

Do Frequent Malpractice Offenders Often Get Away With It?

Wayne J. Guglielmo, MA

February 23, 2021

State medical boards are doing a bad job of disciplining medical malpractice repeat offenders, according to an investigation last month by [CBS News](#).



More than half of all med-mal payouts can be traced to just 1.8% of doctors, says Robert Oshel, a veteran of the US Department of Health and Human Services who worked on the National Practitioner Data Bank, an electronic repository of med-mal payments and adverse actions relating to physicians and [other healthcare providers](#). And yet, says Oshel, of this tiny group, "only one in seven have had action taken against them by any state."

Why the lax oversight? Experts cite several reasons.

First, medical boards are far quicker to discipline doctors who have broken the law — by, say, overprescribing opioids — than those who have committed malpractice, even multiple times.

"State medical boards have the authority to take disciplinary action if the [state] medical practice act is violated," the Federation of State Medical Boards told [CBS News](#) in a statement. "A medical malpractice claim does not necessarily mean there was a violation of a medical practice act or grounds for a finding of unprofessional conduct." However, some say that multiple claims by the same doctor may well mean precisely that.

Second, while some medical boards include nonphysician members, many do not, which could raise questions of impartiality.

"Most medical boards are constituted of physicians who are political appointees. That is an inherent conflict of interest," says John Hall, MD, a long-time pediatric anesthesiologist and critical care specialist before becoming executive director of the Mississippi State Board of Medical Licensure, a job he no longer holds.

And third, even when repeat offenders are disciplined, the reprimands and sanctions may not be commensurate with the offenses.

For example, a former Indiana orthopedic surgeon was fined only \$500 by the Indiana medical board after he lied to it about losing his surgical privileges at two Indianapolis hospitals. Over a decade or so, this same physician settled five malpractice suits. Despite this, the state board didn't act to suspend or revoke his license.

The surgeon retained his Indiana license but relocated to Florida. There, the state medical board has sanctioned him three times since his relocation, including for a wrong-site procedure, for which he was fined \$7,500.

These actions eventually came to the attention of the Indiana board, which held a hearing to address the surgeon's latest round of problems. With neither the surgeon nor his attorney present at the hearing, the oversight agency levied a \$1,000 fine against the doctor. Asked by [CBS News](#) whether the relatively small fine "was consistent with the Indiana Medical Licensing Board's mission to protect the public," the board president declined to comment.

"I believed in the mission of the medical board," recalls former Mississippi board executive director Hall, who during his tenure pressed it to become more aggressive in disciplining doctors. "And I thought this is a place where I could do this and do some good."

Hall now feels that in retrospect, he might have pressed too hard. He eventually found himself out of a job.

Beauty Doctor Settles to Save Face

A California physician who directs a wellness and cosmetic services practice has finally settled a complaint against her by state regulators, as a story in [New Times reports](#).

For years, Laleh Shaban, MD, whose website says she's "[triple board-certified in internal medicine, geriatrics, and functional medicine](#)," disputed the claims of "gross negligence" against her [by the Attorney General's Office](#) and the state medical board, attributing them to the false allegations of a disgruntled ex-employee.

Under California law, once the medical board finds evidence that a "physician has violated the Medical Practice Act and the violation warrants disciplinary action, the case is forwarded to the [Attorney General's Office for the filing of an accusation](#)." In Shaban's case, though, it appears the AG's office received allegations against her and filed a complaint with the medical board, [resulting in a board hearing on the matter](#). So, essentially, the normal process was reversed.

The complaint involved five patients who received treatment at Revive MD, Shaban's medical group, between 2016 and 2018. Among the claims of gross negligence against her was that she failed to obtain informed consents, failed to document and maintain proper patient histories, failed to discuss treatment risks, and permitted nonlicensed "health coaches" to administer various procedures.

Shaban had previously told *New Times*, which serves San Luis Obispo County, that the claims against her were unfounded. "Unfortunately, one of my former employees vowed to damage my reputation and disrupt my business by making false reports to authorities and news outlets," she said at the time.

Shaban still disputes most of the claims against her but has now decided to settle in order "to put this behind me and to focus all my energy on caring for my patients."

Meanwhile, under the terms of her December 31, 2020, agreement with the Medical Board of California, Shaban has been placed on 5 years' probation. During this period, she must fulfill certain requirements: a course in medical recordkeeping, a program in professionalism, and a program in clinical competence assessment. She must also enlist the services of a "practice monitor," a licensed doctor or surgeon with whom she has no prior business or personal relationship.

Until completion of the program in clinical competence assessment, which will permit her to demonstrate her areas of competence or those where she needs improvement, Shaban is also prohibited from administering certain services and procedures, including those involving [human chorionic gonadotropin](#) and platelet-rich plasma.

Finally, Shaban must provide a copy of the accusation and settlement agreement to a variety of institutions — hospitals where she currently has privileges, any facility where she practices medicine, and any and all liability insurers that cover her.

Botched Endoscopic Procedure Triggers Big Award

A gastroenterology practice must pay roughly \$6.1 million to a patient injured during a type of endoscopic exam, says a story in the [Mississippi Clarion Ledger](#).

About 4 years ago, Pamela Arnett went to a GI clinic in Rankin County, Mississippi, complaining of stomach problems. A specialist there examined her and determined that she was dealing with some basic gastroenterological issues.

The problems continued for the next couple of years, however. Arnett returned to the clinic, this time seeing another specialist, who advised her to undergo an [endoscopic retrograde cholangiopancreatography](#), which combines X-ray with endoscopy. The procedure was performed in December 2017, leading to complications that caused Arnett to spend the next 28 days in hospital.

There, over the course of her stay, she underwent six surgical drains of her abdomen and needed to be placed on a respirator after her lungs collapsed.

Arnett has since stopped working and has been in and out of hospital EDs because of lingering complications from the procedure and also routinely takes prescription meds to control her pain. More ominously, her doctors now say she's at risk of losing her pancreas in the next 5 to 15 years.

In her case against the specialist and his practice, Arnett and her attorneys argued that, in moving forward with the procedure, the specialist had both flouted medical protocol and ignored another specialist's opinion. The case was overseen by a medical malpractice arbitrator, who agreed with the plaintiff's claims, finding that the specialist hadn't obtained proper informed consent from Arnett — one that clearly laid out the possible complications of endoscopic retrograde cholangiopancreatography.

A county judge concurred with the arbitrator's findings.

The award, among the highest in the Jackson, Mississippi, metro area, will be apportioned as follows:

- Past medical expenses: \$775,918
- Pain and suffering: \$500,000
- Loss of value of household services: \$498,782

- Lost wages: \$1,062,831
- Life care expenses: \$3,292,831

Arnett's husband, Jason, is in the process of pursuing a separate civil suit against the specialist and his clinic.

The content contained in this article is for informational purposes only and does not constitute legal advice. Reliance on any information provided in this article is solely at your own risk.

Wayne J. Guglielmo, MA, is an independent journalist based in Mahwah, New Jersey.

Follow Medscape on [Facebook](#), [Twitter](#), [Instagram](#), and [YouTube](#).

Medscape Business of Medicine © 2021 WebMD, LLC

Any views expressed above are the author's own and do not necessarily reflect the views of WebMD or Medscape.

Cite this: Do Frequent Malpractice Offenders Often Get Away With It? - *Medscape* - Feb 23, 2021.