

Grubbs, Cynthia (HRSA)

From: Grubbs, Cynthia (HRSA)
Sent: Friday, August 26, 2011 2:07 PM
To: 'dhay@foulston.com'
Subject: FW: Tenny
Attachments: Bavley, Alan_8-26-11_C.Grubbs .PDF

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Hay,

I sent the attached letter to Mr. Bavley at 11:49 AM EST and have not had confirmation of delivery or read receipt.

Cynde

Cynthia Grubbs R.N., J.D.
Director
Division of Practitioner Data Banks
Bureau of Health Professions
Health Resources and Services Administration U.S. Dept. of Health and Human Services
Office: 301-443-1821
Cell: 301-760-9879

-----Original Message-----

From: Grubbs, Cynthia (HRSA)
Sent: Friday, August 26, 2011 11:49 AM
To: 'Abavley@kcstar.com'
Cc: Grubbs, Cynthia (HRSA)
Subject: Tenny

Mr. Bavley,

Please see the attached letter regarding the use of the National Practitioner Data Bank.

Cynde

Cynthia Grubbs R.N., J.D.
Director
Division of Practitioner Data Banks
Bureau of Health Professions
Health Resources and Services Administration U.S. Dept. of Health and Human Services
Office: 301-443-1821
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Bureau of Health Professions

Rockville, MD 20857

AUG 26 2011

Alan Bavley
Health Reporter
Kansas City Star
1729 Grand Blvd
Kansas City, Missouri 64108

Mr. Bavley:

The U.S. Department of Health and Human Services (HHS) has been informed that you may be writing an article for publication in the Kansas City Star which potentially involves the republication of information obtained from the National Practitioner Data Bank (NPDB). Please note that NPDB reports and the information derived from them are protected by Federal law.

The Health Resources and Services Administration (HRSA) operates the NPDB which is a flagging system intended to assist health care entities in evaluating health care practitioner's licensure, professional society memberships, medical malpractice payment history, and clinical privileging history. The information reported to the NPDB is confidential and is not to be disclosed or redisclosed outside of HHS except in furtherance of professional review activities. As specifically required under Federal regulation, any individual who receives information from the NPDB, directly or indirectly, must use NPDB information solely with respect to the purpose for which it was disclosed by HHS. Any individuals who violate the confidentiality provision could be subject to a civil monetary penalty.

More specifically, the confidentiality regulations governing the NPDB (45 CFR 60.15), state:

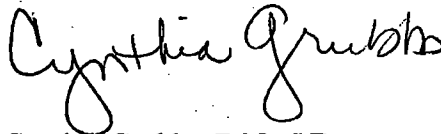
- (a) Limitations on disclosure. Information reported to the NPDB is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in §§ 60.12, 60.13, and 60.16. Persons who, and entities which, receive information from the NPDB either directly or from another party must use it solely with respect to the purpose for which it was provided. Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure.
- (b) Penalty for violations. Any person who violates paragraph (a) shall be subject to a civil money penalty of up to \$11,000 for each violation. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

The NPDB confidentiality provision does not apply to the original documents or records from which the reported information is derived. Therefore, for example, the NPDB confidentiality

provisions do not bar or restrict the release of the underlying documents forming the basis for reports, or the information itself, by the entity taking the adverse action or making the payment in settlement of a written medical malpractice complaint or claim. However, even the existence of NPDB reports regarding specific practitioners is considered confidential information.

We assume that you will be abiding by all the requirements of the NPDB confidentiality provision. If you have any questions regarding the confidentiality of NPDB information, please feel free to contact me directly.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Grubbs".

Cynthia Grubbs, R.N., J.D.

Director

Division of Practitioner Data Banks

Cc: Robert T. Tenny, M.D.

Grubbs, Cynthia (HRSA)

From: Hay, Dick [dhay@foulston.com]
To: Grubbs, Cynthia (HRSA)
Sent: Friday, August 26, 2011 4:22 PM
Subject: Read: FW: Tenny

Your message was read on Friday, August 26, 2011 4:21:59 PM (GMT-05:00) Eastern Time (US & Canada).



Robert T. Tenny, M.D.
Neurological Surgery

10550 Quivira - Suite 230
Overland Park, Kansas 66215
PHONE (913) 831-0000
FAX (913) 831-9988

DATE: August 24, 2011 FAX: 1-703-803-1964
TO: NPDB FROM: RTT
ATTN: Customer Service Branch RE: UNAUTHORIZED USE OF INFORMATION

NUMBER OF PAGES (INCLUDING COVER PAGE): 2

COMMENTS

URGENT

Please see the attached email that my attorney received from Mr. Alan Bavley, a reporter for the Kansas City Star newspaper. The settlements made in the cases listed were all CONFIDENTIAL. PLEASE HELP!

CONFIDENTIALITY NOTICE:

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Mason, Samantha

Subject: FW: Robert Tenny

From: "Bavley, Alan - Kansas City" <ABavley@kcstar.com>
Date: August 16, 2011 7:44:04 PM CDT
To: "Hay, Dick" <dhay@foulston.com>
Cc: "Barker, Jesse - Kansas City" <JBarker@kcstar.com>
Subject: Robert Tenny

Mr. Hay,

Once again, I would like to offer you and your client, Robert Tenny, the opportunity to provide comment for a story the Kansas City Star plans to publish later this month about Dr. Tenny.

The story will refer to the upcoming disciplinary hearing for Dr. Tenny involving the petition by the Kansas State Board of Healing Arts, the lawsuit brought against Dr. Tenny by the family of Maribeth Chase, and previous malpractice suits filed against Dr. Tenny dating back to Mika vs. C.M. Striebing MD, et al in 1983 to the present.

Specific cases the story may describe include Alonge vs. Tenny, Baumgartner et al vs. Tenny, Johnson vs. Tenny and Sisson vs. Tenny et al.

The story also will include information obtained from the National Practitioner Data Bank that shows Dr. Tenny was denied clinical privileges by a health care organization in 1995 for reasons of incompetence, malpractice or negligence, that 15 payments have been made on Dr. Tenny's behalf to settle malpractice claims and that the total amount of the payments is approximately \$3.7 million.

Your comments or those of Dr. Tenny, a denial of responsibility or wrong-doing in any of these matters and a summary of your planned defense of Dr. Tenny in the upcoming license hearing, for example, would be welcome.

Thank you for your consideration,

Alan Bavley

Kansas City Star

816-234-4858



Robert T. Tenny, M.D.

Neurological Surgery

10550 Quivira – Suite 230
Overland Park, Kansas 66215
PHONE (913) 831-0000
FAX (913) 831-9988

September 4, 2011

Cynthia Grubbs, R.N., J.D.
Director
Division of Practitioner Data Bank

Dear Ms. Grubbs,

Enclosed is a copy of the lead, front-page article that appeared in the Kansas City Star on Sunday, September 4, 2011. I feel that the information contained in the 3rd, 7th and 9th paragraphs could have only come from the National Data Bank records. Under the section, *How Many Doctors*, I feel that the information in the 4th and 7th paragraphs also come from the National Data Bank. I am sure that you will find the information in the section, *Using the federal files*, also interesting and, I hope, will change the way the public data is presented.

Respectfully,

Robert T. Tenny, M.D.

Robert T. Tenny, M.D.



KansasCity.com

THE KANSAS CITY STAR

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Sunday, Sep 4, 2011

Posted on Sat, Sep. 03, 2011

Doctors with histories of alleged malpractice often go undisciplined

By ALAN BAVLEY
The Kansas City Star

Maribeth Chase didn't know that the neurosurgeon who would be operating on her had been sued at least 16 times for allegedly making medical mistakes.

She didn't know that former patients and their families contended in court records that he had botched treatments that left one patient dead, several more with paralysis and still others in need of remedial operations.

Or that a dozen years before, federal records show, a health care organization had denied him clinical privileges over concerns about the quality of his care.

Robert Tenny's Kansas medical license was in good standing. And even though state licensing officials had access to his history of malpractice claim payments, dating to the early 1990s, they had never taken action against him.

That's not uncommon. An investigation by The Kansas City Star found that Kansas and Missouri doctors like Tenny with significant histories of alleged malpractice often go undisciplined by the states' licensing boards.

And although the two states' boards have access to malpractice claims information from several sources, they don't make it available to the public — unlike the boards in many other states.

Chase, 77, never recovered from the relatively common procedure — draining a pool of blood from the surface of her brain — that Tenny performed four years ago at Shawnee Mission Medical Center.

She awoke from the surgery paralyzed on the right side of her body and unable to speak, the victim of a brain injury sustained during the operation. Over the days that followed, her condition deteriorated. She slipped into unconsciousness and died.

Tenny settled her family's wrongful death suit for \$1,010,000. The settlement brought total malpractice payments made on Tenny's behalf since the early 1990s to roughly \$3.7 million, federal records indicate.

Tenny's attorney, Charles R. Hay, said federal patient privacy regulations prevented Tenny from commenting. But in court filings and in a deposition taken for the lawsuit, Tenny denied wrongdoing and said he did not cause Chase's injury.

Although disciplinary proceedings against him are pending, Tenny's Kansas license remains untarnished to this day. And though Shawnee Mission Medical Center suspended his staff privileges, he's still practicing at other area hospitals in Kansas.

Tenny is just one of 21 doctors The Star found who have spotless Kansas and Missouri licenses even after lengthy histories of malpractice cases.

Some have been sued over patient deaths and serious injuries. Some allegedly operated on the wrong body parts, made incorrect diagnoses, delivered unnecessary treatment or left surgical materials inside their patients.

None of their records shows any kind of discipline by the states' medical licensing boards.

In 17 states, including California, Colorado, Georgia and New York, patients can go to medical boards' websites to find out about doctors' malpractice histories.

But not in Kansas and Missouri. That leaves sifting through court records as the only way to discover a doctor's malpractice litigation history. And because many settlements are confidential, there is no certainty that all of a doctor's malpractice payments could be found.

"I find it very disturbing that people can go into an emergency room and be treated by (Tenny) after all that has happened," said Chase's daughter, Claire Chase of Lenexa.

Kansas and Missouri board officials say they do take doctors' malpractice case histories into account when initiating investigations. Doctors and insurance companies are required to notify the boards about malpractice payments. The information also is collected by a federal agency, the National Practitioner Data Bank, that makes it available to state boards.

"Certainly malpractice payments, when we receive those reports, are scrutinized. Any information that is concerning is scrutinized," said Kathleen Selzler Lippert, executive director of the Kansas State Board of Healing Arts.

"But just because there's a (malpractice) payout doesn't mean there's grounds for disciplinary action," Lippert said. "Some malpractice payments are a business calculation, a cost-benefit analysis of whether to go to trial."

Some specialists, including neurosurgeons and heart surgeons, are sued more often than other doctors.

A recent survey by the American Medical Association found that most doctors will be sued for malpractice by the time they retire. But the majority will never face more than one lawsuit. And even when they are sued, doctors generally prevail, studies have found.

Doctors who are sued repeatedly and successfully are uncommon.

"If you're a doctor with more than two malpractice payments, you're in a rare group," said Russell Aims, spokesman for the Massachusetts Board of Registration in Medicine.

Of the 34,000 physicians licensed in the state, fewer than 100 will make more than two payments on malpractice claims over the course of 10 years, he said.

Nationwide, fewer than 2 percent of doctors have accounted for half the reported \$67 billion paid out for malpractice claims in the United States since 1990, according to a study by Robert Oshel, a former analyst for the National Practitioner Data Bank.

"Taking that 2 percent of physicians out of practice would certainly make quite a difference," Oshel said.

"I wouldn't necessarily recommend revoking the licenses of all the docs responsible for half of the payments. Some who have a single large payment are probably good, safe, doctors. But all of them, especially those with multiple payments, would be good candidates for investigation by the licensing boards."

In Kansas and Missouri, the licensing boards are appointed by the states' governors and are made up mostly of physicians. They can discipline doctors for dishonorable conduct or professional incompetence by issuing reprimands, suspending their licenses or even revoking them.

A week after her mother died in March 2007, Claire Chase filed a detailed complaint about Tenny with the Kansas board.

Eight months later, the Chase family's attorney, Victor Bergman, sent the board copies of depositions taken for the lawsuit, along with a letter outlining his case against Tenny.

But according to documents obtained by The Star, the Kansas board did not start formal disciplinary proceedings against Tenny until June 2010. After more than a year of legal wrangling, the board's case against Tenny — based on his treatment of Maribeth Chase — is not yet scheduled for a hearing.

How many doctors?

To see whether other doctors with long malpractice payment histories are practicing in Kansas and Missouri, The Star analyzed thousands of records in the National Practitioner Data Bank.

The federal agency in 1990 began gathering information on payments to settle malpractice claims against doctors. It also collects reports of disciplinary actions taken against doctors by licensing agencies and hospitals and by the Drug Enforcement Administration.

State medical boards can use the Data Bank to review license applications or to initiate disciplinary investigations. For a fee, the Data Bank will even email boards within 24 hours when a report of a malpractice payment or disciplinary action is filed.

Data Bank files available to the public have fewer details and are stripped of information identifying doctors by name. The Star linked Tenny to entries in the Data Bank by comparing its public reports to information about Tenny contained in court filings.

The Star found about 200 doctors who have practiced in Kansas or Missouri since 1990 and have had five or more malpractice case payments made on their behalf, without ever being disciplined by the state's board. The number of malpractice claims against the doctors is unclear because individual cases may involve payments from more than one source.

Twenty-one of these doctors, including Tenny, have a record of at least 10 malpractice payments and as many as 19. Malpractice payouts for these doctors exceed \$65 million. Their malpractice cases involved at least 10 patient deaths; at least 32 other patients sustained serious permanent injury.

In a handful of cases, these doctors also saw their hospital privileges revoked or suspended for substandard skills, malpractice or, as in Tenny's case in 2007, because the hospital considered him an immediate threat to patients' health or safety.

Kansas and Missouri aren't the only states where doctors with significant alleged malpractice histories have gone undisciplined by medical boards.

The advocacy group Public Citizen this year released a nationwide analysis of the Data Bank. It found 14 states, including Kansas and Missouri, with physicians who had at least 10 malpractice payments, plus at least one report by a hospital revoking or limiting clinical privileges, but who had not been disciplined by their state. One undisciplined doctor in New Mexico had 26 malpractice cases. A doctor in Indiana had 20.

Weighing the records

Patient safety advocates say boards should use malpractice records to their full advantage to ferret out doctors who may be doing harm. The boards themselves, though, aren't as confident about the records' value.

Boards commonly review malpractice cases, said Lisa Robin, chief advocacy officer for the Federation of State Medical Boards. But a history of malpractice payments is not the most reliable sign that a doctor should be disciplined, she said.

"We believe (previous) disciplinary actions against a license are much more significant than a malpractice payment," Robin said.

Some states make it harder than others to file a malpractice lawsuit, Robin said. And even within states, juries in some court districts may favor patients, while in other districts they favor doctors.

Often times, cases that lead to malpractice payments may not offer legal grounds for disciplining a doctor, Robin said. An insurance company may settle a case not because a doctor is at fault, but because a trial would be too expensive. In other cases, several health care providers may share responsibility.

"There may be whole systems that failed. Not just one person is to blame," Robin said.

For reasons such as these, Lippert, executive director of the Kansas board, called The Star's findings about doctors' malpractice payment histories "very nebulous information" that doesn't indicate whether a doctor should be disciplined.

"It's a piece of information without context," she said. "It's really hard to evaluate."

Whether a doctor poses a danger to the public is a key factor in determining discipline, according to Lippert — not the number of malpractice cases.

"You can practice the best medicine in the world and still have tragic consequences" that lead to malpractice payments, she said. "You can practice bad medicine but not have bad results" that wind up in court.

But patient safety advocates say malpractice reports still are useful indicators of how a doctor practices.

"A better board should use all of its resources, whether it's a complaint against a doctor or an action taken by a hospital or a report of a malpractice payment," said Sidney Wolfe, a physician and director of Public

Citizen's Health Research Group. "And malpractice payments are the most common piece of data by far in the National Practitioner Data Bank."

Investigating malpractice cases may be time-consuming, but often much of the groundwork already has been done by the lawyers who filed the lawsuits, Wolfe said.

"You start with the existing records and proceed from there," he said.

Each year the staff of the Missouri Board of Registration for the Healing Arts reviews reports on about 700 to 800 malpractice claims made against doctors, board spokesman Travis Ford said. The claims reports, with information about the doctors and patients and the nature of the allegations, come in quarterly from the state insurance department.

The claims are more useful than reports of malpractice payments, Ford said.

"It's the allegation behind the claim that is serious," he said. "Whether there's a payment or not wouldn't influence the board's action."

About 90 percent of the claims lead to full investigations, with staff interviewing doctors and patients and witnesses, Ford said. But very few lead to discipline.

Before the Missouri board can take disciplinary action for malpractice, it must demonstrate that a doctor negligently failed to provide patients with the recognized standard of care, Ford said. And unless a doctor demonstrated a willful disregard for a patient's welfare, there has to be a pattern of repeated negligence before the board can act.

In Kansas, similar criteria apply.

And in both states, cases may go through an independent administrative hearing, similar to a trial, before the boards are authorized to take disciplinary action.

"It's easy for the board to decide that someone should be suspended or revoked, but the board isn't the ultimate decider," Ford said.

'Something was dreadfully wrong'

No one knows exactly why blood welled up on the surface of Maribeth Chase's brain and made her a candidate for surgery.

In elderly people like her, even a minor bump on the head can tear small blood vessels and cause a slow bleed between the brain and the membrane covering it. The condition, called a chronic subdural hematoma, may not show any symptoms at first. Brains shrink with age, and that leaves room for blood to accumulate. Blood may build up over time, even for months, before it puts pressure on the brain.

Chase, a retired speech therapist, had moved from Iowa to Lenexa to be closer to family members. In February 2007 she started having headaches and found it hard to remember words. Her handwriting started to change.

On the way to a gym for aerobics one day, her vision blurred. Her doctor told her to go to the emergency room at Shawnee Mission Medical Center.

Surgery for a subdural hematoma like Chase's is often a routine procedure. The surgeon drills two quarter-size or smaller holes through the skull and drains the blood. Typically, the slow bleed doesn't damage the brain, and patients get better in a few weeks.

Claire Chase remembered Tenny saying her mother would make a full recovery; she would spend a day or two in intensive care, a few more days in the hospital and then go home.

After the surgery, family members said, Tenny told them the operation had gone well. But it soon became clear that wasn't the case.

"I didn't notice until the next day. She was paralyzed on the right side. She couldn't talk, but she was clearly there — she grabbed my hand," Claire Chase said. "Obviously, something was dreadfully wrong, and it didn't go as planned."

Maribeth Chase's son, John Chase, an orthopedic surgeon, had flown in from Florida to be by her side. He called a neurosurgeon friend for advice.

"You've had a major complication," he recalled his friend saying. "A big problem. She may die."

Tenny told Chase's son and daughter shortly after the operation that their mother had suffered a stroke, their lawsuit alleges.

But the family said they heard little more from the doctor.

"He would not give any information at the time, and I didn't realize I should have been grilling him, interrogating him because I didn't know what to expect," John Chase said. "I took what he said at face value."

Evidence gathered for the Chase family's lawsuit showed that on the day after the operation, Tenny had booked an operating room to perform additional surgery on Chase, but it was never done. He called his malpractice insurance company. And he phoned the hospital to have a do-not-resuscitate order added to Chase's medical records, the suit alleged.

Her family did not know about the do-not-resuscitate order, John Chase said.

Months later, Tenny would place an addendum in his hospital operative report that during the surgery he "noted a small piece of brain tissue draining out" of one of the holes in Chase's skull. His initial report made no reference to a brain injury.

As their mother's condition deteriorated, the family asked for a neurologist to consult on the case. Brain scans showed there was bleeding into Chase's brain and pockets of air that indicated the brain had been penetrated, John Chase said.

The neurologist reported the incident to the hospital. In her deposition, the hospital's risk manager said Tenny told her that a nurse in the operating room apparently injured Chase by using a bulb syringe to squirt saline solution into one of the holes. She said Tenny told her the nurse did this without his permission.

When the hospital investigated, it found that the nurse Tenny named had not even participated in the operation, according to court depositions and hospital documents.

"That's just so transparent," John Chase said. "He couldn't even remember which wrong guy to blame here."

The family's lawsuit alleged that Tenny intentionally kept from them the facts about Chase's post-operative condition. Had the family known what had happened, immediate surgical intervention may have "substantially increased" Chase's chances of survival and an acceptable quality of life, the lawsuit alleged.

"We never had the opportunity to make that decision" for emergency surgery, John Chase said. "(Tenny) knew there was a problem but he ... just let her sit there."

In his answer to the Chase family's lawsuit, Tenny admitted that Maribeth Chase's death was, in retrospect, a result of trauma she suffered during surgery, but he denied that a follow-up operation would have changed her outcome. And in his deposition testimony, Tenny held steadfastly to his assertion that the nurse he had named was the person who had forcefully irrigated Chase's brain.

Asked why everyone else who was in the operating room contradicted Tenny about who assisted him with the surgery, Tenny answered:

"Well, I can't comment as far as their motives, or intentions, or their memory of the events; I can only testify to what I observed."

Informing the public

The ordeal of her mother's surgery has shaken Claire Chase. "I certainly at this point wouldn't trust ... (a) doctor without checking their history," she said.

But the limited information available on the Kansas and Missouri board websites doesn't offer much help to the average person trying to assess a doctor's background. Other states make some information about doctors' malpractice case histories public.

After years of study and legislative action, the North Carolina Medical Board started posting malpractice payment information about the doctors it licenses on its website in December 2009. A television news report on the postings caused a surge in web traffic.

"There has been a steady drumbeat from the public and the press for more information. This is the board's reaction to what the public expected," board spokeswoman Jean Fisher Brinkley said.

The board doesn't report the dollar amounts of payments, nor does it list payments of less than \$75,000. Some doctors were concerned that nuisance lawsuits settled for relatively small amounts would appear on their records.

"We had people boldly predict no one would want to settle a case again because they wouldn't want it to show up on their record," Brinkley said. "As far as we can see, it's business as usual."

Brinkley said the malpractice information might raise as many questions as it answers. She recently got a call from someone asking whether he should go to a particular orthopedic surgeon who had a report of a malpractice payment.

"I told him I can't say whether he provided substandard care. All I could say was he had a payment."

But Brinkley has heard people say about the malpractice postings, " 'If I had known that, I would never have gone to that doctor.' This allows patients to go in with their eyes open. The point is, we're being transparent."

Lippert said the Kansas board has not discussed making malpractice payment information available in this way. In Missouri, the law was changed recently to allow the board to post information about doctors' education, discipline by boards in other states and practice limitations ordered by courts.

"To get this far is a dramatic step for transparency," Ford said.

So far the Missouri board hasn't asked lawmakers for permission to disclose doctors' malpractice histories, Ford said, "but I think we're always reviewing possible legislation."

John Chase serves as a reviewer of cases brought to the Florida Board of Medicine.

The Florida board investigates patient deaths and neurological injuries quickly, he said. "I know how this is supposed to work."

Chase said he has never been sued for malpractice, but he worries about it with every patient he sees. And he believes insurance companies may settle malpractice lawsuits against doctors' wishes just to make cases go away.

"There can be a payout where there isn't negligence," he said. "But again, where there's smoke, there's fire. It's (a medical board's) job to put the whole picture together."

"The best and most efficient way to discipline substandard physicians is through the board."

Giving the public access to malpractice reports

In the late 1990s, Massachusetts became the first state to make comprehensive profiles of the physicians it licenses available to the public.

The profiles, on the Massachusetts Board of Registration in Medicine website, include basic information about doctors' education, medical specialties, business addresses and affiliations with insurance plans and hospitals.

Doctors can include professional and community awards they've received and information about their research or publications.

Each profile shows the number of malpractice claims against the doctor that led to a payment in the past 10 years. The date of each payment is given, but not the specific amount. Instead, the profile tells whether the payment was average or above or below average for that doctor's specialty.

The profile also gives the percentage of doctors in that specialty who made a malpractice payment in the past 10 years. Among Massachusetts neurosurgeons, for example, 14.5 percent have made one or more payments.

Each profile also lists criminal convictions and disciplinary actions taken by hospitals or the board in the past 10 years.

The profile site gets about 20 million hits per year from 600,000 to 700,000 unique users, board spokesman Russell Aims said.

One doctor's history of malpractice cases

By the time Robert Tenny operated on Maribeth Chase in 2007, court records show, he had been sued by patients or their families at least 16 times since 1983.

While consistently denying the allegations, Tenny eventually settled at least six of these lawsuits, court records indicate. For the rest of the cases, the outcome either isn't clear from the records, the cases were dismissed or, in at least one case, the verdict was in Tenny's favor.

Among the cases Tenny settled:

- Two back operations that allegedly left one man partially paralyzed below the waist and another man paralyzed in all four limbs. Before operating, Tenny allegedly had told the patient who would suffer quadriplegia that surgery would not worsen his condition.
- Surgery on a carotid artery of a 74-year-old woman whose post-operative care Tenny allegedly mismanaged, leading to her death. The lawsuit contended that the woman suffered "marked bleeding" from her surgical wound and was bleeding when Tenny transferred her from intensive care to a regular hospital floor. Tenny settled the lawsuit brought by the woman's family for \$750,000, according to Victor Bergman, the family's attorney.
- Allegedly disfiguring and ineffective surgery that cut open a patient's skull to remove a tumor behind his left eye. A biopsy, brain scans and a second operation by an eye surgeon allegedly found that Tenny had missed the tumor and removed other tissue instead. The patient claimed he was left with blurred and double vision, nausea, migraines and hand tremors.

A case Tenny won:

- The alleged failure of Tenny and other doctors to diagnose and treat a woman's spinal infection before it caused paralysis and lack of sensation in her lower extremities. The patient alleged Tenny should have reviewed an MRI scan himself, rather than rely on a report by a radiologist. A jury found Tenny and two other doctors not at fault. The hospital and two additional doctors settled before the trial.

Using the federal files

The Kansas City Star analyzed National Practitioner Data Bank records from 1990 through 2010 of physicians who have had payments made on their behalf in Kansas or Missouri for malpractice claims and who have not been disciplined by the state's medical board.

The Data Bank's public files are designed to make identification of individual doctors difficult, if not impossible. Doctors are identified by a number rather than by their name, and those numbers change periodically.

The records used by The Star may include doctors who no longer practice in Kansas or Missouri, but also may exclude doctors who had malpractice histories in other states before practicing in Kansas or Missouri.

The methodology used to analyze the data was recommended by Robert Oshel, retired Data Bank associate director who created its public use file. Oshel also provided databases to The Star for Kansas and Missouri.

The records show about 200 doctors with five or more malpractice payments who have practiced in Kansas or Missouri but have never been disciplined by the states' licensing boards.

For some of these doctors, the actual number of individual malpractice claims may be lower than the number of payments counted. That's because Kansas has a Health Care Stabilization Fund that makes separate payments for some claims in addition to payments made by doctors' insurance carriers.

The Data Bank identifies whether payments were made by the state fund or by an insurance company but does not make clear whether payments from these sources were applied to the same case.

The total amounts of payments cited by The Star are conservative estimates.

The public data do not list the specific amount of each payment. Instead, the Data Bank places each payment within a range and reports the midpoint of that range. For example, if the actual payment is \$131,500, the range would be \$130,001 to \$140,000 and would be reported by the Data Bank at the midpoint of \$135,000. For each payment, The Star used the lower amount of the range rather than the reported midpoint.

The Data Bank also lists separately amounts that are supposed to be paid over time. The Star did not include these additional amounts in its estimates because it could not verify that these payments were made.

The Star's review of the National Practitioner Data Bank found:

21 doctors with 10 or more malpractice payments made on their behalf, including at least one payment in Kansas or Missouri, but no disciplinary action in that state.

\$65 million paid in the 263 total payments on behalf of those doctors.

@ Go to [KansasCity.com](http://www.kansascity.com) for excerpts of Robert Tenny's taped deposition from the Maribeth Chase case.

To reach Alan Bavley, call 816-234-4858 or send email to abavley@kcstar.com.

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Robert T. Tenny, M.D.

Neurological Surgery

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September 5, 2011

Cynthia Grubbs, R.N., J.D.
Director
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Department of Health & Human Services
Mail Stop 8-103
Rockville, MD 20857

Re: K.C. Star Article

Dear Ms Grubbs,


If Mr. Bavley were able to extract the data for his article from the publicly provided information from the National Practitioner Data Bank, would there be any record of his inquiry? Also to perform the type of data analysis that he claims to have done, he would have to identify all of the neurosurgeons in the geographic area that the public data covers, search each of the appropriate county court records (in my case at least five counties) and then form a large spreadsheet to include all the cases reported by both the courts and the Data Bank and be able to match them. If he did this, does he have the records to prove it? Would there be records of his inquiries at each of the county court houses, especially coming from a reporter? If he made his inquiries via the Internet, there should be an electronic record of his actions? If he hired someone to do this work, the same should apply. If he did hire someone to do his research, where did he obtain the revenue to finance the project, who did he pay and how much and when? There should be records of this information. Was he paid by someone to write the article? His financial records might indicate this information.

Obviously, his article has significantly questioned the security of your data.

According to a media consultant, Mr. Bavley does not develop his own material, but rather he writes from the material that has been provided to him. This, to me, would suggest that he was given Data Bank information (probably from [REDACTED]) as opposed to the arduous task of compiling a complex spreadsheet.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert T. Tenny, M.D.", with a small flourish at the end.

Robert T. Tenny, M.D.



Robert T. Tenny, M.D.
Neurological Surgery

10550 Quivira – Suite 230
Overland Park, Kansas 66215
PHONE (913) 831-0000
FAX (913) 831-9988

September 7, 2011

Cynthia Grubbs, R.N., J.D.
Director
Division of Practitioner Data Bank
Department of Health & Human Services
Mail Stop 8-103
Rockville, MD 20857

Re: Editorial K.C. Star

Dear Ms Grubbs,

I have enclosed a copy of the lead editorial in the Kansas City Star from September 7, 2011. I am sorry that the yellow background highlighting the editorial did not copy well. It is apparent that the article (and now with the editorial) was not the product of a lone reported, but rather a concerted effort by the K.C. Star to end my professional career. I am sure that you are asking the question, why?

Shawnee Mission Medical Center is a heavy advertiser in the K.C. Star and their logos frequently co-appear on several items. At the time of the surgical procedure on [REDACTED], the surgical scrub, [REDACTED] performed a forceful irrigation upon the patient's brain. Suspecting that this may have injured my patient, I reported this event to the hospital risk manager and to the patient's family. Within a few days, the hospital informed me that [REDACTED] was the surgical scrub of record and that I was mistaken. The hospital took sworn statement from [REDACTED], [REDACTED] and [REDACTED] (the recorder of the data) and they all testified to the hospital's timeline. However, I kept pressing.

Enclosed is material that Shawnee Mission Medical Center produced, but they did not think that I would do the math. I believe that Shawnee Mission is guilty of Medicare Fraud in that they altered the medical records of two

is guilty of Medicare Fraud in that they altered the medical records of two patients who had undergone total joint procedure (that would most likely be in the Medicare age group) and of a third patient that may or may not be over 65. My attorney's have tried numerous times to subpoena the remaining information to prove my contention and we have been told that it does not exist and/or it is privileged and cannot be released. I have a new group of attorneys who are trying to obtain this information and I believe that this action has prompted Shawnee Mission Medical Center to ask their publicist, the Kansas City Star, to destroy my career before I can prove their deception. Where can I go for help?

Sincerely,

Robert T. Tenny, M.D.

Robert T. Tenny, M.D.



BLOG BIT
Tea party supporters are right. The mean-spirited words of Teamsters President James P. Hoffa were inexcusable. Hoffa introduced President Barack Obama at a Labor Day speech, exhorting union supporters to "take these son-of-a-bitches out" in a reference to Republicans in Congress. It was the kind of uncivil comment that Democrats have jumped up and down about for months whenever it came from the mouths of tea party backers.
Yael T. Abouhalkah, Kansas City Star editorial page columnist, on the Midwest Voices blog at voices.kansascity.com

THE STAR'S EDITORIAL

Kansas, Missouri don't give the public enough information about malpractice claims

Doctors' licensing boards must end secret ways

A good doctor will advise a patient to get at problems quickly. Delaying action usually makes matters worse.

But the Kansas and Missouri boards charged with licensing and regulating medical professionals are much too slow to acknowledge problems and deal with them. At a time when the public is demanding information on the products they buy and the services they use, licensing boards in both states are stung by the information they provide about doctors and other medical professionals.

A detailed report published Sunday by The Star showed that both states are overlooking excessive malpractice claim payments that could serve as warnings about a physician's performance.

An analysis by Public Citizen, an advocacy group, placed Missouri and Kansas in a group of only 14 states that had not disciplined physicians who had at least 10 malpractice payments, plus a record of having practicing privileges revoked or limited by at least one hospital. That's not a club to which either state should belong. An isolated



BIGSTOCK PHOTO

malpractice claim against a doctor is a common occurrence. A pattern of multiple payouts is a big red flag.

2 percent of doctors are responsible for the \$6.7 billion in malpractice claims paid out since 1990. The Kansas and Missouri licensing agencies don't even allow consumers to decide for themselves whether repeated malpractice claims should be seen as a problem. While many other states make information about successful malpractice claims available to the public, Kansas and Missouri do not. The reluctance to take action against doctors, combined with the information vacuum, leaves some patients defenseless.

The Star's report detailed the death of a patient at the hands of a Kansas neurosurgeon, Robert Tenny, who had been sued at least 16 times and paid more than \$2 million as a result. Yet at the time he performed the surgery that proved fatal to 77-year-old Maribeth Chase, Tenny's license with the Kansas State Board of Healing Arts was in good standing.

Despite receiving extensive information from Chase's family about her death, the licensing agency took almost three years to start formal disciplinary proceedings.

Tenny is scheduled for a pre-conference hearing with the board on Friday.

The Kansas board and Missouri's Board of Registration for the Healing Arts need to be much speedier about taking action against physicians with troublesome records. They also should be much more transparent. Other states have found ways to make information about malpractice claims public while also putting that information into context for consumers.

Neither state board does even a mediocre job of providing the public with easily accessible data about physicians and their records. Their websites are confusing and have no way for consumers to quickly research a doctor's credentials, education and record.

Overall, the Kansas and Missouri boards are locked into defensive postures that protect problematic doctors and shut out the public. Both boards owe citizens an explanation as to why they are slow to discipline doctors with multiple malpractice payouts, and a plan of action for taking doctors' legal histories seriously.

LETTERS

On the day of the surgical procedure, 2/27/07, [REDACTED], who had recently been promoted to the position of afternoon Operating Room Coordinator, indicated to Dr. Tenny that, because of a staffing shortage, he, [REDACTED] would be the individual to scrub the surgical procedure for Dr. Tenny. He later informed Dr. Tenny that [REDACTED] should be finished with the case in which he, [REDACTED] was working and that [REDACTED] would be available to scrub Dr. Tenny's case instead. It is speculated that the circulating nurse, [REDACTED], was aware of this information and that she entered the name of [REDACTED], at the beginning of the computerized data entry form as "1st Scrub" while the surgical suite, OR 1, was being "turned over" from the prior surgical procedure and preparing for Dr. Tenny's case. This name, [REDACTED], would then be stored into the system and the next window would appear on the computer screen for [REDACTED] to complete.

Before the start of Dr. Tenny's surgical procedure, [REDACTED] was scrubbed and [REDACTED] was preparing the surgical equipment and the supplies for Dr. Tenny's surgical procedure. [REDACTED] indicated to Dr. Tenny that [REDACTED] was still assisting in another surgical case and that [REDACTED] would not be available in time to start Dr. Tenny's case, so he, [REDACTED], would be assisting in the case after all. It is speculated that the circulating nurse, [REDACTED], did not scroll back through all of the, now completed, computer window forms, to the beginning, to change the name of the "1st Scrub" from [REDACTED] to [REDACTED].

Enclosed is data, provided by Shawnee Mission Medical Center, indicating the number of minutes of attendance for each person in OR 1 (Operating Room 1), OR 2 and OR 3 for February 27, 2007. On the first page, in the third column, from the left, is the title, Primary Surgeon. On the 16th line down, is listed, Tenny MD, Robert T, across from that is, the name of the patient, the procedure, the person in attendance, their role in the procedure and the number of minutes in attendance for that procedure. On the second page, in the second column, nine lines down from OR-02-SM, is listed OR-03-SM and, going across is the name of the surgeon, procedure, attendee, role and number of minutes of attendance. On the bottom, [REDACTED] is listed as 1st Scrub with 144 minutes of attendance. If one looks at the second case, in OR-3, [REDACTED] was in attendance 155 minutes and he was in attendance for 67 minutes in the third case.

On the next page is the "Time Line for [REDACTED]". The next two pages explain some of the activities that occur during "turn over" between surgical cases.

The next page has the "More Realistic Time Line for [REDACTED]" and it used known data to calculate the operating room turnover times.

On the last page, is a copy of the time card for [REDACTED]. On 02/27/07, it shows that [REDACTED] timed-in (which is done electronically) at 0630 (6:30 AM). This time card is from his sworn deposition.

In reviewing the previous documents, there are several different scenarios

SMMC has offered the scenario that the first case in OR 3 started at 6:30 AM, the exact time that [REDACTED] time card states that he checked in. After the surgical personnel time-in, they go to the men's locker room (in [REDACTED] case), change into their surgical scrubs and, in the case of a surgical scrub (the job of [REDACTED]), the surgical supplies for that surgical procedure need to be acquired (usually from a checklist), a sterile field established, a surgical hand scrub of several minutes, sterile gowning and gloving of the surgical technician ([REDACTED]), which he does by himself, with the aid of someone to tie up the back of his gown, then sterily turn the back of the gown around to cover the back, the surgical instruments and supplies are opened, counted (with another individual in the operating room and the count is recorded) and instruments and supplies are arranged on a sterile field (and there are a lot of equipment/supplies for a total joint replacement operation – the first case in OR 3). All of these events usually occur prior to the patient being brought into the operating room and, certainly, prior to the start of the surgical procedure. This is the rationale for the staff arriving at 6:30 AM in anticipation of a 7:30 AM surgical start time.

[REDACTED], might have made a simple clerical error on data entry, In order to secure their testimony, Shawnee Mission Medical Center obtained sworn statements from [REDACTED] and [REDACTED] within three weeks of the event. Dr. Tenny, subsequently, questioned Shawnee Mission Medical Center about their timeline and requested more information. It is speculated that when SMMC reviewed the records for the attendance and found [REDACTED] name was in both OR 1

and OR 3, at the same time. SMMC might be reluctant to release the records because it would discredit the sworn testimony of its three employees and it would also raise the question of a "cover-up" regarding the presence of [REDACTED] during that time. After all, how could [REDACTED] [REDACTED] done anything wrong if he was not there?

SMMC might have gone back and changed the medical records so that [REDACTED] was only in one location at a time and, if discovered, this action could expose SMMC to a large variety issues.

The necessary records to clarify this issue have been requested and subpoenaed from SMMC on numerous occasions without receiving an adequate response.

It may all be coincides, but [REDACTED] who had been promoted to the position of afternoon Operating Room Coordinator a few days before the day of the surgical procedure, resigned from SMMC to work as an agency staff nurse. [REDACTED], the Risk Manager for SMMC at the time, reportedly had told several individuals about her dislike for the private practice of law; but within a few months, she left SMMC for private practice and her supervisor had left SMMC even earlier.

St. Vincent's Mission Medical Center
Department of Surgery

Case Start Date	Operating Room	Attending Surgeon	Patient Name	Primary Procedure	Case Attendant Name	Case Attendant Role	Number of Minutes in Attendance
27-Feb-2007	OR01-SM	[REDACTED]	[REDACTED]	Laparoscopy/Salp hgm-Obp/Prosection w/Proslap	[REDACTED]	Procedure Physician	50
					[REDACTED]	CRNA	93
					[REDACTED]	1st Scrub	93
					[REDACTED]	1st Circulator	93
					[REDACTED]	Anesthesiologist	93
					[REDACTED]	Procedure Physician	189
				Prostatectomy/Rob otic	[REDACTED]	Anesthesiologist	20
					[REDACTED]	Ancillary Personnel	230
					[REDACTED]	CRNA	230
					[REDACTED]	Circulator/Relief	16
					[REDACTED]	1st Scrub	230
					[REDACTED]	1st Circulator	230
					[REDACTED]	1st Assistant	86
					[REDACTED]	2nd Circulator	34
					[REDACTED]	Anesthesiologist	230
					[REDACTED]	CRNA	101
					[REDACTED]	1st Circulator	101
					[REDACTED]	Procedure Physician	101
					[REDACTED]	1st Scrub	101

TIME LINE FOR [REDACTED]

Shawnee Mission Medical Center
Department of Surgery

Page 3 OR 03-SM – [REDACTED] is listed in three
Consecutive surgical cases for
144 minutes (2:24), 155 minutes
(2:35), and 67 minutes (1:07)

Assuming that the first surgical procedure began at
7:30 AM (the usual start time) and that the testimony
of [REDACTED] during his deposition of 10/25/07
regarding the turn over time of 15 minutes between the
surgical cases, the following time line would exist:

First Case Start	7:30	
First Case Finish	9:54	(7:30 + 2:24)
Second Case Start	10:09	(9:54 + 0:15)
Second Case Finish	12:44	(10:09 + 2:35)
Third Case Start	12:59	(12:44 + 0:15)
Third Case Finish	14:06	(12:59 + 1:07)

Dr. Tenny's case started at 13:57 – See SMMC IntraOp

These times do not account for the usual morning break
of 15 minutes nor for the 30 minute lunch break.

SOME OF THE USUAL ACTIVITIES FOR THE SMMC OR PERSONNEL FOR SURGICAL CASE TURN OVER

At the end of the first case:

Collect/bag/remove all contaminated disposable items and fluids.

Collect/bag/remove all contaminated linens.

Collect/assemble/remove all surgical instruments.

Mop the floor, wipe down the OR table, other horizontal surfaces, OR lights and remove body fluids from any other surfaces.

Reconfigure the OR table.

New linen for the OR table.

Bring in the surgical supplies need for the case.

The circulating nurse and CRNA would go to Interview the patient and bring them to the surgical suite.

The scrub nurse/tech would create a sterile field, open the needed sterile instruments and sterile supplies, scrub for the case, gown and glove themselves, then begin to arrange the sterile instruments and supplies.

ALL of these activities are usually done PRIOR to the patient entering the OR suite. The official start time is when the patient is brought into the OR suite.

MORE REALISTIC TIME LINE FOR [REDACTED] [REDACTED]

The time between cases offered by [REDACTED] is probably not realistic. The mixture of surgical cases in OR 01-SM, from page one could be used to calculate a better estimate. Assuming that the first case began at 7:30 and it lasted for 93 minutes (1:33). The second case lasted for 230 minutes (3:50). The exact start time of the third case (Dr. Tenny) is known to be 13:57; therefore,

$13:57 - 7:30 = 6:27$ for entire time that had elapsed from the start of the first case until the start of Dr. Tenny's case.

We know that the two proceeding cases used a total Of 5:23 ($1:33 + 3:50$), so if we subtract:

Total time $6:27 -$ proceeding case time $5:23 = 1:04$
For the turn over time for two cases, or 0:32 per case.
If this turn over time is used, [REDACTED] would have been finished in OP 03-SM at 14:39, still without a 15 minute morning break nor without a 30 minute lunch.

HR3 NOV. 28. 2007 4:15PM Tir LOGAN&LOGAN

NO. 691, 08/01/07 15:10

Scope-> Begin Date: 02 18 2007 Reason Modf : ** +
End Date : 03 03 2007 Minute Format: MIN (Min/Hun)

More : < >
Problem: * (Y/N)

ID * [REDACTED] 5 Name: [REDACTED]
Status: 2 + ACTIVE Type: 00 + HOSPITAL EMPL Pos: 306 01.2480.2 +
Badge : [REDACTED] 5 Oprt ID: [REDACTED] Total Hours: 69.38

AC	Date	X	In	Time	Out	Rsn	Lunch	Net	Cost	Job	Actv	Empl
						Modf	+Min	Time	Cent	Class	Code	Typ
	02 20 2007		6 : 30	19 : 24				30 12 : 24	306	2480		00
	02 21 2007		6 : 29	16 : 07				30 9 : 08	306	2480		00
	02 27 2007		6 : 30	18 : 54				30 11 : 54	306	2480		00
	02 28 2007		6 : 35	19 : 02				30 11 : 57	306	2480		00
	03 03 2007		-	-		OC		0 12 : 00	306	2480	OC	00
	03 03 2007		-	-		OC		0 12 : 00	306	2480	OC	00

A _ _ _ _ : _ _ : _ _ _ 0 _ _ : _ _ _
Message: You are positioned at the bottom of the entries.

CLIENT06 Empl ID <OR> \Badge

Tran-PF Action

Command:

PF1 Help PF2 Copy PF3 Exit PF4 Beam PF5 Memo PF6 HR14 PF7 Bkwd
PF8 Fwd PF9 Jump PF10 HR14 PF11 HR40 PF12 Cancel PF21 HR31 CLR Rset





Robert T. Tenny, M.D.

Neurological Surgery

10550 Quivira - Suite 230
Overland Park, Kansas 66215
PHONE (913) 831-0000
FAX (913) 831-9988

September 11, 2011

Cynthia Grubbs, R N., J.D.
Director
Division of Practitioner Data Bank
Department of Health & Human Services
Mail Stop 8-103
Rockville, MD 20857

Dear Ms. Grubbs,

There are two observations that you might find useful in your investigation.

First, on September 7, 2011, my attorney, Charles R. Hay, indicated that he had received a telephone call from the attorney that represents [REDACTED] for medical staff related issues, [REDACTED], inquiring whether Mr. Hay had any idea as to why the Data Bank was asking about its ([REDACTED]) release procedures? This would seem odd in that [REDACTED] is in the [REDACTED] area and that Mr. Hay is in Topeka and, why would they elect to call him, of all people, unless they had a reason to be concerned?

Second, I have enclosed an advertisement for Shawnee Mission Medical Center that was published in the Sunday Edition of the Kansas City Star (9/11/11). Exactly one week after Mr. Alan Bavley's article. The two points of interest are the size of the ad and, as usual, the co-appearance of the Shawnee Mission Medical Center logo with that of the Kansas City Star. Is this a way to compensate the K.C. Star for its journalistic endeavor? I have also enclosed a copy of the "standard size" ads that most medical centers purchase. This is the first time that I have ever seen an ad of this size by Shawnee Mission Medical Center and I always look. Also, on the page of the second ad, there is an interesting article describing the recent awards that the Kansas City Star has received!

Sincerely,

Robert T. Tenny, M.D.

Robert T. Tenny, M.D.

Maximum Benefits



Robotic technology is being applied to an increasing number of procedures, including prostatectomy, hysterectomy and nephrectomy. As a result, patients benefit from smaller incisions and faster recoveries. At Shawnee Mission Medical Center, we have the longest running robotics program in Kansas City. Our experience combined with compassionate care helps patients receive better long-term outcomes.

For more information, or to attend a free informational session on robotic surgery, visit LeadingKCCare.com, or call the ASK-A-NURSE Resource Center at 913-676-7777.

Partners in Leading KC Care



Staff for local business coverage; Star staff for coverage of rural life or agriculture; Donald Bradley for rural life or agriculture story; Rick Montgomery for education story; Matt Campbell for history story; Laura Bauer for religion story; Star staff for coverage of family living and young people; Gerry Mullen for page design; Todd Peckham for best video; Dave Eames and Kent Babb for information graphic; John Steiner for sports photography; Robin Langdon, Jacque Lehatto and Mike Fitzgerald for ad idea/promotion — advertiser; Tom Lore and Vana Sweetland for ad idea/promotion — newspaper.

Second-place awards: Anne Spence for community service; Robertson for breaking news; Christine Vendel and Tony Rizzo for news story; Albert Long for photo package; Michael Mansur and Blair Kerkhoff for sports news story or package; L. Brady McGee for sports feature; Sam McElmiger for sports column; Bauer for coverage of government and education; David Blappert for rural life or agriculture story; Mullen and Stacy Downs for information graphic; Keith Myers for video; Monty Davis for video; Mike Hendricks for humor column; Langdon, Lehatto and Judy Revenahgh for ad idea/promotion of an advertiser; Lehatto and Ted Machin for ad idea or promotion for the newspaper.

Third-place awards: Bauer for news or feature series; Star

No free flu shots for Kansas City's uninsured adults

Starting Monday, the Kansas City Health Department will begin offering flu vaccinations to adults. But unlike previous years, there won't be any free shots for the uninsured.

A cut this year in the federal budget for vaccines meant states received less money. Missouri used to allocate roughly 1,500 doses of flu vaccine to Kansas City for neighborhood outreach clinics and people who didn't have insurance coverage for the shots. This year, flu vaccine won't be available through that program.

The Health Department still has vaccine that it bought, which it is offering for \$20 per shot. The cost is covered for people with Medicare or Medicaid.

Free vaccine for uninsured children will still be available, but it has not yet been delivered.

Vaccination clinics will be held at the Health Department, 7400 Tibost Ave., from 8 a.m. to 4 p.m. every Monday, Tuesday, Wednesday and Friday, and from 8 a.m. to noon on Thursdays.

The Johnson County Health Department is offering flu shots for \$25. For information about times and locations, go to health.jocogov.org.

Alan Baveley,
abaveley@kcstar.com

National rankings can help people make better choices about their hospital.

He will celebrate this year's achievement.

As soon as he finishes what has helped make it possible.



Best Hospital in Kansas City

- U.S. News & World Report

At The University of Kansas Hospital, it's our unique role to take on the most serious health challenges in this region. That's why we're particularly proud to be included in this list of hospitals, each distinguished by the way it treats patients who need unusually high levels of care. Saving more lives: This is academic medicine.

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Gastroenterology • Nephrology • Pulmonology

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OF KANSAS HOSPITAL

A D V A N C I N G T H E P O W E R O F M E D I C I N E ®

The University of Kansas Hospital



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September 14, 2011

Cynthia Grubbs, R.N., J.D.
Director
Division of Practitioner Data Bank
Department of Health & Human Services
Mail Stop 8-103
Rockville, MD 20857

Dear Ms Grubbs,

Enclosed is a copy of a FAX that I received yesterday that contains an email from Mr. Alan Bavley, of the Kansas City Star, regarding an upcoming article about the National Practitioner Data Bank.

My attorney, Mr. Charles R. Hay, indicated that [REDACTED], who is an attorney for the law firm that represents the Medical Staff issues for the [REDACTED], [REDACTED], and [REDACTED] had recently contacted him stating that their three clients did not forward any NPDB information.

Apparently, the disgruntled former Data Bank employee, Robert Oshel, who is referenced in Mr. Bavley's article, of 9/4/11, has published a previous article regarding issues with the Data Bank and, reportedly, Mr. Bavley has plagiarized that work as his own in the K.C. Star article of 9/4/11.

Initially, Mr. Bavley had contacted my attorney, Mr. Hay, wanting to obtain more information about the [REDACTED] case. Mr. Bavley was told that he would need to obtain a signed release prior to any potential information being given. Mr. Bavley indicated that he "did not have enough time" to do that. It seems strange to me that he did not have enough time to do something so simple, especially when he was able to interview several of the [REDACTED] family members for his article and that he would have had to invest a tremendous amount of time to collect and to assemble the data that he claims that he did for his article. In keeping with what I have been told before about Mr. Bavley publishing supplied material as opposed to developing his own story and bolstered by the above, someone supplied him with the information for his article. I believe that [REDACTED] is capable and willing to do such a deed. Could a "watch dog" group have developed the material and then sought out Mr. Bavley to be their spokesman?

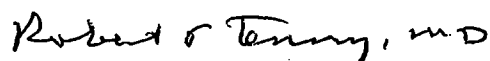
Why would they pick the Midwest and me? Is it because the small number of neurosurgeons in the geographic reporting area, thus making the data "matching game" technically much easier? If Mr. Bavley had amassed all of this data, would you not think that several other names would have "fallen out"? I know of several orthopedic surgeons who have had many more lawsuits filed, but because of the larger number of orthopedic surgeons, would this be too big of a subset with which to work? In any case, I am sure that Mr. Bavley did not do the work himself and that he has written the recent article to "buffer" himself. His worst-case scenario is that he knowingly published restricted material and I believe that he feels that nothing will be proven and that he will ride out the storm. I believe what he fears most is that it will be proven that someone else developed all of the material, gave it to him to publish and he claims it as his own. I feel that Mr. Bavley should be required to produce all of his data to prove that he actually did what he claims because if he cannot produce his data, it was either fabricated or it came from some else that did all of the work.

Also, in Mr. Bavley's article, he mentioned physician numbers, which are usually not reported in the information that is received by the hospitals from the Data Bank. Could this disgruntled employee have a source within in your department?

A few weeks ago, Mr. Bavley shared a byline with an Associated Press journalist on an article discussing cardiac stents. If there are other cases regarding the reconstruction of Data Bank material, either published or soon to be published, and these articles are supported by one of the advocacy groups, this information will be given to the Associated Press or to Reuter's for a national story.

I have enclosed Mr. Bavley's most recent article.

Sincerely,

A handwritten signature in cursive script that reads "Robert T. Tenny, M.D.".

Robert T. Tenny, M.D.

Mason, Samantha

From: Hay, Dick
Sent: Tuesday, September 13, 2011 3:18 PM
To: Mason, Samantha
Subject: FW: Robert Tenny

Send to Dr. Tenny.
Charles R. Hay
Foulston & Siefkin LLP
Bank of America Tower, Suite 1400
534 South Kansas Avenue
Topeka, KS 66603-3436
785-233-3600
dhay@foulston.com

IRS CIRCULAR 230 NOTICE: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) promoting, marketing or recommending to another party any transaction or matter addressed herein or (ii) avoiding penalties under the Internal Revenue Code.

IMPORTANT: This communication contains information from the law firm of Foulston Siefkin LLP which may be confidential and privileged. If it appears that this communication was addressed or sent to you in error, you may not use or copy this communication or any information contained therein, and you may not disclose this communication or the information contained therein to anyone else. In such circumstances, please notify me immediately by reply email or by telephone. Thank you.

From: Bavley, Alan - Kansas City [<mailto:ABavley@kcstar.com>]
Sent: Tuesday, September 13, 2011 3:17 PM
To: Hay, Dick
Subject: Robert Tenny

Mr. Hay,

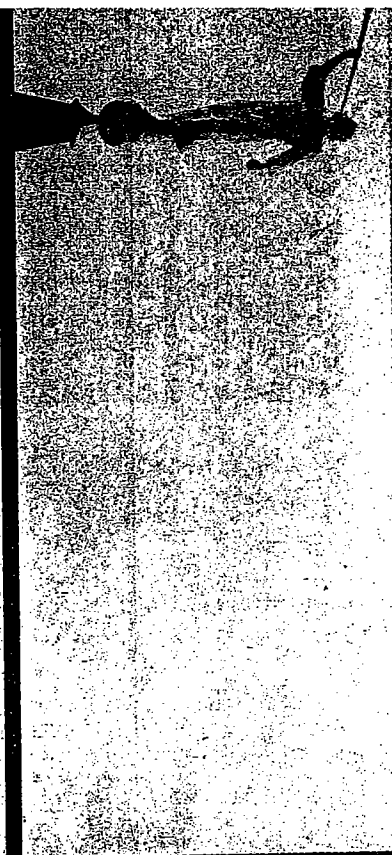
The Kansas City Star will be publishing a story in tomorrow's paper that will refer to a letter that I received Aug. 26 from Cynthia Grubbs, director of the Division of Practitioner Data Banks, HHS, regarding the Star's possible use of National Practitioner Data Bank information. Your client, Dr. Robert Tenny, was cc'd by Grubbs as a recipient of that letter.

I would welcome any comment or explanation from you or Dr. Tenny about why Dr. Tenny's name appears on this letter. Specifically, did you or Dr. Tenny bring my reporting to the attention of HHS?

Please feel free to call or email me this afternoon.

Yours,

Alan Bavley
Kansas City Star
816-234-4858
abavley@kcstar.com



Temple takes shape in Northland

The Church of Jesus Christ of Latter-day Saints' Kansas City Missouri Temple is under construction in Kansas City, North, and it is to be finished in the spring. A gold-leaf angel Moroni sits atop the eastern spire overlooking the 32,000-square-foot structure.

MIKE RANDELL | THE KANSAS CITY STAR

Local

MALPRACTICE RECORDS | Patient advocacy groups stunned by government's action

DATA BANK SHUTS OUT PUBLIC

Shutdown comes after government learned The Kansas City Star planned to use its reports.

By ALAN BAVLEY
The Kansas City Star

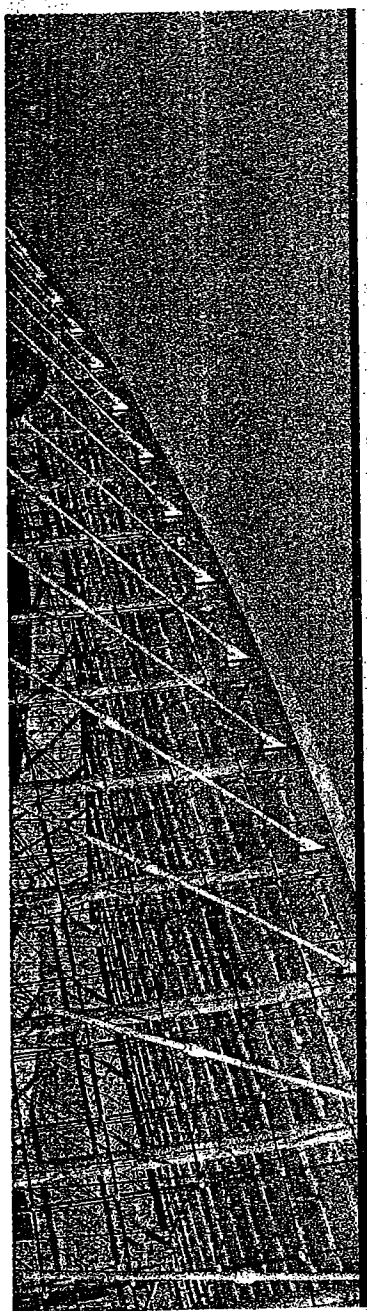
Patient advocacy groups are protesting the government's shutdown of public access to data on malpractice and disciplinary actions involving thousands of doc-

tors nationwide. The National Practitioner Data Bank maintains confidential records that state medical boards, hospitals and insurance plans use in granting licenses or staff privileges to doctors. Although records naming physicians aren't available to the public, the data bank for many years provided access to its reports with the names of doctors and hospitals and other identifying information removed. That changed Sept. 1 when the data

bank removed these public-use files from its website. The action came shortly after it learned The Kansas City Star planned to use its reports. The story, about doctors with long histories of alleged malpractice but who have not been disciplined by the Kansas or Missouri medical boards, was published on Sept. 4. The Star linked anonymous data bank reports to a Johnson County neurosurgeon by matching its information to the contents of court re-

SEE DATA BANK | A7

...n weeks, it seems, po-
...the public about cop-
...es raiding air condi-
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...r crooks ripping cata-
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...l palladium.
...st target of choice?
...3-fashioned grease.
...k, someone stole used
...oil from a Chevrolet.



Trial opens in Westport

DATA BANK: Newspaper used only publicly available information

FROM A4

ices Departments: Health Resources and Services Administration, the agency that oversees the data bank. Kramer said his agency may make the public-use files available again after a "thorough analysis of the data field." But that process probably will take at least six months and the files may not return in the same format as they had been.

Previously, the files could be downloaded from the data bank website as massive spreadsheets. Names of doctors as well as the dollar sums of malpractice payments, were presented as ranges, such as a doctor age 40 to 49, rather than as specific numbers.

The bank is not mandated to make public files immediately accessible on its website, but is required to respond to information requests.

"Whatever they do will probably make it more difficult to use the files in meaningful ways," said Alan Levine, a health care researcher with Public Citizen's Health Research Group, which advocates for patient safety.

On Tuesday, Public Citizen sent a letter to the Health Resources and Services Administration objecting to the removal of the public-use files.

"The continued availability of this data is crucial to patient safety and research aimed at

open government," she said. "I see this action as totally counter to that."

Kramer said the data bank was alerted to The Star's reporting by Robert Tenny, a physician the newspaper was reporting upon. In order to provide Tenny with an opportunity to respond, The Star notified Tenny's lawyer on Aug. 16 of specific information it intended to publish, including several matters contained in the data bank.

In a letter Aug. 26, the bank's director Cynthia Grubbs advised The Star that violations of data bank confidentiality provisions are subject to a civil monetary penalties.

The Star, however, used only publicly available information from the Data Bank.

"A federal agency should not be intimidating reporters for using information that they put on their own website," Ornstein said.

But Kramer said his agency must investigate any potential breaches of confidentiality.

"Once we became aware that this information may be made public, we had a responsibility to make sure that it remained confidential," he said.

To reach Alan Bayley, call 816-234-4858 or send email abayley@kcsstar.com.

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September 14, 2011 Vol. 131 No. 302

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Neurological Surgery

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Overland Park, Kansas 66215
PHONE (913) 831-0000
FAX (913) 831-9988

September 15, 2011

Cynthia Grubbs, R.N., J.D.
Director
Division of Practitioner Data Bank
Department of Health & Human Services
Mail Stop 8-103
Rockville, MD 20857

Dear Ms Grubbs,

In the bottom right-hand corner of the Shawnee Mission Medical Center advertisement that appeared in the Kansas City Star on 9/11/11 and forwarded to you on that day, there are three logo, Shawnee Mission Medical Center, The Kansas City Star and KMBZ (local radio/television station).

Wednesday, 9/14/11, for 6-7:30 PM, on a call-in talk show on KMBZ, the host, Darla Jay, main topic was the recent closure of the public portion of the National Practitioner Data Bank on September 1, 2011 and she “blamed” it on Dr. Tenny for reporting a Kansas City Star reporter, Alan Bavley. She, subsequently, began a negative portrayal of Dr. Tenny, while encouraging caller participation.

One could speculate that this is a coordinated attack.

I received, but did not return, a phone call from Kevin O'Reilly, a Chicago based reporter for the American Medical News, 312-64-4489.

I do not intend to be a gadfly in your investigation, but rather, I want you to have the “local” information that might not be available to you for your project.

Sincerely,

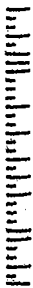
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Neurological Surgery

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September 20, 2011

Cynthia Grubbs, R.N., J.D.
Director
Division of Practitioner Data Bank
Department of Health & Human Services
Mail Stop 8-103
Rockville, MD 20857

Dear Ms Grubbs,

Enclosed is a copy of an additional Editorial that appeared in the Sunday, September 19, 2011 edition of the Kansas City Star.

Sincerely,

Robert T. Tenny, M.D.

Robert T. Tenny, M.D.

Opinion

Climate change deniers have to be struggling to cling to their beliefs like polar bears on shrinking blocks of ice in the Arctic. The evidence keeps mounting. Scientists with the National Snow and Ice Data Center in now report that the Arctic sea ice this summer has melted to its second-lowest level since recordkeeping began in 50 years ago. Like an ice cube in a drink, the sea ice is getting smaller.

Lewis Diuguid, Kansas City Star editorial page columnist, on the Midwest Voices blog at voices.kansascity.com

THE STAR'S EDITORIALS

Health Care Act is showing positive results

Health care reform



THOMPSON | THE ASSOCIATED PRESS
s are a goal of the new law.

The new law allowing to remain on parents' is up to age 26.

in Medicare spending as hospitals move efficiency and quality measured in the law. Missing trends are lost on detractors.

se out in Jefferson City in a group of GOP ding a hearing to promote of a state insurance the mistaken idea that

bureaucrats were authorizing the exchange at that very moment at the order of Gov. Jay Nixon.

The senators charged across town to where the board of the Missouri Health Insurance Pool was discussing a \$21 million federal grant to help build the technological infrastructure for an exchange. After consulting with the senators, the board postponed action on a resolution to accept the grant.

Similar nonsense has prevailed in Kansas, where Gov. Sam Brownback foolishly

returned a \$31.5 million federal grant to design an exchange.

These politicians hope that by being obstinate, they can derail the health care reform law they so despise. But they are denying their states the opportunity to design affordable, consumer-friendly insurance marketplaces.

Opponents of reform need to tell the public what they intend to do about the problem of uninsured Americans. "Let them die" isn't an acceptable fallback position.

Attack on the public's right to know

Stop trying to protect dangerous doctors

President Barack Obama's administration has gone overboard in trying to protect physicians from the public's right to glean essential information about their doctors.

A move by the Department of Health and Human Services to shut down an online database betrays promises by Obama and Secretary Kathleen Sebelius to promote transparency in health care. Public access must be restored immediately.

Removal of the National Practitioner Data Bank followed The Kansas City Star's story about a Kansas neurosurgeon with a trail of malpractice lawsuits. Despite being sanctioned by a hospital and having to pay almost \$4 million in response to the lawsuits, Robert Tenny was in good standing with the Kansas State Board of Healing Arts.

The U.S. Health Resources and Services Administration held out the possibility of financial penalties if The Star published a story using informa-

tion from the database. The Star printed the story, and the government shut down the public portion of the data bank, which journalists have used for over a decade to inform the public about doctors whom they entrust with their care.

The public data bank files list disciplinary and malpractice actions against doctors, who are identified by a number rather than a name. Reporters mine the bank for generic stories about problematic doctors and have used other information to learn some physicians' identities.

Reporting assisted by the data bank has led to reforms in state laws and a greater emphasis on transparency and patient care by state medical boards.

Groups that advocate on behalf of journalists and consumers are protesting the government's move. The Department of Health and Human Services should listen. Its job is to protect the public, not physicians with records they would like to hide.

LETTERS

N

STAR/judge@kcstar.com

CHAT WITH THE EDITORIAL STAFF

The Star's editorial page staff likes hearing and sharing opinions.

which would be taxable income.

This allows him to avoid income and Social Security taxes. Rather than complain about others, I would like to



Robert T. Tenny, M.D.
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22 SEP 2011 PM 4 1



Cynthia Grubbs, R.N., J.D.

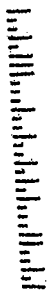
Director

Division of Practitioner Data Bank

Department of Health & Human Services

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Rockville, MD 20857





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September 22, 2011

Cynthia Grubbs, R.N., J.D.
Director
Division of Practitioner Data Bank
Department of Health & Human Services
Mail Stop 8-103
Rockville, MD 20857

Dear Ms. Grubbs,

Enclosed is a copy of another article that was published in the Kansas City Star on Thursday, September 22, 2011. Stay strong and keep up the good work!

Sincerely,

Robert T. Tenny, M.D.

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Intermittent clouds
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50° Low

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Reopen National Practitioner Data Bank files, groups urge Congress

ALAN BAVLEY
The Kansas City Star

In a letter to key members of Congress and to Health and Human Services Secretary Kathleen Sebelius, six prominent journalism organizations are asking that a database containing statistical information on doctors' malpractice histories be made public again.

The National Practitioner Data Bank took its public use file off its website Sept. 1 after it learned that The Kansas City Star was able to glean information about a Johnson County neurosurgeon from anonymous data in the files. Previously, other newspapers have identified doctors from the public use file without repercussions.

In their letter, released Wednesday, the journalism groups called the public use files "a vital government resource used by reporters and others to expose flawed oversight of doctors around the country."

"Without stories written by our members, it's fair to say that some unsafe doctors would continue to be practicing with clean licenses and patient protection legislation in several states likely would not have been enacted," the letter said.

The National Practitioner Data Bank is an HHS agency that compiles information about malpractice payouts, hospital discipline and regulatory sanctions against doctors and other health professionals. State medical boards, hospitals and insurance plans use this information when assessing applications for licenses or staff privileges.

Only the data bank's public use file, which removes names and other identifying information, is available to journalists and other members of the public.

The Star used the public use file to investigate how the Kansas and Missouri medical boards discipline doctors with extensive histories of malpractice payouts.

Related:

Doctor malpractice data is removed from public access by HHS

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In a story published Sept. 4, The Star reported finding 21 doctors in the two states who had 10 or more payouts, but had not been disciplined.

The Star story also detailed the history of one of the 21 doctors, neurosurgeon Robert Tenny. The newspaper was able to identify Tenny in the data bank by comparing the information to court records.

After being contacted by The Star for comment about lawsuits and information in the data bank, Tenny's attorney complained to the data bank.

The data bank then sent a letter to The Star notifying it of civil fines that can be imposed for improper use of its confidential information.

The Star, which had used only the data bank's public use file, did not remove from its story the material about Tenny that it discovered there.

The data bank may make the public use file available again, a spokesman has said. But that process probably will take at least six months and the files may not return in the same format.

The groups calling for restoration of the public use file include the Association of Health Care Journalists, Investigative Reporters & Editors, the National Association of Science Writers, the National Freedom of Information Coalition, the Reporters Committee for Freedom of the Press and the Society of Professional Journalists.

Consumers Union and Public Citizen's Health Research Group, which advocate for patient safety, also have asked that the data bank file be made public again.

To read more, visit www.kansascity.com.

Posted on Thu, Sep. 22, 2011 06:17 AM

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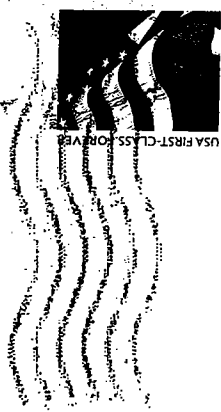
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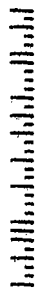
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ROCKVILLE, MD 20857
ON FEB 20 1993

Cynthia Grubbs, R.N., J.D.
Director
Division of Health & Human Services
Mail Stop 8-103
Rockville, MD 20857





Bureau of Health Professions

SEP 26 2011

Robert T. Tenny, M.D.
10550 Quivira - Suite 230
Overland Park, Kansas 66215

Dear Dr. Tenny:

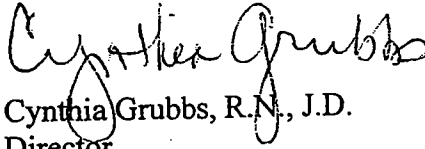
This letter is in response to your six letters dated September 4, 5, 7, 11, 14 and 15, 2011, regarding the publication by the Kansas City Star of an article concerning yourself. The public use file has been removed from our website while we review the integrity and confidentiality of the data. The public use file is intended for statistical research purposes only and data contained in these files is de-identified. We contacted the hospitals and health centers (this included [REDACTED]) who have queried on you in the past 6 years to remind them of the confidentiality requirements and the sanctions for violations of confidentiality. We instructed the hospitals to examine their records and report back to us with any potential confidentiality breaches. We will act swiftly to investigate any potential violations of confidentiality.

As for your complaints regarding the questionable medical record keeping and possible Medicare fraud by Shawnee Mission Medical Center, this falls outside our authority to maintain the National Practitioner Data Bank. The U.S. Department of Health and Human Services, Office of the Inspector General maintains a hotline, which offers a confidential means for reporting Medicare fraud and abuse. The hotline can be contacted by the following means:

By Phone:	1-800-HHS-TIPS (1-800-447-8477)
By Fax:	1-800-223-2164 (no more than 10 pages)
By E-Mail:	HHSTips@oig.hhs.gov
By Mail:	Office of the Inspector General HHS TIPS Hotline P.O. Box 23489 Washington, DC 20026

Thank you for sharing your concerns with us. We are working to ensure that the National Practitioner Data Bank has policies and procedures in place to ensure the confidentiality and integrity of the information we maintain.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia Grubbs".

Cynthia Grubbs, R.N., J.D.
Director

Division of Practitioner Data Banks