Radiologic Technician Potentially Infects Thousands of Patients with Hepatitis C: Need for a National Database of Disciplinary Action

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Introduction

Thousands of patients receiving care in hospitals across the United States may have been exposed to hepatitis C because of one health care professional.¹ Thirty people in New Hampshire were diagnosed with the disease and testing has been recommended for an additional 4,700 people in that state.² The New Hampshire outbreak of Hepatitis C was traced to a radiologic technician, David Kwiatkowski.³ Police arrested and charged Kwiatkowski in July 2012 for allegedly “obtaining controlled substances by fraud and tampering with a consumer product.”⁴ Kwiatkowski recklessly placed “others at risk of death or serious bodily injury” when

² Associated Press, Traveling medical technician, who allegedly spread hepatitis across U.S., wrote suicide note, THE NEW HAVEN REGISTER (July 28, 2012), http://www.nhregister.com/articles/2012/07/28/news/doc5013d88e84850732092539.prt; Press Release, U.S. Dep’t of Justice, Former Employee of Exeter Hospital Arrested in Connection With Hepatitis C Outbreak (July 19, 2012), http://www.justice.gov/usao/nh/press/2012/Kwiatkowski.html. There are two different blood tests to determine whether a person has been infected with Hepatitis C. Dep’t of Health and Human Servs., Ctrs. for Disease Control and Prevention, Hepatitis C Information About Testing (June 2010), available at http://www.cdc.gov/hepatitis/HCV/PDFs/HepCTesting-Diagnosis.pdf. First, the antibody test looks for antibodies in a person’s bloodstream. Id. Second, if a person tests positive for Hepatitis C antibodies, he or she must obtain a confirmatory test. Id. A positive confirmatory test means that the person has the virus in his or her bloodstream. Id.
³ Press Release, U.S. Dep’t of Justice, supra note 2; Dep’t of Health and Human Servs., supra note 2. Hepatitis C is a “contagious liver disease which results from infection with the Hepatitis C virus.” Dep’t of Health and Human Servs., supra note 2. Hepatitis C begins as an acute infection. Id. In approximately 75% to 85% of cases, the acute infection progresses to a chronic illness. Id. Chronic Hepatitis C can cause “liver damage, cirrhosis, liver failure, or liver cancer.” It is also the leading cause of liver transplantation in the United States. Id.
⁴ Press Release, U.S. Dep’t of Justice, supra note 2. If Kwiatkowski is convicted, he faces up to “twenty (20) years in prison for tampering with a consumer product and four (4) years in prison for obtaining controlled substances by fraud.” “Each offense also is punishable by a fine of $250,000.00 and a term of supervised release following any sentence of imprisonment.” Id.
he injected himself with pain medication and replaced the dirty syringes with saline for patient use.5

Radiologic technicians, as health care practitioners, are regulated differently by the various states.6 The events that lead to Kwiatkowski’s arrest and indictment reveal significant weaknesses in the regulatory framework. A national database of disciplinary action for health care practitioners within the National Practitioner Data Bank (“NPDB”) would protect the public by allowing credentialing organizations, licensing states, and potential employers to communicate more effectively and take appropriate action in light of misconduct.

**Background**

In 2003, David Kwiatkowski completed a training program to become a radiologic technician.7 Prior to working in New Hampshire’s Exeter Hospital, where the first cases of infection of hepatitis C were revealed, Kwiatkowski was a traveling technician.8 Kwiatkowski worked for hospitals in at least six other states on a contractual basis, using staffing agencies to find positions for him.9

During his career, at least two hospitals terminated Kwiatkowski for misconduct.10 The University of Pittsburgh Medical Center-Presbyterian in Pennsylvania terminated Kwiatkowski in 2008 when a co-worker observed him in an unauthorized area stealing a syringe of pain

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medication.11 Neither the University of Pittsburgh Medical Center-Presbyterian nor the staffing agency that placed Kwiatkowski in the position informed the police or the American Registry of Radiologic Technologists (“ARRT”).12 Furthermore, because Pennsylvania did not license radiologic technicians at the time, there was no disciplinary action recorded at the state level.13

In 2010, ten days into a new assignment at Arizona Heart Hospital, a co-worker discovered Kwiatkowski passed out in the bathroom with a fentanyl syringe in the toilet.14 Officials at the Arizona Heart Hospital notified the police and the staffing agency that assisted Kwiatkowski in getting the position.15 The police did not file charges because Kwiatkowski flushed the syringe and therewith the evidence.16 Hospital officials alerted the Arizona Medical Radiologic Board of Examiners which began the process of revoking Kwiatkowski’s license to practice.17 Additionally, the staffing agency communicated the events to the American Registry

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11 Caruso & Ramer, supra note 1. University of Pittsburgh-Presbyterian is a designated Level I Regional Resource Trauma Center. University of Pittsburgh Medical Center, http://www.upmc.com/locations/hospitals/presbyterian/Pages/default.aspx (last visited Oct. 14, 2012). The health services it offers are critical care medicine, trauma care, neurosurgery, organ transplantation, cardiothoracic surgery. Id. A co-worker at the University of Pittsburgh Medical Center accused Kwiatkowski of taking a syringe with pain medication from an operating room and placing it down into his pants. Caruso & Ramer, supra note 1.

12 Caruso & Ramer, supra note 1. Gloria Kreps, a spokeswoman for the University of Pittsburgh Medical Center-Presbyterian, reported that hospital officials did not contact the police because they thought they did not have enough evidence. Id. Kreps also indicated that the officials of University of Pittsburgh Medical Center-Presbyterian did not inform the ARRT about Kwiatkowski’s conduct because they thought the staffing agency, Maxim Staffing, held that responsibility. Id. ARRT is a credentialing organization that “seeks to ensure high quality patient care in medical imaging, interventional procedures, and radiation therapy.” Am. Registry of Radiologic Technologists, supra note 6. The ARRT initially tests and certifies technologists, and it administers continuing education and ethics requirements for registration purposes. Id.

13 Am. Soc’y of Radiologic Technologists, Individual State Licensure Information, http://www.asrt.org (follow “Standards & Regulations” hyperlink, then search “Individual State Licensure Info” hyperlink). In Pennsylvania, a radiologic technician must take and pass the ARRT examination. Id. Pennsylvania requires a license to practice only if the technician is working in a doctor’s office. Id.


15 Caruso & Ramer, supra note 1. Springboard Staffing Agency placed Kwiatkowski at the Arizona Heart Hospital. Id.

16 Caruso & Ramer, supra note 1. The police indicated that they did not have enough evidence to file charges. Id.

17 Caruso & Ramer, supra note 1. The Medical Radiologic Technology Board of Examiners for the state of Arizona examines and licenses over 8,000 professionals to practice medical imaging and therapy that utilize ionizing radiation. Medical Radiologic Technology Board of Examiners, http://www.azrra.gov/mrte/index.html (last visited
of Radiologic Technologists (ARRT). Kwiatkowski surrendered his Arizona license and went on to seek out and obtain positions as a radiologic technician in other states, some of which did not require licensure. Kwiatkowski’s reckless behavior was finally exposed while he was at Exeter Hospital when patients treated in the lab where he worked simultaneously tested positive for Hepatitis C.

American Registry for Radiologic Technologists & State Licensure

The American Registry for Radiologic Technologists (“ARRT”) provides “certification” which is the initial recognition of a candidate who meets education, ethics, and examination requirements within a profession. Potential employers, state agencies, and federal regulators accept ARRT credentials as an indication that an individual “has met a recognized national standard for medical imaging, interventional procedures, and radiation therapy professionals.” Following certification, the Registered Technologist (R.T.) credential is maintained through “registration” whereby registered technologists “must agree to comply with the ARRT Rules and Regulations and ARRT Standards of Ethics each year, as well as meet the Continuing Education Requirements for Renewal of Registration every two years.”

Licensing of radiologic technicians is within the purview of the states, and state requirements for licensure vary drastically. The state, not ARRT, administers the license and

Oct. 14, 2012). The Board accepts complaints, investigates allegations, and administratively adjudicates complaints against licensees. Id.

18 Caruso & Ramer, supra note 1.
19 Caruso & Ramer, supra note 1.
20 Id. Laboratory testing revealed that approximately thirty patients who were treated in the cardiac catheterization lab where Kwiatkowski worked contracted a strain of Hepatitis C that matched the virus Kwiatkowski carried. Id.
22 Id.
23 Am. Registry of Radiologic Technologists, supra note 6. A Registered Technologist (R.T.) met the standards for initial certification and has complied with the ARRT Standards of Ethics and Continuing Education Requirements. Id.
24 Id.
grants permission to practice within that state.\textsuperscript{25} Currently, two-thirds of the states have laws that govern radiologic technicians.\textsuperscript{26} Several states use the ARRT certification examination score to make licensing decisions even though the examination is voluntary.\textsuperscript{27}

As the credentialing organization, the ARRT manages complaints against registered radiologic technicians and issues public sanctions for misconduct.\textsuperscript{28} Access to information from state agencies, hospitals, and other health care employers about misconduct enables the ARRT to be aware of and pursue practitioner sanctions in an effort to protect the public. Likewise, state licensing boards utilize information such as ARRT certification and registration, work history, existence of disciplinary action, and other state licenses to make decisions about issuing licenses to practice. In the present case, Kwiatkowski went on to practice in several states despite being terminated twice for serious misconduct. Kwiatkowski was able to slip through the cracks at least in part by practicing in non-licensing states that do not require national certification, registration, or the recording of disciplinary action taken against a practitioner.

\textbf{National Practitioner Data Bank}

The Health Care Quality Improvement Act of 1986 (the “Act”)\textsuperscript{29} was created “to improve the quality of health care by encouraging State licensing boards, hospitals and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical

\textsuperscript{25} Id. Initial state licensure and renewal are separate from ARRT processes. \textit{Id.}
\textsuperscript{26} Id.
\textsuperscript{27} Id.
\textsuperscript{28} See \textit{id.}
\textsuperscript{29} Title IV of Public Law 99-660.
malpractice payment and adverse action history.”30 The Act led to the creation of the National Practitioner Data Bank (“NPDB”).

The NPDB collects and releases information concerning competence and conduct of “physicians, dentists, and, in some cases, other health care practitioners.”31 The NPDB serves as a “nationwide flagging system.”32 However, the NPDB does not require a report or query from state licensing boards, hospitals, or professional organizations on health care practitioners who are not licensed to provide services.33 Consequently, the NPDB has a gap in its flagging system that is not closed by other resources like the credentialing organization or the state.34 Existence of such gaps underscores the need for the creation of a national database of disciplinary action with regard to health care practitioners.

**Conclusion**

Gaps exist in the ARRT’s ability, as the national credentialing organization, to discover, investigate, and sanction radiologic technicians for misconduct. Not all states license radiologic technicians and if they do, the states may not have access to a practitioner’s disciplinary history which would impact initial licensing decisions. Despite their involvement in direct patient care, radiologic technicians are not subject to the strict federal regulations under the Health Care Quality Improvement Act of 1986 that govern physicians.35 Establishment of a national database

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31 *Id.* The purpose of the NPDB is to enhance the review of health care professionals by eligible entities and individuals. *Id.* at A-3. The NPDB defines “other health care practitioners” as “individuals other than physicians or dentists who are licensed or otherwise authorized (certified or registered) by a State to provide health care services; or individuals who, without authority, hold themselves out to be so licensed or authorized.” *Id.* at C-1.
32 *Id.* at A-3. The NPDB is a resource that assists “State licensing boards, hospitals, and other health care entities” to investigate practitioners they are considering for licensure or hire. *Id.* at A-3. Information in the NPDB is intended for use with data from other resources in terms of determining things such as licensure or employment. *Id.* at C-1.
33 *Id.* at C-1–C-3. In contrast, the NPDB requires reporting on physicians and dentists. *Id.* at C-2.
34 See *id.* at C-1. “NPDB information is intended to be used in combination with information from other sources in making determinations on granting clinical privileges or in employment, affiliation, or licensure decisions.” *Id.*
35 See Dep’t of Health and Human Servs., *supra* note 2.
of disciplinary action within the National Practitioner Data Bank could prevent disturbing events such as those in the Kwiatkowski case from occurring again in the health care industry.

Thousands of patients were potentially exposed to and at least thirty were infected with Hepatitis C because of the reckless acts of a radiologic technician involved in their medical care. The regulatory framework which involves interaction between the ARRT, state licensing boards, and in some cases, the NPDB, has gaps in its ability to regulate practitioners. A national disciplinary action database within the NPDB would help communication between these entities for protection of the public from those who are not fit to practice.