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MEDICAL MALPRACTICE

Settling silently

The University of Miami agrees to payouts,
and the lawyers are keeping quiet

by Jessica M. Walker

In the latest of its medical malpractice woes, the University of Miami has settled two catastrophic malpractice cases, including a lawsuit brought by a man who woke up paralyzed after a surgical procedure.

But the confidentiality agreements it required the plaintiffs in both cases to sign apparently were so comprehensive and strict that the usually loquacious plaintiff attorneys involved in the cases won't even acknowledge the existence of the lawsuits.

Court records indicate that the two catastrophic injury cases in Miami-Dade Circuit Court against the university and its faculty doctors were settled this month — including one that settled last week in the midst of closing arguments. One of the settlements is already in the process of being sealed.

The UM medical school and the public Jackson Memorial Hospital in Miami — where the alleged malpractice occurred and



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which the medical school operates and staffs — are required to report all malpractice payouts to the state Office of Insurance Regulation. But a check of the OIR Web site indicates that UM and Jackson have not reported these settlements.

The Daily Business Review reported last month that the two institutions have not reported any malpractice payouts since 1999.



Blumberg

See Malpractice, Page A12

MALPRACTICE

From Page A1

An Office of Insurance Regulation official said last month that her office had opened an investigation into the apparent six-year reporting gap. Calls to the OIR on Tuesday to check on the status of the investigation were not returned.

The state law requiring insurers and self-insurers to report settlements and verdicts to the state OIR does not make an exception for reporting sealed cases.

UM general counsel Robert Blake referred a request for comment to Steven Stark, director of UM's Office of Patient Protection. Stark did not respond to a message left at his office before deadline.

Edward Blumberg, who with his partner Steven K. Deutsch represented the plaintiffs in one of the cases that just settled, declined to comment on any aspect of the case, or even to confirm that the settlement indicated on the court docket existed. "We are not at liberty to make any kind of comment," said Blumberg, a former president of The Florida Bar. "We don't feel that we can say anything."

Stuart Ratzan, a partner at Ratzan & Alters in Miami who represented the plaintiff in the other case, which apparently was settled last week, also declined to comment on any aspect of the case.

Confidentiality agreements in medical malpractice cases are far from unusual. But the UM settlements and their supersecrecy come at a time when the private university and its medical school are reeling from a number of big verdicts and settlements, and the accompanying bad publicity. This follows the university's unsuccessful attempt this year to persuade the Florida Legislature to grant it and other medical educators across the state immunity from malpractice suits.

Stuart Grossman, a partner at Grossman & Roth in Miami, who has filed malpractice suits against UM in the past, said that while confidentiality is common in settlements, there should be limits on what is confidential.

"A part of the settlement agreement should never be that the appropriate reporting should be obviated," Grossman said. "The only thing that should be private is the amount of the settlement itself."

Settled midway through trial

One of the settled cases, which went to trial this month, involved Berto

Valdes, a blue-collar worker in his 50s who underwent surgery at Jackson Memorial in 2002 to remove a benign tumor on his brain. He was put under anesthesia. When he woke up he was paralyzed. He's now a quadriplegic and requires a ventilator to breathe.

His suit alleged that the doctors attending him, including UM faculty anesthesiologist Stephen Klumpp and Roberto Heros, co-chairman of the department of neurological surgery, either failed to monitor his vital signs during surgery or inadequately monitored them. His attorneys alleged that failure led to an infarction in his spinal cord. They say his care alone will cost \$20 million to \$25 million for the rest of his life.

Just before closing arguments, which were scheduled for last week, the jury was dismissed.

The other case, which went to trial last month, involved Boris Larrave, a 7-year-old boy who suffered massive brain damage after he underwent elective heart surgery as an infant at Jackson Memorial.

Boris' parents, Maria Ibanez Larrave and Luis Larrave, alleged that attending physician Alvaro Galindo, a pediatric cardiologist on the faculty at UM, did not have blood ready in time for a transfusion, causing a damaging delay when bleeding occurred during the surgery. The Larraves allege that the delay caused Boris to suffer permanent brain damage.

Galindo was also involved in a case that led to a \$5.2 million UM settlement last year. Stephen Stieglitz and Robert Bouchard of Fowler White Burnett in Fort Lauderdale represented the university.

The Larrave case, which was before Circuit Judge Ronald Dresnick, settled midway through the trial. The court docket indicates a motion to approve a settlement was filed July 1, and a motion to seal was filed July 13.

The Valdes and Larrave cases aren't the only recent, big-dollar malpractice cases against UM, which has complained in recent years of great strain on its budget due to malpractice settlements and verdicts. Last year, UM President Donna Shalala told the South Florida Sun-Sentinel that the school paid out \$60 million on malpractice lawsuits that year, \$49 million in 2003 and \$32 million in 2002.

Public purpose

For years, UM has lobbied the Florida Legislature for sovereign immunity for itself and its faculty doc-

tors from malpractice immunity and caps. Sovereign immunity gives state entities major protection from liability. UM lobbied to extend such protection to its faculty and students at Jackson.

This year's Republican-sponsored legislation would have barred malpractice lawsuits against the university's medical school, its faculty and staff, and other medical educators operating at public and private teaching hospitals around the state.

Under the bill, plaintiffs who sue teaching hospitals that have agreed to a set of patient safety standards would be limited to recovering \$150,000 in total damages from the hospital — even if there were evidence that the medical providers violated the patient safety standards.

UM argues that it serves a public purpose by operating a public hospital and training doctors, and that its unique position as a private entity operating a public hospital exposes it to heightened liability. The university claims that since Jackson Memorial has sovereign immunity, plaintiff attorneys go after the university, which doesn't have immunity, in lawsuits arising from Jackson cases.

But the plaintiff bar, which strongly opposes granting UM sovereign immunity, argues that the UM medical school and its teaching program at Jackson Memorial have serious quality of care problems and that remedial efforts are needed to fix the problems.

UM came close to winning malpractice immunity this year. In April, as the legislative session drew to a close, Senate President Tom Lee, R-Brandon, demanded that the UM-backed bill providing sovereign immunity to medical educators come up for a vote. It was approved 8-1 by the Senate Health Care Committee, but it never came up for a final vote.

Resisted reporting

Meanwhile, the university has resisted publicly reporting its malpractice claims history. Last month, the Review reported that the university was under investigation for failing to report its verdicts and settlements to the state Office of Insurance Regulation, as all insurers of hospitals and self-insured hospitals are required to do. Such reporting would create a public

account of the number and amount of judgments and settlements against UM.

Since there is no state record of UM's malpractice payouts, UM's confidentiality agreements and sealing of court records have eliminated any official trace that a case against the university ever existed. That makes it harder for legislators to objectively evaluate the university's arguments for immunity from lawsuits.

Miami plaintiff attorney Brett Panter, who has sued UM for medical malpractice several times, argued that the university may be keeping its malpractice payout record secret for political purposes. "If they can hide the incidents that occurred, when they are debating [immunity and caps] in front of the Legislature they can hide them

from the people who need to know about them," Panter said.

Still, Panter acknowledged that confidential settlements are being used more often by other hospitals and medical providers as well "because hospitals don't want people to know about these

cases."

He said in cases where the incident was a one-time mistake that was unlikely to recur, covering up a blunder probably wouldn't have a grave impact on the public. As an example, he cited a case in which a man was brought to a hospital emergency room and was never treated. He reached a confidential settlement in that case. Panter said the case was a fluke, and therefore he had no qualms about keeping the matter confidential.

Grossman estimated that 85 percent of the malpractice settlements his firm signs are confidential, which is an arrangement typically sought by both sides. "The plaintiffs don't want the world to know how much money they attained," he said. "The defendant never wants you to know, and their reason is purely publicity."

But in the case of UM, Panter said, the sealing of cases is a matter of serious public concern because the university is seeking major public policy changes in the area of medical liability. "It's all part of a plan," he said. "Hide what you do wrong, then push for reform." ♦

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