50 Shades of Malpractice

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Malpractice Is a Universal Concern

Most physicians make some medical mistakes in their careers, whether it's an understandable misdiagnosis, an unavoidable error, or perhaps a bad outcome due to carelessness and lack of attention. It's easy to read about some of these cases and mentally chastise the physicians who let these tragedies happen. Others cases make you think, "I had a similar situation but was luckier."

The threat of being sued for medical malpractice is never far from the minds of most physicians. And with good reason: Numerous surveys show that even doctors in "low-risk" specialties stand a good chance of being sued at least once over the course of their careers. A study published in the *New England Journal of Medicine*[1] found that an amazing 99% of physicians in "high-risk" specialties have been sued.

It's of little comfort to doctors that two thirds of claims are dropped or dismissed, and that physicians prevail 90% of the time in cases that go to trial, an American Medical Association study found.[2] Being served with a summons alleging that your care caused an injury to a patient is one of the most traumatic experiences any physician can face. Beyond the financial risk, the threat to your reputation can cause emotional trauma and affect the way you practice and interact with patients for the rest of your career.

We are highlighting noteworthy cases and developments in each of the 50 states—a kind of "50 shades of malpractice." What we found ranges from the tragic to the bizarre but can provide lessons for all physicians on how to avoid lawsuits.

Some highlights:

- Several cases are among the largest verdicts or settlements in a state's history.
- In a few cases, doctors have been sued dozens of times and faced state disciplinary actions as well.
- Multimillion-dollar verdicts are often substantially reduced after trial because of caps on pain and suffering or a judge's ruling that the verdict was excessive. For example, a $130 million verdict against doctors and a hospital in a case involving a neurologically impaired infant received big headlines in New York newspapers. When a judge reduced the award to $11 million, the newspapers did not carry follow-up articles.
- In every state, most malpractice cases took at least 4 years from the date of the alleged negligence to a conclusion in court. Some cases took more than 10 years to resolve.
- Lawsuits are often filed because of basic risk-management failures. Miscommunication among physicians and nurses, lack of adequate documentation, delays in referring patients to specialists, and failure to follow up are the most common reasons patients sue.
- Some cases we found were just downright strange.

- Although the malpractice climate has improved for physicians in recent years, the fear of being sued persists. We hope there are plenty of good lessons for physicians in the cases below about how to avoid getting sued.

Botched Care; Expert Testimony Requirements

Alabama

Stomachache or heart attack? Be very sure before you discharge the patient.

A Walker County jury last year awarded $4 million to a woman who claimed that her husband died in 2008 because a doctor mistook symptoms of a heart attack for a stomach problem, according to a report on the website al.com.

The lawsuit charged that Dr Charles E. Shipman, an emergency department (ED) doctor at Walker Baptist Medical Center, should have done more to investigate a heart condition before releasing the 40-year-old patient after a few hours.

A few days later, the man fell while clutching his chest and telling his wife to call 911. He was taken to the hospital but could not be revived, according to the lawsuit.

The standard of care required that the doctor consider and rule out a cardiac problem, said the family's attorney. No blood tests for cardiac damage or ischemia were ordered, he said.

Alaska

A physician often recognizes "botched" care provided by another physician.

An Anchorage plumber who sued his neurosurgeon for botching a 2009 operation was awarded $1.7 million by a jury that found the physician acted recklessly.

Marvin Kroener saw neurosurgeon Dr Kim B. Wright after suffering an injury at work, according to a report in *Alaska Dispatch News*. He complained of lower back and leg pain. Dr Wright recommended spinal surgery. During the procedure, he said he found a meningocele that had caused extensive bleeding and resulted in a large opening of the dura.

After complaining the next day of severe neck pain and headaches, the patient was admitted to the hospital and diagnosed with chemical meningitis, a postoperative infection. The patient saw another surgeon, who performed two other procedures. During the second operation, the surgeon discovered a defect in the dural layer and hemostatic material stuffed into the spine, the lawsuit states. That surgeon told him there was no cyst or blood vessel defect before Dr Wright operated and that his complications were caused "by instrumentation."

The patient is in near-constant pain and suffers from incurable arachnoiditis, an inflammation of the nerves, the lawsuit charged. A fresh look at the doctor's prior cases revealed a sponge lost in the patient, and other suspicious issues.

Arizona

There are definitely times when a physician needs to be aggressive and act quickly. The conundrum is, symptoms might masquerade as some other condition.

Failure to quickly respond to a serious infection led to one of the largest medical malpractice verdicts in Arizona history.

After a meniscus tear to her knee, Lori Sandretto had surgery performed in 2008 by orthopedist Dr Charles Calkins, who was employed by Payson Healthcare Management. Fluid removed from her knee tested negative for infection.

About a week later, Sandretto's knee was swollen, red and painful. A physician assistant (PA) who worked with Dr Calkins examined her and prescribed antibiotics for a skin infection. Days later, she went to the ED with the same symptoms. Dr Calkins came to the hospital and prescribed a different antibiotic.

With no improvement 1 week later, the patient again saw the PA, who aspirated her knee. This time, tests showed the fluid was positive for methicillin-resistant *Staphylococcus aureus* (MRSA).

Dr Calkins operated three times to wash out the MRSA. The patient filed a lawsuit alleging that the doctor and his PA failed to properly treat the infection. She developed contractures, an abnormal gait, and muscle loss and requires a spinal pain pump. She also had a total knee replacement but remains in considerable pain, the lawsuit alleged.

Just before trial in 2012, the patient settled with Dr Calkins for an undisclosed amount. The doctor's employer, Payson Healthcare Management, was the only defendant at trial.

A jury awarded the patient more than $7.2 million. The Arizona Court of Appeals upheld the verdict last year, finding there was substantial evidence for a jury to conclude that her doctor waited too long before testing for the source of the infection and acting aggressively to get rid of it.

Arkansas

Which experts may testify in a malpractice trial remains a contentious issue and varies by state. The Arkansas Supreme Court in 2012 found that part of a law that requires expert testimony must come from "medical care providers in the same specialty as the defendant" violates the state constitution.

Plaintiff Teresa Broussard underwent a parathyroidectomy in 2006 and developed a burn near the surgical site, according to the court's opinion. After the operation, she complained of severe pain. A few weeks later, a black eschar (dead, sloughing tissue) developed at her neck and chest. She was admitted to a burn center in Tulsa, Oklahoma, and underwent removal of "pigskin" and received skin grafts.

She sued St Edward Mercy Health System, Inc.—the Arkansas hospital where she had the first procedure—along with several doctors, nurses, and technicians present in the operating room, for negligent treatment of the burn. The case was dismissed before trial because her expert witness wasn't a surgeon and therefore couldn't legally testify about the standard of care, an appeals court ruled.

The Supreme Court found the law limiting expert testimony "invades the province of the judiciary's authority to set and control (trial) procedures. As such, it violates the separation of powers doctrine...and the inherent authority of the courts to protect the integrity of the proceedings and the rights of the litigants."

The court reinstated the lawsuit and remanded it back to the trial court.

Standard of Care; Jury Sympathy for Plaintiff

California

Adverse outcomes occur even when physicians follow the standard of care. In cases of high exposure, doctors and their insurers and attorneys must decide whether to defend the case or take the risk for a multimillion-dollar verdict because of jury sympathy for the patient.

That's what happened to Los Angeles ED physician Dr Malkeet Gupta. A young woman who was 26 weeks pregnant presented to his ED with symptoms of simple cystitis. He did a thorough exam and sent her home with an antibiotic and instructions to follow up with her obstetrician. "Unfortunately, she came back the next day in preterm labor and delivered a baby who was severely impaired and requires long-term care," he said.

The patient's lawsuit alleged that she should have been monitored at the hospital for early signs of labor. "This case had an exposure of more than $10 million because of the baby's condition and the natural sympathy jurors would feel," said attorney James Schaeffer.

Dr Gupta wanted to clear his name. At trial, he was an excellent witness—compassionate and knowledgeable, said Schaeffer. "We also brought in the best expert witnesses we could find in emergency medicine and obstetrics."

The jury in 2013 found for Dr Gupta. The Doctors Company, the nation's largest medical liability insurer, recently featured him on a video on its website, describing the legal process and the emotional upheaval he felt at being sued.

Colorado

A patient's own behavior can legally be considered partially responsible for a bad outcome from a procedure. In this case, a patient's cocaine use led to a defense verdict for an interventional radiologist and internist.

A patient went to a hospital ED for abdominal pain. Tests disclosed a cyst on his liver. An internist took his medical history and admitted him for a needle biopsy. The following day, shortly after an interventional radiologist pierced the cyst, the patient had a severe allergic reaction, went into cardiac arrest, and stopped breathing, according to a report from the American Medical Association. Before he could be revived, he suffered permanent brain injury. Doctors didn't know what caused the allergic reaction.

About 2 weeks after this incident, the patient's former girlfriend contacted the radiologist and told him that the patient had used cocaine recreationally, including around the time of his ED visit. The patient's legal guardian sued both doctors, alleging that the internist was negligent for not ordering further tests or consulting a specialist. The radiologist was negligent for failing to consider the cause of the cyst and performing the biopsy without taking precautions against an allergic reaction, the suit alleged.

At trial, defense experts testified that cocaine use is a known cause of cardiac arrest and was the most likely explanation for the patient's injuries. The jury found for the doctors. The guardian appealed, arguing that the trial judge shouldn't have allowed testimony about the cocaine use. An appeals court agreed and ordered a new trial.

The Colorado Supreme Court last year reversed that decision and ruled for the doctors. The court held that evidence used to make a medical diagnosis is admissible even if the diagnosis doesn't lead to a decision regarding treatment. Thus, the patient was at least partially responsible for the medical outcome that resulted from his own behavior.

Connecticut

No excuses if a medical resident makes a mistake—the attending assumes full responsibility for the resident's patient care.

A 65-year-old woman whose colon was punctured during a routine hernia operation was awarded $12 million last year in a jury verdict.

The patient sued Danbury Hospital and two doctors who performed the operation, according to a report in InsuranceJournal.com. She testified that the surgical mistake caused her to be in a month-long coma, led to a massive abdominal infection and multiple other surgeries, and resulted in the loss of most of her large intestine.

The doctors didn't discover the puncture until after they had closed the wound and the patient went into septic shock. The plaintiff's attorney argued that a surgical resident had perforated the colon. He denied that and said the puncture was caused by the attending surgeon, who settled the malpractice case for an undisclosed amount before the trial.

Hospital attorneys argued that the hospital wasn't responsible for the acts of a surgical resident and the attending was responsible.

Delaware

A former schoolteacher went to a plastic surgeon complaining of an achy left knee and tingling in her toes at night. The surgeon, who advertises that he specializes in procedures on legs and feet to relieve nerve compression, performed multiple procedures on her left leg in 2010.

The patient was left in severe pain. Physicians at Johns Hopkins Medical Center later diagnosed her with complex regional pain syndrome and ordered new treatments. But the pain persisted, her lawsuit alleged.

The plaintiff's expert witnesses testified that the surgeon should have offered the patient nonsurgical options, such as physical therapy, and that diagnostic tests hadn't demonstrated that she had surgically correctable nerve problems, according to a report in the Wilmington *News Journal*. The surgeon testified at trial that he met the standard of care and that he didn't cause the injuries she alleged.

A jury last December found for the plaintiff and awarded her $3.4 million.

Penile Amputation; Honesty Didn't Pay

Florida

In an extraordinarily unsettling case, an anesthesiologist who cleared a man for penile implant surgery was ruled not responsible for the gangrenous infection that led to the amputation of the man's penis, according to a 2012 Miami jury verdict.

The patient, Enrique Milla, then 60, and his wife sued Dr Laurentiu Boeru, claiming that Boeru overlooked his diabetes and high blood pressure and never should have cleared him for surgery, according to a report by Courthouse News Service. The surgery was for a penile implant to help with the patient's erectile dysfunction. The physician testified that the infection was the result of the patient's failure to follow postoperative instructions. A urologist in the case settled out of court.

The jury took half an hour to reach its verdict. The case was somewhat unique in that plaintiff Milla was deported to Lima, Peru, shortly after filing the complaint 3 years earlier. He testified via Skype. An expert witness for the plaintiff couldn't attend the trial, and his deposition testimony was read to the jury. Milla's attorney said those factors impeded his case.

Dr Boeru was gratified by the verdict but said that the 3-year process "damaged my family life [and] my personal life."

Georgia

Was a second operation necessary? Many experts urge being conservative when deciding whether or not to perform an additional operation.

A 46-year-old cell phone customer service representative went to a hospital ED in 2012 with abdominal pain, vomiting, and nausea. A CT scan showed a small-bowel obstruction.

Surgeons operated, but also did a second procedure to correct a gastric outlet obstruction that kept the patient's stomach from emptying. That operation includes cutting a nerve to the stomach and intestine to reduce acid production. It left the patient unable to eat any solid food without becoming extremely nauseated. Because of that complication, she spent 45 days in the hospital, her lawyers said. She can only drink smoothies or eat pureed foods.

Plaintiff's medical experts testified that she never had gastric outlet obstruction and that the procedure should be done only for diagnosed long-term gastric outlet obstruction typically caused by either a tumor or chronic peptic ulcer disease, according to an article in the *Daily Report*, a Georgia legal publication.

The surgeons never made a settlement offer and contended they were right to do the procedure, but they encountered complications from scar tissue left by the patient's chronic gastrointestinal problems and prior abdominal surgeries.

In June, a jury awarded the woman $4 million.

Hawaii

Did physicians miss a key diagnosis by being conservative in their diagnosis effort, or were they being careless?

A jury last year awarded $5.62 million to a flight attendant whose cancerous tumor was left undiagnosed for 2 years. During that time, it grew from the size of a lima bean to the size of a fist.

Jeff Kim, 43, was examined in 2008 by several physicians at Straub Hospital for chronic pain in his mouth. He was told he was cancer-free when in fact a tumor was growing in his neck. None of the doctors ordered an MRI that he believes would have detected the tumor, according to a report in *Hawaii News Now*.

Two years later, as the pain persisted, a private oral surgeon ordered an MRI and the cancer was found. Kim underwent nine operations and needed major reconstructive surgery on his face. Surgeons took a bone from his leg and made it into his jaw. They took chest muscle to reconstruct his mouth, and skin from his abdomen is on his cheek.

"We could have caught this at the early stages, and it would have been one day in the hospital for surgery and 5 weeks for radiation, and I would have been back to work," Kim told reporters. He's now back at work as a flight attendant for Hawaii Airlines.

Idaho

Many urge doctors to always reveal errors, but a lawsuit can arise from being honest and telling the patient that you made a mistake he or she didn't even know about. Is honesty still the best policy?

A lawsuit against an orthopedist who admitted operating at the wrong level of the patient's spine and installing a plate to stabilize the spine was dismissed by a trial judge. That decision was upheld in 2011 by the Idaho Supreme Court in a 3-2 vote.

The legal decision turned on whether the patient filed his lawsuit before the 2-year statute of limitations expired. The surgeon didn't learn that he had actually operated at the T5-6 level when he'd planned to operate at the T6-7 level until 26 months later, when the patient sought him out again after a work-related injury. Amazingly, the patient had no complaints of pain or disability after the mistaken surgery.

MRI showed that the surgeon had operated at the wrong level. He informed the patient of the mistake and referred him to another surgeon for the new injury. The patient sued, but the courts ruled that he filed suit too late. The Supreme Court justices argued over the definition of an injury, ultimately finding that it occurred at the initial surgery even though the patient hadn't known of the mistake and actually felt fine. Because of that delay, the statute of limitations had expired.

Idaho has a "foreign-object exception" that can extend the statute of limitations from the time it is discovered. The patient argued that the plate the surgeon installed in his spine should mean the case could continue. The justices

disagreed because the foreign-object exception applies only to the inadvertent leaving of an object and not the deliberate and intentional placement of a device.

Failure to Refer; Overseas Escape

Illinois

In the area's record verdict for a leg amputation, misuse of a special "boot" and failure to refer a patient to a vascular surgeon led a jury in January to award $3.157 million to a former police lieutenant whose left leg was amputated.

Donald Johnson, 65, who had a history of peripheral vascular disease, was admitted to Rockford Memorial Hospital in August 2010 with dizziness, weakness, and possible upper gastrointestinal bleeding.

General surgeon Dr Mark Zarnke evaluated wounds on Johnson's lower left leg. Despite tests showing the patient had only 41% blood flow to the leg, the surgeon applied an Unna boot—a special gauze bandage—2 days later to treat the wounds. The boot remained on for 5 days, the complaint alleged according to a report in the *Rockford Register Star*.

When the boot was removed, Johnson's leg showed signs of tissue death requiring amputation below the knee. Johnson's attorneys said using the boot was negligent because of the decreased blood flow in the leg. They argued that Dr Zarnke didn't offer surgical options to restore blood flow and never consulted a vascular surgeon.

Indiana

Escape overseas to avoid malpractice charges? This doctor tried it after a staggering number of malpractice charges; his notorious exploits subsequently gained national attention.

More than 350 patients filed malpractice suits against former Dr Mark Weinberger, whom they accused of performing unnecessary operations. The otolaryngologist, who billed himself as "The Nose Doctor," disappeared in 2004 while vacationing in Greece. He was on the run for 5 years, having left his wife saddled with about $6 million in debts.

Weinberger was discovered in the Italian Alps in 2009. He pleaded guilty to 22 counts of healthcare fraud and was sentenced to 7 years in prison. He admitted that he sometimes put patients under anesthesia and didn't do anything.

In 2013, the Indiana Patient's Compensation Fund and two law firms reached a $55 million settlement to compensate 282 of the doctor's former patients. They'd accused him of performing outmoded procedures, including drilling holes in patients' sinuses.

Litigation against Dr Weinberger's malpractice insurers is continuing. However, Dr Weinberger was released from prison in January 2015, and a federal judge ruled in April 2015 that he can serve his probation on supervised release in southern Florida, according to a report in IndianaLawyer.com.

Iowa

Interesting fact: A physician can be found negligent but win the case anyway.

When his longtime patient was several months pregnant in September 2002, the doctor performed a Pap test that showed dysplasia on her cervix. The patient gave birth in December 2002 and didn't contact the doctor until May 2003, when she was again pregnant, according to court documents.

A new Pap test again showed dysplasia of the cervix. Colposcopy performed 6 weeks later revealed severe dysplasia. When the patient returned for a postnatal check, a new Pap test had a normal result. The doctor still urged her to get another colposcopy within 30 days and recommended another Pap test in 6 months.

The patient said she planned to move to another city. He recommended that she schedule the colposcopy with him or seek treatment from another doctor, but he didn't document this advice. He never saw the patient again.

The patient didn't obtain another Pap test at the recommended 6 months. In September 2005, she was diagnosed with cervical cancer that had spread to her lymph nodes, causing complications and the need for a radical hysterectomy.

She sued the physician, alleging he failed to diagnose and treat her condition in a timely matter. The doctor argued that the patient was negligent in failing to follow up with his advice. The jury found that the doctor was negligent, but that the patient was as well. It assigned the patient 51% of the fault and the doctor 49%. Under the comparative negligence rule in Iowa, a judge dismissed the patient's complaint.

The Court of Appeals of Iowa upheld the dismissal, finding substantial evidence that the patient was negligent in failing to obtain follow-up care that would have prevented the development of cervical cancer.

Kansas

The patient clearly suffered pain—but was it primarily the pain, or the pressure of his own psychiatric problems, that led him to suicide? Two injections for chronic lower back pain caused such severe injuries to a man with a history of psychiatric problems that he committed suicide, his family's lawsuit charged.

Joel Burnette went to a pain clinic in 2009. An epidural steroid injection didn't relieve his pain, but a lump soon appeared at the injection site, according to a report by the Associated Press. He complained about the lump but was told that some swelling was normal. One week later, he was diagnosed with meningitis caused by MRSA infection.

A plaintiff's expert testified that one clinic pain injection caused an infection. The second pain shot passed through the infected area into the spinal cord, causing his meningitis.

The infection caused Burnette to suffer chronically inflamed spinal nerves that left him impotent, incontinent, and in constant pain, the suit charged. He'd filed a malpractice suit against a physician and the pain clinic but took his own life before the case went to trial. His parents charged that medical negligence led to his suicide.

A jury awarded the parents $2.88 million in a trial last year. The pain clinic's attorney said that Burnette's history of bipolar disorder and admissions to psychiatric hospitals for depression led to his suicide rather than his medical condition.

The award will probably be reduced to $1.67 million because of a state cap on awards for pain and suffering.

Varying Interpretations of the Facts

Kentucky

High complication rates from a single physician are worth paying attention to.

A morbidly obese 39-year-old music teacher died 1 month after she had laparoscopic gastric bypass surgery at Lake Cumberland Regional Hospital, which heavily marketed its bariatric surgery program.

The mother of two had a rocky recovery after the operation, performed by Dr John Husted. She showed signs of infection resulting from a gastric leak. Dr Husted performed a second exploratory surgery and discharged her. The patient died days later. An autopsy found her pelvis filled with pus, and intestines that were "full of adhesions and virtually falling apart," according to a report in the *Commonwealth Journal*.

The patient's family sued Dr Husted and the hospital, alleging that the hospital had allowed an "unsafe bariatric program to operate" despite an abnormally high incidence of complications. The hospital stopped its program after analyzing data showing that about 30% of patients reported postoperative complications after surgery by Dr Husted, the suit charged. Several other malpractice suits are pending against the surgeon and hospital.

Dr Husted declared bankruptcy during the course of the litigation and has moved away from Kentucky. The defendants countered that the patient didn't follow instructions to return to the hospital if she experienced pain and other symptoms and that she had refused CT before her discharge.

A jury last year awarded the patient's family $10.6 million, finding that the hospital should pay 60% of the award and Dr Husted 40%.

Louisiana

It's wise to keep in mind that jurors and physicians interpret facts very differently, leading to different conclusions.

A state medical malpractice screening panel cleared two pediatricians of negligence in the death of an 8-year-old girl. A New Orleans jury disagreed and awarded the child's mother $8 million earlier this year. However, the trial judge reduced the judgment to $500,000, the maximum allowed under Louisiana law.

Chela Butler went to the pediatricians' office in 2009 with a fever and sore throat of 2 days. One doctor diagnosed sinusitis and discharged her with prescriptions for an antibiotic, an inhaler, and a decongestant, according to a report in the *New Orleans Times-Picayune*. Eleven days later, the child was dead owing to respiratory failure caused by H1N1 influenza, an autopsy showed.

The child was considered at high risk for complications from the flu; she was born 7 weeks premature and had a history of asthma, bronchial pulmonary dysplasia, and pulmonary hypertension stemming from her early development and should have been treated with antiviral medications as advised by the Centers for Disease Control and Prevention, the lawsuit charged.

As the child's condition worsened, she was admitted to a hospital and administered oseltamivir phosphate (Tamiflu®), but it was too late, the suit charged. She developed pneumonia and was put on a ventilator before dying 3 days later.

The state screening panel, comprising three physicians, found that the doctors acted reasonably and that it would not have been useful to order an influenza test or prescribe oseltamivir phosphate at the time. The panel said that the case was a sympathetic one, and the verdict appeared to have been influenced by compassion for the family.

Maine

In one of the largest malpractice verdicts ever recorded in Maine, a jury in 2011 awarded a family $6.7 million against Eastern Maine Medical Center and Dr Lawrence Nelson, a Bangor surgeon.

Thomas Braley Sr, then a 44-year-old who worked as glazier, was injured in 2005 in an all-terrain vehicle rollover accident. He suffered several broken ribs and other injuries. At the hospital, CT scans ordered by an emergency department physician indicated internal bleeding, according to a report in the *Bangor Daily News*.

The physician didn't order follow-up radiography to monitor the internal bleeding, the complaint said. Over the next 2 days, one of Braley's lungs collapsed. The lack of oxygen precipitated a massive heart attack, from which he died, said the family's attorney. The death might have been avoided with the placement of a chest tube for drainage of accumulating fluid, he said.

The surgeon's attorney said that Mr Braley died of an unexpected and unpredictable rupture of an intercostal artery and that "no test, lab, or evaluation could have predicted or prevented what happened." He added that the jury ignored the finding of a prelitigation screening panel, required under Maine law in all medical malpractice cases, that actions alleged by the patient's family did not cause his death.

The award was substantially reduced by a judge because of Maine's caps on awards for pain and suffering.

Maryland

A definite effort to defraud the healthcare system, while putting patients at risk, took place over several years—but at least it came to a halt.

In 2010, St Joseph Medical Center sent notices to hundreds of patients, warning that they might have had unnecessary heart stent procedures. As you might expect, scores of malpractice suits soon followed.

An internal hospital review done amid a federal investigation found that many of cardiologist Dr Mark Midei's patients had only minor clogging and didn't need stents.

A $37 million settlement between the hospital's former owner and Dr Midei's patients was approved last year by a Baltimore judge. As many as 273 patients will get payments of at least $134,000 before lawyers' and other fees, ending class-action suits in Maryland and federal courts, according to a report in the *Baltimore Sun*.

Dr Midei lost his medical license after the Maryland Board of Physicians found that he falsified records to justify the expensive procedures. He has denied any wrongdoing. He told the newspaper that many of his patients would have died without the stent procedures.

Several suits are still pending against Dr Midei, who now has a healthcare consulting business.

Missed a Small but Key Step; Loss of Chance

Massachusetts

Failure to add a patient's name to a list resulted in a tragic situation and a huge malpractice award.

A jury awarded $35.4 million to a Walpole woman who is paralyzed from a stroke she suffered hours after she gave birth, according to a May 7 report in the *Boston Globe*.

Andrea Larkin, 35, experienced dizzy spells in 2004 after running the Boston Marathon. MRI and CT showed brain abnormalities. That meant her internist was required to place Larkin in a database of patients with certain medical conditions that other doctors can access, said her attorney Benjamin Novotny.

However, Larkin's physician failed to add her name to the list. When Larkin became pregnant 4 years later, her obstetrician was not aware of her brain issues. Had that doctor known of Larkin's problems, a cesarean section would have been ordered because it was dangerous for her to be in labor, according to Novotny.

The defendants were Dedham Medical Associates, a large multispecialty group practice, and the internist.

Larkin delivered her daughter without having a cesarean section, Novotny said, and had a massive stroke that left her almost completely paralyzed hours after the birth. "She requires 24-hour care for pretty much everything," Novotny said of his client, a former teacher at the Foxborough Regional Charter School. The Larkins have been paying about $200,000 a year out of pocket for Andrea Larkin's care.

Michigan

It's important to recognize when a condition requires the expertise of a specialist. Complications from a "tummy tuck" led to a $1.3 million award last year for a Michigan woman.

Kathie Pagan was 39 in 2009 when she underwent an elective abdominoplasty, which included liposuction of the abdominal flap, at the office of plastic surgeon Dr Rouchdi Rifai, according to a report by the website Mlive.com. She soon experienced dark-colored drainage, clots, and painful burning sensations, according to her complaint.

Dr Rifai cleaned the wound area and prescribed ointment and pain medication. He did not refer her to a wound care specialist as she'd repeatedly requested, even after the wound became infected, the complaint said. Two months after the surgery, she was hospitalized for 6 days because of a *Staphylococcus* infection. She continues to receive treatment for a gaping stomach wound that has never entirely healed.

The trial lasted 10 days. Jurors found that the doctor had breached his duty of care, causing Pagan's injuries and physical and economic losses.

Minnesota

Doctors may be liable for a patient's "loss of chance" at recovery. A patient in Minnesota may now sue physicians not only for negligent acts that cause an injury, but also for loss of chance of a favorable outcome in the future. In a 3-2 ruling, the Minnesota Supreme Court in 2013 joined 22 other states in allowing patients to sue in these circumstances.

The case involved a girl who had had a suspicious lump on her body since birth, according to a report in the *Minneapolis Star Tribune*. A year went by until the lump was determined to be alveolar rhabdomyosarcoma, a rare and aggressive cancer. Her parents sued their family physician, alleging that he didn't properly diagnose the cancer before it spread to other parts of the child's body and that his delay in diagnosis reduced her chances of survival.

A trial judge dismissed the suit because a "reduced-chance" lawsuit wasn't recognized in Minnesota. The state's high court, however, found that a patient's chance to survive or recover is something of value and, if taken away, should be regarded as an injury. It reinstated the lawsuit. The child died a few months after that ruling, at age 7 years.

An attorney for the state's hospital association and medical society said that the ruling is "troubling" because it lowers the bar for doctors to be held liable on hypothetical situations, and will probably encourage cases that law firms previously turned away.

Mississippi

Should the physician have asked the mother to bring the child to the hospital immediately? Yes, according to a judge.

Delays caused by giving advice over the telephone rather than asking the patient to return to the hospital caused doctors to miss a case of bacterial meningitis that led to a child's death, a judge ruled.

A 10-year old girl who was in pain and had a fever of 102°F was seen at the hospital ED. A physician diagnosed an ear infection and prescribed antibiotics and ear drops.

Later that night, the child seemed worse and vomited several times. Her mother called the hospital twice and was told to keep giving her antibiotics. The next morning, the child collapsed and was taken back to the ED. She stopped breathing, was placed on a ventilator, and died 3 days later.

A judge who heard the case without a jury found that signs of meningitis were present when the mother called and the child should have been seen as soon as possible. If the hospital had instructed the mother to bring the child back to the hospital, she would have been properly diagnosed and treated and would have survived, the judge ruled. He awarded the family $500,000.

Physicians Often Miss Cardiac Symptoms

Missouri

Many lawsuits involve a physician not considering the possibility of cardiac problems. In this case, a family physician's failure to order cardiac tests or refer his patient to a cardiologist led to one of the largest malpractice verdicts in Missouri history.

Jeffrey Schneider, 59, a former bank examiner for the Federal Reserve Bank, was diagnosed with mitral valve prolapse in 1996. An echocardiogram in 2001 showed the existence of the same condition, the lawsuit charged, according to a report in the *St Louis Post-Dispatch*.

In 2007, Schneider complained of fatigue, loss of appetite, and abdominal pain. His physician, Dr Joseph Thompson, referred him to other specialists but not a cardiologist, and he didn't order any tests examining his heart, the lawsuit alleged.

Later that year, Schneider had an acute stroke resulting from a bacterial infection on his heart valve, the suit charged. He has restricted use of the right side of his body and other neurologic impairments, his attorney said.

A jury awarded the patient and his wife $6.4 million in 2013.

Montana

Misdiagnoses are not uncommon, particularly with cardiac issues. This one left a widow and four children.

A physician missed a fairly common cardiac condition, known as a leaky valve. Failure to monitor and failure to refer the patient to a cardiologist resulted in a $1.7 million wrongful death verdict against a Billings clinic and internist, according to a report in the *Billings Gazette*.

The family charged that the internist misdiagnosed the patient's chest pain as a torn muscle instead of pain caused by the leaky valve. The patient died 1 year later because he did not receive a replacement valve, according to the family's attorney.

A Yellowstone County jury in 2011 found the internist and clinic negligent in the death of Gerard Heidt, 42, who died on October 5, 2005. "This case is about a patient who fell through the cracks and suffered a death that was entirely preventable," said Don Harris, one of the attorneys.

Harris said they were seeking $1.9 million in lost wages and money for the children's college education. When the verdict was rendered, the jury awarded $1.6 million for lost wages and $120,000 for the children's college education.

Nebraska

Many malpractice trials settle "on the courthouse steps," or just before trial, if the attorneys have a hunch that one side is more likely to prevail. In this case, the case against the doctor and hospital gained some strong support.

A 30-year-old woman underwent a lengthy operation to remove part of her large intestine. The procedure was a success. However, when the patient was positioned for surgery, her upper extremities were placed on arm boards, resting on towels and loosely taped. One arm fell from the board and dangled for as long as 3 hours, plaintiff's attorney David A. Domina told Medscape.

After surgery, the patient's arm was permanently and severely compromised. She sued the anesthesiologist and hospital. No settlement was offered until after the surgeon gave deposition testimony favorable to the plaintiff.

Just on the eve of trial in 2013, the defendants offered to mediate, Domina said. The case was settled before trial for a confidential but significant sum of money, he said.

Nevada

Whereas many lawsuits are lost or dismissed on a technicality, there are instances when the court recognizes the right intentions and gives the plaintiff a break.

A mother brought her toddler to a hospital ED after the family pet, a parrot, bit the boy's right middle finger. A doctor and nurse irrigated the finger, repaired it, and dressed and bandaged it.

When the child returned several days later to have the dressing removed, the doctor and nurse noted that the finger was discolored. They consulted two hand surgeons, who said the finger was "dusky [and] swollen" and had "venous/arterial flow compromise." The boy had several operations but eventually required partial amputation of the finger.

The family sued the hospital, doctor, and nurse, charging that the dressing they applied was too tight. However, their expert's affidavit didn't identify the hospital staffers by name. As a result, a trial court dismissed the case.

The Nevada Supreme Court last year reinstated the lawsuit, finding that the trial court should read a malpractice complaint and affidavit of merit together when determining whether the affidavit meets the requirements of the law. Even though the names were omitted, the expert adequately supported allegations of malpractice.

View With Your Own Eyes; Watch Out for Drug Interactions

New Hampshire

Primary care doctors should look at the radiographic tests they order instead of merely relying on the radiologist's report.

A patient saw a family physician for gastrointestinal problems. The doctor ordered CT of the colon, and the radiologist reported no abnormalities. Over the next 3 years, the patient continued to experience abdominal pain and was seen at hospital EDs many times.

Finally, a new CT scan was performed by a different radiologist. It showed the patient had an intussception of the intestine. The second radiologist checked the earlier scan and found that this condition had been present then, but the first radiologist had missed it.

The patient underwent open surgery and had a difficult recovery. If the intussception had been discovered earlier, he could have had a less invasive laparoscopic procedure, said attorney Paul Mangione in a telephone interview. The patient was left with a large painful scar and still has gastrointestinal discomfort.

The patient filed suit against the first radiologist and family physician, who should have ordered the second CT scan earlier, while his symptoms persisted. "The family physician could have looked at the scan himself instead of relying on the radiologist. You don't need training in radiology to spot this. Doctors should look at the films they order," said Mangione.

The case ended in a confidential settlement for an undisclosed but significant amount, he said.

New Jersey

When a patient is given several different drugs, drug interactions pose a common risk. It's imperative to be extra-careful about potentially lethal drug interactions.

A 35-year-old man went to a hospital ED in severe pain and was diagnosed as having an acute diverticulitis attack. Physicians gave him an antibiotic and intravenous hydromorphone hydrochloride (Dilaudid®) before discharging him.

Two months later, the patient returned with the same complaint. There was some concern that he may have had a perforation of the intestine, said his attorney, Heidi Villari of the Beasley Firm in Philadelphia, in a telephone interview. While doctors performed tests, they again gave him the potent painkiller both intravenously and later intramuscularly. But physicians also gave him alprazolam (Xanax®).

"There was an overload of the Dilaudid. Adding alprazolam had depressed his respiratory function," she said. "He was found unconscious, couldn't be resuscitated, and died."

The patient's parents sued the doctors and hospital and received a settlement of $795,000. New Jersey case law severely limited the award in this case. "Because he was unconscious because of the Dilaudid, it's harder to prove he had conscious pain and suffering," said Villari. "Because he was a single man with no dependents, the jury can't even consider his future loss of earnings. If this case was tried in Pennsylvania and many other states, any award or settlement would have been in the millions of dollars."

New Mexico

Basic communication and common sense should not require an expert testimony. That's one of the lessons of this case regarding delay in diagnosis of colon cancer.

Poor communication between a radiologist and surgeon may have led to a 14-month delay in diagnosing a patient's colon cancer, the New Mexico Supreme Court ruled last year.

A trial judge initially dismissed the lawsuit against St Vincent Hospital because the plaintiff didn't specifically plead that the hospital was liable for the failure of a contract radiologist to communicate a possible cancer diagnosis to the ED doctor. The hospital also alleged that the plaintiff didn't submit expert testimony in support of his claim.

In 2002, the radiologist concluded the patient had a diverticular abscess. The surgeon testified at a deposition that she never received a report noting a secondary neoplasm diagnosis. If she had, she "would have tried to do whatever she could to get ahold of the patient," who left the hospital and didn't return for a follow-up visit. In 2006, the patient sued the hospital because the radiology report wasn't forwarded to the surgeon and the abscess was treated with antibiotics, "allowing the neoplasm to grow."

The Supreme Court reinstated the case and ordered a new trial. There was enough evidence for a jury to decide whether the hospital was liable for the actions of the radiologist, it held, also finding the trial judge was wrong to demand expert testimony. "Communication between medical personnel is not a matter that requires expert knowledge to understand the standard of care involved... A reasonable patient understand that the radiologist who processes X-rays needs to communicate the results to the treating physician. Basic human communication, even between doctors, is not so far from common knowledge that it requires an expert's testimony."

New York

This case is a lesson in how a malpractice suit can continue through additional trials, and how each trial's results can be different from the last.

In a surprise reversal of fortune, one of the nation's top plaintiffs' attorneys turned down an $8 million settlement offer in a malpractice suit—then the jury in 2009 found for the defendants. But the attorney tried the case two more times and finally won.

The attorney had alleged that negligence by an obstetrician and a hospital left a child with cerebral palsy.

Thomas A. Moore, whose law firm has won more than 120 verdicts each over $1 million, appealed the case. A second trial resulted in a mistrial, but the third time was the charm. A Suffolk County jury in 2013 awarded the child and her family $130 million, the second-highest personal injury verdict in New York history.

The child was born with severe brain damage. Moore convinced the jury that a nurse at St Charles Hospital in Port Jefferson failed to notice that the girl was deprived of oxygen at birth and that other mistakes were made during the delivery. The child cannot walk or speak and needs almost constant medical care. "Had the nursing team communicated with the obstetrician just 15 minutes sooner—and delivered the baby—this terrible tragedy could have been avoided," Moore told reporters.

The obstetrician, who was cleared by the first jury, was dropped from the subsequent lawsuits. A state appeal court in 2013 upheld the verdict against the hospital but reduced the award to $11 million.

Make Sure You Communicate With Staff; What If the Doctor Is Injured?

North Carolina

Make sure you and your nurse or medical staff members are on the same page. Miscommunication between an ophthalmologist and a nurse during cataract surgery resulted in an injury that left the patient blind in his left eye.

A Durham jury last year found that the ophthalmologist and North Carolina Specialty Hospital were negligent for using the wrong drug during the 2008 operation. It rendered a verdict awarding $1.5 million to the patient, according to a report in the *Herald-Sun*.

The patient had alleged that Dr Timothy Young ordered a dye called VisionBlue® (Dutch Ophthalmic; Exeter, New Hampshire) to stain the cataract. But the nurse brought the wrong drug—methylene blue, which is toxic to the eye. The nurse testified that she announced the drug's name as she handed it to a surgical technician, who also said she announced the drug. Dr Young testified that he never heard that.

The drug caused severe injuries. A second operation failed to correct the injury, and the patient's body rejected a full corneal transplant.

North Dakota

Do doctors owe a duty to patients they've never met? That was the key question in a case decided by the North Dakota Supreme Court earlier this year.

Herman Johnson experienced confusion and swelling of his legs and calves in December 2012. His daughter called the Mid Dakota Clinic, a 60-physician group, and was given an appointment for that afternoon with internist Donald Grenz. Johnson and his daughter arrived 7 minutes late and were told that Dr Grenz couldn't see them, but they could reschedule for another day or go to the hospital ED or nearby walk-in clinic.

Shortly after leaving the clinic, Johnson fell and hit his head, suffering a laceration on his forehead. He returned to the clinic, where a nurse assisted him until an ambulance arrived. He was hospitalized, had episodes of respiratory arrest, and died a week later, the court's opinion said.

The family sued Mid Dakota, alleging that the policy of not seeing patients who arrive more than 5 minutes late for appointments was a breach of the duty the clinic owed to Johnson, and that his fall was a foreseeable event proximately caused by the refusal to treat him. An expert witness testified in a deposition that a "reasonable" clinic would not have refused to see a patient who was only 7 minutes late, and the patient should have been evaluated to see whether he needed immediate treatment.

A trial judge dismissed the lawsuit, and found that scheduling an appointment with a doctor does not establish a legal duty to treat the patient and does not establish a physician/patient relationship necessary to maintain a malpractice claim. The Supreme Court agreed, rejecting Johnson's argument that the clinic should have foreseen that he may fall and sustain an injury. "This argument imposes an unreasonable level of prescience on the clinic. Mr Johnson's unfortunate trip and fall and subsequent passing were not causally connected to the clinic's refusal to see him."

Ohio

It's rare that a physician becomes injured during the course of operating on a patient—and even rarer that he then sues the clinic and physician who tried to repair the damage. Neurosurgeon Dr Xiao Di may be one of the unluckiest doctors in Ohio. But at least a $7.7 million award will compensate him for the career-ending injuries he sustained.

The doctor who worked at the Cleveland Clinic was performing surgery in February 2010, when it appeared that bone chips went into his left eye, according to a report on the *Cleveland Plain Dealer.* About 1 year later, he had surgery at the clinic to repair the damage.

During the procedure, a hole was torn in Dr Di's iris, his attorney said. His left pupil was destroyed. Because of the injuries, Dr Di cannot perform surgery and has not worked since then, the attorney said.

After a trial that lasted nearly 3 weeks, a Cuyahoga County jury last year awarded him $7.7 million in a malpractice verdict, including money for lost prior and future wages.

Six of eight jurors voted in favor of the verdict. That's permissible under Ohio law.

Oklahoma

Make sure you communicate and document your intentions, and that other health professionals involve are aware of your instructions.

A patient was diagnosed in 2006 with invasive ductal carcinoma of the left breast. She elected to have a mastectomy and reconstruction. She was given antibiotics, including cefadroxil, although she had no clinical indications of an infection at the surgical site, according to her attorney Jacob Diesselhorst.

As a result of the cefadroxil, she developed *Clostridium difficile* colitis, her lawsuit alleged. She went to a cancer care center and told an oncologist that she was taking metronidazole for the *C difficile* infection. The oncologist told other employees not to start chemotherapy until the infection cleared. However, his order was not properly charted and documented. Other doctors started chemotherapy without checking on the patient's *C difficile* status.

The woman's cancer treatment had to be delayed, and she needed eight additional surgeries on her colon, the attorney said. She still has severe pain and long-term disability. The defendant doctors and cancer care center said that they met the standard of care and the patient's injuries were caused by the "natural sequelae and complications from necessary procedures following the diagnosis of her condition."

In 2011, a jury awarded the patient $4.5 million.

Dangers of Medical Equipment; Phone Advice Is Risky

Oregon

New cutting-edge medical equipment can be exciting and very useful, but it may also carry big risks.

A jury found that a gynecologist committed malpractice when he used a da Vinci surgical robot (Intuitive Surgical, Inc.; Sunnyvale, California) in a 2007 procedure that removed a patient's healthy ovary and left a piece of plastic in her body.

Suffering pelvic pain, the woman consented to the removal of her right ovary, fallopian tube, and appendix, according to a report in the Medford *Mail Tribune*. A pathology report found that the organs were normal.

The robotic device malfunctioned during the procedure, according to hospital records. More than 3 years after the operation, foreign objects were revealed in the patient's body during CT. A laparoscopy sheath, plus extraneous coils used as birth-control devices, were removed from her pelvis. Until that time, she had been unaware of the foreign objects. Gynecologist Dr Daniel H. Laury hadn't been informed of any damage to the robotic equipment, according to trial testimony.

A jury in 2013 awarded the woman $10,500 in medical expenses and $100,000 as compensation for physical pain and mental anguish. Jurors denied her husband any payment for loss of consortium due to his wife's diminished health.

Pennsylvania

Giving advice over the phone can be dangerous to doctors. A first-time pregnant woman complained to her obstetrician about swelling, headaches, and abdominal pain. The doctor told her over the phone to take acetaminophen.

It was unknown whether the woman ever took the painkiller, said her attorney Dion Rassias of the Beasley Firm in Philadelphia. The open bottle was beside her body when she was found unconscious on her kitchen floor after having a seizure and stroke owing to undiagnosed and untreated eclampsia.

The woman was rushed to the hospital for an emergency cesarean section, but at that point, the baby she was carrying had already suffered from a lack of oxygen. The hypoxia caused damage to the child's brain, and she now has cerebral palsy.

During a 2-week trial in 2012, the mother's attorney argued that her complaints warranted further evaluation by the obstetrician to make sure her blood pressure was acceptable. The jury awarded the family $3.75 million.

Rhode Island

Proper training makes the difference, and it's important to be sure that you're trained for any procedures that are within your purview and might be required. A pediatrician's lack of training and his delay in contacting a tertiary hospital for assistance led to an infant's severe brain injury.

A baby was delivered by a planned cesarean section at a community hospital. The girl was active but extremely pale. A hematocrit showed a very low volume of red blood cells, said plaintiff's attorney Miriam Weizenbaum in a telephone interview. "The baby needed a transfusion. Although a board-certified pediatrician was present, he was never trained in how to insert an umbilical venous catheter to administer the blood. No one at the hospital had ever performed one."

"They waited more than 2 hours before contacting a tertiary hospital for advice," she said. "Doctors there unsuccessfully tried to talk the pediatrician through the procedure while an emergency response team with a doctor and neonatal nurse drove in an ambulance 45 minutes to the hospital. The response team administered the blood

and brought the baby to its facility. An MRI showed massive brain damage. That little girl is now 9 and in need of constant care."

"It's inevitable that newborns will need transfusions and resuscitation, but no one at this community hospital knew what to do," she said. "And they waited 2 hours before trying to get help. We sued the hospital and pediatrician. The case was settled just before trial for $4.5 million."

South Carolina

Typically, lack of knowledge of the law doesn't count as an excuse—and if either side doesn't conform to the legal or technical requirements, the case may be over. This lawsuit was an exception, however. Many malpractice cases are dismissed on esoteric legal technicalities, but the South Carolina Court of Appeals recently allowed a case to go forward because the plaintiff's legal mistakes weren't intentional.

The patient alleged that his physician prescribed an antibiotic that negatively interacted with medication he was previously prescribed. The results were complications that included bleeding, renal failure, and a lengthy hospital stay.

In South Carolina, plaintiffs must file a notion of intent (NOI) to sue that requires a mediation conference within 120 days. The patient didn't state in the NOI that the case was subject to mandatory mediation and didn't fill in the name of the proposed mediator. The plaintiff and doctor discussed collection of medical records but made no attempt to schedule the mediation conference.

On the doctor's motion, a trial judge dismissed the case with prejudice, meaning that it could not be filed again, because the plaintiff hadn't complied with the statue. The Court of Appeals reversed that decision, finding that dismissal wasn't warranted because the plaintiff's failure to include information about mediation wasn't made in bad faith, and that such a sanction was "too severe" for technical violations. That means the plaintiff will be allowed to proceed with the case.

A Whirlwind of Lawsuits; Should Peers Have Taken Action?

South Dakota

A controversial surgeon has inspired a whirlwind of lawsuits, ensnaring more than a dozen physicians who served on hospital committees that granted him privileges.

A jury in 2013 found that orthopedic surgeon Dr Allen Sossan was negligent in performing two unnecessary spinal fusion operations and rendered a $933,835 verdict for the family of the deceased 80-year-old patient.

That lawsuit was one of almost three dozen other suits brought in South Dakota courts by Dr Sossan's former patients or families of patients who died after undergoing surgery. The doctor also settled several other cases, according to a report in *USA Today*.

Over the past year, more than a dozen doctors have been named in federal lawsuits charging that they acted in bad faith by allowing Dr Sossan to perform surgery. The doctors are accused of "negligent credentialing" in extending him privileges to perform complex spine surgeries, despite knowing of his history of unnecessary procedures and unprofessional conduct. The plaintiffs allege that the hospitals granted him privileges because spine surgeries are lucrative revenue streams.

Numerous complaints were made to the South Dakota and Nebraska medical licensing boards about Dr Sossan from other doctors and patients, but he was allowed to keep his privileges until 2012.

Tennessee

It's important to examine a cast for skin changes, rather than let it go for a significant period.

A 72-year-old woman with a history of peripheral vascular disease and smoking fell and fractured her ankle. Her orthopedist placed her in a walking cast and told her to return after a week.

The doctor decided to leave her in the cast and check her again in a month. On that visit, the cast was removed, and it was discovered that the patient had developed a heel ulcer, as well as dark eschar and sloughing of the skin on the dorsum of her foot.

Two weeks later, her skin condition was worse, and the patient was referred to a wound care specialist. The ulcers on her left ankle and heel were infected, and she had a large ulcer with an exposed tendon. After several weeks of wound therapy and debridement at a hospital, the patient elected to undergo a below-the-knee amputation.

Her lawsuit against the orthopedist and his clinic alleged that he failed to properly monitor her foot and should have removed her cast earlier because she showed signs of ecchymosis at the time the cast was placed. The defense argued that the patient may have been self-medicating with alcohol, and that removal of her cast would have made no difference in whether she would ultimately have experienced skin breakdown.

A jury in 2013 found the orthopedist and his clinic were negligent, but the patient was 25% at fault for her injuries. It awarded her $1.3 million, which was reduced to $981,000 for her apportionment of fault.

Texas

The case of a "dangerous" physician prompts the question: If these charges are true, should peers have taken action to keep him from operating?

A controversial former neurosurgeon in Plano whose Texas medical license was revoked for allegedly killing or maiming patients during spinal operations was arrested in April for assaulting several people and shoplifting about $900 worth of clothing and other items from a Dallas Wal-Mart, according to a report in the *Dallas Morning News*.

The Texas Medical Board previously found that Dr Christopher Duntsch, 44, now of Centennial, Colorado, violated the standard of care in six patients, had a pattern of failing to follow appropriate procedures before operations, and failed to recognize and respond to complications during and after surgery.

Numerous malpractice suits against him are still pending. He was accused of maiming several patients and causing the death of at least two patients between July 2012 and June 2013. In one lawsuit, a patient who was a friend of the surgeon alleged that they both used cocaine the day before the surgery. Duntsch has denied using drugs. Several of the lawsuits also allege that Baylor Regional Medical Center at Plano knew that Duntsch was a dangerous physician but didn't stop him from performing back surgery.

In a series of interviews with the newspaper, Duntsch said he was the victim of a Texas cabal of rival physicians and personal injury lawyers. "I am a well-trained surgeon. I'm a complex spine surgeon. My record is excellent. Ninety-nine percent of everything that has been said about me is completely false."

Utah

As increasingly more physicians work with nurse practitioners (NPs) and PAs, it's useful to know that in some states, supervising an NP doesn't mean that a doctor must review and sign off on every prescription she writes.

David Ragsdale shot and killed his wife in a church parking lot in 2008 while under the influence of medications prescribed by an NP. He pleaded guilty to felony aggravated murder and was sentenced to 20 years to life in prison.

A conservator for the couple's young children sued the NP, her consulting physician, and the clinic, claiming that the prescriptions for at least six antidepressants, steroids, and other drugs led to Ragsdale's deadly attack. A judge initially dismissed the suit but the Utah Supreme Court reinstated it, unanimously ruling in 2012 that healthcare providers have a duty to consider how treatment of patients might affect their families. The NP later reached a settlement with the children.

Family physician Hugo Rodier, who was the NP's consulting physician, asked to be dismissed from the suit.

In another unanimous decision, the state's high court ruled last January that the doctor had no duty to consult with the NP on each individual prescription she wrote. The Utah Nurse Practice Act gave the NP the authority to prescribe controlled substances and doesn't impose any obligation on the nurses to discuss with a doctor each prescription of a controlled substance.

Sometimes Payoffs Are Large; Sometimes Not

Vermont

Malpractice settlements can lead to big payouts, even when there's no decision as to whether negligence took place.

A 42-year-old woman won a $3.5 million confidential settlement in 2011 against an orthopedic surgeon and hospital stemming from their treatment of her Schatzker VI tibial plateau fracture, a fracture that is a high risk for compartment syndrome.

The orthopedist place an external fixator and intended to perform an open reduction internal fixation days later when the swelling receded, according to a report in *Zarin's Jury Verdict Review and Analysis*. Nursing staff noticed that the patient was having decreased movement and sensation in her foot and demonstrated symptoms consistent with compartment syndrome, her lawsuit alleged.

Just before the scheduled second surgery, the patient's foot was cool to the touch, gray, and without pulses. No angiography was performed, and a vascular surgeon wasn't consulted. The patient alleged that she should have been transferred to a better-equipped trauma center. The orthopedist's operation left her with significant and likely permanent muscle and nerve loss.

The surgeon testified during his deposition that some of the hospital nurses failed to report neurovascular abnormalities in a timely manner. However, two nurses claimed that they were unable to reach the orthopedist to advise him of their concerns. The hospital's expert said the plaintiff suffered an iatrogenic thermal injury to the sciatic nerve when the external fixator was placed, which can occur in the absence of negligence.

The orthopedist's expert said the woman suffered a vascular perfusion injury that wasn't amenable to treatment. The defense experts also questioned whether the plaintiff actually had compartment syndrome.

The parties mediated the claim and agreed to the $3.5 million settlement.

Virginia

Huge verdicts don't always mean huge payouts to plaintiffs. Although a plaintiff's law firm boasted that a 2013 jury verdict of $25 million was the largest medical malpractice award in state history, it was slashed to $2 million because of Virginia's cap on such awards.

In January 2010, 37-year-old Christopher Denton had sudden-onset chest pain radiating into his jaw and left arm. He was rushed to a local hospital and treated with heart medication. He was transferred to Riverside Regional Medical Center, where he underwent a cardiac catheterization. Although that test showed 70% blockage of a main

heart artery, cardiologist Dr Edward Chu reported that the arteries were clear and free of disease, said attorney Malcolm McConnell of the Richmond law firm of Allen, Allen, Allen & Allen.

Dr Chu diagnosed Denton with a mild infection of his heart, discontinued the heart medication, and discharged him on ibuprofen, the lawyer said. Three months later, Denton had a massive heart attack. He will probably require a heart transplant within a few years—and there's only a 50% chance he will survive 10 years after that, if indeed he gets the transplant, McConnell said.

At the trial, plaintiff's experts said the catheterization showed severe blockage requiring a stent to open the arteries. Defense experts argued that the blockages weren't that severe and didn't require drastic action.

The jury was never told about the $2 million cap on awards.

Washington

It's not just the doctor or his or her care that's a key factor in a trial. Factors unrelated to the healthcare may become issues in the outcome of the trial.

In a case tainted by several jurors making racist anti-Japanese comments, it took two trials and almost 9 years for a patient whose foot was amputated after a botched diagnosis to win her lawsuit.

Darlene Turner's lawsuit charged that Dr Nathan Stime, who has been repeatedly disciplined by state regulators, told her in 2004 that she had terminal cancer. In fact, she had pneumonia. During her treatment, she lapsed into a coma and later required amputation of her left foot, according to a report in the Spokane *Spokesman-Review*.

A jury reached a verdict finding for Dr Stime on December 7, 2008, the 66th anniversary of the bombing of Pearl Harbor. Two jurors told the trial judge that other jurors disparaged plaintiff's attorney Mark Kamitomo, calling him "Mr Kamikaze" and "Mr Miyagi" (a character in the movie *The Karate Kid*) and making other anti-Japanese comments. One juror said that because of the Pearl Harbor anniversary, the remarks were "almost appropriate."

The judge declared a mistrial. At a new trial in 2013, a jury awarded Turner $813,000 for past and future medical bills, lost wages, pain and suffering, and loss of consortium.

Dr Stime, now retired, had been fined $2000 by the state in 2009 for prescribing methadone to several drug-addicted patients, including one who died from an overdose. The doctor also was fined twice in 2007 for failing to diagnose one patient's rectal cancer over a period of 6 years and for failing to recognize cardiac symptoms in another patient who later had a heart attack.

West Virginia

Think carefully, and pay attention when you sign off on treatment. Failure to take action about a patient's known allergy to a drug contributed to his death and led to a $1 million award against the doctor.

Dr Delilah Stephens was the patient's attending physician and knew that he had had a previous allergic reaction to quetiapine fumarate (Seroquel®), according to the court opinion. Another physician ordered the antipsychotic drug when the patient was in the hospital for chronic health problems, including chronic obstructive pulmonary disease and chronic hypercapnia, which caused him to become confused and agitated. Dr Stephens signed off on that order and took no further action, the lawsuit charged.

The patient was heavily sedated and unresponsive. He developed tachyarrhythmia, QRS widening, bradycardia, and asystole before dying at the hospital.

In June, the Supreme Court of Appeals of West Virginia in June upheld the 2013 jury verdict and punitive damages award, which found that the doctor was responsible for the patient's death and that the plaintiff "presented sufficient evidence that Dr Stephens' lack of treatment was dangerous, and even reckless." Two other physicians previously settled for $190,000. The jury in Dr Stephens' case awarded the patient's family $500,000 in compensatory damages and $500,000 in punitive damages.

Caps on Awards; Statute of Limitations for Bringing Suits

Wisconsin

Caps on awards for pain and suffering have made an impact. Some would argue that they've gone too far, and that physicians who have committed clear negligence are not being sued as a result.

Medical malpractice suits have reached an all-time low in Wisconsin because of caps on awards for pain and suffering, tighter rules about who can sue, and the high cost of bringing a suit. The number of suits fell to 84 last year from 140 in 2013 and 294 in 1999.

The *Milwaukee Journal Sentinel* recently highlighted several cases of apparent negligence where there was no lawsuit. In one case, a woman died after a breathing tube was mistakenly inserted into her esophagus at a hospital ED. That and other serious errors in care were confirmed by state investigators. Still, her three adult children were unable to find an attorney willing to file suit. State law allows only spouses and minor children to sue for loss of companionship in a medical malpractice death case. The patient was divorced.

Several plaintiffs' attorneys told the newspaper that they shun medical cases because the chances for recovery are so slim. Noneconomic damages are capped at $750,000. Lawyers said they often must invest up to $100,000 in cases. Michael Matray, editor of the *Medical Liability Monitor*, agrees and said that lawyers are only taking cases that are "slam dunks."

Ruth Heitz, general counsel for the Wisconsin Medical Society, said, "Some of the decline in cases is due to doctors and hospitals getting it right. There are fewer incidents of medical negligence."

Wyoming

There are instances when a person can bring a malpractice claim well beyond the stated time frame allowed for filing suit after treatment.

A surgeon operated on a 12-year-old boy for appendicitis in 2007 and discharged him the following day. Complications required additional surgery and treatment. The child's parents filed a claim for malpractice in 2011.

A trial court dismissed the lawsuit on the grounds that it was filed after the state's 2-year statute of limitations had expired. Historically, a minor has until the age of majority plus 3 years (21 years of age) to file a lawsuit. However, the Wyoming legislature in 1976, at the height of a crisis in malpractice insurance, enacted laws that required all persons, including minors, to bring a medical malpractice claim within 2 years of treatment.

The parents appealed, and the Wyoming Supreme Court ruled last year that the laws were unconstitutional on public policy grounds. The court had concerns that a minor child's legal remedy could be barred if his parent or guardian failed to act in a timely manner. The decision was in line with decisions in many other states.

The court said it was unrealistic to rely on parents or guardians who may be "ignorant, lethargic, or lacking concern" to bring the action to protect the minor's rights. Even if dedicated guardians had reasons for not bringing suit on a minor's behalf, the court held that restricting a minor's right to sue would be unfair and unreasonable.

The court reinstated the lawsuit against the surgeon.

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Cite this article: Mark Crane. 50 Shades of Malpractice. *Medscape*. Aug 13, 2015.