



Hospital Fraud Contributed to Doctor's Malpractice

February 12, 2012 by *Patrick A. Malone*

A rare verdict for punitive damages and fraud against a Florida hospital opens a window on the big business aspects of weight loss surgery, which can be unsafe for patients especially when the surgeon lacks experience. The verdict also has lessons for how patients can protect themselves.

A jury in Jacksonville ordered Memorial Hospital to pay \$10 million in punitive damages for what amounted to false advertising about its weight loss surgery "Center of Excellence" designation. The same jury said that Clay Chandler, a county deputy sheriff, should be paid \$168 million in compensatory damages for brain damage that happened to him as a result of uncorrected leakage in his abdomen after a weight loss procedure in 2007 with surgeon John DePeri, MD.

DePeri, testimony revealed, had performed at most 21 bariatric surgeries before he operated on deputy Chandler. To meet the standards of the **American Society Bariatric Surgery's Center of Excellence** seal, he was required to have performed 50 and to have completed at least 20 hours of bariatric education courses. He had taken one.

Memorial Hospital used that accreditation seal in pamphlets given to potential surgery patients of its Bariatric Surgery Center. The seal also was featured on documents DePeri used when speaking at informational forums at the hospital.

The jury found that use to be fraud. It said that the hospital knowingly allowed DePeri to perform paid surgeries for which he was not accredited.

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The [malpractice verdict was reported by the Florida Times Union](#).

Chandler is now brain damaged and confined to a wheelchair. The day after his surgery in 2007, Chandler was placed into critical care with respiratory failure and signs of fluid leakage into his abdomen. Eight days later DePeri operated to repair the leak. Even the hospital's own expert witness testified that most doctors would have addressed the complication much earlier.

It was too late for Chandler, who suffered a stroke and was comatose for more than two weeks. He also suffered a permanent loss of eyesight from a burned retina because he was not given the basic care of lubricating eye drops while he was on the respirator.

The damage to Chandler, said his attorney, Tom Edwards, "occurred because you had a relatively inexperienced doctor doing this surgery and managing the patient."

DePeri has since been accredited by the bariatric surgeons' program. But it's too late for patient Chandler.

What are the lessons for other patients who want to prevent this from happening to them?

In this case, deputy Chandler would have had to do a fair amount of research to find the 50-case minimum standard of the bariatric surgeons. If he did, of course, he could have asked Dr. DePeri up front how many he had done, and DePeri presumably would have told the truth.

But even without that level of research, here are the kinds of questions any patient can --and should-- ask any surgeon, as I explained in a recent issue of my firm's [Better Health Care newsletter, on the topic: Talking to Your Surgeon: What You Need to Ask](#).

"Is there anyone at your institution (in your partnership, in my town, etc.) who does these procedures more than you do? If so, would you mind if I speak to him or her?" (A defensive response to this question is a red flag.)

Another question that gets at the experience issue:

"Who would you ask to do the operation on a close family member of yours if you couldn't?"

Surgical volume is important to hone a doctor's skills in the operating room. It's the old idea that practice makes perfect. But with bariatric surgery in particular, one of the key issues is being able to quickly recognize and correct surgical complications afterwards. That is where Dr. DePeri fell down, with the long delay in returning his patient to the OR. Leaks themselves happen sometimes with this surgery, even in the best of hands; it's the response that is key to a good outcome for the patient.

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Surgical volume is also important for the hospital, because the more nurses and other caregivers have seen patients just like you, the more equipped they are to make sure the post-op recovery period goes smoothly.

See our newsletter for more important questions up front for your surgeon. I called this issue of the [Patrick Malone patient newsletter](#): "[When a Conversation Can Save a Life](#)." The Florida story shows how true that is.

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