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## **Lawsuit won over doctor's undisclosed drug problem**

**By Carol M. Ostrom**

*Seattle Times staff reporter*

A Washington hospital and a malpractice insurer have successfully sued a Louisiana hospital and two doctors who wrote glowing letters of recommendation for a colleague without disclosing his drug problem.

The jury award of more than \$4 million for fraud and negligent misrepresentation marks the first time one hospital has successfully sued another for failing to disclose adverse information about a doctor being considered for privileges to practice there, liability experts said.

The case was brought by Seattle-based Western Professional Insurance and Kadlec Medical Center, the Richland hospital that later hired Dr. Robert Lee Berry, unaware of his history.

In 2002, one of Berry's patients, Kim Jones of Richland, then a 31-year-old mother of three, sustained severe brain damage during a routine procedure. Jones is in a nursing home in Michigan unable to care for herself.

Two years later, Berry, an anesthesiologist, and Kadlec agreed to an \$8.5 million settlement in a lawsuit brought by Jones' family.

During that lawsuit, Jones' family learned that Berry had been diverting the narcotic painkiller Demerol from his patients. They also learned he had been asked to leave the Louisiana hospital and his practice for being impaired on the job — a fact neither had disclosed to Kadlec.

"Had we known, we wouldn't have hired him," Kadlec spokesman Jim Hall said.

Ron Perey, Jones' lawyer, said "a case like this has never been won before." He predicted it would bring about positive changes in "honesty in the medical industry."

Hospitals' practice of recommending impaired or incompetent doctors or nurses seeking work at other hospitals is "unfortunately common," Perey said, and is not unlike churches that transfer problem priests or schools that don't mention predator coaches' faults to prospective employers.

In Berry's case, he was not technically fired, but asked to leave both Lakeview Regional Medical Center and his anesthesia practice with Lakeview Anesthesia Associates in Mandeville, La., Perey

said. That way, the actions were not reportable to a national data bank that lists formal adverse actions against physicians.

Both the hospital and his colleagues "got rid of this doctor because he was addicted to Demerol, and then they wrote glowing letters of recommendation with no reference to that, or didn't respond to questions that were asked," said Gary Morse, general counsel for Physicians Insurance, owner of Western Professional.

Berry surrendered his Washington medical license in 2004 after the state took action against him. He no longer has a license in other states, including Louisiana, where he lives now.

The award, by a federal district court jury in New Orleans on May 26, was against both the hospital and Berry's former colleagues.

Afterward, Judge Lance Africk said patients should have the right to know if a doctor has been previously dismissed from a hospital's staff or from a previous practice for drug-related issues or misconduct and called on Congress to investigate the process hospitals go through to give doctors the credentials to perform procedures at their facilities.

Representatives of the hospital and Berry's former practice were not immediately available.

Morse said he thinks the case will send an important message to hospitals and doctors.

"If you have had an impaired physician terminated from your practice, you need to be very, very careful about misrepresenting those circumstances," he said.

Hospitals, like many employers, worry about getting sued if they say something negative about former employees, he said. "But you just do not put patients at risk when you've got this kind of knowledge about an individual."

Kadlec's Hall said the award will help fulfill the hospital's promise to the Jones family to help "make sure tragedies like this don't happen again."

Morse said he expects the case to be appealed.

"We don't intend to let go of this," Morse said.

"We think we have a chance here to reinforce the importance of being truthful in response to these kinds of requests for information."

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