

## Medical Boards Let Physicians Practice Despite Drug Abuse

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### *First of three articles*

Over the past 20 years, John F. Pholeric Jr. struggled on and off with cocaine addiction, cycled in and out of rehab and was convicted of a felony. During that time, he also practiced medicine.

Pholeric, 55, an ear, nose and throat specialist in Fairfax and Loudoun counties, admitted snorting cocaine "three to four times per week" in his office in 1999. He stole drugs from hospitals where he worked and wrote more than 40 fraudulent prescriptions for his own use, according to Virginia and District medical board records.

Several times, the Virginia Board of Medicine took up Pholeric's case. But it never took away his license to practice.

Pholeric, who retired last month after he was questioned by a Washington Post reporter about his substance abuse, is not alone. Virginia Board of Medicine records show that an Arlington ophthalmologist who performed cataract surgery under the influence, his hands shaking and his speech slurred, still has his license. So does a Loudoun County gastroenterologist who deprived his colonoscopy patients of painkillers and injected himself with the drugs between operations.

Scores of physicians in the area and across the country have been given repeated chances to practice, despite well-documented drug and alcohol problems, a Post investigation has found. They have stayed in business with the permission of state medical boards and hospitals, even when many have relapsed multiple times and posed a danger to patients, records show.

When physicians were disciplined, the process sometimes was so slow that they moved to another state and became licensed before a paper trail surfaced detailing their transgressions.

According to a review of medical board records, 74 doctors in the District, Maryland and Virginia were disciplined for substance abuse from 1999 through 2004. In five other cases, the boards found that doctors violated the law by abusing drugs or alcohol but took no action despite the doctors' repeated substance abuse. In nine other cases, the physicians surrendered their licenses for the time being to avoid investigation and possible punishment, according to board records.

In the 74 cases in which doctors were disciplined, most had their licenses suspended temporarily. Ten doctors were reprimanded and five others were placed on probation, but their licenses were not suspended.

Seven of the disciplined doctors have been convicted of felony drug crimes. One doctor who was convicted in Virginia and served time in prison once again has a license to practice in the state.

Of the 74 physicians, 53 percent have been disciplined more than once for alcohol or drug use during their medical careers. Nine were sanctioned at least three times by the same board.

The District and Maryland boards do not permanently revoke doctors' licenses. In Virginia, where a license can be permanently taken away only with a doctor's agreement, just one was revoked for substance abuse from 1999 to 2004, records show.

Critics say lenient treatment of substance-abusing physicians flows from a seriously flawed national system of disciplining doctors. At its heart is a network of state medical boards made up primarily of physicians who, critics argue, are unwilling to exact strict punishment on their colleagues. A federal data bank designed to track problem doctors has critical loopholes and is closed to the public. Malpractice lawsuits often end in sealed settlements, adding to a cloak of secrecy that keeps patients from learning a doctor's full history.

Patient advocacy groups say bad doctors are also coddled by hospitals and other employers as part of a culture of clemency and second chances.

"Medicine tolerates behavior that in any other industry would be unacceptable," said Lucian Leape, a physician and expert on patient safety who teaches at the Harvard School of Public Health. "There are patients' lives at stake . . . and that's more important than a doctor's career."

Charles B. Inlander, president of the People's Medical Society, an Allentown, Pa.-based nonprofit consumer health advocacy group, said doctors who are drug addicts are often given too much leeway.

"If a pilot gets caught, they're out. If an engineer gets caught, they're out," Inlander said. "Why does a doctor get special treatment?"

Hospitals and other employers can discipline physicians. But when it comes to a doctor's license, the authority rests with state boards of medicine, which usually are appointed by governors. In the District, board members are mayoral appointees.

The panels also grant licenses and investigate complaints. Although their meetings are usually open to the public, physician discipline is typically discussed behind closed doors.

Many boards prefer not to take away a doctor's license to practice. "Regulators believe that many problems can be resolved with probation and by putting restrictions on a physician's license," according to a release from the Federation of State Medical Boards.

William L. Harp, a physician and executive director of the Virginia Board of Medicine, said he could not comment on specific cases but defended his panel's record. If the Virginia board is aware of an impaired doctor, he said, it moves swiftly to take action.

"The practice of medicine is on the honor system," he said. "Once you get your license . . . the board assumes that you're out there taking good care of patients until we hear otherwise."

But Harp acknowledged that the system has flaws. "You can't catch every single thing."

He said medical boards should become more proactive in assessing doctors and patient safety instead of using the current system, which primarily reacts to complaints.

The Virginia board did not discipline Herman A. Garrett, an anesthesiologist licensed in Virginia. Garrett has struggled with drugs and alcohol off and on since he was a resident at Georgetown University, according to Kentucky medical board records. In 1991, Georgetown officials placed him on leave for his "chemical dependency," the records show. In 1992, he pleaded guilty to driving under the influence in Georgia and received a suspended sentence and fine, according to the records.

"Physicians are no different than any other individual," Garrett said in an interview. "I was just a person who liked to change the way I feel through using chemicals. It may be illegal, but I didn't perceive it as wrong."

Garrett, who injected himself with drugs up to 10 times a day, admitted stealing drugs while working at a Kentucky hospital, medical board records show.

His abuse of fentanyl, a synthetic morphine, was the "crescendo" that prompted him in 2001 to surrender his Kentucky license in lieu of revocation, he said in the interview. He has been in rehab twice. The Virginia board stated in a 2003 order that he was in a "well established recovery monitoring program."

Garrett, 42, argued that he and other physicians have a right to return to medicine despite relapses.

"Do we as a society want to say that because you've had this problem, you're no longer eligible to participate in the capacity that you're trained in?" he asked. "There are some stunningly good professionals in recovery."

### **Suit Over Drugs**

Nancy Rodriguez, a Loudoun County mother of four, claimed in a 2001 lawsuit that gastroenterologist Joseph Shaw Jones used drugs meant for her.

Rodriguez had gone to Jones for a colonoscopy in 1998 on the recommendation of her doctor. When she arrived at Loudoun Hospital Center for the procedure, Jones asked the nurse to go and change the music piped into the room, Rodriguez recalled in an interview.

"That's when he changed the drugs," she said. "That was the only time I was alone with him. That was the only time he could have done it."

Rodriguez was awake during the procedure and told Jones she felt sharp pain, she said. "He said, 'We're almost finished.' I told him it hurt."

She later found out through media reports that Jones had tampered with drugs meant for patients. Nurses reported that "they heard a number of his patients screaming during procedures," according to Virginia medical board records. Hospital staff members also reported that Jones had glassy eyes on one occasion and slurred speech on another.

The Virginia medical board gave Jones several chances. Even though he was battling drug and alcohol addiction in 1989, the board gave him a license to practice. In 1993, the board found that he had violated specific terms of a 1992 order to abstain from drugs and alcohol. And in 1999, after he used drugs meant for patients while performing colonoscopies and endoscopies, board members reprimanded him and fined him \$10,000. Still, they let him keep practicing.

"It never even occurred to me that a doctor would be allowed to continue practicing if he had any drug history," Rodriguez said. "If a more serious penalty or punishment would have come down on him sooner, perhaps he wouldn't have continued" practicing.

Jones, 51, settled the case with Rodriguez for an undisclosed amount.

The Virginia medical board suspended him only after he pleaded guilty to drug possession charges in federal court in Virginia, was sentenced in July 2001 to 30 months in federal prison and ordered by the court to surrender his medical license for three years.

But in September 2003 -- two years and two months after he was sentenced -- the Virginia board gave Jones his license back.

After the incidents at Loudoun Hospital Center, Jones received support from the group that oversees physicians with substance abuse problems and from a hospital official, records show. In an Oct. 4, 1999, letter to the medical board, Walter M. O'Brien, president of the hospital's medical staff, said he was "familiar with the current events involving Dr. Jones' drug use . . . and he fully supports his return to practice," according to Virginia board records.

Jones declined several requests for an interview.

"My natural instinct is to use your forum to set the record straight," Jones wrote in an e-mail. "As you know, the events that led to my last meeting with the Virginia Board of Medicine occurred . . . six years ago. Since then, my family and I have moved past the painful fallout of those times and do not wish to revisit them in a public forum."

Jones declined to say whether he is practicing medicine, and the Virginia medical board does not keep track of who is actively practicing, said Karen W. Perrine, the board's deputy executive director of discipline.

In the case of Arlington ophthalmologist Kenneth D. Hansen, 58, Virginia medical board records say that in January 1997, he showed up at Arlington Hospital, now Virginia Hospital Center, late for surgery, "unshaven, his hair was uncombed . . . his eyes were glassy, his speech was slurred and his face and hands appeared swollen."

His hands trembled while performing cataract surgery, and "Patient A," according to the board records, "incurred excessive bleeding," prompting the hospital to suspend Hansen's privileges. The hospital reinstated him less than a month later. A year earlier, he had been suspended from performing surgery at the hospital until he completed treatment for a prescription drug problem. Then in March 1997, after the cataract surgery, he was back in rehab, according to board records. His Virginia license was suspended, then reinstated on probation in 1998. He currently has an unrestricted license.

Hansen, who has a private practice in Arlington, declined to discuss his history. "I've done everything I can to the satisfaction of the board," he said in a brief phone conversation. "Sometimes you have to move on."

### **Incident in Loudoun**

Kim Gardiner, a former patient of physician John Pholeric, said state medical boards and hospitals should bar drug-abusing doctors from the medical field.

"That just angers me," she said. "Nothing is really done about it."

Gardiner knew nothing of Pholeric's history when she went to his Loudoun County office in 1995 on the recommendation of her HMO. She needed surgery for hearing loss in her left ear, a procedure that involved wiring a tiny hammer into her ear drum.

"He had performed it before -- not once or twice, but several times," said Gardiner, now 42 and a mother of three in suburban Atlanta. But she emerged from the surgery at Reston Hospital Center with a dislocated jaw.

"My face hurt, and I had an excruciating headache, like a migraine, and it kept getting worse," she recalled in an interview. She said she was unable to chew and had to sip liquids through a straw for three weeks.

Gardiner sued Pholeric and the hospital, but it was the hospital that settled with her for an undisclosed amount, she said.

When Gardiner went to Pholeric, he was already known to the Virginia medical board for stealing and using drugs in the 1980s. He went to a residential treatment program in 1984 and the next year was convicted in federal court in the District for writing 42 false prescriptions for his personal use. The court placed him on probation and banned him from prescribing certain drugs for two years but did not order him to stop practicing.

The Virginia medical board also allowed him to keep practicing, despite a law requiring that it suspend or revoke the license of anyone convicted of a felony.

After Gardiner sued Pholeric, the Virginia medical board concluded in 2002 that he had stolen cocaine solutions meant for his patients at Countryside Ambulatory Surgery Center and Loudoun Hospital Center. The state board put him on probation but let him keep practicing. He entered inpatient drug treatment again in 2001, and his license was fully reinstated in 2003. The medical board placed him on probation last year after his urine tested positive for marijuana, records show. Pholeric told the board he was "exposed to secondhand marijuana smoke" the night before his drug screen.

Before his retirement last month, Pholeric said in several lengthy e-mails to The Post that drug addiction is an "occupational hazard" that should not end a physician's career.

"Do you throw these people away, or do you treat them, monitor them and assure public safety?" Pholeric wrote.

Pholeric said he was sober for 17 years, from 1983 through late 2000, but 1987 Virginia medical board records show he failed a drug screen, and 1999 records show the cocaine theft. He blamed a "long and difficult" schedule for his relapses but said he has been drug-free since September 2003.

"I am no longer trying to prove a thing," he said in an e-mail. "If patients don't think I am doing a good job, they should go somewhere else."

But Pholeric decided to retire March 7, in part because of the Post investigation, he said in a brief phone conversation.

"Your help in getting me to retire has been excellent, thank you," he said before hanging up.

### **Relapses**

Paul H. Earley, medical director of the Impaired Professionals Program at the Ridgeview Institute in Smyrna, Ga., said it is common for doctors with substance abuse problems to relapse. One in 10 doctors do so within two years, he said. Others, he said, are in and out of rehab for years.

"There are people who can't stay sober . . . and they shouldn't practice medicine," he said.

From 1999 to 2004, nearly 1,400 physicians across the country were disciplined for substance abuse and reported to the National Practitioner Data Bank, a federal clearinghouse for disciplinary action and medical malpractice payments against doctors. Of those, many were repeat offenders: 259 physicians were reported twice; 58 had three reports; and two physicians had six reports, according to data bank records.

The controversy over whether medical boards should treat prolonged substance abuse as a career-ending offense is partially rooted in a much broader debate over whether addiction is an illness or a crime. The same question has come up in other arenas, from the judicial system to disability policy.

Arthur Caplan, chairman of the Department of Medical Ethics at the University of Pennsylvania School of Medicine, said it is common for the medical community to let doctors with a history of substance abuse continue to care for patients.

"Treating impaired doctors with kid gloves has been true since I was on the New York state licensing board in the '70s, and it hasn't changed," Caplan said. "I'm all for rehabilitation, but when you have multiple violations of drug abuse, you can't be near a prescription pad."

James T. Birch Jr., 50, a family practitioner who practiced for years in Norfolk, contends that a doctor with a drug or alcohol problem should be given as many chances as a doctor who is physically ill.

"Suppose you have a diabetic surgeon whose blood sugar drops and he's in the middle of a procedure," he said in an interview. "How many chances do you give him?"

From 1990 to 2001, Birch tested positive for alcohol, marijuana or cocaine seven times and went to four drug treatment centers, one financed by taxpayer dollars, according to Birch and state records. The Virginia medical board suspended his license four times but each time gave it back.

"I think the board was very fair to me," said Birch, who said he has been drug free for nearly four years. "I was given five chances. I think the board understands and recognizes addiction as a disease and not some type of moral turpitude."

Drug use, he said, "never prevented me from staying focused on my work." But he said he became reckless with money, stayed up all night and was always "bone-dead tired." Still, no one at Norfolk Community Hospital knew about his drug use, and "nothing was ever documented" that he harmed a patient, he said.

After he tested positive for drugs in 1990, the Virginia medical board suspended his license for the first time. But it immediately set aside the order, allowing him to keep practicing. If he relapsed, the board could enforce the suspension.

In 1993, a medical board inspector approached him during his 12-hour shift at Norfolk Community Hospital's emergency room and ordered him to stop practicing medicine immediately, Birch said. His license was suspended, she told him, because he had tested positive for cocaine.

"There were people around," Birch recalled. "That was the most humiliating experience of my life."

The cycle continued, with Birch testing positive, losing his license and then regaining it. Birch obtained a Missouri license in 2003 and is on a medical fellowship in the state.

### **One Chance in Ohio**

Some states are less tolerant than others.

In Ohio, for example, "everybody has one chance to screw up," said Lauren Lubow, the senior executive staff attorney for the Ohio Medical Board.

If doctors are impaired, they are evaluated, offered treatment and then allowed to return to practice "without interference from the board," she said. If a relapse occurs, the board takes action, usually a consent agreement immediately removing the doctor from practice, she said. The doctor must meet certain guidelines, including 28 days of treatment, before applying for license reinstatement.

"There is an end to [the board's] patience," Lubow said. "It comes at a point where they are convinced this is not a person who will be able to recover and safely return to practice."

In Massachusetts, an impaired doctor who relapses twice or more must demonstrate at least a year of sobriety before being allowed to return to medicine, according to Nancy Achin Audesse, executive director of the Massachusetts Board of Registration in Medicine. "We give people a

couple of chances to get themselves together," she said. "But our primary goal is patient protection."

Maryland, Virginia and the District are more tolerant.

Alexandria psychiatrist Luanne Ruona has been hospitalized for alcohol dependency and been in drug rehab at least nine times since 1991, records show. By her own admission, Ruona relapsed at least 12 times during that period and once tampered with her urine sample so that those who monitored her couldn't detect alcohol, according to Virginia medical board records.

She also has treated patients while under the influence, records show. In March 1999, a patient arrived appearing "distressed" for an afternoon appointment at her home office and was greeted by Ruona at the door, according to records. She suggested that he lie on her couch, then she sat beside him on the floor and held his hands near her face to relax him.

At one point, Ruona excused herself and told him she was going upstairs to phone in a prescription. When she didn't return, the man said, he went upstairs and found her in "lounging attire" asleep across the bed, according to records. He left and reported the incident to another doctor the next day. Five months passed before the board acted, suspending her license for two years, records show.

It was the first time the Virginia medical board took away her license, even though it knew about her alcohol abuse for more than a decade, medical board records show.

In 2001, a physician familiar with her history recommended that the Virginia board allow her to practice again. Another doctor said he "very strongly" recommended reinstatement because "this time, she surrendered to her illness," records show. The board reinstated her license in October 2001. She has relapsed at least three times since then, according to board records.

"I probably over-drank," Ruona, 63, said in an interview. "But I didn't feel like it interfered with my work that much. And it wasn't like I would get up and drink."

After 11 relapses, she was put out of Virginia's Health Practitioners' Intervention Program, which oversees impaired doctors, in March 2004. She surrendered her license in the fall after another relapse and said the board told her that it would return her license in 2006 if she does not drink again.

"They said the ball was in my court this time and told me to come up with a good treatment plan, and if I stayed clean I could get my license back in 18 months," Ruona said. "It's a big relief. I was satisfied and I think the board was, and we all shook hands."

*Staff researcher Bobbye Pratt contributed to this report.*