

Dr David Kern Case – Selling Sickness Roundtable on Whistleblowing

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The Lead-Up (pre-1997)

- Dr Kern was Associate Professor of Medicine, and Director of General Internal Medicine and of the Occupational and Environmental Health Service at Memorial Hospital of Rhode Island (MHRI), and Director of the Program in Occupational Medicine at Brown University
- 1994 – He lead a group of medical students during a “teaching site visit” at a local textile factory owned by Microfibres.
 - To do so he had to sign an agreement not to disclose “confidential and secret information as well as trade secrets” relating to manufacturing processes, the configuration of the manufacturing facility, and sources of supply
- 1995 – Dr Kern started formally investigating cases of lung disease at the plant owned by Microfibres
 - Microfibres and Memorial Hospital failed to successfully negotiate a contract to cover the investigation, so the hospital was paid “fee for service”

The Occupational Medicine Investigation - 1997

- Dr Kern wrote an abstract of the initial findings of the investigation, which found that some plant workers had a new lung disease,
 - The abstract described the new disease, but could not identify its cause
 - The abstract noted that patients worked in an anonymous “synthetic fiber textile manufacturing plant,” and did not specify manufacturing processes, plant configuration, or sources of supply
- Microfibres told him not to publish or present the abstract, saying it revealed trade secrets

What Dr X Did - 1997

- Dr Kern told hospital administrators he would submit the abstract for publication and presentation
- The Memorial Hospital Chief of Medicine later said,
 - Microfibres lawyers “were all set to come after the hospital. Our hospital lawyers thought it was a risk,…”

What The Hospital Administration Did - 1997

- A week later the hospital CEO informed Dr Kern that his contract would not be renewed, the Occupational Medicine program that he directed would be disbanded, he would no longer be Director of General Medicine and Occupational Medicine at the hospital
- Dr Kern protested to the Medical School

The Medical School and University Respond - 1997

- The Dean of Medicine
 - “disavowed any responsibility for the occupational medicine program,”
 - described Dr Kern’s conduct as unprofessional because he failed to protect himself from pressure from Microfibres, and to get written assurance that it would not interfere with his right to publish
 - Wrote in the New England Journal of Medicine that Dr Kern “persisted in working at the company without a written contract, leaving him with no prior understanding about the right to publish.”

The Immediate Aftermath

- Some faculty members wrote privately to support Dr Kern
- A Committee of Inquiry at the University
 - included an administrator who had told Dr Kern not to submit the abstract
 - Found Dr Kern's academic freedom was violated, but suggested no remedy
- The University President did not intervene
- Dr Kern published an article describing the new disease in a major medical journal, the Annals of Internal medicine
- An editorial described the case as
 - “at best, ... a story of incorrect assumptions and mutual misunderstandings by well-intentioned persons”
 - “At worst, it is a story of narrow self-interest getting in the way of public disclosure, responsibility to patients, and academic freedom.”
- Dr Kern left Memorial Hospital and Brown University, and now practices in a Veterans Affairs hospital in Maine
- Microfibres promised to hire another occupational medicine specialist

Aftermath

- More cases of the disease were reported affecting workers at plants in another state and another country
- It became clear that Microfibres was a large, privately held multinational corporation whose former CEO had given lavishly to other institutions, and was chairman of the board of Dartmouth University
- Microfibres never filed a lawsuit
- The Chief of Medicine, The Dean of Medicine, and The University President all left
- No further information about the new disease at Microfibres, or any research on it ever appeared, save that done by Dr Kern
- The “Dr Kern Affair” was never
 - Publicly discussed in any public forum at Memorial Hospital, Brown Medical School or University (as best as can be determined, until I presented this case at a Brown University undergraduate course session in 2011)
 - Further investigated within the University or by a body independent of it

Later Aftermath - 2011

- Dr Kern published an article following up on patients from the original study
 - He had been informed of cases of lung cancer afflicting one patient who had worked at the study factory, but who was not in the study cohort
 - Using a state cancer registry, tabulated cases of lung cancer afflicting the cohort
 - Found 5/162 patients had lung cancer, one had never smoked, one quit cigarettes in 1989
 - This rate of cancer was 3 times higher than expected for population with that age distribution
- It is possible that
 - The new disease is a cause of cancer
 - Speculatively, perhaps some of these cancers could have been mitigated had Microfibres authorized further investigation and surveillance of the disease

Presenting the Case at Brown

- I presented the case, but completely anonymized it (Dr X, The Hospital, The Company, The Medical School, The University)
- I asked students what they were do at particular points if they had played particular roles
 - All said they would have done the “right things”
- At the end, I asked: imagine you are a student at The University
 - What should you do now, and why?
- All would have protested in some way
- At the end of the case I asked them to guess the name of the University
 - Only a few thought about Brown
 - After I revealed it was Brown, all seemed horrified
 - None ever contacted me again after the session, or ever protested, to my knowledge