

BEST NEW WASHERS, DRYERS & LAWNMOWERS

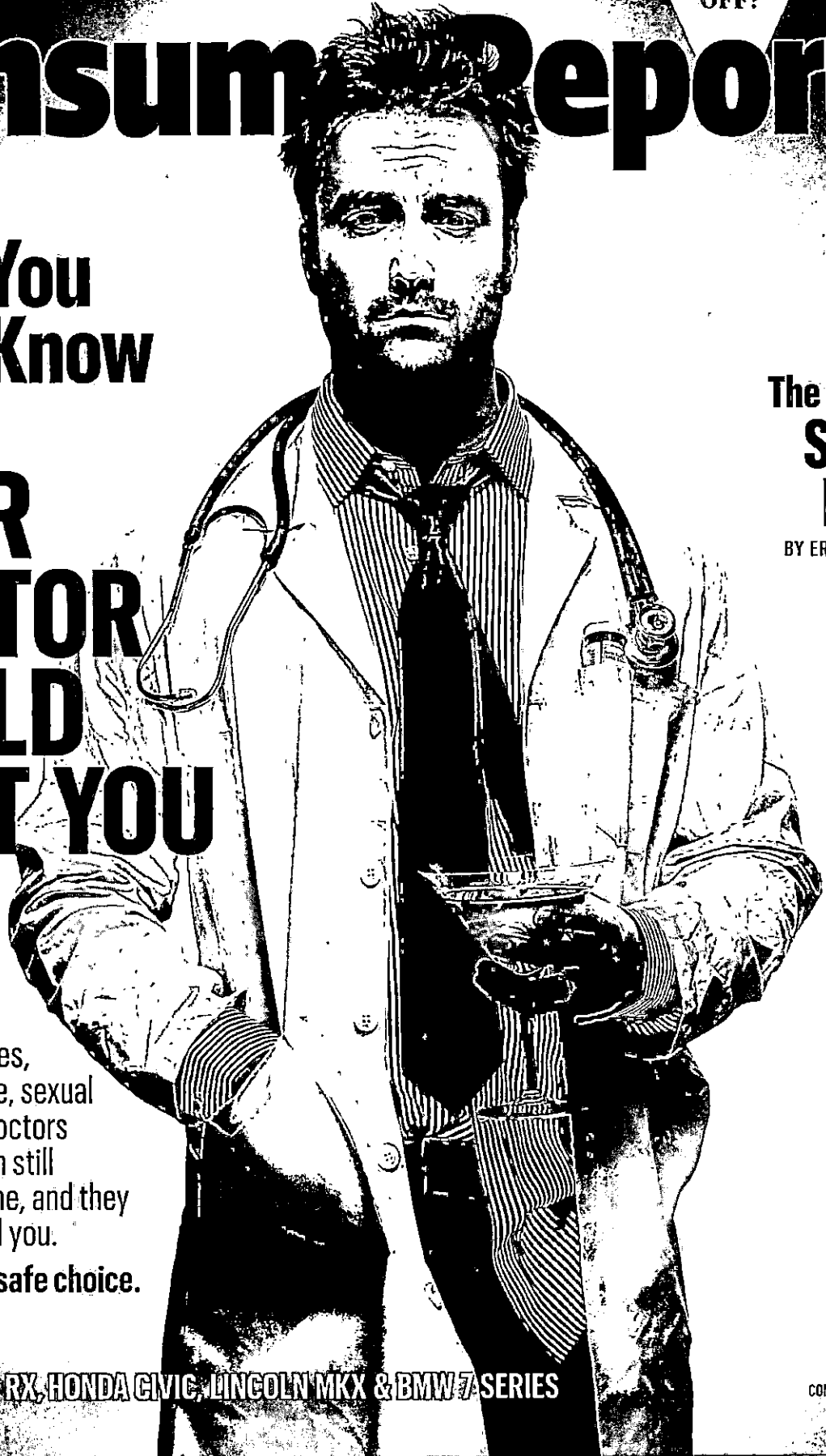
**INSURANCE
A RIP
OFF?**

**REVERSE
MORTGAGES
RISKS vs. REWARDS**

Consumers Reports®

What You Don't Know About YOUR DOCTOR COULD HURT YOU

PLUS
The Fight for SAFER FOOD
BY ERIC SCHLOSSER



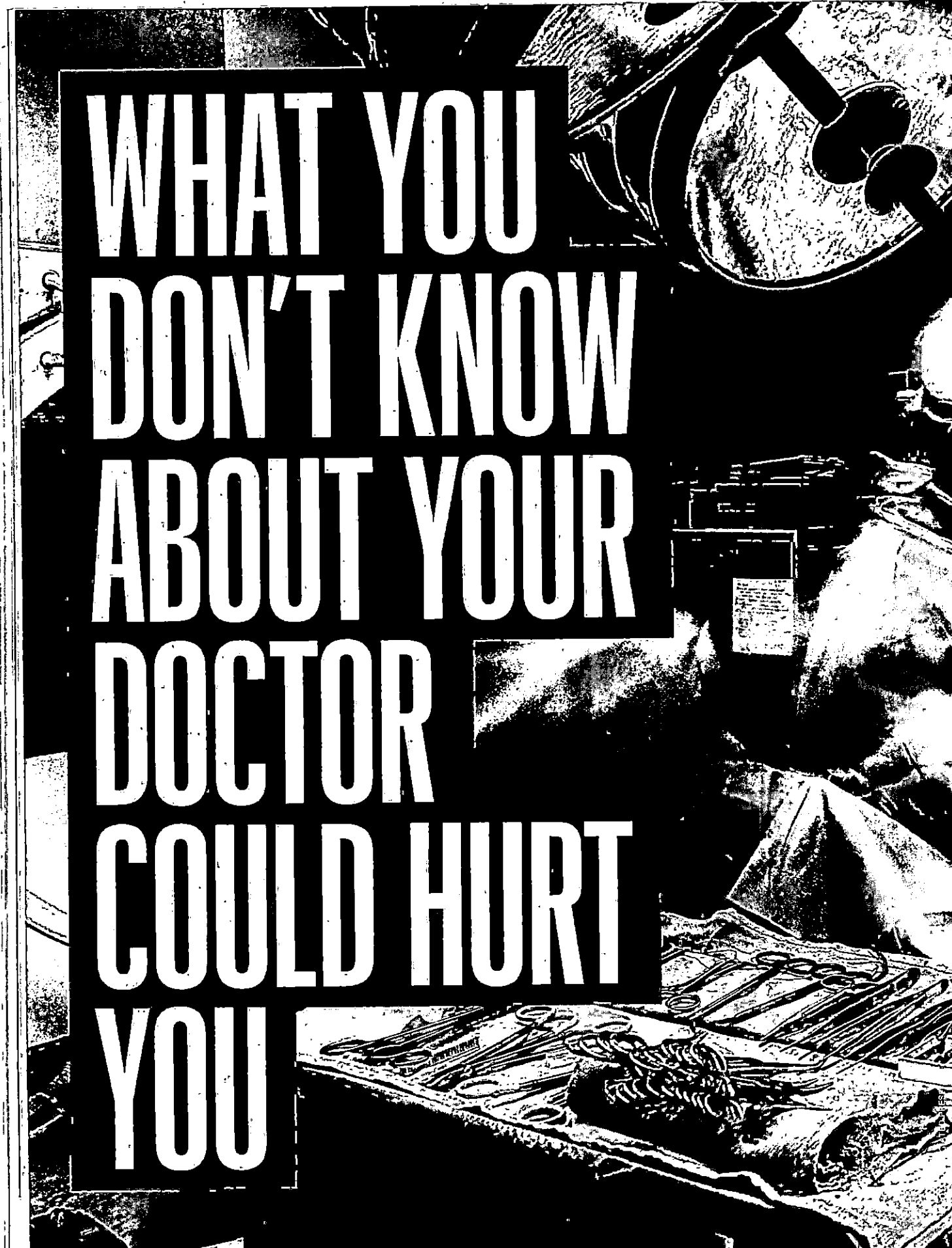
Botched surgeries, substance abuse, sexual misconduct—doctors on probation can still practice medicine, and they don't have to tell you.

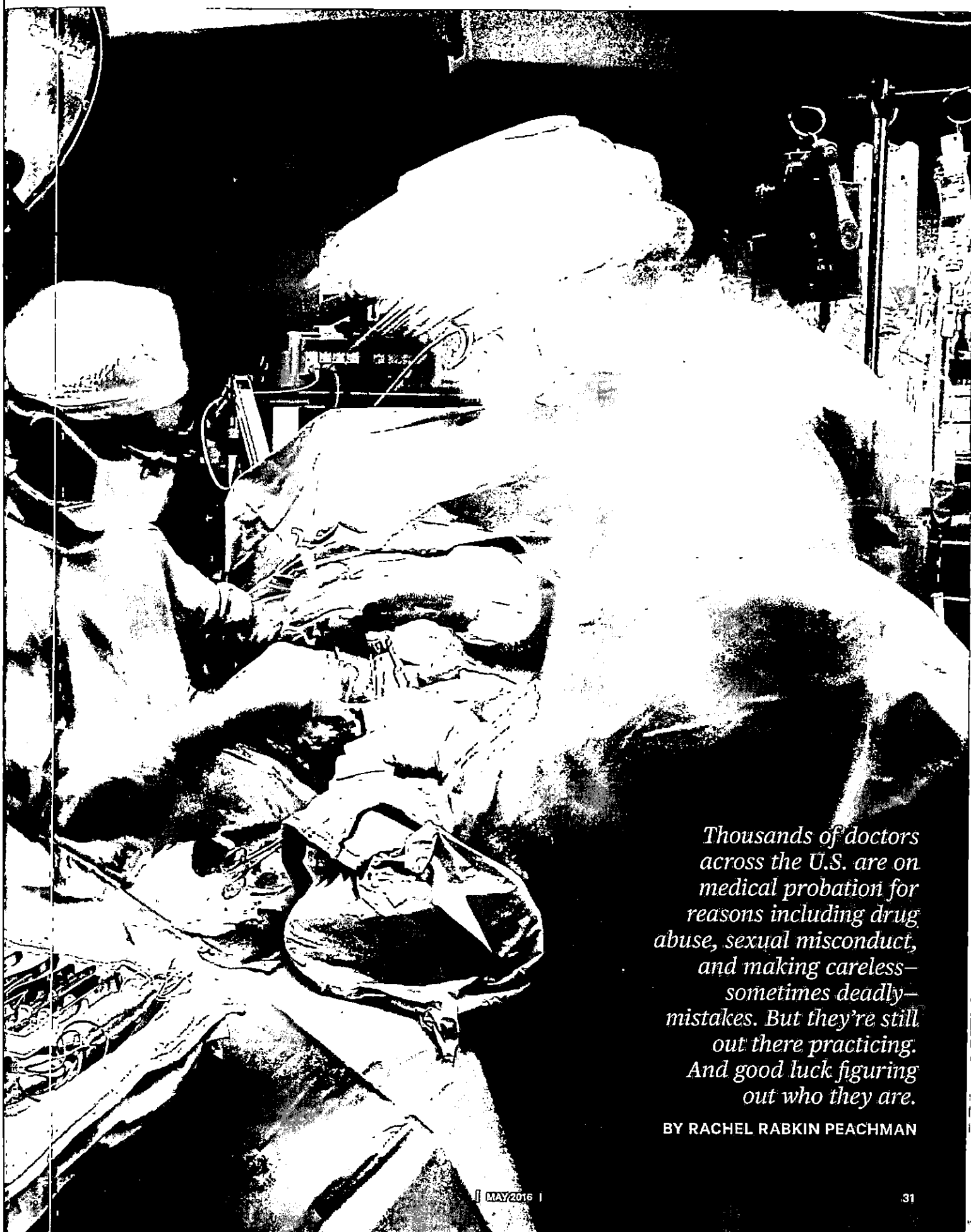
How to make a safe choice.

RATINGS LEXUS RX, HONDA CIVIC, LINCOLN MKX & BMW 7 SERIES

MAY 2015
CONSUMERREPORTS.ORG

**WHAT YOU
DON'T KNOW
ABOUT YOUR
DOCTOR
COULD HURT
YOU**





Thousands of doctors across the U.S. are on medical probation for reasons including drug abuse, sexual misconduct, and making careless—sometimes deadly—mistakes. But they're still out there practicing. And good luck figuring out who they are.

BY RACHEL RABKIN PEACHMAN

THE STATE MEDICAL BOARD'S report on Leonard Kurian, an obstetrician-gynecologist in Southern California, tells in stark clinical detail what it says happened to several patients in his care. And it's not easy to read.

The report describes the time Kurian surgically removed the wrong ovary from a 37-year-old woman, a mistake the patient only learned about weeks later when, still in pain, she went for more tests. The good ovary was missing, and the cystic one was still inside her.

Kurian's record gets worse from there. The report makes the case of how his errors of medical knowledge, judgment, protocol, and attentiveness contributed to the deaths of two patients. Both were young mothers who had recently given birth to healthy babies.

You might think a doctor with that type of record would be barred from practicing medicine, but that didn't happen in this case.

Thousands of working physicians are currently being disciplined by their respective state medical boards for findings that patients may want to know about—things such as sexual misconduct, their own addiction problems, overprescribing controlled substances, and all sorts of other documented examples of unprofessional or dangerous doctoring.

Though the odds are quite good that your doctor isn't one of them, it's important to know for sure.

Here's the problem: Even in a time when vast amounts of information sit at the end of our fingertips, it's still too difficult for consumers to find a doctor's disciplinary record and its causes.

Through our Safe Patient Project, Consumer Reports is working to change the way the system works around the country. "The onus shouldn't be on patients to investigate their physicians," says Lisa McGiffert, who directs the effort. "Doctors on probation should be required to tell their patients of their status."

Last fall in California, the state with the most doctors, Consumer Reports petitioned the medical board to do just that. The board rejected the idea, saying it would put too much of a burden on doctors and damage the doctor-patient relationship.

We also filed a public records request and were able to obtain California's entire database of doctors on probation as of late September, information that is now searchable on our Safe Patient Project website.

Consumer Reports' deep dive into California's records brings this important issue into sharp focus. Read some of the probationary settlements, all signed by



Impaired at Work

Yessenia Candelaria
PEDIATRICIAN

The medical board cited her for 13 causes of discipline, saying she was “under the influence of drugs to such an extent as to impair her ability to practice medicine with safety to her patients and the public.”

the doctors and their lawyers, and it becomes clear why this matters:

There’s the orthopedic surgeon whose inattention to a man’s fractured thigh-bone resulted in a leg amputation. And the family practice physician, who, along with her cardiologist husband, ordered more than 4 million doses of hydrocodone in 15 months but when pressed by investigators could account for only a small fraction of it. You’ll find examples of doctors practicing under the influence—a psychiatrist drinking midshift and the urologist arrested for DUI while on call, his blood alcohol reading almost twice the legal limit.

And what about the highly regarded surgeon with a seizure disorder? Is his condition something patients need to know about?

Some of the most egregious cases raise the question: What does it take for a doctor to have his or her license suspended or revoked? And if those sorts of transgressions are regularly tolerated with only modest and discreet sanctions, the system of disciplining physicians needs to be made more transparent, reliable, and accessible than it is today.

State medical boards are really hybrid regulatory agencies, combining government oversight with professional peer review. Their main purpose is to license and discipline physicians and to investigate complaints, whether they are filed directly by patients or come from other

medical personnel, hospitals, the courts, or law enforcement. It’s important work often performed by volunteers—doctors and also some outside the profession.

“One of the core defining points of what a profession is, is that it takes responsibility for regulating itself,” says Jim E. Sabin, M.D., director of the ethics program at Harvard Pilgrim Health Care, an insurance company in Boston, and a clinical professor of psychiatry and population medicine at Harvard Medical School.

Board findings and sanctions should be public, Sabin says. “Can that be uncomfortable for the medical profession? Yes, it can. That’s unfortunate—the discomfort—but the responsibility of an agency like a board of registration is to the public.”

In the case of Kurian, the California

board placed him on probation from 2015 until 2022, citing 40 instances of his negligence and incompetence, yet allowed him to keep practicing on the condition that he completes courses in clinical training, ethics, and medical record-keeping. And he doesn’t have to tell new or existing patients he’s on probation or what’s in the board’s 25-page investigative report that details his mistakes. Kurian did not respond to messages left with his office staff. Two of his lawyers declined to comment.

Hidden Information

How can consumers figure out whether their doctor has been cited for substandard medical care, bad behavior, or other problems—and why?

The availability of that crucial information varies from state to state, and it’s too hard to find.

The National Practitioner Data Bank (NPDB), part of the Department of Health and Human Services, collects data on medical malpractice payouts and certain levels of disciplinary actions in the U.S. for physicians and other licensed healthcare practitioners. About 1.25 million doctors have practiced medicine in this country since 1990, when the database opened. Over that time, roughly 192,000 doctors, or about 15 percent, have had at least one malpractice payout and 50,000 have had an “unfavorable adverse action” against them by their state medical board or other agencies,

82%

of Americans favor the idea of doctors having to tell patients they are on probation, and why.

66%

of Americans lean toward keeping doctors from seeing patients until their probationary period ends.

Source: 2016 Consumer Reports survey of 1,203 U.S. adults.

according to a Consumer Reports analysis of the database. Actions include things such as a reprimand, probation, and license suspension or revocation.

The trouble is, you can't go to that central database and simply type in a name and examine your internist or surgeon's record. Only hospitals, doctors, law enforcement, insurance companies, and a few other select groups are granted access.

The American Medical Association has long lobbied against public access to the NPDB, maintaining that its information is unreliable and unfair to physicians. The doctors' group answered some of Consumer Reports' questions about those concerns but not others, and would not agree to an on-the-record interview.

AMA president Steven J. Stack, M.D., in a statement to Consumer Reports, called the NPDB "inherently flawed," citing a 15-year-old Government Accountability Office report as proof. Opening it up, his statement said, "would not help patients."

The National Physicians Alliance, an organization of doctors committed to social justice and healthcare reform, believes the disciplinary reporting system should be less secretive and more useful to consumers. "A good place for that information might be at the point of decision when patients are choosing their doctor," says William Jordan, M.D., M.P.H., past president of the NPA. He says he'd like to see disciplinary information of the sort contained in the NPDB integrated with healthcare provider lists from insurance companies and employers. He says one concern is how to simplify this information for consumers while still being fair to the doctors.

Robert E. Oshel agrees with that kind of transparency. He was the NPDB's associate director for research and disputes for almost 15 years until he retired in 2008, and has since become a patient-safety advocate, working with Consumer Reports and other organizations, without compensation, to make information on sanctioned doctors more accessible.

"You can find out more about the safety record of your toaster and whether or

Best Practices

Getting an appointment when you need it is key. That's why the office of Dr. Joseph Garland, in Springboro, Ohio, opens at 7 a.m. five days a week and often stays open till 8 p.m.

Recognizing that one doctor can't do it all, Dr. Nayana Vyas, of Kissimmee, Fla., relies on a carefully chosen team of support staff and specialists.



not it's going to catch on fire than you can find about your physicians," he says.

The AMA, meanwhile, suggests that consumers seeking that information go to one of the 50-plus state medical board websites.

But that's not an elegant solution. Each state has its own peculiar way of providing this information, explained Eric Fish, legal counsel for the Federation of State Medical Boards. "This information is either couched in the minutes of the board meetings, or some states do have a separate sort of a rolling tally of action."

Consumer Reports analyzed the state medical board websites for their completeness and ease of use. We rated them best to worst (see the box on page 36) and found that even when consumers arrive at the right website, information on a particular doctor was still difficult to locate and very often, where malpractice cases were concerned, incomplete. In Mississippi, which fared the worst in

our Ratings, the information is sparse and vague. To get details about a physician, consumers are directed to a page that says they must pay \$25 per request.

In California and New York—which have two of the better-rated board websites—researching a doctor's disciplinary history can still require searching out and downloading lengthy documents, in the form of PDFs, then sorting through pages of legalese to get at the crux of the findings.

Online Confusion

People looking for a primary care doctor or specialist often ask friends, relatives, or other doctors to refer them to someone they trust. And more and more, when consumers want to check out a doctor's record or bedside manner, they go to Internet sites such as Healthgrades or Yelp that offer patient reviews and ratings.

(continued on page 36)

WHAT MAKES A GREAT DOCTOR?

MANY OF US yearn for a wise, empathetic doctor who knows us, and our loved ones, inside and out. Sadly, it's difficult to find a doctor like that even on television these days. And that's a problem: Evidence suggests that we all need good primary care doctors. Patients who see such physicians have reported better overall health and are less likely to die of cancer, heart disease, or stroke; go to the emergency room; or be admitted to the hospital.

Even better, though, is a primary care physician who belongs to a good medical practice. How well a primary care doctor cares for you can depend, in part, on his or her team and the culture they've created.

What does a good practice look like? The Peterson Center on Healthcare and researchers at Stanford University's Clinical Excellence Research Center worked together to answer that question.

First, they collected data from 15,000 U.S. primary care practices. To winnow the list down to the most successful ones, they used 41 accepted quality-of-care measures along with data on healthcare spending. They then sent a team of investigators to a sample of the highest-performing practices to see what set them apart. The most successful ones shared these characteristics:

Extended Hours

SureCare Medical Center in Springboro, Ohio, offers extended hours starting at 7 a.m. during the week and on Saturdays at 8 a.m. Doctors take turns working the late shift and on Saturdays. "Patients know if they call at 7 in the morning that they are going to get seen that day," says Joseph Garland, D.O. (see facing page), one of the medical center's six physicians. Knowing that the office opens early helps patients avoid trips to the emergency room, Garland says. "I think patients have to feel that the availability is there," Garland says. "It's part of the culture here."

Careful About Overtreating

At Northwest Family Physicians in Crystal, Minn., a six-physician office, the emphasis is on spending time with patients and understanding the case, not necessarily rushing to tests. "If a patient has back pain but there's no sign that they need surgery, there's no point in sending them for an MRI before trying medication and physical therapy," explains James Welters, M.D.

Open to Complaints

Patient gripes are "as valuable as compliments," according to the Peterson Center-Stanford study. "At most places, complaints go to a manager or a complaint department and die," Welters says. At Northwest Family Physicians, a team of nurses, managers, lab technicians, physicians, and care coordinators meets every few weeks to review all patient comments and complaints.

One-Stop Shopping

Top practices perform some relatively minor procedures that other practices often refer out, such as skin biopsies and injections for joint pain. They also try to arrange for specialists to come into the office, so they can perform certain exams, such as exercise stress tests, in house.

Like-Minded Specialists, and Only as Needed

When they send patients to specialists, they think hard about who they're referring them to: "You want specialists who share your attitude and philosophy," says Nayana Vyas, M.D. (see facing page), of Family Physicians Group in

Kissimmee, Fla., so patients don't end up with too much or too little care. Her group also confers with specialists to ensure that patients can avoid problems such as duplicate tests or prescriptions.

Two-Way Communication

The best practices actively follow up—through phone calls, repeat visits, or emails—to make sure, for example, that patients take their medications as directed and that they are seen soon after they are admitted to the hospital, Garland says. And when patients get care from other providers, physicians follow up with the specialists to get the records, he says.

A Team Approach

Physicians at top practices embrace teams that include an array of healthcare providers, including nurses, nurse practitioners, physician assistants, nutrition counselors, and social workers. "We have a team approach," Vyas says. It's similar at Northwest Family Physicians. "One of our mantras is 'the doctor can't do it all,'" Welters says. In his office, everyone who sees the patient, from the receptionist on up,

asks questions about what patients need. "Someone might come for a sprained ankle, but when they get here we check to see if there is anything else they might need, from lab tests to a flu shot."

A Fair Workplace

Physicians in high-performing groups were not compensated primarily on how many patients they see—and thus how much money they make for the practice. At Northwest Family Physicians, "we have a quality bonus program," Welters says. If the teams reach certain targets in quality and patient satisfaction, everyone gets a bonus. "That makes it clear that quality of care is everyone's responsibility," he says.

Spend Wisely

High-scoring doctor groups tend to avoid expensive, high-tech devices—such as the newest bone density scanner—in part because that can push doctors to order unnecessary tests to recoup the costs of the fancy equipment. Instead, responsible practices focus on the kind of technology that encourages efficiency, such as electronic medical records. —Elizabeth DeVita-Raeburn

That's what Cynthia Mora did in 2010, when she learned she was pregnant with her third child after moving to Lancaster, Calif.

Her husband, Ismael Aguirre, says that his wife did a typical search online for doctors in the area and landed on the aforementioned OB-GYN, Leonard Kurian. Then, he says, she researched his name "to see what popped up," and was persuaded by the mostly positive reviews she found.

Aguirre is certain his wife did not know that her new obstetrician had already been reprimanded by the state medical board in 2006 for "negligent" and "incompetent" care and "dishonest" behavior.

Patients casually researching Kurian on widely used doctor rating sites today are still unlikely to find clear, accurate, or up-to-date information about his record. On Healthgrades and Yelp, the first impression one gets of Kurian is positive.

When this report went to press, he had a rating of four out of five stars on Yelp, based on 17 patient reviews, many of them glowing, some not: "He is the best Dr I have ever had," posted Kayla M. "I'll never go anywhere else!" wrote Leah C. "Although some women swear Dr. Kurian is the best, I beg to differ. He totally dropped the ball with me," Sharon C says.

Yelp is built around user reviews and does not check a doctor's record with state medical boards or other sources, says Morgan Remmers, senior manager of business outreach at the company.

On Healthgrades, Kurian had 3.4 out of 5 stars based on 38 user responses. That site provides information on whether physicians have had medical malpractice claims or board actions taken against them, but finding any details requires more savvy and diligence.

For example, though Kurian's record on Healthgrades did mention a sanction against him, it was for "failure to keep adequate medical records," obscuring the more serious medical board findings of negligence and incompetence.

Under Healthgrade's category of Board Actions, it said, "No board actions found for the years that Healthgrades collects data."

BEST & WORST

of state medical boards

If you want to see whether your doctor has been disciplined for bad behavior or shoddy medical care, and why, you will need to check with your state medical board. Consumer Reports and the Informed Patient Institute, a nonprofit patient safety group, analyzed the websites of boards in all 50 states to see how complete the information was and how easy they were to use, and rated them on a 1-to-100 scale. (Martin Schneider, chairman of the board of the Informed Patient Institute, is also on Consumer Reports' board of directors.)

BEST FIVE	Overall Score
CALIFORNIA	84
NEW YORK	79
MASSACHUSETTS	78
ILLINOIS	76
NORTH CAROLINA	76

WORST FIVE	Overall Score
WYOMING	27
MONTANA	26
HAWAII	22
INDIANA	20
MISSISSIPPI	6



LEARN

For complete Ratings of all of the boards, plus links to their websites, go to ConsumerReports.org/safepatientproject

And it's far from obvious that the medical board's full and damning report on Kurian is there but mislabeled—linked to the somewhat innocuous "medical records" finding.

Healthgrades does not show any malpractice lawsuits against Kurian even though the Los Angeles County courthouse has a record of 18 in which he was named. A Healthgrades representative says the site draws data from more than 100 external sources and relies on them to be current and accurate.

One suit against Kurian and others was brought by Ismael Aguirre over the death of his wife, Cynthia Mora, and was settled out of court in 2013 for \$950,000. (California malpractice law caps non-economic damages—such as the loss of companionship—at \$250,000.)

What Went Wrong

In its report, the Medical Board of California was quite specific as to what it says went wrong with the care Cynthia Mora received.

In the final weeks of her pregnancy, she went to the emergency room with excruciating pain in her side, and while there, her labor began. But that pain did not subside with the birth of her third child, a healthy daughter.

The medical board investigation found that Kurian missed signs of a ruptured appendix and for days stuck with an alternative diagnosis that didn't match her symptoms. It said he also failed to run the right tests and "adequately evaluate [her] status" before discharging her.

In the board findings, it said Kurian "later admitted that he never read the nurses' notes documenting [her] three-day history of pain and change in vital signs" and that "doing so would not be part of his custom and practice."

His unresponsiveness was also at issue. The report says that he "remained in his office during the day" and it took almost 10 hours and seven phone calls from nurses and worried family before Kurian went to see her after she was readmitted.

(continued on page 38)

DOCTORS ALLOWED TO KEEP PRACTICING

Examples from the Medical Board of California

THERE ARE ABOUT 100,000 DOCTORS practicing in California; 446 of them were on probation as of Sept. 29, 2015, which means they can continue practicing so long as they follow certain conditions. Those can include taking a course in ethics, not treating female patients without a chaperone, and undergoing drug testing. Through a public records request, we obtained the medical board's database of probation settlements. These examples illustrate the range and seriousness of the findings. Nationally, to check on your doctor, start at docinfo.org; if the doctor has been disciplined, you will be linked to your state's medical board website. To search our California database, go to ConsumersUnion.org/safepatientproject.

ORTHOPEDIC SURGEON

FINDINGS While on probation for substance abuse and forging prescriptions for "highly addictive" drugs and fictitious patients, was "caught using a prosthetic penis and bladder" to circumvent urine testing as part of mandated drug testing.

SANCTION Four years' probation, starting Nov. 14, 2013, with additional year added July 23, 2015.

PEDIATRICIAN

FINDINGS Sexual misconduct. Respondent "is a pediatrician with a sexual foot fetish" who coerced mothers of his patients to allow him to examine their feet while in the office. During one exam, he took the patient's mother's "right foot and placed it on his inner thigh," then "began rotating the foot so that [her] toes rubbed against his penis." He later said that he had "engaged in similar conduct with 30 or more female

parents/patients" over a 12-month period.

SANCTION Eight years' probation total, starting Sept. 30, 2009 (including a one-year extension for failure to have a chaperone when seeing patients, as ordered).

PRIMARY CARE PHYSICIAN

FINDINGS With her cardiologist husband, ordered more than 4 million tablets of prescription painkillers containing hydrocodone, a controlled substance, over a 15-month period, but investigators from the Drug Enforcement Agency "could account for only 167,000 tablets."

SANCTION Seven years' probation, starting Aug. 28, 2015.

CARDIOLOGIST

FINDINGS "Gross negligence" in treating four people with heart disease, including two who died. Cited for failing to recognize a perforated artery.

he caused while inserting a stent and exposing a patient to "extremely excessive radiation," failing to order appropriate follow-up tests, dictating a "fictitious history and physical" without seeing a patient, and dictating medical records weeks after patients died.

SANCTION Five years' probation, starting July 31, 2014.

INTERNIST

FINDINGS When applying to renew his license in California, it was discovered that in 2012 the Maine board of licensure had previously "limited his narcotic prescription privileges" and that in 2013 he had failed to disclose that information to the Virginia medical board when he applied to practice medicine in that state. Also, he had inaccurately responded "no" when asked if he had a history of being treated for substance abuse.

SANCTION Five years'

GASTROENTEROLOGIST

FINDINGS Unnecessary endoscopies on multiple patients and his substandard treatment of three nursing-home patients. He was also found negligent in his failure to "manage chronic conditions of diabetes, schizophrenia, and seizure disorder" and his failure to "obtain informed consent" from the patients or their guardians.

SANCTION Four years' probation starting July 28, 2008; one-year extension on Jan. 20, 2010; five years' additional probation, starting Oct. 24, 2013.

probation, starting Sept. 26, 2014.

PEDIATRICIAN

FINDINGS False advertising, fraudulent billing, and improper prescribing of weight-loss drugs and other medications, including to himself.

SANCTION License suspended for 90 days, then 10 years' probation, starting Aug. 12, 2015.

ORTHOPEDIST

FINDINGS "Gross negligence" in the care of two patients, including one whose fractured thighbone was incorrectly treated for two months, allowing the "sharp end of the bone" to "erode through the skin." Patient's leg required amputation.

SANCTION Three years' probation, starting Oct. 16, 2015.

UROLOGIST

FINDINGS "Excessive use of alcohol," following DUI arrest for a blood alcohol level more than twice the legal limit on a weekend when he was on call for a local hospital. Five months later, he admitted to drinking again while on call.

SANCTION Four years' probation starting Dec. 5, 2013.

NEUROLOGIST

FINDINGS Allowing unlicensed medical assistants to routinely give patients narcotic painkillers through infusion pumps; in one case, a woman was sent home after receiving more than four times the proper dose. She was found dead the next morning.

SANCTION Five years' probation starting Sept. 3, 2014.

FAMILY PRACTICE DOCTOR

FINDINGS Excessive prescribing of controlled substances to patients, including one who received 1,080 oxycodone tablets at one time, another who filled prescriptions for more than 41,000 methadone tablets over a 28-month period, and another who received "approximately 700 oxycodone and 180 Norco [pills] approximately every 3 weeks." Also sold drugs for cash without labels, patient names, or adequate records; and provided free drugs to patients in exchange for sex.

SANCTION 10 years' probation, starting Feb. 20, 2015.

It was four days after giving birth, and she was suffering from high fever and debilitating pain. The report says she died two days later with complications that included infection, kidney failure, and cardiac arrest stemming from the ruptured appendix he failed to diagnose.

Kurian did not admit to all of the board's allegations but chose not to fight any of them.

When asked why Kurian was allowed to continue practicing, Cassandra Hockenson, public affairs manager for the California medical board, declined to discuss the details of any particular case. More generally, the board considers probation "if we believe a physician can continue to practice with conditions and monitoring," she says, adding, "It all boils down to the safety of the consumer."

Raising Red Flags

When the state medical board puts doctors on probation, it can have little effect on their practice. In fact, the board's

'One of the core defining points of what a profession is, is that it takes responsibility for regulating itself.'

—JIM E. SABIN, M.D.,
PROFESSOR,
HARVARD MEDICAL SCHOOL

imposed terms and penalties sometimes seem crafted specifically to keep a doctor working.

Luis Felix Tincopa-Minani, a family practice doctor in Whittier, Calif., is on probation for repeatedly sexually assaulting a "vulnerable" female patient with "many psychological problems." According to the medical board report, the young woman kept returning to his office in spite of his groping her because she needed her attention deficit hyperactivity disorder and seizure medications refilled. "She was in the exam room alone with him and he locked the door." After he was caught, the report says, Tincopa-Minani first denied it, then said it was consensual yet admitted that it wasn't the first time he'd had sexual contact with a patient.

The state board's solution to that problem, on top of other more pro forma probationary terms, was to require Tincopa-Minani to undergo a psychiatric evaluation and have a chaperone with him when he examines female patients.

(continued on page 40)

WHEN AND HOW TO FILE A COMPLAINT

After emergency room doctor David Newman allegedly drugged and sexually abused a patient at New York City's Mount Sinai Hospital in January, the woman called police and went to another hospital for medical care. That reportedly allowed physicians to collect a sample of semen, which if found to contain DNA matching Newman's could strengthen the criminal case against him and improve the odds that he might be stripped of his medical license. Newman has been arrested, and his lawyer says Newman denies the charges. Mount Sinai had no comment.

Many people don't know what to do when they've been a victim of dangerous or negligent care. This patient acted swiftly to secure evidence and report the incident. Here's what you should do if you think you've been harmed by a doctor:

Recognize a cause for action. This obviously includes any kind of physical or sexual abuse you suffer at the hands of your doctor, or if you suspect that a doctor is practicing medicine under the influence of alcohol or drugs.

Then there's the problem of poor medical care, which can be less clear-cut. The kind of medical harm that warrants a complaint includes when a doctor overprescribes a drug or prescribes the wrong one, is dishonest, or fails to give you the results of a worrisome cancer biopsy or diagnosis of a serious medical problem in a timely way.

Consider contacting the police and a lawyer. To file criminal charges—for, say, sexual or physical abuse—you should first contact the police. For a malpractice lawsuit, you'll probably need to convince a lawyer that you have a strong case with the potential of a payout.

Contact your state board. That's the agency that licenses and disciplines physicians. (To find your state's board, go to ConsumersUnion.org/safepatientproject.) Some states make it easy to file a complaint against physicians online. If you have trouble

navigating the website, call the board for help.

Gather your records. It's a good idea to send a hard copy of your complaint, along with copies of your medical records and other supporting documents, to the board. Once the board receives your complaint it will assign it to an analyst, who may request additional documents or information. Then be patient: The state board must first determine whether your complaint warrants further investigation. And it can take several months or even longer before the board makes a final ruling.

FOLLOW THE MALPRACTICE MONEY

A VERY SMALL PERCENTAGE of doctors have accounted for most of the country's medical malpractice payouts over the last quarter century. That's according to an analysis done for Consumer Reports of the National Practitioner Data Bank, a federal repository that has collected disciplinary actions and medical malpractice payouts since 1990.

Robert E. Oshel, who worked as the associate director for research and disputes at the NPDB for almost 15 years until he retired in 2008, ran the numbers and figured out that less than 2 percent of the nation's doctors have been responsible for half of the total payouts since the government began collecting malpractice information.

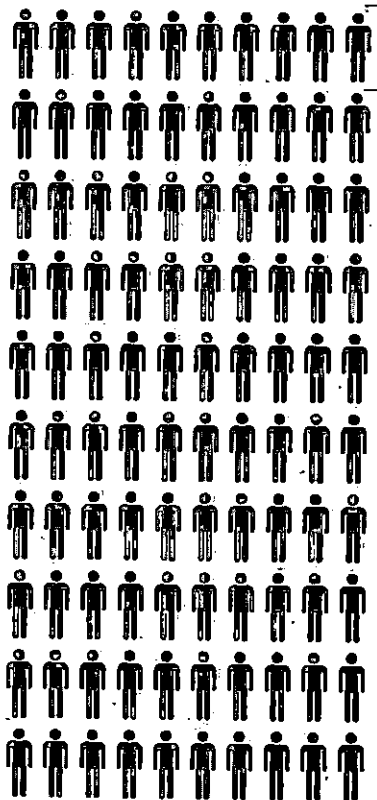
Malpractice is considered an inexact indication of substandard care, for many reasons. Cases often settle before trial and without documented findings of wrongdoing. And even the best doctors and surgeons can sometimes face lawsuits.

"Still," Oshel says, "when doctors have multiple large settlements against them, it can be a warning sign ... suggesting that if licensing boards and hospital peer reviewers were willing to either get these doctors to stop practicing or get retraining, we'd all be better off."

DOCTORS

1,247,500

have practiced in the U.S. since 1990.

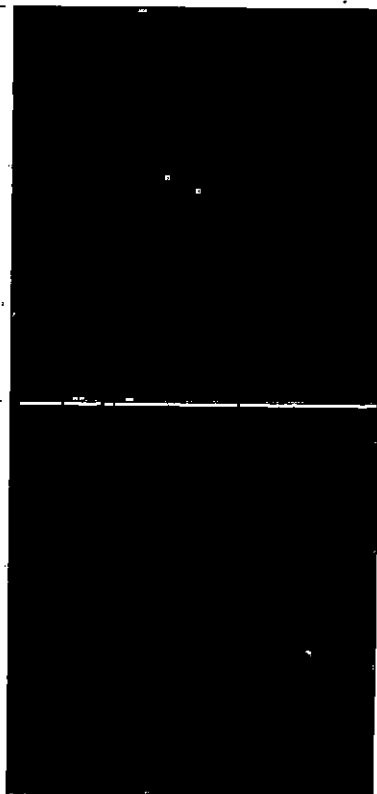


MALPRACTICE PAYOUTS

\$85,064,857,850

is the total amount paid for all malpractice cases since 1990.

Less than
2%
of doctors are
responsible for
50%
of malpractice
payouts
since 1990.



And he doesn't have to tell his patients why that person is present or that he is on probation for sexual misconduct.

When reached for comment, Tincopaminan told us he was too busy working to talk about his probationary status.

Even in some of the most egregious cases of physicians placed on probation, the punishments meted out by the California state medical board—and sometimes even the criminal justice system—amount to a slap on the wrist. Take the case of pediatrician Yessennia Candelaria and her husband, Efrain Gonzalez, an OB-GYN.

He worked as a cosmetic surgeon, the board's report said, and Candelaria joined him as his anesthesiologist, sometimes providing deep sedation. There were many problems with that arrangement, beginning with the fact that she is neither trained nor certified to offer that level of anesthesia.

On the day in March 2013 when law enforcement agents raided their clinics, the medical board report says, she was

**You can find
out more about the
safety record of
your toaster
and whether or not
it's going to catch
on fire than you can
find about
your physicians.'**

—ROBERT OSHEL,
FORMER ASSOCIATE DIRECTOR
FOR RESEARCH AND DISPUTES
AT THE NATIONAL
PRACTITIONER DATA BANK

visibly impaired, with "extreme body shakes and tremors" on a day that surgeries were scheduled. A search found loose pills in her pocket, syringes in her car, and injectable vials of fentanyl and Demerol in her home bathroom.

Husband and wife were arrested, and Gonzalez surrendered his license to practice medicine. The medical board cited him for more than 100 examples of his negligent and incompetent care—including botched surgeries and allowing staff with no medical training to insert intravenous lines. The board cited Candelaria for 13 causes of discipline, writing that she was "under the influence of drugs to such an extent as to impair her ability to practice medicine with safety to her patients and the public."

Gonzalez was sentenced to 90 days in jail and one year of probation for three felonies, including tax evasion and conspiracy to practice medicine without a license, according to a local news account.

He was also ordered to pay \$100,000 to compensate harmed former patients,

MAKING IT EASIER TO LEARN THE TRUTH

Michele Monserratt-Ramos decided to volunteer with Consumer Reports' Safe Patient Project after her fiancé, Lloyd Monserratt, died at age 36 from complications following gall-bladder removal and bariatric surgery. Ramos later learned that Lloyd's surgeon had a history of arrests, including for possession of crack cocaine.

She also learned that California's medical board at the time had a program for doctors with substance-abuse problems, which allowed them to keep their addictions private, provided they enrolled in a recovery program.

Angered that doctors with that kind of history could remain hidden and still practice, Ramos worked with others in the state to change that policy, something that finally happened after years of lobbying. Doctors with a history of substance abuse can now be found on the board's website, along with other actions.

"It's progress."

Monserratt-Ramos says, "But it's still too hard for patients to find out whether their doctor is really safe." She points out that most consumers don't know about those boards or how to navigate their complicated websites.

That's why she's now

working with other Safe Patient Project activists in California and across the country to make it easier for patients to learn about their doctors' disciplinary history.

Those efforts are focusing on five areas:

- ▶ Doctors on probation should be required to tell patients that they are being disciplined and explain why.
- ▶ The state medical boards, where consumers must go to file complaints about doctors or investigate their records, should present information in a clear, consistent way, including plain-language summaries of why doctors are on probation.
- ▶ State medical boards

should include more consumer representatives. They are now dominated by physicians.

- ▶ State boards should be more aggressive in pulling the licenses of doctors who are clearly a danger to patients.
- ▶ The National Practitioner Data Bank, a federal repository that includes disciplinary actions taken by state boards, hospitals, and other healthcare agencies as well as malpractice payments, should be open to the public.

To learn more about Consumer Reports' efforts to protect patients, go to ConsumersUnion.org/safepatientproject.

who agreed not to sue.

About the same time last spring, the state board lifted Candelaria's temporary suspension and placed her on probation for seven years but allowed her to continue practicing as a pediatrician if she adhered to certain terms, including not practicing alone and biological fluid testing. She is now accepting new patients. She must tell them she is prohibited from providing deep sedation, though she doesn't have to explain why. Nor does she have to mention her disciplinary history or drug use. When we called her office, Candelaria declined to comment.

Although the California medical board reports describe the underpinnings of the cases against doctors, they rarely explain the board's thinking on why it is levelling a particular sanction. To Harvard's Sabin, the medical ethicist, that is a lost opportunity for more transparency.

"I think it's important to provide the rationale," he says. "A board's finding could range from permanently taking away the license to requiring someone to take a course in ethics. It ought to explain why it is doing that."

A Pyramid System

Patients who believe they've been harmed or mistreated can file a complaint with their state medical board, which then investigates. If the complaint goes forward, all parties are notified, the case is reviewed, a decision is made, and a hearing is scheduled.

In California, certain kinds of medical malpractice judgments or arbitration agreements against a doctor for more than \$30,000 are supposed to be reported to the state board. So, too, any physician convicted of a misdemeanor or charged with a felony-level crime such as unlawfully discharging a firearm (in one case during a dispute over a neighbor's goat) should be reported to the board.

Only a small percentage of complaints result in a sanction against a doctor, according to numbers published in the California board's most recent annual report. There were 8,267 official complaints



**'This could have been prevented.
My wife could have been right here
with my daughter and my two boys.'**

—ISMAEL AGUIRRE, WHOSE WIFE DIED IN 2011

brought against state doctors in the 2014 to 2015 fiscal year. The board opened cases against 1,381 physicians and surgeons, and reprimanded 86.

An additional 136 were placed on probation and allowed to keep practicing, 14 after serving temporary license suspensions. Forty-five more doctors had their licenses revoked by the board. And 85 others surrendered their licenses before the board made a final ruling.

The disciplinary rate is that low in part because the burden of proof is high. There needs to be "clear and convincing evidence" that a violation has occurred and that it meets the guidelines to move forward, says Kim Kirchmeyer, executive director of the California board.

Other people interpret the numbers differently, including patient advocate Robert E. Oshel, the former official at the NPDB. He says medical boards tend to protect their own. "They're run mostly by doctors, and they are often reluctant

to take actions against physicians unless they get a lot of pressure, or if something comes out in the press," he says.

Medical boards have complicated rules that can effectively keep information out of the hands of the public, such as listing a doctor's malpractice cases only if they hit a certain monetary threshold or a doctor has several cases over a period of time, says Consumer Reports' McGiffert. "As a result, a physician may have a long history of malpractice, but it never shows up in his or her public record," she says.

Boards frequently don't discipline physicians unless there are repeat offenses, says William Newkirk, a malpractice attorney in California who represented the family of Cynthia Mora, the patient of Kurian's who died. Newkirk sees an imperfect system limited by the boards' small staffs and modest budgets. For a doctor to be sanctioned, Newkirk says, "the complaint has to be dramatic and the evidence strong."

The Right to Know

Many of the hundreds of probation decisions from the Medical Board of California we reviewed involve shoddy personal or professional behavior, both blatant and documented. But not every disciplinary case is clear-cut.

Consider Scott Eisenkop, a highly trained surgical oncologist whose probationary report describes his physical limitations following treatment for throat cancer in 1996. Though successful, the chemotherapy and radiation left him with numbness in the face, dry mouth, and hearing loss, making it difficult to communicate with him. Eisenkop also has to take medication for a seizure disorder.

A complaint was filed about Eisenkop over an operation he performed at St. Joseph's Medical Center in Burbank, Calif., in May 2012. At issue was his behavior.

During the board's investigation, a surgical technician assisting on the surgery said he had found Eisenkop to be "confused, incoherent, and disoriented" for several minutes in the midst of a complicated abdominal surgery.

Some of the experts who were called in to evaluate him during the investigation said that Eisenkop could have suffered a seizure.

He disputes that, testifying at his hearing and telling Consumer Reports more recently that it wasn't a seizure at all; he says he was simply conserving his voice for when he needed it most.

In their report, the California medical board members bent over backwards to acknowledge his expertise, writing that Eisenkop "enjoys a reputation as an extraordinary surgeon" and "is dedicated to his profession."

At the same time, the board recognized the potential danger he poses and in 2014 put him on probation for 10 years, concluding that the possible effects of his medical condition place at risk "every patient on whom the surgeon operates." The board decided that Eisenkop could continue practicing medicine only if he continues to get medical evaluation and treatment, limits his work shifts to no

more than 10 consecutive hours, and has a backup surgeon with him whenever he serves as the primary surgeon.

But the board did not require him to tell patients of his disorder or that he is on probation. Nor did it tell him to permanently stop operating on patients—even though he's still susceptible to seizures.

Eisenkop says he feels no obligation to share either of those facts with his patients. "No, I don't want to do a disclaimer and say right away, 'This is what I was falsely accused of.' No, thank you," he said in an interview with Consumer Reports. Eisenkop maintains that he is safe to operate so long as he gets enough sleep and takes his medication.

Edythe Preet believes she was entitled to know that information before Eisenkop collaborated with her gynecologist to remove a cyst and both of her ovaries in 2013. The writer from Van Nuys, Calif., is suing Eisenkop and her gynecologist. Her lawsuit alleges that the surgery left her with permanent injuries. The medical center and its board of directors are also named in the suit for letting Eisenkop perform the surgery even

though it was aware of his condition.

Eisenkop says her claims against him are baseless and that nothing went wrong during Preet's surgery.

What really bothers Preet now is how little she knew about Eisenkop before her procedure. Preet's lawsuit alleges that she asked her gynecologist if she could meet Eisenkop before the scheduled operation but was told that he was "too busy."

She says she didn't press the matter or even think to research his record. "I'm of the generation that thinks—thought—of doctors as gods and infallible," she says.

Nor did she know that at the time of her operation a formal complaint against Eisenkop was being investigated by the state medical board.

"Had I known," she told Consumer Reports, "I would not have agreed to have him in the operating room."



A Complicated Case

Scott Eisenkop SURGICAL ONCOLOGIST

The state medical board report says the highly trained surgeon is devoted to his profession, but it also said that the possible effects of his medical condition place at risk "every patient on whom the surgeon operates."



LEARN

For video on finding a good doctor and to hear more from Ismael Aguirre, who lost his wife, and patient advocate Michelle Monserratt-Ramos, please go to ConsumerReports.org/doctordangers

PHOTO: MICHAEL LEWIS

SMART WAYS TO CHOOSE A DOCTOR

MANY PEOPLE LOOKING for a new doctor start by asking friends, relatives, or co-workers for recommendations. Though those suggestions may be perfectly good, you still need to do your own research. Here, the steps you should take:

1 | KNOW YOUR INSURANCE

A doctor who isn't affordable for you probably isn't Dr. Right. So contact your insurance company and get a list of approved doctors or give your insurer the name of the doctor you are considering. If you're on Medicare, go to medicare.gov/physiciancompare and see which doctors accept Medicare.

TIP Don't rely solely on your insurer's website: Doctors frequently add or drop plans, and lists may be out of date. Call the doctor's office and ask.

2 | SPOT RED FLAGS

It's not easy to get clear information about your doctor's disciplinary history. But the best place to at least start is docinfo.org, run by the Federation of State Medical Boards, an organization representing state agencies that license and discipline doctors.

TIP If your search results list anything under "Actions," click on the link, which will take you to a state's website. Once there, you will have to dig deeper to find out exactly what the doctor is on probation for. Some sites are easier to use than others, as we

found in our analysis of websites in all 50 states. If you're unclear of what to do or how to interpret what you find, call your state medical board.

3 | LOOK A LITTLE DEEPER

Does the doctor order the right tests and prescribe the best possible treatments? Are patients seen promptly and treated with respect? Reliable data on those measures are admittedly difficult to find, though physician report cards are becoming more common. If you live in California; Maine; Massachusetts; Minnesota; Washington; Wisconsin; the greater Columbus, Ohio, area; or the Detroit area, check the inserts in this issue of Consumer Reports, which include information on physician performance for medical groups in those regions. If not, the nonprofit Informed Patient Institute gathers available online physician report cards and assesses the usefulness of each. To check it out, go to informedpatientinstitute.org. **TIP** Don't necessarily trust those "Best Doctors" lists in many city or regional magazines or on websites: They can be a measure of

reputation, as determined by colleagues, not by quality data, such as how often patients get the best tests or treatments. And be wary of website user reviews when judging quality: It's difficult to know who wrote the reviews (and what their relationship to the physician might be), and doctors often score high ratings based on just a few responses.

4 | CHECK ON HOSPITAL AFFILIATION

The doctor you choose can determine which hospital you go to. Your insurance company's website and, for Medicare patients, medicare.gov/physiciancompare should list the doctor's hospital affiliations.

TIP For national results, go to ConsumerReports.org/hospitalratings to compare medical centers in your area.

5 | FOLLOW THE CONNECTIONS

The government now collects information on how much money doctors get from drug and medical device companies. Such payments can be legit, but a physician who receives large payments may

be unduly influenced by industry. ProPublica posts that type of payment information at propublica.org/docdollars. **TIP** Also ask the doctor's staff whether the office gets many visits from drug reps. More and more are restricting such sales calls. That's good: They not only can take up a lot of the doctors' time but also may inappropriately influence their choice of drugs.

6 | CONSIDER COMPATIBILITY

Use your first appointment with a doctor as a litmus test. Factors to consider: Does the doctor listen without interrupting? Do you feel your questions are fully answered? Does the doctor explain your diagnosis and treatment, and specify a date for a follow-up appointment?

TIP Also ask the front-office staff about the practice's policies. How long must you wait to get an appointment for a routine visit? (Optimum is less than a week.) Are same-day appointments available? Also, evaluate how much time you spent in the waiting room. Is the office staff friendly, efficient, and respectful?

—Steven Findlay