

# What's Crazy About Letting Business People and Lawyers Control Health Care

By Michael Fine

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What I am about to tell you is a true story. One that is happening now in a Rhode Island hospital.

An 81-year-old man who still worked ten hours a day and was as strong as a bull was hit by a car as he crossed the street from the restaurant where he worked to his house. The car was driven by a Brown student who said she was distracted by looking at her GPS, but some people think was talking on her cell phone. He had severe, life-threatening injuries, which left him temporarily paraplegic and on a ventilator. The surgeons at a Rhode Island hospital saved his life. Then he recovered enough to regain control of his arms and legs and come off the ventilator.

At that moment, about a month into his hospital stay, he should have been transferred to a rehabilitation hospital, where he should have been able to make a pretty complete recovery, something he very much wanted to do. But at that moment, for a crazy set of bureaucratic reasons, he was not transferred to rehabilitation. (He was undocumented and uninsured. He doesn't speak English – though his family speaks English quite well. The lawyer his family found for him didn't understand how to get an insurance settlement from the student's car insurance quickly enough to pay for his rehabilitation. The hospital refused to release his medical records, quite illegally, and no one knew how to persuade them. And so on.)

So he stayed in the hospital. Where he remains, while his growing and likely over four-million-dollar hospital bill is being paid for with public funds. All of which I'll write more about over the next few weeks but is not the subject of this commentary.

Stuck in the hospital, the single most important medical intervention needed to save this man's life was and is physical therapy, and lots of it. He needs three to four hours of physical therapy a day, therapy he wanted and wants desperately. But didn't get and hasn't

gotten. The hospital had all sorts of excuses: they don't have enough physical therapists. They don't do rehab – you need to go to a rehab hospital for that. He had periods of confusion and couldn't cooperate with physical therapy (like when he got a hospital-acquired infection that went undiagnosed for five weeks, or like when he was overmedicated for pain by people who said he was in pain but didn't speak his language or know his culture enough to clearly evaluate that.) And so forth. So he didn't get the one treatment in the hospital that could have allowed him recover enough to be discharged, and without which he is very likely to slowly die.

But the family went out and found a PhD level physical therapist licensed in Rhode Island to come to the hospital every day to treat him, which she started doing. Until the hospital ordered her to stop a few days later.

Say what? There was one treatment that could help him recover enough to be discharged, one treatment that actually might save his life, one treatment that the hospital itself wasn't providing but the family had found a way to get him, and the hospital ordered that treatment to stop? Yup. That's exactly what happened. It's worse: the hospital's decision was appealed internally. The matter was referred to the Attorney General's office and the Department of Health, but no one thought they had the authority to force the hospital to allow a licensed and skilled physical therapist to provide a critical and likely life-saving therapy that the hospital itself had been unable to provide.

What the heck is going on?

What the heck is going on is this: health care has been taken over by bureaucrats, administrators, and lawyers, who know only how to protect (and some would say enrich) themselves and their organizations, people who don't know anything at all about medicine, but feel embolden to make decisions that cost patients' lives.

The hospital said the physical therapist couldn't treat this poor man because the physical therapist wasn't employed or credentialed by the hospital, which meant the hospital perceived some potential liability in case something went wrong. They feared that the hospital could be successfully sued if the patient had a bad outcome and that bad outcome could be linked to the practice of this outside physical therapist. (They appear not to worry about their liability if the patient continued to decline because the hospital failed to provide needed physical therapy and couldn't get out of its own way to make sure the patient got the rehab he desperately needed, just saying.)

Viewed narrowly, some of the hospital's arguments might actually be correct. Because of the way we have constructed our liability laws and our regulations, there might be some

potential liability, conceivably. But viewed more broadly, isn't the hospital's main responsibility to save lives? Which makes us ask, who is in charge?

Once upon a time, hospitals were run by nurses and doctors, and existed for patient care, not for legal defense. Somehow, over time, administrators got control. First, they pushed out private-duty nurses, who were available to give exquisite patient care to the patients (but only to those who could afford it, although it wasn't that expensive, back in the day). Then they pushed out the primary care doctors, who would come to the hospital every single day to check on their patients and make sure disasters like the one described here didn't happen.

So now hospitals are neat little businesses. With big billing departments. And full-time lawyers. About a third of their employees do billing or move money around or go to meetings. Patient care happens, but now legal defense and administrative control comes first, not patient care.

What could be crazier than that?

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