

A negative data bank listing isn't easy to erase
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When the San Francisco Department of Health decided in 1998 to cut two staff positions at county-owned Laguna Honda Hospital, Dr. John Ulrich Jr. stood up at a staff meeting and called the layoffs "an injustice to patients." The next week, he and other physicians sent a letter of protest to the health department.

Less than two weeks after that, hospital officials notified Ulrich that he was being investigated for incompetence, "spanning the full range of hospital care" from incomplete diagnoses to inappropriate diagnostic orders to overall poor management of his patients' hospitalizations.

Eventually, a California Medical Board review of Ulrich's performance would determine that the doctor had provided acceptable care. But at the time, Ulrich, believing he was being targeted for speaking out, quit in protest. He posted a resignation letter near a nurse's station that criticized the hospital's budget priorities.

By resigning while under investigation, though, Ulrich learned the next week that he would be reported to the National Practitioner Data Bank, a listing of doctors who have faced disciplinary sanctions, lost hospital privileges or lost malpractice judgments.

Ulrich immediately tried to take back his resignation. When the hospital refused, he sued.

The data bank which strikes such fear in physicians was established as part of the Health Care Quality Improvement Act of 1986, though it was not in operation until 1990. It was prompted by evidence that incompetent or unprofessional doctors, once they had been detected, were simply moving to other states and resuming their practices.

The listings are not public, but all state medical boards and hospitals check for data bank information on any doctor who applies for a license to practice in their states or for staff privileges at their hospitals.

The Rockville, Md.-based data bank has collected reports on more than 125,000 physicians, most of them for malpractice payments. Reports on doctors who lost their clinical privileges or their licenses represent fewer than 20 percent of the total, with about 1,000 such reports filed each year.

About 1,500 reports overall have been filed for unprofessional conduct, which could include whistleblower physicians if they're deemed disruptive, but also includes doctors who have raped patients or committed fraud.

Once a physician is listed in the data bank, only the reporting hospital can withdraw the report. A doctor can appeal to the Health and Human Services secretary if he believes the report is inaccurate or on technical grounds, but fewer than 5 percent of those appeals succeed.

A data bank report "can essentially make you unemployable, and it can be the difference between getting insurance and not getting insurance," said Dr. Edward Dench Jr., recent president of the Pennsylvania Medical Society. "With malpractice being what it is, insurers are clearly cherry picking, and if there's anything that makes you look unusual, they're not going to take you."

After Ulrich sued, the presidents of two California medical associations told the court that "it will be virtually impossible" for Ulrich to find work at any U.S. hospital with that report in the data bank.

Ulrich, 54, lost in U.S. District Court. Once the resignation was accepted, the hospital did not have to rescind it, the court said. But on appeal, the 9th U.S. Circuit Court of Appeals ruled he could pursue his argument that he had been retaliated against for exercising his free speech rights.

Ulrich, reached by phone, declined to talk about what happened, saying he still hopes to reach some resolution with the hospital. A hospital spokeswoman also declined comment, citing the pending legal action.