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## Despite criminal records and malpractice judgments, some doctors remain in practice for years. Critics blame the besieged state Medical Board. : Watching a Watchdog

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Meet Dr. Leo Kenneally, operator of Her Medical Clinic on South Figueroa Street. It has been more than seven years since the emergency-room staff of a nearby hospital first complained to the California Medical Board about a shocking pattern of injuries to women patients at his clinic.

The board still has not completed action in the case. And today, despite charges of negligence in three patient deaths and continuing reports of abuse, Kenneally maintains a busy practice, seeing as many as 100 women each day.

### ***For the record:***

***12:00 AM, Feb. 10, 1993*** *For the Record*

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*Dr. Lawson Akpulonu--Because of incomplete information provided by the Los Angeles Municipal Court, the story "Watching the Watchdog" (Jan. 31) did not include complete details regarding the Nov. 19, 1991, arrest of Dr. Lawson Akpulonu. The Los Angeles physician faced four counts in connection with a firearms complaint. The first three counts were dismissed Feb. 20, 1992, and Akpulonu pleaded guilty to a fourth count of disturbing the peace.*

Meet Dr. Lawson Akpulonu, whose Midland Medical Center on West Washington Avenue also sees mostly women. He's been convicted of threatening enemies with a loaded gun; he's pleaded guilty to medical insurance fraud. Last spring, one of Akpulonu's employees complained to the Medical Board that the doctor did not sterilize his surgical tools and used untrained people to assist in operations. But the board will not say whether Akpulonu is even under investigation.

And meet Dr. Rodney Brown, the former small-town obstetrician from Northern California whose patients were so unhappy that they formed their own support group to deal with their rage and frustration. When the Medical Board tried to settle the negligence case against Brown in the death of a patient's baby, two dozen more women came forward with their own allegations.

All three doctors have maintained their innocence.

Despite criminal convictions, malpractice judgments, even orders to revoke their licenses, doctors such as these remain in practice for years--and there is little to warn the public about the history of complaints against them.

For this, many blame the recently assailed California Medical Board, a watchdog agency where cases have usually languished.

When action is taken, it still may not protect patients. A full 60% of serious complaints against doctors are either stayed or suspended, allowing physicians with even the most grievous histories of negligence and incompetence to remain in business.

"This is supposed to be a consumer agency--an agency that promises to protect consumers. But the promise is empty. We cannot count on the Medical Board," charges Jeannette Dreisbach, director of Women's Advocate, an underground network of health and legal professionals who help women injured by doctors, especially those who perform abortions.

"It is almost a moribund agency--and people are dying," agrees Robert Fellmeth of the University of San Diego's Center for Public Interest Law, a private watchdog over state licensing boards.

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For years, the California Medical Board has defended itself by pointing the finger at others--at the Legislature, for failing to properly fund and staff the board, or at the legal system, for stalling its best efforts to rid the state of bad doctors.

In 1989, the Legislature gave the board an extra \$2.4 million to get rid of a 900-case backlog and then tightened the board's deadlines for resolving complaints.

But earlier this month, state consumer chief Jim Conran announced that some of the backlog had been erased by the wholesale shredding of hundreds of complaints. In a toughly worded report, the California Highway Patrol, which had been investigating the board, sharply attacked what it called “improper closure” of the cases.

Many of the top board officials responsible for ordering the move have already been suspended or removed from their posts. In December, the board’s controversial director, Kenneth Wagstaff, was replaced with Dixon Arnett, former private health consultant and aide to Sen. Pete Wilson.

The CHP report wasn’t the first criticism of the board, whose mandate is to police and license the state’s 70,000 licensed medical doctors and to protect consumers from incompetent, grossly negligent, unlicensed or unethical practitioners. Earlier, the Washington-based Public Citizen Health Research Group had ranked California 37th in the nation in disciplining doctors for incompetence and abusive behavior.

Moreover, some critics suggest the state should rank even lower. “I think California is probably 50th,” says Fellmeth. “Rarely does the board act unless it is in reaction to some other state or agency’s action.”

Indeed, Fellmeth estimates the board acts independently against only five or 10 doctors a year, a figure that the board disputes. While acknowledging that most serious actions against doctors may be stayed, medical board officials say they fielded close to 7,000 complaints and disciplined 500 doctors last year in gentler ways, including informal counseling and “re-education.”

Still, a look at some longstanding Medical Board cases shows how physicians can avoid discipline and use the weaknesses and delays built into the board’s system of “due process” to stay in business.

### History of Complaints

When Estella Gonzalez, 22, went to Her Medical Clinic on Dec. 19, she did not know that the doctor she would see had a history of serious complaints against him.

Although the Medical Board opened an investigation of the clinic in 1985 after the death of a young woman there, it was five years before it filed any formal action.

By then, three more patients at the clinic were dead as a result of what the medical board called Kenneally’s negligence or incompetence: Donna K. Heim, a 20-year-old preschool teacher from Covina; Liliana Cortez, a 22-year-old housekeeper, and Michelle Thames, an 18-year-old homecoming-queen contestant at Lynwood High School.

Kenneally declines to be interviewed, but his attorney, Jay Hartz, says his client “feels he has done nothing wrong” and has fought charges against him all the way to the U.S. Supreme Court.

As early as 1976, however, the Medical Board had suspended Kenneally’s medical license after he was convicted of a federal narcotics violation. But the suspension later was stayed, and Kenneally was placed on probation for two years.

By 1979, Kenneally was off probation but now was in jail after being convicted of Medi-Cal theft. Again, the Medical Board ordered his license revoked but once more stayed the order, instead giving him three years' probation.

When the board finally filed its formal accusation against Kenneally in 1990, it was to charge him with incompetence in Heim's death, as well as negligence in the deaths of Cortez and Thames and in the permanent injury of three other patients. All had gone to the clinic for abortions.

In the Thames case, the board said, Kenneally continued the abortion even as his patient suffered life-threatening seizures. Of the patients who survived, one was left permanently sterilized and the others nearly died of massive blood loss.

Kenneally's 2-year-old case is tentatively set for a hearing by the Medical Board this spring. Meanwhile, his three clinic waiting rooms at 2700 S. Figueroa St. are full of anxious, desperate women, and his practice is thriving.

Like Heim, Cortez and Thames, Estella Gonzalez went to Kenneally's clinic for a 10-minute abortion. She was carrying \$250 in cash. According to the complaint filed on her behalf on Christmas Eve, clinic personnel failed to give her a full examination, or to take a detailed medical history or vital signs. When the procedure was finished, says Gonzalez, Kenneally inserted two tampons and gave her a sanitary pad. After 15 minutes "recovering" in a chair, she says she was shown the door.

Gonzalez's mother helped her pale daughter outside and they walked half a block to a McDonald's, where Estella says she collapsed. McDonald's employees called 911, and the young woman was rushed to California Medical Center where, she says, emergency surgery saved her life.

As she lay in the hospital recovering from a lacerated uterus and intestines, Gonzalez says, she was visited by employees of Her Medical Clinic, who offered \$10,000 "for my expenses" and later proposed \$5,000 plus a Cadillac.

"We see nothing wrong with visiting a patient in the hospital," says Hartz. "And if such an offer (of cash and car) was made, I would see it as a humanitarian gesture."

Kenneally is "well-known" to the state Medical Board, says Tom Heerhartz, the board's assistant executive director. "He has been using his rights of appeal (to stay in business) for some time now, we know, but I believe we are moving very quickly now toward a (final) hearing on his case later this spring," Heerhartz declares.

Still, "this is our greatest grief," says Dreisbach of Women's Advocate. "There is no sign up on (Kenneally's) front door saying, 'Watch out! This person is under investigation for a serious matter. Women have died here!'"

### Spurred by Loss

Terry McBride's tragic loss of a baby led her to form Safe Medicine for Consumers, a support and education group for women who have suffered at the hands of their physicians.

At the end of 1989, after a history of miscarriages, McBride was about to deliver her first child. But on Christmas Day that year, she became seriously ill, suffering nausea, diarrhea and severe abdominal pain.

Her obstetrician, Rodney W. Brown, had built a substantial practice among the women in the rural areas of remote Calaveras County east of Stockton. He admitted McBride to the hospital but over the next four days, she says, repeatedly assured her that “everything was all right.”

But on Dec. 29, 1989, McBride’s son, Sean, died at birth. McBride, it was discovered, had suffered a ruptured appendix and the infant was killed by the ensuing infection.

Although Brown’s attorney, Michael Mordaunt of Stockton, said pending litigation prevented discussion of details of the case, he noted that the doctor’s actions were “within standard medical practice.”

After her release from the hospital, McBride filed a complaint with the Medical Board about Brown. Soon afterward, she began to hear from other women angry about his care, including two who had also filed Medical Board



After more than 1 1/2 years, McBride still had not heard from the board about her complaint. But not long after she told her story to a California Senate hearing on the Medical Board in December, 1991, she was notified that the board had filed a formal accusation against the doctor.

The state document included charges from seven other women who said they had been “victimized” by Brown. It charged him with gross negligence in connection with unnecessary hysterectomies and with the perforation of internal organs during routine surgeries.

Finally, the women thought, justice was at hand. But last June, McBride learned the case would not have a hearing. Rather, she learned, the Medical Board was planning to settle with Brown, who by now had moved his practice to a town near New Orleans.

McBride and the other women staged a massive letter-writing campaign, and last September the Medical Board added more names to the case, filing a supplemental accusation charging Brown with misconduct, gross negligence and repeated negligence in the handling of three hysterectomies and one delivery. The baby in this case, as in McBride’s, also died.

“We just can’t let this sort of thing continue,” says McBride. The 32-year-old travel agent says her group is growing--but she’s not hopeful they alone can change things: “Until consumers say to the Medical Board, ‘Hey, this is what you’re paid to do!’ it’s going to keep happening. And babies and children and adult patients are going to suffer and die.”

‘Complaints Are Growing’

Perhaps surprisingly, Dixon Arnett, the Medical Board's new executive director, agrees.

"We need to get a far better handle on just exactly who the bad guys are," says Arnett, who was deputy undersecretary of health in the Reagan Administration. "Our budgets aren't going to expand, but the numbers of complaints are growing. . . . There may be a very small percentage of doctors who are never disciplined, but those guys can do a lot of damage."

In the case of Dr. Lawson Akpulonu, twice convicted of criminal charges and the subject of repeated complaints by patients and consumer groups, the system is "a sieve," according to one angry complainant.

"Investigators are as frustrated as the consumers are," says Dreisbach of Women's Advocate. "They work very, very hard to investigate a case, and there is no telling what, if anything, will become of it as it moves through this very troubled system."

A former member of Akpulonu's staff told Women's Advocate last April that the doctor, who performs abortions and other minor surgeries in his office, repeatedly failed to sterilize equipment and that he had no registered nurses or trained assistants working for him.

Although the woman worked for Akpulonu for only three weeks and came to him without medical training or experience, she says she was required to assist him in surgeries. The woman also charged in her Medical Board complaint that fetal tissue removed during surgeries was improperly flushed down toilets or put into plastic bags to go out with the trash.

Proper medical procedures require labeling and pathological examination of such tissue, especially in abortions, to guarantee that all tissue has been removed from the uterus. Without examination in a laboratory, it is impossible to know whether a pregnancy has in fact been terminated or whether the patient may be suffering a life-threatening tubal pregnancy or tumor.

Akpulonu has denied any wrongdoing and says he knows of no complaints against him. Although the Medical Board declines to comment on Akpulonu, law enforcement officers confirm they have contacted the board and the state attorney general's office about him.

Still, lack of cooperation among agencies has helped some doctors avoid disciplinary action. In the case of Akpulonu, whose Medi-Cal conviction included 14 counts of theft, it was not until Women's Advocate notified Medi-Cal and Medicaid authorities that action was taken to bar the doctor from the government insurance program.

In other cases, publicity has moved authorities to act. Dr. Sidney Wolfe of Public Citizen cites the case of Tustin gynecologist Ivan C. Namihas as a "shocking" example of the California Medical Board's failure to protect the public until publicity forced it to act.

The Namihas case made headlines last March because of the doctor's alleged sexual abuse of dozens of women 20 years after an investigator first notified the board about him and 17 years after the Orange County Medical Assn.

itself had warned the board.

In the wake of the headlines, the board received more than 140 complaints against Namihas from women with horror stories about their treatment. Details of the case led Deputy Atty. Gen. Randy Christison to call Namihas “a predator in a white coat” who had used his position “to invade women’s most intimate areas of personal privacy, solely to carry out the most egregious series of sexual exploitation for his own perverse sexual gratification.”

More complaints against Namihas in 1982, 1987 and 1990 finally led to Namihas’ license being revoked last July 3.

Repeated complaints against a single practitioner can focus board attention on certain doctors. But, say board officials, the board’s obligation to guarantee physicians “due process”--even those with a suspicious volume of complaints against them--can undercut efforts to act fast.

Two years ago, the state Legislature tried to streamline the system by giving the Medical Board the extra money to clear up its backlog and by setting up specialized legal teams in the state attorney general’s office to help the board.

But according to Fellmeth, whose watchdog group helped design the new system, little has changed. “When it comes to actually protecting the public, California still has one of the worst medical boards in the nation,” he says.

Yet Arnett says more changes lie ahead. “Maybe some of this (history) is embarrassing,” he concedes. “(But) I promise you, this is the dawning of new day.”

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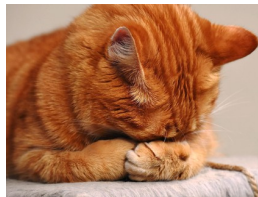
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