

Arizona Medical Board's hands-off approach to relapsed addict physicians is endangering patients

By John Dickerson

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Laura Migliano was looking for some relief when she showed up for a doctor's appointment in April 2004. Ten years earlier, she'd herniated a disc while doing sit-ups. She spent a decade fighting the pain — with surgery, steroid injections, and finally with a battery-powered spinal cord stimulator.

photo illustration by Giulio Sciorio



The stimulator helped, reducing the ache with electric shock. But then the battery died. Migliano, 41, was in agony when she saw Dr. Thomas Grade, a pain specialist at the Desert Pain Institute in Mesa.

It turned out she needed only a battery change. But Grade couldn't replace the battery for another six days, so he prescribed painkillers. Although a nurse by profession, Migliano had no idea that Grade's prescribed dosage of methadone — a narcotic usually reserved for heroin addicts trying to kick the habit — could interact with her other painkillers and kill her.

It did.

In his notes, Grade wrote that Migliano should take five to 10 milligrams of methadone. But on her prescription, he wrote 120 milligrams — a fatal dose when combined with her other medications, which Grade never determined before writing the prescription.

Migliano drove to the pharmacy and filled the prescription. Then she went home and drank the pills down with a large glass of water — just as the doctor ordered. She was expecting relief from her lower-back pain.

Instead, her best friend found her dead the next morning.

Accidents happen, even in medicine. Scalpels slip. Drugs interact unexpectedly.

Laws are designed to keep those mistakes at a minimum. But in the case of Laura Migliano and Dr. Thomas Grade, the rules in place weren't strong enough.

Migliano had no way of knowing it, but Dr. Grade was a recovering drug addict — practicing with the Arizona Medical Board's blessing and without drug tests. Even after Migliano's death and multiple patient complaints, the board didn't learn of Grade's relapse into addiction for three years.

That wasn't soon enough to save Laura Migliano. An autopsy confirmed drug interaction as the cause of her death. Last year, Migliano's parents won a confidential legal settlement from Grade, who was still licensed to practice at the time.

Because Grade wasn't being drug-tested, it's impossible to know exactly when he relapsed. What is clear is that he finished the Arizona Medical Board's substance abuse rehab program in 1993 and practiced unmonitored for 14 years. Within 30 days of Migliano's death in 2004, the medical board received two more serious complaints against Grade. Both accused him of the same error that killed Migliano — prescribing narcotics without learning what drugs his patients were taking and failing to document their visits.



Laura Migliano had no idea her doctor, who prescribed her a fatal dose, was a recovering addict.



Police mug shot of Dr. Thomas Grade, who completed the medical board's addiction monitoring in 1993. He was arrested 14 years later.

As a result of the complaints, the board restricted Grade's prescribing privileges but still didn't test him for drugs. It wasn't until 2007, when Gilbert police arrested Grade on charges of domestic abuse — and found him intoxicated — that the board pulled his license.

Grade isn't alone. Substance abuse was the leading cause of physician license suspension in 2007 in Arizona.

Arizona law requires that the medical board drug-test addicted doctors for only five years after they complete rehab. Then they're on their own. But that may not be adequate regulation. An examination by *New Times* of the records of 50 addicted doctors over a five-year period reveals that 45 of those doctors relapsed — and 15 of those relapses took place *after* the board stopped monitoring them.

And those are only the doctors who were caught. The pool is actually larger: If you, as a doctor in Arizona, voluntarily submit to rehab, your addiction is kept confidential. None of those doctors was examined in this investigation.

After the five years of drug tests have passed, addicted physicians are free to practice without monitoring. The board learns of relapse only when a doctor is arrested, self-reports, or is reported by a colleague. Some who completed rehab are caught when nabbed for drunken driving. One Glendale physician was even arrested for running a meth lab. Others avoid trouble with the law and continue seeing patients. In the past 10 years, at least two Arizona residents have died in the care of addicted physicians who relapsed.

In the information age, patients can research their physicians online, including on the Arizona Medical Board's Web site. But when it comes to a physician's addiction, the site can give a false sense of security. *New Times* found that some cases of addiction don't show up on physicians' profiles.

Arizona's look-the-other way policy for rehab graduates is in line with the national standard, accepted decades ago. But after years of physician relapses, some experts think it's time to examine that standard. Last year, the state of California led the way in questioning its own rehab program for physicians. California's program was strikingly similar to Arizona's, particularly in its no-strings-attached graduation for addicted physicians.

Arizona's program has never been audited. But after California's program was audited, lawmakers forced the California Medical Board to scrap its rehab methods. That board met in January to create a new program, which will be announced in June. Alabama and a handful of other states now require lifelong drug tests of some addicted physicians.

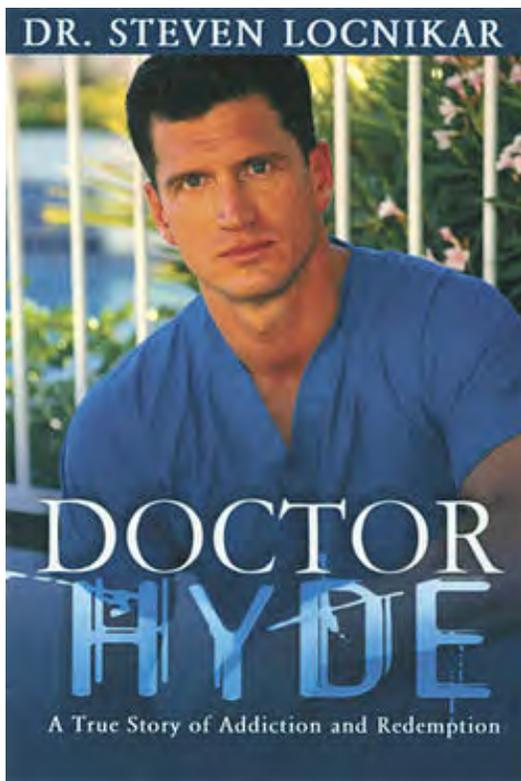
Arizona doesn't. But perhaps it should. Here's a reason why:

Phoenix residents may not recognize the name of Dr. Michael Mahl, but Tucsonans might. In 1997, Mahl, a child psychiatrist, was accused of molesting a number of boys at his Tucson group home for troubled teens.

According to medical board records and news media reports, Mahl's descent into drug and sex addiction started with prescription medication and then eventually included cocaine abuse. Mahl testified before the medical board that using cocaine drove him to sexual compulsion. Despite allegations of abuse from his employees and boys at his group home, Mahl was never criminally charged.

In August 2002, the medical board gave Mahl his license back and placed him on the standard five-year probation for drug use. Mahl moved to Chandler, where he's been working as a psychiatrist for adults. On August 9, 2007, Mahl's five-year probation ended, meaning that if Mahl screws up again, the Arizona Medical Board may be the last to know. Even though he testified that cocaine use launched his cycle of drug and patient abuse, he is free to prescribe drugs and counsel adults behind closed doors, without drug tests or accountability.

Mahl is among dozens of addicted physicians who've graduated from rehab and now practice medicine — including performing surgery and prescribing drugs — unmonitored.



Dr. Steven Locnikar's memoir, *Doctor Hyde*, describes his life as a drug addict and cosmetic surgeon.

photo illustration by Giulio Sciorio



photo illustration by Giulio Sciorio

At his office in Chandler, Mahl says he doesn't need drug tests anymore. "Five years is adequate. I couldn't imagine having to do it beyond five years," he says.

Mahl knows a number of physicians who finished the five years and then relapsed while seeing patients, but he's optimistic that he won't join them by relapsing.

Arizona lawmakers are, too. They aren't currently considering changes to physician-relapse laws. But at least one doctor thinks the existing system is broken. Cosmetic surgeon Stephen Locnikar wrote a book about his years in Arizona as an addicted doctor.

"I did the board's addiction program, but I never thought it actually applied to me. I thought, I'm just doing this because they're requiring it," Locnikar says.

He graduated from Arizona's rehab program, only to relapse and practice as an addict for years. He tells stories of snorting cocaine off his private bathroom sink between surgeries.

Locnikar believes addicted physicians should be monitored for the duration of their practice.

"After five years, they take the physicians off probation. It doesn't make sense," he says. "After my probation ended, I started drinking, picked up a few pills on the house. Then within a very short period of time — months — I was deep into addiction again. Whenever that probation period was up, and I had no gun to my head, I would relapse. If the probation had kept going, I don't think I would have relapsed. It's absolutely necessary for addicts."

To be fair, no one's trying to let doctors in Arizona get away with murder. In the past decade, the Arizona Medical Board's rate of physician investigation and discipline has increased, and a number of policies have changed for the better. The board has more investigators and examines complaints twice as quickly as it did. But one practice hasn't changed — the board's Monitored Aftercare Program (MAP) for addicted physicians.

Local addiction experts Dr. David Greenberg and Dr. Michel Sucher run the MAP program. They did not return messages left at their office and declined requests through the board's spokesman, Roger Downey, for interviews. Downey said his agency is too busy to track the relapses of MAP graduates. Greenberg and Sucher report that 80 percent to 90 percent of MAP graduates do not relapse, Downey added.

New Times researched hundreds of medical board and physician records to see whether that success rate was accurate. It's impossible to determine because some doctors enter and exit the program confidentially. But 75 percent of the MAP graduates investigated relapsed after their drug testing ended. And those are just the physicians who were caught.

The investigation included records of 50 physicians who were disciplined for substance abuse between 2002 and 2007. Only 20 of the 50 doctors graduated from MAP. The board revoked the licenses of the 30 who didn't graduate.

But of the 20 addicted physicians who did graduate from MAP, 15 relapsed after the board stopped monitoring them — and while they were practicing medicine.

Many doctors who graduated from MAP in the 1980s and '90s were not caught relapsing until 2002 or later. Because they weren't drug-tested, there's no knowing exactly when they relapsed or how long they practiced under the influence.

Based on a five-year records review, at least 200 addicted physicians have enrolled in Arizona's MAP program. Downey reports that an additional eight to 10 doctors self-report into confidential rehab each year.

Several legislators were contacted about the laws governing MAP. None was aware that legislation passed in the 1980s requires drug testing of addicted physicians for only five years.

Bob Stump, a Republican who chairs the state's House Health Committee, was



Dr. Gary Blass pleaded guilty in 2006 to running a meth lab. He'd graduated from the medical board's rehab program in 1997.

photo illustration by Giulio Sciorio

surprised to learn Arizona's MAP program has never been audited. "I would certainly be curious to know, myself, what the relapse rate is," he says.

Stump says he has long supported malpractice reform and other physicians' rights but adds that public safety remains his highest priority.

"We can't allow physicians who are relapsed to be taking patients," he says. "If an audit of the board's Monitored Aftercare Program would be helpful to that end, then I would certainly be in support of that."

Sitting in a north Scottsdale Starbucks, Dr. Steven Locnikar looks like he walked straight off the set of *Scrubs*, *House*, or *ER*. At 40, he still looks the part of a suave, sophisticated young physician. But Locnikar has had his license revoked twice because of his drug addiction.

Locnikar wears a tight blue T-shirt that covers his well-built upper body and matches his eyes. He talks with the intelligence of a med school whiz. His voice is calm and engaging as he candidly discusses his years as a drug addict and cosmetic surgeon in Scottsdale, detailed in his self-published book *Doctor Hyde*, released last year. The book gives a glimpse into the denial of an addicted physician.

In the early '90s, Locnikar was fresh out of his residency, and his cosmetic surgery practice was thriving. *Cosmopolitan* magazine even named him Bachelor of the Year.

And he was descending into his first bout with addiction.

"I started using casually, like anyone else, on the weekends," he says. "That went on for months. Then the weekends began on Thursday or lasted until Monday. You go to work tired and hung-over. To me, that is the absolute most impaired you'll ever be. Even if you didn't use on the way to work, you're cloudy, tired, impaired. You don't want to make decisions. Soon, I was using during work. There was a time where I'd run into the bathroom, nasal snort, and finish up the day."

In 1995, Scottsdale police arrested Locnikar for drunken driving. They found cocaine in his car and in his bloodstream. Locnikar, a D.O., was responsible to the Osteopathic Medical Board, the cousin of the larger Allopathic Medical Board, which licenses M.D.s. The D.O. and M.D. boards share the same five-year rehab program.

The osteopathic board forced Locnikar into inpatient rehab and then onto the MAP probation, with its random drug tests. But Locnikar remained in denial.

"I played the game, went through the 'recovery,' but I didn't really get it. They wanted me to do it, and I did it. I still didn't think I was an addict," Locnikar says.

During his five years of MAP probation, Locnikar built another successful cosmetic surgery practice. At its height of success, he was making \$5 million a year. He got married and bought a 10,000-square-foot home.

Five years later, he graduated. And the drug tests ended.

"At the end of my probationary period, once again, I'd achieved all this financial reward. But I never really felt fulfilled or happy or content. I casually started drinking, picked up a few pills on the house. Addiction progresses, even if you aren't using. You'll pick right up where you left off. I soon got to the point where pills or cocaine snorted didn't work. I started shooting, injecting heroin, Demerol, anything I could get my hands on."

Locnikar then practiced as an addict for three years.

"Even at that point, people were still hesitant to confront me because I was a doctor," Locnikar says. "We were in a \$3- or \$4-million house in Paradise Valley, with all the toys. When you see that on the outside, you think that somebody has it together."

At 3 in the morning on November 9, 2004, Locnikar was desperate for a fix as he sped downtown to buy cocaine. On the way, he totaled his Mercedes. Officers



Giulio Sciorio



Details:

First in a series. Read the rest of "Prescription for Disaster" [here](#).

Subject(s):

[Dr. Thomas Grade](#), [Gary Blass](#), [Steven Locnikar](#), [drug-addicted doctors](#), [Prescription for Disaster](#)

found syringes, vials of Versed, and other drug paraphernalia in his car, according to osteopathic board records.

The police notified the osteopathic board, which suspended Locnikar's license.

"Once I signed power of attorney, my wife sold the house and kept all the proceeds. I literally went from Paradise Valley to penniless," Locnikar says. "Within a very short period of time, I was homeless on the streets, pushing a shopping cart on Van Buren."

Months later, Locnikar's friends found him homeless, with no shoes or ID, in Tijuana, Mexico. "I don't even remember a lot of it. I was in a perpetual state of psychosis. I was finding spent needles on the ground, didn't eat for weeks at a time. Just shot up drugs."

Back in the States, Locnikar learned that his wife had divorced him. "At that point, no clothes, no shoes, as a homeless guy ready to die, I realized for the first time that I had a problem. I lost tens of millions of dollars, my family, every tangible thing in life. I watched all of it go away without even realizing what happened."

In January 2006, the osteopathic board revoked Locnikar's license for the second time because of his substance abuse. Under Arizona law, he was allowed to re-apply in January. He did.

Locnikar expects to have his license back soon. If that happens, the MAP program will stop testing him for drugs five years from now. Locnikar knows his propensity to relapse again and claims he'll continue paying \$65 a day for random drug tests, even after the board stops requiring them.

"There's something about the thought of the random test that motivates somebody," Locnikar says.

Gary Blass was a successful emergency room doctor. He and his wife, Carlee, a ballet teacher, moved to Arizona in 1994, shortly after Blass finished his residency at Episcopal Hospital in Philadelphia.

On June 29, 2005, Glendale police raided Blass' Arrowhead home and uncovered, of all things, a meth lab. Blass and his wife were arrested for making and selling crystal meth. The Arizona Medical Board revoked Blass' license one month later.

But if the board had monitored Blass sooner, it might have saved the life of one of his patients.

Blass had graduated from his *third* MAP probation eight years earlier, in 1997.

When Colleen Lomax saw Blass' face on the front page of a newspaper after his arrest, she wasn't surprised. The Phoenix attorney knew the name Blass well, having represented the family of a man who died in his care. Doug Morton Jr.'s family won an undisclosed settlement in 2002, and that was without any proof that Blass had been impaired when he diagnosed Morton's heart attack as a sports injury.

"The nature of the malpractice was so egregious we thought all along, at some

level, he had to be impaired," Lomax says.

Because the board wasn't drug-testing Blass, it's impossible to know when he began practicing under the influence, or whether, in fact, he was using when he saw Morton on the night of May 19, 1998.

That night, Morton, 36, felt a sharp pain in his left shoulder. Morton was a tough Midwesterner, a construction materials salesman who didn't much care for hospitals. After prodding from his fiancée and parents, he finally drove to the emergency room at Chandler Regional Hospital.

According to court records, Blass diagnosed Morton's pain as tennis shoulder — even though Morton had a full range of motion in the joint.

Lomax says Morton actually exhibited five of the seven classic signs of heart attack.

Morton tried to sleep that night, sitting upright in a recliner because of the throbbing. He assured his worried fiancée it was only a sore

shoulder. That's what the doctor said. By sunrise, Morton had died a slow death from cardiac failure.

His son found him early the next morning, dead in his La-Z-Boy.

A heart attack killed Morton, less than 24 hours after his ER visit. Despite that grave error and four more errors in the ensuing years, the medical board still didn't submit Blass — an addict with a 20-year history of relapses — to drug tests.

The medical board instead mailed Blass a handful of disciplinary warnings for practicing sloppy medicine and keeping poor records. Then they allowed him to continue practicing, even after he unlawfully prescribed the narcotic OxyContin.

After the board stripped Blass' prescribing privileges, he apparently grew more desperate to secure drugs.

In 2006, Blass pleaded guilty in court to making meth at his house and was sentenced to probation. Two months into his probation, Blass allegedly pulled a gun on three Mesa police officers. According to court records, the officers subdued him without firing shots and then found marijuana on him.

On March 17, Blass' third drug-related criminal trial is scheduled to begin in Maricopa County Superior Court.

The deaths of Laura Migliano and Doug Morton Jr. have not been enough to get the attention of the Arizona Legislature, perhaps because of the lobbying power of the Arizona Medical Association.

Julie Fellmeth, a public interest attorney and law professor at the University of San Diego, says physician trade associations have been successful in limiting oversight on drug use among physicians. Fellmeth has been studying physician-addiction programs for more than 20 years. She was influential in the California Legislature's demand that the California Medical Board scrap its equivalent to Arizona's MAP program.

"Physician-rehab programs were all created years ago at the behest of physician trade associations. These are trade groups that want to protect physician licenses. Public protection is not their role," Fellmeth says.

David Landrith has been the Arizona Medical Association's chief lobbyist and policy expert for 17 years. Landrith wasn't a lobbyist 20 years ago, but he remembers the legislation from the 1980s that created today's MAP program.

And he is familiar with another bill he fought to make law 10 years ago. Dubbed the "Drunk Doctor Bill," it created confidential rehab for physicians who self-report their addictions. That law is the reason why certain cases of physician addiction don't surface on the medical board's Web site today.

"We're very supportive of the current program, and we do believe it falls within the effective standards in place around the country. We think it's great that the board would take the opportunity to mediate and return a valuable community resource back to the community," Landrith says.

But Jon Hinz of the Arizona Trial Lawyers Association says current laws favor the few physicians who are responsible for the majority of malpractice.

"Two percent of doctors are responsible for 75 percent of malpractice," Hinz says. "But if they keep passing these broad laws that protect all doctors, they're protecting the bad ones along with the good ones. By helping the very worst, they're lowering the level of the whole profession. They're literally opening the door for every quack who can't practice in another state to come here to Arizona."

Hinz says the laws can be traced beyond physician trade groups to malpractice insurance companies.

"There are countless measures to keep physician addiction as private as possible," he says. "They don't want monitoring because that protects them from civil liability. If the doctor was monitored and then hurt somebody while proven to be an addict, they would get sued."

Landrith disagrees. He says drug-testing physicians for more than five years would be cumbersome and unfair.

"We don't have any information to the fact that there's something wrong with the status quo. Lifelong monitoring would probably be unfair. We'd say, show us the data. Show us the studies that say it's appropriate. If you can show us the studies, then we'll talk," Landrith adds.

Dr. Greg Skipper, a national expert on physician addiction, heads Alabama's equivalent to the MAP program. He has studied thousands of addicted physicians and thinks lifelong monitoring would better protect not only the public, but also physicians.

"I think lifelong [monitoring] is a good idea," Skipper says. He adds that more state boards, such as Alabama's, are requiring some physicians to agree to lifelong monitoring. Arizona's is not among them. In fact, the Arizona Medical Board could not name a single physician who has opted into lifelong drug testing.

"The medical board can say you have to do this indefinitely," Skipper says. "Sometimes malpractice companies will require it. Actually, that's becoming more and more of a trend, where some third-party requires lifelong monitoring."

In California, that third party is the Legislature. After California's physician rehab failed its fourth audit, state lawmakers there forced the board to scrap its MAP program and present something more effective by June 2008.

Audits of the California program revealed many of the same holes found in Arizona's: physicians practicing unmonitored and killing or injuring patients, and MAP graduates relapsing into career-ending addiction.

A full-fledged audit could dig much deeper than *New Times* did, simply because more information is available to auditors. A committee of state lawmakers can order the Arizona Auditor General to perform such an audit. Fellmeth says that's the only way to evaluate the program's success or failure.

"An external audit is invaluable. Unfortunately, you cannot believe the medical board because most members of the medical board have no idea how that program works or how it's supposed to work. You can't trust the staff of the program to be straight with you. They never want to self-report, 'Oh, we're doing a bad job,'" Fellmeth says.

"We've had 27 years of spin about this program, of essentially lying with this false success rate, and every state program does it. I've seen it. Our program doesn't monitor any participant after they've left the program. They have no idea if this program is effective in the long term. To make any conclusions, you have to continue tracking them."

Downey, the medical board spokesman, says the board isn't cutting breaks for addicted physicians. "The Arizona Medical Board always keeps its mission in mind: Protect public health and safety. It investigates these cases completely, thoroughly, and fairly in a standard way with a formal process."

Downey admits that it's a tricky business to balance the doctor's right to practice with the patient's right to safety.

"We're trying to preserve the physicians we have. If we can rehab a physician and get him to take care of his problem, we don't lose a physician," Downey says. "The problem is, when you revoke a physician's license, you impact the lives of about 2,000 patients who are looking for a physician. That's not so easy these days. That doesn't mean we cut the doctor any deal. It's just, we're trying to balance public safety with the doctor's career here."

Laura Migliano's story ended with her death after Dr. Thomas Grade over-prescribed methadone. But Grade's story continued.

After Migliano's death, Grade's partners voted him out of the practice and the office building he'd constructed. But Grade still held his license to practice, with a restriction only on the drugs he could prescribe.

Two years later, on March 4, 2006, Kathryn Curtis Campbell nearly died during a routine cervical epidural performed by Grade. According to a lawsuit and a medical board complaint, Campbell's heart stopped; she was legally dead. She was revived and rushed to a hospital. The lawsuit has since settled out of court for an undisclosed amount.

Grade continued to practice. Another complaint was filed, but because the board dismissed it in April 2007, the details remain secret.

Two weeks after that complaint was dismissed, Grade's wife, Emily, a radiation oncologist, arranged an addiction intervention.

On a Wednesday afternoon, Grade drove his black Mercedes SUV into the upscale Circle G Ranches neighborhood in Gilbert and parked next to his restored 1969 Camaro in his three-car garage.

At his home, Grade's family and friends, along with a professional interventionist, tried to convince Grade that he needed help for his addiction. The intervention didn't work.

According to a Gilbert police report, "Thomas became very angry and ordered everyone out of the house. When they all refused to leave, Thomas started screaming and yelling obscenities."

Grade shoved his wife, shouted at the interventionist, and retreated to the basement, yelling. Gilbert police arrived at the home to find Grade inebriated and barricaded in the closet of a basement bedroom.

Officers beat down the bedroom door and tried to arrest Grade. When he resisted, they used a Taser on him.

Grade was booked at the county jail. His wife soon dropped all charges.

In a phone interview from his home in Gilbert, where he still lives with his wife and four children, Grade is difficult to understand. He sounds like a fine-tuned machine that's been fed the wrong fuel, his complex vocabulary packed with four-syllable medical terms.

Grade says that after he was released from jail, he hopped a flight to the Ukraine to find a new wife.

"After Ukraine, I was paralyzed in Kiev, it turns out. I'm thinking that's what I might title my book, *Paralyzed in Kiev*. Well, I was looking for a woman to have another family with because my wife, also a doctor, is in the middle of a divorce with me," Grade slurs.

"It's a meaty story. I became so ill through the course of this. Post-traumatic stress probably instigated from a sporting injury in 1984. I started to get ill [at] the time when the medical board came after me. It's one of the worst boards in the country. I've been doing these hyperbaric treatments."

After Grade's arrest, the board ordered him back into addiction treatment, but Grade didn't show up for treatment or the required drug tests.

In September, the medical board met to vote on Grade's license. Physicians usually bring an attorney to such votes and defend their right to make a living. But Grade didn't show.

On September 14, 2007, the board voted to revoke Grade's license, citing an evident relapse. It had been four months since Grade's arrest, one year since Kathryn Curtis Campbell went "code blue" during a routine epidural, three years since Laura Migliano died of a prescribed overdose, and 16 years since Grade graduated from rehab.

Grade still doesn't seem to understand that his license was stripped because of his addiction relapse.

Contacted by *New Times*, Dr. Emily Grade says her husband didn't practice under the influence.

"As physicians, we don't always get our records perfect," she says of the discrepancy between Grade's office notes and the actual prescription he wrote for Migliano. She thinks the medical board's strict discipline after Migliano's death drove him back into addiction.

"He had an amazing life until they took it away," Emily Grade says. "It's also a good lesson. Addiction is a lifelong risk."

For more stories from this series, check our special reports page: [Prescription for Disaster](#).



Arizona's homeopathic board is the second chance for doctors who may not deserve one

By John Dickerson

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A Florida doctor lost his license after he was diagnosed as a sex addict — he claimed he could cure his female patients by fondling their breasts.

A Utah doctor lost his license after he illegally prescribed drugs over the Internet.

A California doctor lost his license after he was charged with hiding more than half a million dollars in profits, convicted of tax fraud, and sent to prison.

Another California doctor's license was suspended twice. The first time, he was accused of missing cancer in two patients. The second time, of misprescribing drugs.

Yet another California doctor went to prison and was ordered to pay \$15 million in fines after he was convicted of defrauding Medicare by performing unnecessary surgery on the eyes of elderly patients.

And a fourth California doctor had his license suspended, then moved to Arizona and lost a patient. The doctor injected the patient with either cow hormones or sheep DNA (the doctor's given two versions of the story), which caused an infection. The patient died.

In the world of medicine, there are no second chances. A doctor makes a misstep, and a patient can die. That's why the boards that license allopathic and osteopathic doctors — M.D.s and D.O.s, respectively — are so tough, and often criticized for not being tough enough. (See ["The Doctor Is Out."](#) [John Dickerson, March 6](#), the first in our ["Prescription for Disaster" series](#).) Lose your M.D. license in one state in the U.S., and you may never practice medicine again. Certainly not in this state.

Unless you know about Arizona's Homeopathic Board of Medical Examiners.

For a few hundred dollars, some extra training (sometimes provided by the board's president himself, for a fee) and a test on the principles of homeopathy, an M.D. or D.O. who likely can't secure another medical license can get a license to practice homeopathic medicine in the state of Arizona. You'll be banned from some procedures, but for the most part, you can go back to practicing medicine — diagnosing patients, prescribing drugs, even performing minor surgeries.

All the doctors listed above — and more — are now homeopathic physicians, licensed to practice by the state of Arizona. (Except for that Utah doctor. He lost his homeopath's license last month after a patient died during a procedure he was not authorized to perform.)

And it's all perfectly legal under Arizona law.

Homeopathy isn't dangerous, per se. The alternative practice began in Germany in 1810. By modern medical and chemistry standards, it's a harmless pursuit because it dilutes chemicals almost to the purity of drinking water before injecting them into the body.

Classic homeopathy uses no prescriptions and is based on a theory that "like cures



21. On or about June 20, 2002, as part of his treatment at IHSC, Respondent entered into a Comprehension Contract in which he stated his sexually inappropriate behavior, which included touching patients' breasts in a way they found offensive (for example, stroking their nipples); examining genitalia without a chaperone watching from inside the room; kissing patients and staff; using the back of his hand to touch women on the buttocks without their prior consent; and using crass and sexual remarks that others found offensive.

Click the image above to see a detail of documents from the Florida Department of Health that show Dr. Charles Crosby had a problem before the Arizona homeopathic board licensed him.



Dr. Gary Page



Dr. Gabriel Cousens

like" in sick patients. For example, if you're allergic to pollen in the air, a homeopathic physician might take that very pollen, dilute it, and inject you with it. The theory is that a small amount of the problem ingredient will cure you of your symptoms — sneezing, in the case of allergies. Modern chemists say homeopathic injections are so diluted that they have no effect, good or bad.

One popular homeopathic cure, oddly enough, is poison ivy oil. Because poison ivy causes a rash and can cause a fever, homeopathic physicians dilute the oil in alcohol, dilute it again, and use it to treat rashes and fevers. It may seem backward, but that's homeopathy. Homeopathic doctors track which substances help which patients, and then try the same treatments — pollen, poison ivy or otherwise — to treat patients with similar symptoms.

But that hardly matters here, because Arizona's homeopathic license is not always used to practice homeopathy. In fact, none of the doctors in this story were practicing it when they killed or harmed their patients. And, as the Arizona Auditor General found last year, the real problem is that the board is lax when it comes to poor medical treatment, regardless of whether it's considered homeopathic.

Homeopathic doctors can get the D.E.A. authority to prescribe the same drugs an M.D. or D.O. can prescribe, and are allowed to perform "minor" surgeries (for example, a homeopath can perform a vasectomy and administer local anesthesia, but can't perform a breast augmentation or give a patient an epidural) — which have nothing to do with homeopathic medicine. That attracts doctors who can't get, or who are about to lose, their conventional licenses.

Only two other states, Connecticut and Nevada, issue homeopathic licenses. Those states have tighter guidelines for getting a license and give their homeopaths less prescribing and surgical power than Arizona does.

So Arizona's license is a unique opportunity. In effect, the law amounts to a loophole for doctors who've gotten in trouble, or know they'll soon get in trouble, to practice medicine with the initials M.D.h., as homeopathic physicians — even if they don't practice homeopathy.

The requirements for getting an M.D. license in Arizona are strict. You cannot even apply for an M.D. license if you've ever lost an M.D. license in another state. (And that includes California, which can "revoke" an M.D. license, then reinstate it. If your California M.D. license has been revoked, you cannot get an Arizona M.D. license.) You also cannot apply if you have a felony conviction.

It's a little easier to get a D.O. license. If you have lost your D.O. license elsewhere, or you're a convicted felon, you are eligible to apply — but given recent history, it is unlikely Arizona's D.O. board will let you through. An M.D. cannot apply for a D.O. license, or vice versa. The rules for M.D.s and D.O.s are similar in other states.

In order to apply for a homeopathic license in Arizona, you must be either an M.D. or a D.O. in good standing in Arizona or another state. If you have lost a license elsewhere in the past, that's okay. If you are a convicted felon, you're still free to apply. And most significant: Once you are a homeopath, if you lose the license that got you in the door in the first place, you're fine. It doesn't affect your homeopathic license.

(Homeopaths in Arizona aren't even required by law to practice homeopathic medicine. That's a far cry from Connecticut, where the homeopathic license is good for homeopathic treatment and little else.)

Doctors who've committed felonies or have had their licenses revoked in other states need only to listen to a couple audio CDs about homeopathy before applying for a homeopathic license in Arizona. (One \$880 correspondence course is actually taught by board president Dr. Todd Rowe.)

A homeopathic license in Arizona costs \$975, almost twice as much as a conventional M.D. license (\$500). Since a conventional license allows doctors to practice classic homeopathy, there are only two reasons to pay more for the homeopathic license: because you're banned from getting a conventional license or



Dr. Elliott Schmerler



Dr. Elliott Schmerler and Dr. Rick Shackel have an office in Scottsdale.

Details:

Read the rest of the ["Prescription for Disaster" series](#).

Subject(s):

[Prescription for Disaster, unlicensed physicians, Homeopathic Board of Medical Examiners](#)

because you want to experiment with treatments the conventional board doesn't allow.

The homeopathic board also fails to discipline the doctors it has already licensed. That's one finding from — amazingly — the first audit of the homeopathic board done since 1985. The report was released in August 2007 by Arizona's Auditor General.

"The Board appears to allow conduct that the other two Arizona physician regulatory boards have determined is unsafe or unprofessional," the auditor general reports.

Auditors concluded there may no longer be a need for the board, which was created in 1981 at the behest of alternative doctors, because many alternative procedures are now allowed with conventional licenses. They also found the board has:

- Sometimes waited for more than a year to look into complaints against doctors.
- Licensed homeopathic doctors who weren't competent in homeopathy.
- Licensed a revoked Arizona D.O. who failed the homeopathy exam three times.
- Dismissed complaints against doctors without considering the accusations.
- Allowed doctors to practice medicine far beyond the scope of homeopathy.
- Failed to explain the difference between an M.D. and an M.D.h. to the public.

Copies of the August 2007 audit were delivered to the 12 state senators and representatives who sit on the Joint Legislative Audit Committee.

And yet, legislation currently being considered by the state House of Representatives would rubber-stamp the homeopathic board for two more years. Another bill attempts to clean up the board, but it fails to plug the loophole that lets doctors with revoked licenses into Arizona. In fact, the second bill solidifies the board's power to license doctors who have had their licenses revoked.

Current homeopathic board members say they are addressing the concerns listed in the audit. But recent board decisions indicate otherwise.

New Times researched the licensing history of all 107 homeopathic physicians in the state and reviewed hundreds of pages of board records. Among the findings:

- One-fourth of Arizona's homeopaths have lost their conventional M.D. or D.O. licenses.
- The homeopathic board has licensed at least five convicted felons, whose crimes range from tax fraud to mail fraud. Four are now practicing. The other is on parole.
- The board dismissed a complaint against a homeopath after a patient died. Although a county medical examiner determined that the homeopath caused the death, the board ruled that the procedure did not violate the rules of homeopathy.

- One-fourth of the homeopaths licensed in Arizona don't live or practice in Arizona. Some practice with their Arizona M.D.h. in states where their M.D. license has been revoked. That is illegal in some states and legal in others.
- Other state medical boards pay professional investigators to study complaints against doctors. The homeopathic board uses volunteer alternative doctors to investigate their colleagues.
- Some doctors use their Arizona homeopathic licenses to perform face lifts, breast augmentations, liposuctions, and other surgeries that homeopaths aren't allowed to perform.
- Doctors who claim an interest in homeopathy need little training in the field to get an Arizona license.

Anna Prassa was a public member of the homeopathic board from 2000 to 2006. She says the board is flawed beyond repair.

"There's a reason why another state revokes a doctor's license," Prassa says. "For that to happen — and then they can waltz right into our state and get a license — that's a problem. It's a crime."

DR. GARY PAGE

In 2004, Dr. Gary Page, a dermatologist and M.D. from Utah, sent an application to the Arizona Medical Board. The Arizona Medical Board sent Page's application right back. Because his Utah license had been surrendered for Internet prescribing (and his California license revoked, as a result), Page wasn't eligible by law to apply for an M.D. license in Arizona.

If Arizona didn't have a Homeopathic Board of Medical Examiners, Page's story would likely have ended there.

Unable to practice medicine as a conventional M.D., Page sent an application to Arizona's homeopathic board.

Even though Page had no history of practicing homeopathic medicine, and though he'd been previously stripped of his medical licenses, Arizona's homeopathic board welcomed Page into the state.

Page was issued a homeopathic M.D.h. license. He moved to Gilbert with his wife and five kids — supposedly to practice alternative medicine.

But on July 3, 2007, Page was not practicing homeopathy, or any form of alternative medicine. He was performing a standard liposuction — a surgery not allowed under a homeopathic license.

According to records from the homeopathic board and the Arizona Medical Board, Page's patient, a 53-year-old woman, prepaid for liposuction on her thighs. Page injected the patient with anesthesia, which was allowed by his M.D.h. license, and then performed the liposuction, which wasn't.

The patient died shortly after surgery. The Maricopa County Medical Examiner cannot release the cause of death because board documents have concealed the victim's name.

That death — the third fatality at the Anthem cosmetic surgery clinic — was reported by the media. What wasn't reported is that Page walked right through the homeopathic board's loophole, securing an Arizona M.D.h. even after he'd lost his M.D. licenses in other states.

On March 18 of this year, Page surrendered his homeopathic license as the board was preparing to revoke his license because liposuction falls outside the scope of "minor" surgery homeopaths are allowed to perform.

He never could have practiced in Arizona, if not for the loophole that lets previously revoked doctors practice here as homeopaths.

Page did not return phone calls and e-mails seeking comment.

DR. GABRIEL COUSENS

In 1998, Charles Levy, 57, booked a flight to Arizona. Levy, an insurance agent, told his family he was in good health and planned to visit the Tree of Life Spa for a time of rejuvenation with a homeopathic doctor.

He looked forward to the live organic vegan diet and spiritual rest described by Dr. Gabriel Cousens, whose Web site promotes him as an M.D. and M.D.h.

Cousens is not eligible for an M.D. license in Arizona because his license was once taken away (but reinstated) in California and remains censured in New York. According to Arizona Medical Board spokesman Roger Downey, that makes a doctor ineligible for an Arizona medical license. If Cousens were a D.O., he would be eligible. But he's not. He's been practicing here as a homeopath for 15 years.

According to court records from a civil suit filed by Levy's family, Levy showed up at Cousens' secluded campus in the green hills of Patagonia, Arizona. He was hoping for a time of physical and spiritual rest. Cousens told him that injections of cow adrenaline and/or sheep DNA could energize his body. Levy agreed to five injections, which aren't a homeopathic treatment but are allowed by Arizona's homeopathic board.

Unfortunately, the injection site — on Levy's right buttock — grew infected, so he went to see Cousens about it. Cousens didn't recommend an antibiotic. Instead, he treated the growing abscess with acupuncture and massage.

The infected area became green and black. It spread down Levy's thigh, and on March 1, 1998, Levy did not wake up in his dorm room at the Tree of Life Spa. Cousens found Levy unconscious and attempted CPR, with no success.

Cousens did not call 911. Instead, he called an air ambulance, and arranged for a helicopter pickup on the football field of a nearby high school.

Cousens and a nurse carried Levy — draped in a bathrobe, bleeding from his mouth and groin — to a car and drove him five minutes to the field.

A Patagonia police officer was driving by the school when he saw Cousens and a number of spa guests gathered around an unclothed body lying on the grass.

Levy's buttock and thigh were black and swollen. His eyes were wide open. He was dead. After the helicopter took the body, Dr. Cousens

told the officer that he'd injected Levy with sheep DNA. Later, Cousens contradicted his statement, saying the injection was actually cow hormones.

Whether the injection was cow or sheep didn't matter to Santa Cruz County Medical Examiner Dr. Cynthia Porterfield. She examined Levy's body and ruled that the injection and subsequent infection killed him. Specifically, she found that Levy died from *Clostridium perfringens*, a bacteria that grows in gas gangrene. During the Civil War, that bacteria claimed thousands of soldiers' lives when it grew in their battle wounds. Modern antibiotics can kill the bacteria easily when used.

"I spoke with him the day before. The next day, I got a phone call that he was gone," Levy's son, Howard, says. "I pretty much haven't recovered since. He was not on any medication, didn't have high blood pressure, or a weight problem. He could go out and run three miles on the boardwalk."

Levy filed a lawsuit against Cousens, and Cousens paid an undisclosed amount to settle the suit after the medical examiner pinned the death directly on him.

The osteopathic medical board also examined the autopsy and ruled that the medical examiner was right to name the injection and infection as the causes of death.

But when Cousens' dead patient came up before the homeopathic board in 2001, the board dismissed the complaint — despite the medical examiner's findings.

The board ruled that, though a patient did die, the doctor did not violate any laws of homeopathic medicine.

In his October 11, 2000 court deposition, board member Dr. Garry Gordon says he served as the board's lead investigator into Cousens, but he also worked as an expert witness for Cousens in court.

Because the homeopathic board dismissed the complaint, the medical board in California — where Cousens holds his M.D. — has no way of knowing Cousens injected a patient with animal hormones. It has no way of knowing he treated a growing infection with acupuncture or that a county medical examiner named his treatment as the causes of a patient's death.

The Arizona board has since destroyed audio records from that meeting (technically, it did so legally).

"I think it's a travesty that he's still practicing in Arizona," Howard Levy says from his home in New York. "Those people who are allowing this to continue to happen are just as guilty. The simple fact that he can continue to practice medicine in any way, shape, or form shows that the system is failing the general public."

Today, Cousens still practices at his spa in Patagonia. He says he has "28 cubic feet of scientific literature" that disprove the medical examiner. He says Levy died of an extremely rare syndrome that strikes suddenly and kills in hours. Cousens also says Levy was sick when he arrived at the spa and had the gas gangrene infection long before his cow adrenaline injections.

"Dr. Porterfield, the pathologist, really was neglectful," says Cousens, who also says he thinks he would have won the case in court. (He says his insurance company forced him to settle.) "I believe that if we were in front of the medical board, they would have cleared me just as well."

DR. CHARLES CROSBY

In 2002, the Florida Department of Health forced Dr. Charles Crosby, a D.O., into the state's impaired-physician program. Crosby had been kissing and groping female patients and staff, according to Florida records.

Crosby was diagnosed with a narcissistic disorder and with Frottuerism, a disorder "characterized by intense sexually arousing fantasies, sexual urges, or behaviors involving touching or rubbing against the body of a non-consenting person."

The surgeon and pain-management specialist's bedside manner included "touching patients' breasts in a way they found offensive (example, stroking their nipples) . . . kissing patients and staff . . . and using crass and sexual remarks that others found offensive."

Crosby told a psychiatrist he had "developed a special technique of manipulating women's breasts to treat pain in other areas of their body." That psychiatrist diagnosed Crosby with a breast fetish and ruled him unfit to practice medicine.

In June 2003, Crosby was still practicing medicine when he was caught manipulating the breasts and ribs of a woman at a medical trade show in Norfolk, Virginia.

On March 17, 2004, Florida's physician intervention program warned Crosby that it was restricting his practice and might suspend his Florida license.

Two months later, Crosby was standing before Arizona's homeopathic board, petitioning for a homeopathic license. Crosby didn't have enough homeopathic training, but the board voted to give him a license, as long as he took 40 hours of homeopathic courses. The homeopathic board licensed Crosby in Arizona — even as the Florida board was investigating him for groping his female patients.

Two months after Crosby secured his Arizona homeopathic license, the Florida board suspended his license. Crosby apparently never

moved to Arizona. He lives and advertises in Florida, and his license is still suspended there. His Arizona homeopathic license is active, though he's on probation, which means Crosby has to submit reports that confirm he's seeing a psychiatrist.

Crosby declined comment for this story.

DR. MURRAY SUSSE

Dr. Murray Susser, 73, has been practicing alternative medicine for decades. The California Medical Board has taken his license away twice.

The first time was in 1997. According to California Medical Board records, Susser failed to identify some conventional cases of cancer. He failed to diagnose colon cancer in one patient, even though the patient had blood in her stool and complained of rectal bleeding.

For another patient, Susser prescribed natural vitamins in dangerous quantities, including "tannic acid, which is carcinogenic," and testosterone, which boosted blood pressure to unhealthy levels. According to California Medical Board records, Susser failed to see bowel cancer in that patient, too.

Susser's discipline culminated when he advised a patient who was jaundiced and experiencing severe abdominal pain to not go to the emergency room. Paramedics forced the patient to go to the ER, where she was diagnosed with severe liver and pancreas damage, due to the all-natural injections.

After two years of community service at 25 hours a week, Susser's California medical license was restored in 2000. His New York license is still surrendered.

In 2002, Susser secured a homeopathic license in Arizona. He's been practicing in Scottsdale ever since. In 2005, the California Medical Board again took away Susser's license (he's on probation again) for prescribing ketamine, an anesthetic and animal tranquilizer.

In 2006, Arizona's homeopathic board examined the same charges and dismissed them.

Known as "Special K" in the club scene, ketamine is similar to PCP. It can cause hallucinations along with extreme detachment from reality. The homeopathic board concluded that Susser was not in the wrong to prescribe ketamine to fibromyalgia patients — even though it falls outside the conventional standard of care.

In an interview for this story, Susser calls ketamine the pain reliever of the future for patients with chronic pain.

The U.S. Food and Drug Administration begs to differ. The FDA approves ketamine only as an anesthetic and veterinary tranquilizer.

Susser also says the details in the California Medical Board's paperwork are charges and not facts. He says they weren't proved and that he signed the agreements only to avoid court fees.

DR. ELLIOTT SCHMERLER

On January 9, 2007, a physician stood before Arizona's homeopathic board and told his personal story of redemption. Too bad it wasn't all true.

It had been five years since Dr. Elliott Schmerler pleaded guilty to felony tax fraud. According to IRS documents, Schmerler funneled more than \$500,000 through a corporation in the Bahamas and then used the money for personal expenses. He was sentenced to 15 months in prison and stripped of his Nevada medical license.

Two of Schmerler's cosmetic surgery patients had poor results, and he paid out money in lawsuits to two others, according to his homeopathic application and records from the Nevada Medical Board.

By December 2006, Schmerler had served his time in prison and finished his probation for the tax fraud case. He wrote the IRS a check for \$96,533 to settle the score. That month, the Nevada Medical Board issued Schmerler a restricted medical license that specifically banned him from performing cosmetic surgery in the state.

Because of his revocation and felony conviction, Schmerler could not perform cosmetic surgery as an M.D. in Arizona.

One month after Nevada issued him a restricted license, Schmerler was in Arizona, petitioning for his homeopathic license. Standing in the basement boardroom at the state building for regulatory boards, Schmerler told the board a big lie.

"Since our previous meeting, I was issued a new, unrestricted license by the Nevada Allopathic Medical Board," he said.

None of the board members mentioned that Schmerler's printed license restricted him from ever performing any kind of cosmetic surgery.

Instead, the discussion focused on giving doctors second chances, particularly when their history involves felonies.

"I fully recognize we may take a little heat from the media because 'that homeopathic board is back to licensing felons again,'" then-board president Dr. Garry Gordon said as he made a motion to accept Schmerler's application. "But I take the full responsibility of

recognizing everything I've seen and read about this doctor going forward."

The board members didn't ask Schmerler why Nevada banned him from cosmetic surgery. They didn't ask about the liposuction patient who ended up with an infected, oozing stomach or the breast augmentation patient who woke up with a lopsided chest — both documented in his own application and in Nevada Medical Board records.

Nobody asked Schmerler why the Nevada Medical Board disciplined him for "intent to deceive" or whether he would attempt to practice his specialties — liposuction and breast augmentation — in Arizona. Those procedures aren't allowed with a homeopathic license.

Instead, the board took Schmerler at his word. Gordon asked his fellow members to give Schmerler another chance at honesty.

"Physicians are really not well suited to digging ditches, but they don't have a lot of other things they're good at doing," he said. "They shouldn't be used car salesman. When I was in California, I was astonished how everyone who serves their time and does their probation is finally re-licensed."

Arizona law doesn't let the conventional board give M.D.'s such second chances. The only way Schmerler could bring his services to Arizona would be through the homeopathic board's loophole.

The board voted 5-0 to grant Schmerler a homeopathic medical license.

So how has Schmerler used his shot at redemption?

Schmerler advertises himself on the Web and at his Scottsdale office as an M.D. He is not a licensed M.D. in Arizona. Homeopathic board president Dr. Todd Rowe says it's illegal for a homeopathic doctor to advertise as an M.D. if the doctor isn't licensed in Arizona.

According to Schmerler's office staff at A Surgical Art: A Cosmetic Surgery Group in downtown Scottsdale, Schmerler doesn't specialize in homeopathic medicine. He specializes in cosmetic surgeries — also illegal because his homeopathic license limits him to minor surgery.

A call to Schmerler's office confirms he specifically performs tummy tucks, breast augmentations, liposuctions, and facelifts, none of which is minor and none of which is legal to perform with only a homeopathic license.

There's no evidence Schmerler has harmed anyone in the year he's practiced here. But it's clear that he walked right through the homeopathic loophole to perform cosmetic surgery — the very thing he's banned from practicing in his home state of Nevada, and the very thing Arizona's conventional medical boards are designed to regulate.

Schmerler did not return phone calls requesting an interview for this story.

DR. RICK SHACKET

In 2003, Dr. Schmerler's partner in practice, Dr. Rick Shacket, shared the same page of an IRS press release, long before he shared the same office suite in Scottsdale. The press release detailed the felony convictions of both doctors.

Shacket secured his homeopathic license in 2001, before his conviction. The next year, he was sentenced to 33 months in prison after he pleaded guilty to creating a false identity so that he could hide \$540,000 in profits, according to IRS documents.

A standard practice for nearly every medical board in the country, the California Osteopathic Board revoked Shacket's license. But Arizona's homeopathic board didn't. Shacket's Arizona license remained intact even while he was in prison and on probation. His profile on the Arizona Homeopathic Board Web site shows no discipline or letters of concern since his licensing in 2001.

In 2005, the osteopathic board also gave Schmerler an Arizona license.

Shacket did not return calls for comment.

DR. JEFFREY RUTGARD

In 1995, Dr. Jeffrey Rutgard, a San Diego ophthalmologist, was found guilty of talking senior patients into unnecessary eye surgeries, so he could pocket the Medicare payments. He was sentenced to 11 years in prison and ordered to pay \$15 million to Medicare. The California Medical Board revoked his license during the 1994 trial.

Rutgard was out of prison by 2004. He promised the Arizona homeopathic board he would move to the state to learn alternative medicine. A chiropractor even testified that he'd take Rutgard under his wing to keep an eye on him.

Four years later, Rutgard apparently has yet to relocate to Arizona. The board hasn't penalized him, and Rutgard's license is intact. Despite his revoked California M.D. license, he practices part time in California with his Arizona M.D.h. and under the supervision of another homeopath, according to Homeopathic Board records.

California Medical Board spokeswoman Candace Cohen says Rutgard is breaking the law in that state if he is diagnosing patients or prescribing drugs, regardless of the Arizona license.

New Times could not confirm whether Rutgard has broken the law in California. He has paid his annual renewal fee of almost \$1,000 for five years.

Rutgard did not return a message left on his home answering machine, requesting an interview.

Dr. Todd Rowe has served on Arizona's homeopathic board since 2005. He took over as president a month after state auditors released their report in the fall of 2007. Rowe, a psychiatrist, holds a valid Arizona M.D. license in addition to his homeopathic license.

Rowe says he and his board members are working to fix the problems outlined in the audit.

"I do feel like there's cleaning to do, and we have been working on that. We thought the auditors did an excellent job and really listened to the issues," he says.

But Rowe disagrees with the audit's statement that the homeopathic board may not serve a purpose. He and others in the alternative medicine community say Arizona holds the unique position of protecting alternative medicine.

As for the audit finding that licensed homeopaths aren't practicing homeopathic medicine, Rowe says the board wants to change its name to the board of "homeopathic and integrative medicine." That way the board can continue licensing alternative treatments outside the scope of homeopathy.

Rowe adds that the board is prepared to protect and regulate alternative medicine and that it's cracking down. "We've been tightening our discipline, at least since I've come onboard," he says. "All of our disciplinary actions have been at least if not more stringent than other boards."

He says the board is speeding up its investigations, too, by using volunteer homeopathic doctors to investigate complaints against their colleagues. Though that's a far cry from the professional, independent investigators the conventional medical board uses, it may be better than the recent system, in which board members investigated complaints themselves.

"We've made significant changes in the last year. There's a flow chart now that mandates we investigate every matter, at least since I've been president," Rowe says.

But three months ago, on January 9, the board failed to see an apparent violation of law right under its nose. Dr. Elliott Schmerler, the doctor banned from practicing cosmetic surgery in Nevada, stood before the board. It had been one year since the board voted to license Schmerler, a convicted felon.

The American Board of Cosmetic Surgeons had filed a board complaint that Schmerler was using their acronym, ABCS, on his business card and Web site — implying he's still board-certified, which he's not.

Schmerler showed the homeopathic board a new business card and said he had pulled the misleading acronym off his Web site. The board didn't discipline him, writing him a non-disciplinary letter of concern instead.

With that, Schmerler was off the hook.

The board had just been reminded, by the death of Dr. Gary Page's liposuction patient in July 2007, that it's illegal to use a homeopathic license for major cosmetic surgery in Arizona.

Still, none of the board members asked Schmerler why he's advertising as a cosmetic surgeon and M.D., when he isn't licensed as either in Arizona.

Rowe tells *New Times* he is aware that it's illegal for a homeopath to perform breast augmentations and tummy tucks in Arizona without an M.D. or D.O. license. He also confirms that "it's against the law for a doctor who isn't an M.D. in Arizona to advertise himself as an M.D."

So why didn't either issue come up in January, when Schmerler was before the board?

"We are only allowed to focus, as a board, on the complaint. We're limited in what we can explore outside of the initial complaint," Rowe says. But he adds that the board could open its own complaint, if it wanted. He says he's not sure why it didn't.

If Arizona lawmakers did disband its homeopathic board, it wouldn't be the first time that's happened in this country. In 1957, the state of Maryland disbanded its 80-year-old homeopathic board amidst controversy surrounding the doctors it was licensing. Other states have followed suit, forcing homeopaths to get licensed with the conventional board.

Some of Arizona's lawmakers say they have higher hopes for the largest homeopathic board in the nation. Despite last year's less-than-favorable audit, the state Senate voted last month to continue the board for two years.

The Senate also passed another omnibus bill that addresses a few of the problems highlighted in the audit. Both bills are expected to pass the House this month. But they don't plug the biggest loophole.

Barbara Leff, a Republican from Paradise Valley, and Paula Aboud, a Tucson Democrat, are members of the Senate Health Committee. Leff did not return calls for this story, but Aboud says she knows about the audit and that she and Leff sponsored amendments to the omnibus bill that would affect the homeopathic board. One amendment touches more on the concerns of activist doctors than the concerns of the audit.

One new clause in the bill confirms the board's power to license doctors who've been kicked out of other states.

Aboud — who has sought treatment from homeopaths — says she's concerned about that very problem.

"If you're doing classical homeopathy, which is merely a spiritual practice of working on the level of the spirit or the body, there are not too many ways a person can be harmed," Aboud tells *New Times*.

"But this homeopathic board is allowing a homeopathic doctor to do surgery and acupuncture and treatments that do harm the public."

The bill passed by the Senate in March and pending in the House as of press time does take a step toward closing the loophole. It would require doctors who've been revoked to wait five years before applying for their homeopathic license. That doesn't stop doctors from applying months or weeks before their licenses are revoked in their home state.

Dr. Charles Crosby, the Florida sex addict, illustrates why the new legislation wouldn't close the loophole. The intent behind the new line is that a doctor like Crosby couldn't apply for a homeopathic license until five years after he lost his Florida license.

But Crosby didn't apply for his homeopathic license after Florida suspended him. He applied for it two months before they suspended him.

In all states, doctors know when a medical board is investigating them. If doctors think they may lose their conventional licenses, they can secure an Arizona homeopathic license during the months of investigation in their home state.

Then, if their conventional license is stripped, they retain a homeopathic license. The bill that passed the Senate would not stop shrewd doctors from walking through the loophole. It still would allow them to keep a homeopathic license, even if they were stripped of the M.D. or D.O. license two months later — as Crosby was.

Conventional medical boards across the country rubber-stamp revocations. For example, when Dr. Gary Page surrendered his Utah license, California automatically revoked his license there.

Arizona's homeopathic board, however, doesn't have to follow suit.

The new legislation wouldn't affect the homeopathic board's ability to ignore revocations in other states — or even here in Arizona.

In fact, the proposed fixes would have let every single one of the problem doctors in this story into Arizona, though it would have delayed one doctor for two years.

If the House passes a bill that doesn't close the loophole, the governor could still veto it. Governor Janet Napolitano's spokeswoman, Jeanine L'Ecuyer, says she's surprised to hear the homeopathic board has licensed convicted felons.

"The governor has a general policy of not commenting on legislation until it's before her for her signature or veto," L'Ecuyer says. "But what you've described is of tremendous concern. We will begin the process of working with the board to see what's going on because public safety is paramount to the governor."

Dr. Kathleen Fry is one homeopath who doesn't think the new legislation would do enough. Fry is also an M.D. in good standing with the Arizona Medical Board. She testified before the Senate Health Committee in February that the homeopathic board is broken.

"I ask you not to continue this corrupt system because more people may end up maimed or dead." Fry said, then referring to Page's patient.

"It is this careless language that I believe led to the death of the unfortunate woman in Anthem last summer who underwent liposuction under local anesthesia. This language in this bill does not preclude another such tragedy occurring."

Chris Springer, executive director of the Arizona Board of Homeopathic Medical Examiners, is also the board's only employee. And she's a part-time employee. For 30 hours a week, Springer wears the hats of application reviewer, phone answerer, initial complaint investigator, liaison between other boards and spokeswoman, among others. Before this job, she was the director of the state's board of nursing home administrators.

Springer has a few things to say about the audit and the potential new laws that would affect the board. She says there will be no more second chances for doctors who've lost their licenses elsewhere, regardless of what the Legislature does this session. Her board is getting tough, Springer says. "The second chance isn't going to happen anymore."

As if the fallout from last year's audit weren't enough, Springer is fighting not just to keep the homeopathic board in existence, but also to keep her job in existence. This year, Napolitano is combining the staffs of several tiny boards. In Arizona, the concern seems to be

more with consolidating office equipment and jobs than with regulation — at least, the regulation of homeopathic medicine.

In a lot of ways, Chris Springer represents the homeopathic board's six members. Down in the basement boardroom, cleaning up agendas after a recent board meeting, Springer gives her opinion of Dr. Gary Page.

She doesn't see Page as a formerly revoked doctor who found a loophole to practice in Arizona. She doesn't see him as a man whose patient died hours after a liposuction he wasn't licensed to perform.

"He has five kids and wife. Now he doesn't have a job," she says quietly. "It's sad."

Correction (posted April 24, 2008): It should have been stated that Dr. Rick Shackel surrendered his California medical license after a felony conviction for tax fraud.



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Blind trust: Don't assume you're seeing a doctor — even at the Mayo Clinic

By John Dickerson

published: May 22, 2008

At 65, Paul Phillips was ready to retire. He'd raised his four kids, sold his Phoenix produce company, and even bought a 40-foot RV to drive across the country with his wife LuWanna.

Jamie Peachey



Paul Phillips

Jamie Peachey

Phillips was working on his golf game, in anticipation of all the free time he'd have. Even more, he enjoyed playing ping-pong and catch with his grandkids.

But on March 13, 2001, Phillips found himself at the Mayo Clinic in Scottsdale, waiting to see an ophthalmologist. The vision in his left eye had suddenly gone blurry, and he was seeing floating specks of light in the same eye. Phillips has diabetes; he's had it for 18 years. He and LuWanna knew failing vision could be related, so she insisted he get the best help available. As LuWanna later recalled, she called the Mayo Clinic and scheduled an appointment with Paul's ophthalmologist.

Phillips fidgeted anxiously in the waiting room, wringing his hands — still leathery and calloused from 40 years of handling boxes of fruit and vegetables.

Then a nurse called him to examination room number 9, where she asked him to read an eye chart. After the nurse left, a man wearing the standard tie and suit coat of a Mayo physician — a trademark in the healthcare company's facilities — entered the room. He held an Executive Glaucoma Screening Form and Phillips' chart in his hand. He asked a number of questions and then examined both of Phillips' eyes.

That man, Paul Hughes, diagnosed Phillips on the spot with "K. sicca" or eye inflammation. He explained that the problem was simply dry eyes and Phillips need not worry about his left eye. Hughes recommended over-the-counter salve and drops, known as "tears." Then he walked Phillips to the billing desk, shook his hand and thanked him for visiting the Mayo Clinic.

On the way home, with LuWanna behind the wheel, Phillips wondered aloud why the doctor hadn't dilated his eye. He concluded the doctor knew more about eyes than he did.

He used the drops, but they didn't alleviate the blurriness or floating flashes of light.

Two weeks later, the Phillips were sitting in a movie at the Deer Valley Harkins Theatre on Bell Road when Paul's left eye went completely dark — as if somebody had dropped a veil over it.

The retina in his left eye had detached. The symptoms Paul Phillips reported at Mayo were classic signs of a tearing retina; according to the Mayo Clinic's own literature, if caught at that point when he'd visited the clinic, the condition has about an 85 percent chance of successful treatment with retinal reattachment. Once it had detached, it was much tougher. And today, after a series of surgeries, Phillips is permanently blind in his left eye.

So why did the Mayo Clinic fail to properly diagnose Phillips' run-of-the-mill malady?

Could be because Paul Hughes, the man who treated him — who held his chart and



Paul Phillips and the RV he can no longer drive.

Jamie Peachey



Jamie Peachey

looked in his eye and recommended drops — isn't a doctor at all. He's not a physician's assistant or a nurse, either.

In fact, Hughes has no formal medical training and has never been licensed to provide healthcare or even sell glasses in Arizona. And yet, for almost 20 years, Paul Hughes "triaged" eye patients in the Mayo Clinic's ophthalmology department, deciding which doctor, if any, they should see. Some patients, like Phillips, never did see a doctor — or any other licensed practitioner beyond a nurse. Phillips says he wasn't told this. He assumed he'd seen a doctor; his wife had asked for an appointment with one; he'd been seen by a nurse, then by a man in a coat who certainly looked like a doctor and never said otherwise.

Even after Phillips' catastrophe, when the case had gone to court — where a jury would eventually award Phillips \$3.5 million — Paul Hughes apparently had no contrition.

"I don't feel like I need to be certified in something I'm efficient at," Hughes said to the jury about the treatment he gave Phillips.

When Phillips learned that he was misdiagnosed by a non-doctor, he and his lawyer told the Mayo Clinic they could donate \$2 million to the blind, or they could brace for a lawsuit.

Mayo chose the lawsuit, and lost.

In July 2006, a jury found in Phillips' favor; the judge lowered the medical malpractice judgment to \$750,000, an amount that matches similar cases involving blindness.

Phillips says he has yet to spend a penny of it. (After the emotional turmoil of the trial, he's decided to keep the money.) Instead, he's spent the last year mourning the recent death of his wife of 50 years, as well as the loss of his depth perception.

Phillips' story is a case in point that when you visit the doctor, you can't assume you're seeing a doctor — or even a trained practitioner. Not at the Mayo Clinic. Not anywhere. *New Times* reported the details of this case mainly from interviews with Phillips, court pleadings, depositions, and transcripts from the trial.

It's hard to fault Paul Phillips for assuming that a practitioner in a suit and tie, holding his chart at the Mayo Clinic, was qualified to give a diagnosis. After all, Phillips had gone to the best. He knew of Mayo's international reputation for leading the way in cancer research. And Mayo had just been named the number one choice of hospital by consumers in the Phoenix area for the third year in a row, according to the National Research Corporation.

Beyond that, the Mayo Clinic — founded in Rochester, Minnesota, in 1888 — is an icon, considered the gold standard of medical care. When the company opened an outpost in northeast Scottsdale almost 100 years later, in 1987, Mayo drew patients like bees to honey.

But the standards in place at the Mayo Clinic's ophthalmology department when Paul Hughes was hired — standards clearly not reviewed as the years went on — were hardly golden.

As revealed in court testimony, Paul Hughes was more than just a non-doctor who had his own office located between the spaces of Mayo physicians. Hughes came to Mayo as a convicted felon; his offenses included forgery and cocaine possession.

Not that Hughes was qualified to practice medicine in the first place; he doesn't even have a college degree.

If Hughes wasn't pretending to be a doctor, he was clearly allowed to see and treat patients in a way other non-doctors were not. (And in a way not allowed by Arizona law.) That's because Hughes was working for a longtime friend, then Mayo's director of ophthalmology, Dr. John Creasman.

Contacted for this story, Creasman says he trusted Hughes, regardless of his lack of official training.



Jamie Peachey



Jamie Peachey

"All technicians in our department become pretty good diagnosticians. You could take any one of them, and 95 times out of 100, they could tell the doctors what the patients had. They were right most of the time, so that was part of their responsibility," Creasman says.

Neither Creasman nor Hughes works for the Mayo Clinic now.

Creasman says that Hughes, still a close friend, was devastated by the lawsuit and would not comment for this story. Other attempts to reach Hughes were not successful.

Mayo employees testified that Creasman's trust of Hughes resulted in Hughes' seeing six to 13 ophthalmology patients per day at the Mayo Clinic, usually without any physician supervision.

Hughes worked in that capacity at the Mayo Clinic for 18 years.

No other lawsuits against Creasman or Hughes surfaced in a search of lawsuits at the Maricopa County Superior Court and at Arizona's U.S. District Court. Creasman has a spotless record with the Arizona Medical Board, too. (At least, to the extent that the medical board keeps such records. For more information about the Arizona Board of Medical Examiners and other state-regulated boards, see the earlier stories in this series, "The Doctor is Out," March 6, and "Dr. Loophole," April 10).

Even if Creasman and Hughes aren't contrite, the Mayo Clinic certainly is.

Speaking publicly about the case, apparently for the first time, the CEO of the Mayo Clinic admits that Phillips' care was not ideal. He says it was a fluke that won't happen again.

"I've been in this position six years, and I've been with Mayo 31 years. Personally and representing the organization, I feel bad and take responsibility when things go bad. We see about 100,000 patients per year. We know this wasn't the optimal," Dr. Victor Trastek says.

"Today we have a lot more policies and procedures in place," he adds. "I hope the point comes out that these are different times, and we're all trying to give the best healthcare to every patient."

It goes without saying that a non-doctor shouldn't be seeing patients alone, says Katherine Hatwell, a spokeswoman for the American Medical Association. Hatwell says she's heard of optometrists (who fit patients for glasses) working as ophthalmologists (who operate on eyes), but she's never before heard of a non-doctor diagnosing patients in an ophthalmology department.

"We think people should practice to their education and training and not beyond it," Hatwell says. "If you don't have a medical license, you shouldn't be able to practice medicine."

Paul Hughes was officially trained to do one thing — fit people for lenses that an eye doctor has prescribed. That's equal to the guy at Costco who works the glasses counter filling prescriptions, not writing them. (In fact, even those salespeople at Costco are licensed by the Arizona State Board of Dispensing Opticians. Hughes has never been a licensed optician in Arizona, according to Lori Scott, that board's executive director.)

Even if Hughes were a licensed optician in Arizona, he couldn't treat or diagnose patients. He could only put their glasses together or order their contacts.

So why was Hughes allowed to see Paul Phillips? The answer starts about 40 years earlier, when Paul Hughes was convicted of his first crime.

Hughes was born in 1939 in the rural farming town of Friona, Texas — a panhandle community with a population of about 800, according to *A History of Parmer County*. To this day, the average male in Friona doesn't achieve more than a high school education. So Hughes' journey to the Mayo Clinic, where he had an office and dressed in a suit and tie, was remarkable — in more ways than one.



Details:
Read the rest of the ["Prescription for Disaster" series](#).

Subject(s):
[Mayo Clinic](#), [Paul Hughes](#), [Paul Phillips](#), [healthcare](#), [Prescription for Disaster](#)

In his deposition in the Phillips case, Hughes explained he flunked in an attempt to earn a degree at Southwest Junior College in Texas. He added that his medical training wasn't official, per se.

"I guess the rest of the education wasn't done in a classroom setting. I suppose it was mostly on-the-job training," Hughes said.

What Hughes left out was that his on-the-job-training started as an inmate at a prison in Sugar Land, Texas, as he would later confess to Judge Anna Baca.

Asked under oath whether he'd ever been arrested or served time, Hughes initially forgot to mention his years in prison. He answered, "Yes, speeding and changing lanes without a proper signal, and just everyday things that . . . I seemed to be in a hurry everywhere I went, so I accumulated a few traffic tickets."

Attorney: "Have you ever been to jail or in jail?"

Hughes: "Yeah. I went to jail because I didn't pay the fines."

Attorney: "How many times?"

Hughes: "One."

Attorney: "How long did you stay?"

Hughes: "One day. Actually, not a full day."

Attorney: "Anything else?"

Hughes: "No."

During the trial, it was revealed that Hughes hadn't told the whole truth. He had actually been to jail multiple times and prison once, and had been convicted of two crimes: forgery and possession of cocaine. The forgery conviction landed him a

six-year prison sentence. Turns out that's when Hughes first learned about the human eye.

In the prison infirmary, Hughes met an ophthalmologist. He says he worked under him as a volunteer inmate for almost two years. When Hughes walked out of prison, he had one asset he didn't have before — a two-year prison education about the eye.

He applied for a job at Lee Optical in nearby Amarillo. "That's where I began my optical profession, in a store with something like five doctors and 60 people," Hughes said in his first deposition. Hughes was in charge of making and distributing the glasses that doctors prescribed.

Hughes then learned how to craft prosthetic eyes. He worked the Texas area as a "traveling eye salesman," selling (not installing) prosthetic eye implants to Vietnam vets who'd lost eyes in combat.

Hughes regularly solicited his prosthetic wares to eye doctors. During a cold-call sales pitch in Houston, he met an ophthalmologist by the name of Dr. John Creasman. The two became close friends.

Around 20 years later, the same Dr. Creasman got a call from an old medical school friend. Did he want to start an ophthalmology clinic in Scottsdale? Creasman agreed to assemble a staff at a for-profit business — the Mayo Clinic. The year was 1987.

The next year, Creasman hired Hughes to work as a technician at the brand-new Mayo Clinic's ophthalmology department in Scottsdale. Hughes apparently didn't even interview for the position.

"He just hired me and put me in charge," Hughes said in his deposition. For Hughes, it was a dream job. The Scottsdale region and the Mayo Clinic both enjoyed a decade of rapid growth. By 2001, Hughes was seeing between six and 13 patients per day, without any direct supervision from doctors, according to Mayo receptionist Cheri Chandler's deposition.

Attorney: "When you schedule [patients] with Hughes, are those patients seeing Dr. Creasman after?"

Chandler: "They are usually just scheduled with Paul."

That testimony aligned with Hughes' own words about his role as a near-doctor at Mayo. "The procedure is that the patient calls into the ophthalmology department, and they're triaged over the phone, best they can. And then they're scheduled with me . . . they're just scheduled on the schedule for either a doctor or myself."

Department head Dr. John Creasman also testified that Hughes was the only technician to see patients without a doctor present. He said none of Mayo's other six technicians saw patients alone, but Hughes did. According to Creasman, Hughes actually had a patient schedule.

It's that appointment schedule that Paul Phillips somehow landed on — even though his wife specifically requested an appointment with Dr. Thomas McPhee, an ophthalmologist.

On the night of March 11, 2001, Paul and LuWanna Phillips were watching TV. Phillips had never met Paul Hughes, but the two shared more than a common first name. They were both born in the late 1930s. And like Hughes, Phillips also grew up in a farming family.

Phillips spent most of his life picking oranges and building a wholesale produce business. He eventually sold his Phoenix-based Wholesale Produce and invested the profits into commercial property — mostly west Phoenix storage facilities built in the early '80s.

In 1979, Phillips had a 3,600-square-foot home built on the border of Glendale and Phoenix. When the Mayo Clinic opened in 1987, Phillips was one of their first customers. He and LuWanna knew the clinic's prestigious reputation. So they took their most serious concerns to Mayo — battles with cancer, other maladies, and, eventually, Paul's eyesight.

Phillips was first treated at Mayo's ophthalmology department in 1999. There he met Dr. Thomas McPhee, a reputable ophthalmologist who became his eye doctor. In 2000, Dr. McPhee left Mayo to practice on his own. Phillips says he would have followed McPhee to his private practice but didn't know McPhee had left.

As it turned out, Phillips' vision problems began a few months after McPhee left Mayo. Phillips recognized the symptoms as a possible detaching retina, only because his son once suffered the same serious problem. Phillips also knew his diabetes made him particularly susceptible.

LuWanna called the number for Dr. McPhee's office at the Mayo Clinic and booked the earliest available appointment, two days later. As LuWanna and Paul drove the 50 minutes from their home to Mayo, they both thought they'd be seeing Dr. McPhee.

They had been to enough appointments to know the routine at Mayo: fill out paperwork, get escorted by nurse to exam room, wait for doctor in a suit and tie, get diagnosis and/or treatment, and leave.

Phillips was soon called back by a nurse. The nurse asked Phillips to read the letters on an eye chart. Phillips couldn't read them with his left eye, he says. He answered some initial questions and then sat with LuWanna, waiting to see the doctor.

The next and last person to enter the exam room was Paul Hughes. (Mayo's records confirm that.) In his deposition, Hughes says he introduced himself simply as "Paul Hughes" and told Phillips that Dr. McPhee wasn't available.

According to the depositions of both Hughes and Phillips, here's what happened next:

Hughes tugged the sliding doctor's stool over to Phillips, took a seat and rolled within a few inches of Phillips. Then he examined both eyes. In addition to Phillips' medical records, Hughes held a form labeled Executive Glaucoma Screening.

Phillips and his wife assumed Hughes was a doctor because he replaced Dr. McPhee, dressed like McPhee, and performed an examination. Hughes then wrote a diagnosis of "K. sicca" and treatment of "tears." He explained that the problem was simply dry eyes. Records show no ophthalmologist or eye doctor saw Phillips at Mayo that day.

"Thank you, doctor," LuWanna Phillips told Hughes on the way out. Hughes, she testified, did not correct her.

In court, Mayo Clinic attorneys argued that Hughes only "assessed" Phillips. But medical records show Hughes wrote "K. sicca," the diagnosis for inflamed eyes, where the form indicates "Present Rx," the Latin abbreviation for prescription. With that, Hughes sent Phillips home.

Despite Phillips' complaints of severe blurriness and flashes of light, Hughes didn't dilate the problematic eye. Not that he should have known to; he isn't a doctor.

Hughes said he didn't dilate the eye because he thought Phillips was only in for a standard eye exam. But given the written diagnosis (in Hughes' handwriting), the documented complaint of symptoms, and the form that reads "Executive Glaucoma Screening," the jurors didn't buy Hughes' story. Even if Phillips had come for a standard eyeglasses exam, Hughes wasn't licensed to give one (and he documented the exam on a glaucoma screening form).

Two weeks after Phillips asked the Mayo Clinic to examine his eye, his retina detached completely. Doctors hired as expert witnesses for Phillips testified in court that Phillips' retina could have been fixed had it been diagnosed during his Mayo appointment.

The same doctors said the two weeks of additional scar tissue buildup made repair by surgery nearly impossible. That's why Phillips is blind in his left eye today.

Scottsdale attorney Mark Wesbrooks represented Phillips. He says his client's case against the Mayo Clinic is one of the most outrageous medical malpractice cases he's ever seen.

"This guy was a two-time felon. They actually created a separate schedule for him. Mayo tried to keep it hush-hush," Wesbrooks says. "It was a non-doctor who was allowed to practice medicine. He testified that he learned all about the eye while in Texas prison."

These days, it's common to go to the doctor and not see an actual doctor. That's not necessarily a problem. Many non-doctor practitioners are trained and licensed to diagnose patients. For example, physician assistants (P.A.s) and nurse practitioners (P.R.N.s) routinely see and treat patients. Both P.A.s and P.R.N.s receive years of medical training and residency before diagnosing patients in their area of specialty. They're also licensed and disciplined by state boards.

Even without any such training or certification, it's possible to legally work with patients, under Arizona law. There's a state law on the books that allows doctors to name anybody a "medical assistant." Medical assistants aren't allowed by law to see patients alone or to diagnose them.

Sometimes, however, they do. The state trusts physicians to be honest about the duties they give medical assistants, says Roger Downey, spokesman for the Arizona Medical Board.

For this reason, Downey says, medical care in this state is a swim-at-your-own-risk situation. "Patients may be offered a quicker appointment if they wish to see a physician assistant or a nurse practitioner at the doctor's office. Otherwise, patients should not assume the unfamiliar practitioner is a doctor. They should ask if they don't know. That's part of being an informed patient," Downey says.

"For elderly patients, most healthcare professionals recommend that an 'advocate' accompany them when they visit the doctor. An advocate in this sense is a relative or friend who can ask questions the patient doesn't think of asking. The advocate can also take note of the healthcare provider's instructions and information that the patient may not remember later."

That didn't help Paul Phillips.

Medical assistants sometimes go by the name "technician" in ophthalmology departments. The American Academy of Ophthalmology says technicians and assistants should never diagnose patients. Spokeswoman Christina Curas says ophthalmic assistants "are not licensed to practice medicine." Curas adds that it's a violation of the Academy's bylaws and ethics to let technicians diagnose patients alone.

Despite those known standards, Creasman assigned Hughes to triage. Creasman knew Hughes was a convicted felon with no formal medical training when he hired him. But in an interview for this story, Creasman still says Hughes is qualified to work at the Mayo Clinic.

"Paul was the only one that did triage when [doctor's] appointments weren't available. He was the only one that had the expertise," Creasman says. "It's absolutely okay for Hughes to be working triage because he has more experience. In our department we don't have P.A.s."

Dr. Creasman also says the Mayo receptionist told Phillips he'd only be seeing a technician. (Phillips says otherwise, so it's his word against Creasman's. There's no recording of the conversation.) Creasman says Phillips was the negligent one, by assuming a technician was a doctor.

"There's no way Mr. Phillips could have misunderstood who he was seeing, because the secretaries make that really clear. Maybe he hoped he could see a physician after triage," he says.

National advocates say patients should never assume they're seeing a doctor, and patients shouldn't be afraid to ask for practitioners' credentials. Technicians and medical assistants shouldn't ever diagnose patients.

"One of the best ways for patients to help ensure that they receive safe and appropriate care is to be informed, ask questions, and make sure that they understand what is going on," says Diane C. Pinakiewicz, president of the National Patient Safety Foundation. "Patients and their families need to be viewed by all as part of the healthcare team and, as such, should be encouraged to speak up and actively participate in the care process."

Exactly two years after Hughes diagnosed Phillips with dry eyes, Phillips filed a lawsuit against the Mayo Clinic. His March 13, 2003 complaint alleged that the clinic overlooked his detaching retina and that they did so because Paul Hughes — a non-doctor — diagnosed his problem.

The case dragged on for three years, at a cost of tens of thousands of dollars. It was shaping up to be a boring malpractice case, packed with medical terminology and detailed time lines, but ultimately, it came down to one man's word against another's.

Had Paul Phillips actually complained of retinal symptoms? Had Paul Hughes really held himself forth as a doctor?

During the trial, Paul Hughes retired from the Mayo Clinic. It was June 6, 2006 — exactly 18 years after he'd started. Days later, an anonymous tipster sent a mysterious fax to Phillips' attorneys.

The fax clearly tipped the scales. It came from a number inside Mayo and outlined the criminal past Hughes had hidden during his first depositions under oath. Judge Baca reviewed Hughes' sworn claims that he'd only been arrested for speeding.

"He clearly testified to the contrary, and it goes to his credibility. So he can be impeached with those," Baca ruled.

Baca called Hughes to the court, showed him the fax and told him to come clean. Hughes then said his first criminal conviction was for

forgery. He explained that his eye education actually started in prison. Hughes then said his second criminal conviction was "a conviction for possession of cocaine, about 20 years ago."

Hughes was testifying in July 2006, making "20 years ago" about 1986 — roughly when Mayo hired him to work triage and see patients alone as a "technician." Hughes then said that, among other things, he learned how to spell the word "ophthalmology" while in prison. "He gave me a real good training," Hughes said of the infirmary doctor.

To make matters worse, Hughes was caught in a second inconsistency. The medical record from Phillips' appointment was a one-page form. Hughes testified multiple times that he never modified or added to that record.

Phillips had requested and saved the same document back in 2001. When Mayo produced the same record — three years later — it had additional comments about Phillips' condition. Those comments were clearly in Hughes' handwriting and were obviously added some time after Phillips received his copy.

Between the additions to the medical record and the half-truth about his prison time, Hughes' credibility before the jury was obviously shot.

"It was never about the case beyond that point," Creasman says. "It was always about the personality of the individual."

Creasman thinks Hughes' criminal past should have been left there. "I practiced for 40 years. Never did I work with someone who had his expertise, his savvy, his honesty, his integrity. I've never worked with a technician that was as good as he was."

The jury disagreed.

March 19 is an obscure Catholic holiday, Saint Joseph's Day, honoring Joseph, the husband of Mary and foster father of Jesus. Paul "Joe" Phillips, his son Joe, and his grandson Joe consider it their own holiday. They celebrate together every year. And so on a Wednesday this past March, the three Josephs have gathered at Phillips' home to celebrate their holiday with cake, food and a family party in the backyard.

Sitting at the kitchen table, Phillips describes the struggles of life with one eye. Some days he trips on the stairs in his home of 29 years. When Phillips' grandson Joe makes for the backyard, Phillips says he'd like to play catch with him. He can't.

Now 72, Phillips is otherwise healthy. He walks without a cane or other assistance. His hair is still dark, his skin tanned. His left eye is cloudy. Sometimes he wears a patch over it, particularly for reading, but he's not wearing a patch today.

"It takes me forever to read. You lose the line, and then you have to start the paragraph over again," Phillips says.

LuWanna, Phillips' wife, recently passed away after a long battle with cancer. Phillips says he regrets spending the last years of LuWanna's life fighting a court case. He says there's no price you can put on an eye.

Outside the house, Phillips' RV sits unused. He's tried to drive it twice. But after a minor accident each time, he decided it was too dangerous to drive the motor home with his damaged depth perception.

"We thought we were going to see Dr. McPhee. He's a good doctor," Phillips says. "Now I can't play golf. Some days I trip over the stairs in my own house. It's tough because the eye wants to see, and it takes away from the good eye."

Third in an ongoing series. Read the rest of "[Prescription for Disaster](#)" [here](#).



The advertisement is a rectangular graphic divided into four quadrants. The top-left quadrant is black with the MIT Sloan Management logo, which consists of a stylized building facade above the text "MIT Sloan MANAGEMENT". The top-right quadrant is light gray with the text "Learn More. Click Here." in white. The bottom-left quadrant is maroon with the text "MIT Executive MBA" in white. The bottom-right quadrant is a photograph showing four people (three men and one woman) gathered around a table, looking at a laptop screen.

