

Los Angeles Times

Sunday, February 14, 2010

Tons of ads for weight loss aid

Home Edition, Business, Page B-1

Business Desk

30 inches; 1238 words

Type of Material: Column

By **MICHAEL HILTZIK**,

One feature of life in Southern California that's become hard to avoid is the relentless advertising for a weight-loss procedure known as lap-band surgery.

You've probably seen the billboards: They feature a willowy blond in a red tank top and the phone number 1-800-GET-THIN in huge red letters. "LOSE WEIGHT WITH THE LAP-BAND!" they say.

These billboards blanket Southland freeways like a giant adipose layer. I've counted 17 on one four-mile stretch of Interstate 5 east of downtown Los Angeles. The ads also appear on the sides of city buses, and there's a TV spot with a jingle ("Let your newwww life begin/Call 1-800-GET-SLIM") I can't get out of my head, curse it. (The two 800 numbers connect to the same place.)

The ads say the procedure takes an hour, as if you can pop in for a lap-band during your lunch break. In fact, surgically implanting the device requires a general anesthetic and three to four hours of recovery time. Doctors say you can't resume normal eating for up to six weeks. Nor do the billboards mention the price: \$18,000.

The lap-band campaign seems to be some kind of marketing watershed -- I've never seen anything promoted so ferociously on the L.A. freeways. But is it promoting good medicine?

Good question. Let's take a peek behind the billboards.

The billboards advertise Weight Loss Centers, part of a Beverly Hills medical partnership called TopSurgeons. At least one website associated with TopSurgeons says the entity is "owned and operated" by the brothers (Julian **Omid** refused to answer my questions last week about his role in the partnership, and other representatives of TopSurgeons refused to confirm the **Omidis'** ownership. Michael didn't return my calls.)

The Iranian-born **Omidis** built up high-profile practices in dermatology and cosmetic surgery after receiving their medical licenses in 2000 (Julian) and 2003 (Michael). TopSurgeons currently boasts 11 offices staffed by a total of 11 doctors and other professionals, according to the practice's website.

In 2005, the brothers were featured on the plastic surgery reality show "Dr. 90210" on the E! cable channel, which described them in a press release as "immigrants who have built their multimillion-dollar surgical empire from nothing, and whose mother is in charge of all their business decisions."

Today that press release would have to identify Julian **Omid** as a former doctor. His license was revoked in 2009 by the Medical Board of California, which concluded that he had been intentionally deceitful on his license application.

Omid had failed to mention that he had attended UC Irvine from 1986 to 1990. The board concluded that he did so "most likely" to keep it from learning that he had been expelled from UCI in 1990 for his alleged involvement in the burglary of exam papers. This and other factors led the board to conclude in its June 19 decision that **Omid** has "a penchant for dishonesty."

As for Michael **Omid**, the medical board placed him on three years' probation in 2008 after accusing him of being "grossly negligent" in treating three liposuction patients in 2005. The board said he administered anesthetics improperly and allowed unlicensed assistants to administer anesthetics, suture patients and even once to perform liposuction.

It's unclear when TopSurgeons started pushing lap-band surgery. But in December 2008 it issued a press release touting the device and its "finest staff of Weight Loss Surgeons."

In the right hands the lap-band, also known as a gastric band, is an effective obesity treatment. A silicon ring that constricts the upper part of the stomach, it works by making patients feel full after only a small meal, so they'll stop

eating. One study says patients can take off 50 to 70 pounds over two years.

But medical guidelines endorsed by the National Institutes of Health say the prime candidates for the lap-band are morbidly obese patients, defined as those with a -- a comparison of weight and height -- of 40 and above. (A 5-foot-10 person would register a 40 BMI at 279 pounds, or about 100 pounds overweight.) Patients with a BMI of 35 (244 pounds for our 5-10 subject) would be candidates if they also had weight-related conditions such as diabetes.

According to guidelines issued by a medical panel sponsored by the American Society for Metabolic and Bariatric Surgery (bariatrics is the branch of medicine concerned with obesity), patients should first try nonsurgical weight-loss programs such as Weight Watchers. "They come to surgery not as the first resort, but the last resort," Dr. Namir Katkhouda, a nationally recognized bariatrics expert at USC's Keck School of Medicine, told me. Because the surgery carries risks and has long-term lifestyle consequences, "it's not a cosmetic procedure or a quick fix," he says.

The guidelines from the metabolic and bariatric surgery group also call for a psychological exam of candidates to screen out those with depression, bulimia or personality disorders that might undermine the treatment. They don't say anything about people inclined to choose their doctors from a freeway billboard or off the side of a bus, but that's a new phenomenon and the guidelines were last updated in 2004.

The patient selection principles of TopSurgeons seem to be rather liberal. Its website says it "can help those with a BMI of 27 or greater." (For our 5-10 patient, that's a threshold of 188 pounds.) While the bariatric field is beginning to loosen its standards because of the nationwide epidemic of obesity and related health problems, that's a broader patient selection model than anything I could find in the professional literature.

TopSurgeons says on its website that lap-band surgery can be covered by "most major insurance companies." When I asked Blue Shield and UnitedHealth for their coverage rules, both told me they rely on the 35/40 BMI standard.

For other customers, TopSurgeons offers a different solution: Put the bill on a credit card -- specifically the Care Credit card offered by a unit of General Electric Co., which carries an annual interest rate for TopSurgeon patients of 13.9%.

According to Nancy Wambaa, a 51-year-old Los Angeles woman, TopSurgeons "encouraged" her during an office visit last year to fill out an application for the card just to check her credit. A full-time student and Medi-Cal enrollee, she was surprised to be told within hours that she'd been approved, and even more surprised a month later to get a bill for \$15,000 from GE, even though she had told TopSurgeons that on her doctor's advice she had decided against the surgery.

TopSurgeons eventually refunded \$12,000 but kept \$3,000 as a "cancellation fee." She sued the **Omidi** brothers in state court Aug. 20, 2009, alleging breach of contract, breach of fiduciary duty and violation of the state consumer protection law. The court file indicates that they never answered her lawsuit, and in December she won a default judgment for the money.

TopSurgeons, for its part, has sued several lap-band patients for as much as \$111,000 for their procedures. Most of the cases haven't been resolved. A Top Surgeons "administrator," Thomas Cloud (also a former doctor with a revoked license), said in an interview that the bills were so high because they also covered certain preoperative services and counseling programs. But if that's so it isn't reflected in the itemized accounts listed in the legal complaints.

It's your call on whether to get a lap-band, and on who should do the procedure. But at least now you know more than the billboards told you.

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Michael Hiltzik's column appears Sundays and Wednesdays. Reach him at michael.hiltzik@latimes .com, read past columns at www.latimes.com/hiltzik, and follow @latimeshiltzik on Twitter.

Descriptors: WEIGHT REDUCTION; OBESITY; SURGERY; WEIGHT LOSS CENTERS (COMPANY)



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Thursday, March 04, 2010

Lap-band promoters' troubled history

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Business Desk

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Type of Material: Column

By **MICHAEL HILTZIK,**

The waiting room of the Beverly Hills surgery clinic was teeming with customers on a recent Saturday, with many of the patients there for the weight-loss operation hawked on freeway billboards, bus placards, and TV and radio commercials across Southern California: 1-800-GET-THIN.

But few, if any, were probably aware of the troubled history of the medical suite where they might be waiting to undergo major surgery.

Suite 106 at 9001 Wilshire Blvd., currently known as the Beverly Hills Surgery Center, has for years been a business address of TopSurgeons, the sponsors of the ubiquitous marketing campaign for the lap-band -- a surgical implant designed to suppress the appetite of obese patients and normally prescribed for those who are at least 75 to 100 pounds overweight.

As I wrote last month, the people behind TopSurgeons are the **Omid** brothers -- Julian, whose medical license was revoked in 2009, and Michael, who was placed on three years' probation for gross negligence in 2008, according to the Medical Board of California.

TopSurgeons attracts customers in part by pitching the lap-band to people who, according to conventional medical guidelines, shouldn't need major surgery to shed weight.

The **Omidis** formerly operated the Wilshire Boulevard facility as the Almont Ambulatory Surgery Center.

Almont lost an important federal certification last summer after inspectors determined that conditions there posed "immediate jeopardy to the health and safety" of patients.

The government's cancellation of the clinic's certification, which was effective July 20, meant it could no longer receive payments from Medicare and Medicaid for treating the programs' members.

Separately, the American Assn. for Accreditation of Ambulatory Surgery Facilities had already revoked the clinic's accreditation.

The California Department of Public Health was well aware of health and safety issues at the clinic -- its own staff had performed the inspection for the federal government.

The Medical Board of California was aware of the history of TopSurgeons' owners because it was the agency that had revoked Julian **Omidis** license and placed his brother Michael on probation.

Yet state regulators' ability to respond to the actions by the federal government and the accreditation body was limited.

Under state law, no agency has clear jurisdiction over such free-standing ambulatory surgical centers.

Free-standing surgical centers owned by a physician are exempt from licensing by the Department of Public Health.

For its part, the California Medical Board has no legal oversight over a surgical facility because its legal authority extends only to disciplining individual doctors.

The federal government's authority is limited to determining whether a clinic can participate in Medicare and Medicaid (in this state, Medi-Cal). Once it does that, its regulatory bolt is shot.

Robert Silverman, an attorney representing the **Omidis**, points out that his clients "have no involvement in the performance of weight loss surgeries themselves."

So why should you care about them?

For one thing, the business model of free-standing surgery clinics unaffiliated with hospitals is spreading.

These places perform major surgery under general anesthesia, which can be life-threatening.

If there are any holes in the regulatory safety net applicable to such facilities, they need to be closed, but quick.

Then there are the particulars of that June inspection report of Almont Ambulatory Surgery Center, which runs for 22 pages. Here are some highlights:

- The inspectors found unsanitary conditions in the surgical areas. Medications and supplies to treat complications from anesthesia were expired or missing, though 23 patients were waiting for surgery.
- Surgical instruments weren't being properly disinfected. Medical supplies that were supposed to have been tossed after use on a single patient were being reused. Two employees had positive tests for tuberculosis, but there was no record that they got required follow-up chest X-rays.
- The crash cart, which carries equipment and supplies for cardiac emergencies, contained opened and expired drugs and supplies, including some more than 4 years old. Other drugs and supplies, including emergency drugs, were months or years past expiration. Filled and inadequately labeled syringes were found in the operating room. Most of the scrub sinks weren't working.
- Patient records, which contain such confidential information as psychological exams, were left where unauthorized people could read them.

That inspection wasn't the only one to turn up problems. The American Assn. for Accreditation of Ambulatory Surgery Facilities, a voluntary association that inspects such facilities to make sure they're safe and properly run, had revoked the facility's accreditation April 4.

The association's executive director, Jeff Percy, told me that it had suspended Almont's credentials a few weeks earlier, after receiving a serious complaint that he wouldn't specify.

During an unannounced visit April 4, its inspectors discovered that surgery was being performed on the premises despite the suspension. Percy said his organization promptly informed federal Medicare authorities and the state medical board of its action. Silverman blames those violations on unidentified Almont managers who he said were placed in charge by the **Omidis**.

He said Almont went out of business soon after the revocation of its certification and accreditation.

The clinic's quarters, he maintains, were then taken over by Beverly Hills Surgery Center. Under that name the facility received accreditation as an ambulatory care center in January from a different medical accreditation agency, the Joint Commission.

Silverman maintains that Beverly Hills Surgery Center is "a completely separate entity" from Almont. But he also acknowledged that Julian and Michael **Omid** helped launch Almont, and records show both have connections to Beverly Hills Surgery Center.

The Department of Public Health still lists Michael **Omid** as 100% owner of the surgery center at Suite 106 at 9001 Wilshire Blvd. and Almont as its corporate name, department spokesman Ralph Montano said Wednesday.

He said the information was filed with the agency in May 2009 and that the center's owners have not updated the filing since.

Julian **Omid**, who is identified in Los Angeles County records as president of Almont, is also listed as president of TopSurgeons Inc., which, as mentioned earlier, also lists its address in state and county business filings as 9001 Wilshire Blvd., Suite 106.

Beverly Hills Surgery Center was registered with the county by Thomas C. Cloud on Oct. 15, 2009, also at 9001 Wilshire Blvd., Suite 106.

Cloud is a business associate of Julian **Omid's**, according to legal papers Cloud filed in several lawsuits in Los Angeles Superior Court seeking payments from patients who allegedly did not pay their bills.

Cloud is a former doctor whose license was revoked by the medical board -- for the second time -- in 2001, based on a string of felony convictions, including a 1993 conviction for Medi-Cal fraud that garnered him a sentence of 16 months in state prison.

Silverman says Cloud isn't an employee of TopSurgeons, just "an independent contractor."

Through Silverman, the **Omid**s refused my request for interviews.

Silverman told me this week that TopSurgeons Inc. no longer conducts any business. There's a TopSurgeons LLC, he says, but it doesn't operate at 9001 Wilshire Blvd.

As of Wednesday, however, the California secretary of state's website listed that address as the entity's official address, and the TopSurgeons website listed the location as one of the offices to which it refers patients.

Silverman refused to identify the ownership and management of TopSurgeons LLC but said it's different from TopSurgeons Inc.

Should we take that on faith? I'll just note that when TopSurgeons LLC registered its business name with the county last April it listed the same Wilshire Boulevard surgical suite as its address and named as its registration agent Cindy **Omid**, which is the name of Julian and Michael **Omid's** mother.

When TopSurgeons LLC filed its business registration with the California secretary of state in 2008, its agent was Thomas Cloud and its address of record was 9001 Wilshire Blvd., Suite 106.

Silverman said there was no "wrongdoing, illegal conduct, or even inappropriate conduct" involved here.

But the public record shows that one or both **Omid** brothers have been doing business out of the same location under various corporate names since at least 2005 -- and it's a location that has drawn some not entirely positive attention from health and medical inspectors.

If I were even remotely inclined to answer one of those "GET THIN" ads, I'd like to know if my regulators were still keeping their eyes on the place.

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Michael Hiltzik's column appears Sundays and Wednesdays. Reach him at michael.hiltzik@latimes .com, read previous columns at www.latimes.com/hiltzik, and follow @latimeshiltzik on Twitter.

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NOTE: Photos are uncropped archival versions and may differ from published versions.
[Information on missing images.](#)

PHOTO: POTENT PITCH: The lap-band campaign includes billboards along Interstate 5 in



the City of Commerce.
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Sunday, December 19, 2010

Scrutiny of Lap-Band enterprise is overdue

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By MICHAEL HILTZIK,

The tragedy of Ana Renteria's life was in the way it ended: her body ravaged by infection 10 days after she had the Lap-Band weight-loss operation advertised on those billboards and radio spots bearing the phone number 1-800-GET-THIN.

Renteria, who had long struggled with her 240-pound frame, had been in almost constant pain ever since the operation, says her sister, Noemi Luna.

"I remember her telling me, it's not getting any better," Luna recalled. When Renteria called the clinic where she had the operation to complain, Luna said, she was told the discomfort was natural. "They said that's how it's going to feel."

Five days after the Lap-Band operation, the 33-year-old office worker awoke gasping for breath, according to Luna and the Los Angeles coroner's report on Renteria's death.

At Lakewood Regional Medical Center she repeatedly went into cardiac arrest, the coroner's report states. She died shortly after midnight last Feb. 14, while friends and family members filled a hospital waiting room and prayed for a miracle.

Luna saw her just before she slipped into a coma. "I saw the desperation on her face," she told me. "That said everything."

Renteria's death may finally prompt California's medical regulators to take a close look at the weight-loss surgeries marketed by an outfit called TopSurgeons through the 1-800-GET-THIN number.

The Medical Board of California informed Renteria's family July 27 that it was reviewing the medical care she had received from Dr. Atul Madan, who is identified by the coroner as her surgeon at a Beverly Hills clinic connected to the billboard campaign. The letter asked the family to release Renteria's medical records so the review could proceed. The case was referred to the medical board by the Los Angeles County coroner's office, which attributed Renteria's death to complications from her surgery.

This sort of scrutiny is overdue. Renteria's is the second death linked by a coroner's report to Lap-Band surgery performed at 9001 Wilshire Blvd., Suite 106, Beverly Hills. Willie Brooks Jr., a 35-year-old school custodian, died June 8, 2009, three days after his operation. In its report, the Riverside County coroner attributed the death to "peritonitis due to lap band procedure due to obesity." He weighed about 297 pounds.

The suite's history, which includes the revocation of its accreditation by a professional oversight body in 2009, has been detailed previously in this column. It also lost its Medicare certification last year after the federal government determined that conditions there posed "immediate jeopardy to the health and safety" of patients.

The facility, then known as Almont Ambulatory Surgery Center, is now known as Beverly Hills Surgery Center and has been accredited by a different oversight body.

The Brooks family's lawsuit against TopSurgeons LLC, the Beverly Hills clinic, and his doctor, George Tashjian, is scheduled for trial next June. Tashjian has denied responsibility for Brooks' death.

The medical board's spokeswoman, Jennifer Simoes, said letters such as the one received by Renteria's family were a first step in any review. When I asked Madan for a comment last week he told me he would get back to me, but I'm still waiting.

The familiar 1-800-GET-THIN billboards have caught the attention of the Los Angeles County Department of Public Health. The agency's director, Jonathan E. Fielding, has asked the U.S. Food and Drug Administration to investigate the ad campaign.

Fielding says he's concerned about the hazards of "medical complications and unrealistic expectations resulting from the misleading promotion" of the Lap-Band, a silicone ring surgically fitted over part of the stomach to discourage overeating.

The 1-800-GET-THIN ads "fail to provide the relevant warnings, precautions, side effects, and contra-indications related to the procedure," he wrote in his Dec. 7 letter to the FDA. That's troubling because the FDA is considering whether to expand the device's approved use beyond the extremely obese patients for whom it's currently permitted. The change could add 2 million people to the target market in L.A. County alone, Fielding said.

The billboards don't mention, he added, that the surgery is not appropriate "for the vast majority of individuals." He's especially ticked off about the billboards' declaring "Diets Fail! The Lap-Band Works!" That's because diets do work if you stick to them.

The people who have been behind this ad campaign and the clinic where Renteria and Brooks were operated on are brothers Julian and Michael **Omidi**. The California medical board revoked Julian's medical license last year, retroactive to 2007. The medical board placed Michael on three years' probation in 2008.

The **Omidis** have run their business under several names at various times, including TopSurgeons, Weight Loss Centers and Beverly Hills Surgery Center.

TopSurgeons claims in a recent court filing to be a "marketing company" specializing in advertising Lap-Band surgery. It says the surgeons who operate at the Beverly Hills Surgery Center are "independent doctors."

Renteria and Brooks are not the only patients who were allegedly harmed by procedures at the Beverly Hills surgical facility. Consider the case of Jodi Lynn Smith, 50, who says she had her Lap-Band operation there on July 22, 2009.

At her mother's home the next day, Smith awoke in severe pain and couldn't keep anything down, according to her lawsuit in Los Angeles Superior Court. Over the next two days, her family called Tashjian, her Lap-Band surgeon, several times. He advised her to take liquids and pain medication, her suit states.

On the third day she was rushed to Tri-City Medical Center in Oceanside, where doctors determined that the Lap-Band had been cinched around her stomach too tightly, the lawsuit says. They performed emergency surgery to take it out.

Tashjian, in an answer to her lawsuit, contends among other things that her problems may have been due to her own negligence. The surgeon is the target of a medical board proceeding to revoke or suspend his license in connection with his treatment of two hospital patients in 2006. He told me by e-mail that the board has "officially closed" the case without taking action. Simoes, the board's spokeswoman, said that's not so and that the case remains open.

The surgery center denies responsibility for the injuries alleged in Smith's lawsuit, asserting among other things that she "voluntarily assumed the risk" of the surgery.

Smith's lawsuit claims TopSurgeons initially told her the surgery would cost \$15,000. Yet her insurance company was billed for more than \$140,000. That's according to Beverly Hills Surgery Center, which has sued Smith for the money.

How do you get from \$15,000 to \$140,000? For one thing, Smith was charged \$67,000 for the operating room, according to insurance records the clinic filed in court. Since TopSurgeons ads have claimed that implanting the Lap-Band is a one-hour operation, that pegs the value of its operating room at \$1.6 million a day. I'm not sure there's even a five-star hotel room in Beverly Hills that goes for that rate.

Another item on her bill is \$12,220, charged by Tashjian for an endoscopy, according to the insurance records. The insurance entry is dated Aug. 3, 2009. But on that day, her lawyer says, Smith was 98 miles from Beverly Hills -- she was at Tri-City, recovering from the emergency surgery.

Robert Silverman, the attorney for TopSurgeons and the surgery center, said last week that he did not have time to respond to my request for comment on the case before my deadline.

High-volume surgical centers like the one at which Renteria had her operation fall into a regulatory no man's land. The state Department of Public Health says that doctor-owned centers like Beverly Hills Surgery Center fall under the medical board's jurisdiction. But the medical board says it has oversight only over doctors, not facilities.

The Renterias are left to contemplate what they've lost. Ana Renteria was a happy person who dreamed of traveling and loved to take her eight nieces and nephews to ballgames and Disneyland. Family members say they're still struggling with her death. "She opened her heart to a lot of people," Luna told me. Her siblings tried to dissuade Renteria from having the operation, but she went ahead with it because "she just wanted to feel better about herself."

For state regulators to argue that technicalities prevent them from taking a close look at what goes on inside surgery centers like this one is a disgrace. How many coroner's reports do they need to see before waking up?

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Descriptors: WEIGHT REDUCTION; SURGERY; DEATH; MALPRACTICE; INVESTIGATIONS

NOTE: Photos are uncropped archival versions and may differ from published versions.

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PHOTO: LOSS: Ana Renteria's death was attributed to complications from her Lap-Band surgery.

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Sunday, May 08, 2011

Trying to fill a hole in clinic regulation

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Type of Material: Column

By **MICHAEL HILTZIK,**

In 2007, a state appeals judge handed a Southern California orthopedist named Daniel Capen a victory in his quest to build his own outpatient medical clinic without obtaining a license from state health regulators.

California's ability to regulate doctors and outpatient clinics still has not recovered.

In ruling for Capen, the court stripped what is now the state Department of Public Health of its jurisdiction over clinics owned by doctors. The agency retained its authority only over hospitals and non-doctor owned clinics. Everything else became the responsibility of the Medical Board of California. That's a problem, because the medical board has no expertise in inspecting or regulating surgical facilities.

If you suspect that the court decision opened a loophole one could drive a fleet of ambulances through, you'd be right. According to the medical board's most recent reckoning, more than 700 clinics statewide are exempt from state licensing.

As my column Wednesday pointed out, we know almost nothing about the general quality or safety of these physician-owned facilities. The medical board has no authority to stage surprise inspections, and no power to shut down a clinic if it believes it's dangerous.

The board vests inspection power in four nonprofit independent accreditation organizations; if any one of them accredits your clinic, you're good to go. But the organizations don't apply the same standards and don't coordinate their oversight. This leads to "accreditation shopping," in which a clinic that gets revoked or refused accreditation by one of these bodies can simply apply to another.

No other state divvies up the oversight of outpatient clinics between two agencies, only one of which is qualified to do the job, according to a 2009 Rand Corp. study.

This is just one more illustration of how California's system of medical regulation reflects years of broken promises and unconscionable legislative delay. In 2004, Julianne Fellmeth, a San Diego public interest lawyer then serving as a legislatively appointed monitor of the medical board's enforcement program, documented the history, which began with the Medical Injury Compensation Reform Act of 1975.

MICRA was a harsh anti-tort law pushed by doctors and malpractice insurers to address a largely fabricated malpractice "crisis." In return for making malpractice cases almost impossible to file, the medical profession promised to accept tougher disciplinary standards from the state. These were then in the hands of a board of medical examiners largely uninterested in physician discipline. But by the time these changes got through the legislative wringer, the legal barriers to license revocation or other serious punishment were heightened, not lowered.

Every now and then Sacramento would take another stab at tightening enforcement. But typically it took away with one hand what it granted with the other. It mandated that hospitals and licensed clinics report to regulators any adverse actions taken against a staff doctor, such as revocation of privileges -- but it closed those reports to public scrutiny, even though they're considered to be among the best indicators of physician unfitness.

As a result, if you're operated on at a plastic surgery or weight-loss clinic by a doctor who was bounced from the staff at a hospital for unfitness, the former hospital will know, your clinic will probably know and the state will know, but you can't know.

The case for regulation and disclosure is made by a wrongful-death case reported by my colleague Molly Hennessy-Fiske last year.

Hills Surgical Institute of Anaheim Hills was not accredited when a patient named Maria Garcia had plastic surgery as an outpatient there in 2008, according to the medical board. She died at a hospital later that day.

Two doctors her family identified in a wrongful-death lawsuit as having been involved in her treatment have since been disciplined by the medical board, with one accepting a 35-month probation during which he can't perform surgeries, and the other surrendering his medical license. The family has settled its lawsuit, according to court records.

For nearly four years, the Legislature and Gov. Arnold Schwarzenegger dithered over how to close the enforcement gap opened by the Capen decision -- whether to restore all authority to the public health department or close the loopholes in the accreditation process. The good news is that we may be finally on the verge of a solution. Senate Bill 100, introduced by Sen. Curren Price Jr. (D-Inglewood) and now making its way through the legislative process, would do much to achieve the latter.

"For any death to occur or any harm in a fashion that suggests there's careless disregard is an outrage," Price told me. "The state's got to step in and be proactive."

Among other things, Price's measure would:

- * End accreditation shopping by mandating that any one organization's revocation of a clinic be honored by the others
- * Require that an accreditation body inspect a clinic within five business days of receiving a safety complaint
- * Require that any revocation, suspension or reprimand of a clinic be made public within 24 hours, and that all inspection reports be available for public view, along with a list of all clinics, their owners and their medical license status
- * Give the board the authority to make unannounced inspections, and to move for an injunction in court to shut down an outpatient facility that doesn't meet standards

What's stunning is that the board doesn't have these powers already.

To see how they would work in practice, let's examine the case of Almont Ambulatory Surgery Center, a Beverly Hills outpatient clinic specializing in weight-loss surgery.

For a few months in 2009, the center was accredited by the American Assn. for Accreditation of Ambulatory Surgery Facilities. The organization revoked Almont's accreditation in April that year, after its inspectors followed up on a safety complaint.

That action wasn't known to Willie Brooks Jr., a Pomona school custodian who had a laparoscopic gastric band implanted there a few weeks later. Brooks died three days after the operation from what the Riverside County coroner identified as "peritonitis due to lap band procedure due to obesity."

If SB 100 in its current form were the law then, Brooks would likely have learned about the revocation before having surgery. He might also have learned that less than a month before his operation, state health inspectors had visited the facility and written a 22-page list of health and safety deficiencies; these were serious enough for federal Medicare officials to conclude that they posed "immediate jeopardy to the health and safety" of its patients, and to withdraw the clinic's right to treat Medicare enrollees.

Brooks' family says in a lawsuit that the clinic didn't tell them about the inspection results. Had he known, Brooks might have chosen to have surgery elsewhere, and who knows -- he might be alive today.

If SB 100 were the law in July 2009, the Joint Commission, another of the four independent accreditation agencies empowered by the medical board, might have thought twice before accrediting a facility called Beverly Hills Surgery Center, which had taken over Almont's location. It would have had no excuse for not knowing that the owners of Beverly Hills Surgery Center were Julian and Michael **Omid**, that the medical board had revoked Julian's license and placed Michael's on probation, and that they had been involved with launching and managing Almont.

Maybe the Joint Commission would have found justification for accrediting Beverly Hills anyway. But it might have been led to wonder whether it was accrediting a clinic that had previously had its accreditation revoked by a different organization and was now just operating under a new name.

By the way, Los Angeles County coroner reports have stated that two other patients have died within days of receiving weight-loss operations at that clinic -- while it's been under Joint Commission accreditation. Robert Silverman, a lawyer for the facility, has defended the care that the deceased patients received there, and noted that none of the patients died on the premises.

The potential for a flood of deaths and injuries from poorly regulated outpatient clinics has loomed ever since the Capen decision. We stand now on the edge of the water. How bad does the crisis have to get before the Legislature finally acts?

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Wednesday, December 14, 2011

Lap-Band billboards finally get FDA's eyes

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Type of Material: Column

By MICHAEL HILTZIK,

It has taken almost two years, but government regulators finally woke up to the idea that those 1-800-GET-THIN billboards plastered all over Southland freeways may be dangerous to your health.

That's the underlying meaning of the action announced Tuesday by the U.S. Food and Drug Administration against 1-800-GET-THIN and affiliated surgical services and clinics. The FDA warned the marketing company and the clinics that they're in violation of federal law by promoting the Lap-Band, a weight loss device that has been implanted in thousands of patients, through "false or misleading" advertising.

The letters, dated Dec. 9, require the targets to inform the FDA within weeks how they intend to revise their ads to comply with the law.

Two thoughts about the FDA's action come immediately to mind. One is: It's about time. The second: Other regulators should consider actions of their own.

For nearly two years, my colleagues and I have been reporting on the 1-800-GET-THIN ad campaign. In my very first column on the topic, in February 2010, I identified the people behind it as brothers Julian and Michael **Omidi**, and reported that Julian's medical license had been revoked by the Medical Board of California and Michael's medical license had been placed on probation. (Michael's probation has since expired.)

Subsequently we reported on several deaths of Southland patients after surgeries performed at clinics that have been affiliated with the ad campaign, according to lawsuits, coroners' reports and other public records. So far the known toll is four, with a coroner's ruling still pending on the death of a fifth patient, who expired after being rushed to a hospital in September from the surgery center where she had just undergone the procedure.

We've reported on the shocking sanitary and safety conditions at one of the surgery centers affiliated with the ad campaign, and noted questions about whether the centers' insurance billing has been proper.

And we've reported that effective oversight of a potentially life-threatening procedure has been hampered by California's patchwork system of medical regulation, in which the medical board and the state Department of Public Health essentially pass the buck to each other over who should keep an eye on non-hospital surgery clinics like these.

Yet the 1-800-GET-THIN billboards, which have been hard to miss on Southland freeways for a couple of years, seem to have proliferated explosively in recent months, like a recrudescing, metastasizing cancer.

The FDA's action appears to be the first taken by a government agency against 1-800-GET-THIN over its feverish advertising, which seems to promote Lap-Band implantation as if it's a simple, short cosmetic procedure. It's not; it's major surgery.

The thrust of the FDA's warning letters is that it may be a violation of federal law for 1-800-GET-THIN and its affiliated clinics to downplay in their advertising the significant risks and complications of this surgery, including the risk of death, or to fail to make clear that to be truly effective, the Lap-Band needs to be accompanied by a significant change in the patient's eating habits and lifestyle.

Over the last year or so, GET-THIN's billboards have included disclaimers advising, for example, that Lap-Band surgery has certain "risks, side effects, and contraindications," and that you should check with your own doctor before undergoing the procedure. The FDA doesn't think that's nearly enough, especially because the disclaimers appear in such tiny type that they're "illegible."

To take action merely for its advertising against an enterprise that poses so many varied regulatory issues may strike some people as akin to prosecuting Al Capone for tax evasion, but there's more to it than that.

The FDA action is aimed at the very portal through which a very vulnerable population may be enticed into making unwise and uninformed choices about their healthcare. The prime targets of the Lap-Band advertisements, after all, are people who have tried other weight-loss methods and are now being led to believe that surgery is an easy option.

How have 1-800-GET-THIN and the other enterprises associated with the **Omidis** responded to the occasional scrutiny they've received? After Jonathan Fielding, director of the Los Angeles County Department of Public Health, complained about them to the FDA, they filed an administrative complaint against him with the county Board of Supervisors, asserting that he was biased against them because he was a shareholder in Johnson & Johnson, which markets a competing weight-loss device they don't use. Fielding said later that although county counsel told him he had no conflict of interest, he would recuse himself from matters involving weight-loss devices.

When the Los Angeles County coroner blamed the death of Tamara Walter, a Lap-Band patient, at least partially on the "suboptimal" anesthesiology care she had received at a clinic affiliated with 1-800-GET-THIN, the clinic smeared the coroner's anesthesiology expert, accusing her in a letter to the coroner of a conflict of interest because she had

once worked at UCLA, which they said "competes directly" with the Lap-Band clinic. (To his credit, the medical examiner, Dr. Lakshmanan Sathyavagiswaran, essentially told them to go jump in the lake. The consultant's work, he said, was "both thorough and accurate.")

And they've sued me and my colleagues at The Times for reporting about them. So far, three of these lawsuits against us have been thrown out of court by state and federal judges. The plaintiffs have appealed the dismissals and filed more suits against us and commenters on our website.

The public record is brimming with material -- including complaints of wrongful death, negligence and irregularities in billing practices -- that could fall well within the jurisdiction of several state regulatory agencies. It may be that the FDA has fired the first shot in what could be a barrage. Certainly the message communicated by the FDA warning letters is of paramount importance to Southland motorists: When you pass a billboard advertising 1-800-GET-THIN, keep your eyes on the road.

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Michael Hiltzik's column appears Sundays and Wednesdays. His latest book is "The New Deal: A Modern History." Reach him at mhiltzik@latimes.com.

Descriptors: FOOD AND DRUG ADMINISTRATION (U.S.); OUTDOOR ADVERTISING; WEIGHT REDUCTION PROGRAMS; SURGERY; FALSE ADVERTISING



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Sunday, January 22, 2012

Inaction as weight surgery toll rises

Home Edition, Business, Page B-1

Business Desk

42 inches; 1664 words

Type of Material: Column

By **MICHAEL HILTZIK**,

Several current or former workers for the people behind those 1-800-GET-THIN ads have made allegations about this weight-loss enterprise that government regulators should have gotten to the bottom of long ago. Taken together, the allegations are that its patients are subjected to life-threatening conditions.

The regulators can't ignore this situation anymore.

The workers include Dyanne Deuel, a former manager at surgery centers affiliated with the GET-THIN marketing campaign, and Karla Osorio, a surgical technician. They filed a whistle-blower lawsuit last week alleging their

employers retaliated against them for reporting unsafe and unsanitary conditions at outpatient clinics affiliated with 1-800-GET-THIN.

The third worker is Ihsan Shamaan, a surgeon whose deposition, filed in a separate lawsuit, makes allegations of fraud, subornation of perjury and dangerous surgical practices in great detail.

The lawsuit from Deuel and Osorio points the finger at Julian and Michael **Omidi**, whom they identify as the impresarios behind 1-800-GET-THIN and the network of surgical clinics to which callers to the 800 number are referred for weight loss surgery -- chiefly implantation of Allergan Inc.'s Lap-Band, a silicone ring cinched around the stomach to suppress food intake.

The **Omidis** haven't responded to requests for comment on the whistle-blower case. They and other defendants are contesting the separate case, which was brought by relatives of two deceased GET-THIN patients and other plaintiffs.

As I've been reporting for nearly two years, Julian **Omidi's** medical license has been revoked by the California medical board. In October, Michael **Omidi** completed three years of disciplinary probation ordered by the medical board.

We've also reported on five patients who have died since 2009 following Lap-Band procedures in clinics in Beverly Hills and West Hills affiliated with the GET-THIN marketing campaign, according to coroners' reports, lawsuits and other public documents.

Shamaan in his deposition says he knows of six or seven deaths that occurred prior to Oct. 6, 2010, when he says he quit working for the **Omidis**. Because two of the reported deaths occurred after that date, including one still under investigation by the Los Angeles coroner (that of Paula Rojas, whose death last Sept. 8 occurred after she underwent a Lap-Band operation at the **Omidis'** Valley Surgical Center in West Hills) the known toll could be nine.

Brian Oxman, an attorney for 1-800-GET-THIN, went before the Los Angeles County Board of Supervisors a few weeks ago and declared that the doctors and surgical facilities it deals with are the "best of the best." The conditions described in the whistle-blower lawsuit and by Dr. Shamaan don't resemble the "best of the best." They more resemble a charnel house.

The allegations in the whistle-blower lawsuit and in Shamaan's deposition suggest that a major public health crisis has erupted in California right under the noses of the state medical board and the state Department of Public Health.

The problem isn't that these regulators have been unaware of what takes place in the dark world behind the GET-THIN come-ons plastered all over freeway billboards, on the sides of buses, on the Internet, and on radio and TV. On the contrary, what gives the lawsuits so much credibility is how closely they hew to what regulators have long known or should have known about the **Omidis** and their business enterprises, based on public records.

The Deuel-Osorio lawsuit offers abhorrent details about unsanitary conditions and unprofessional behavior at the surgery clinics: The reuse of disposable instruments. The lack of adequate supplies. The flouting of sound sterilization practice, exposing patients to the risk of infection.

Yet inspectors from the state Department of Public Health documented such conditions way back in May 2009, following an unannounced visit to the Beverly Hills facility at 9001 Wilshire Blvd. The surgical suite was known then as Almont Ambulatory Surgery Center, but it was then under the control of the **Omidis**, as it still is, according to the lawsuit.

On that occasion the inspectors needed 22 pages to list all the health and safety violations they found. But the agency didn't bother to shut the facility down. Nor do regulatory records indicate that it ever again conducted an unannounced inspection of that facility or any other under the **Omidis'** control or management.

Deuel and Osorio allege that staffers at the facilities regularly perform medical duties for which they're not properly trained or licensed. That can't come as a surprise to the medical board. The board in 2007 formally accused Michael **Omidi** of allowing unlicensed employees to practice medicine at his clinic in West Hills, including allowing them to suture patients and in one case even perform liposuction.

In 2008 the board disposed of these accusations and others, which could have ended **Omidi's** career, by allowing him to stipulate to violating a couple of legal provisions related to operating in an unaccredited surgical setting. It placed him on three years of probation.

What else have the medical board and public health department been doing all this time? They've been dodging responsibility for keeping an eye on non-hospital outpatient surgical settings like the **Omidis'**. You see, a state appeals court ruled in 2007 that regulatory authority over clinics owned by a doctor belonged to the medical board, not the public health department. Unfortunately, the medical board says it doesn't have the resources or expertise to

be watchdogs over physical facilities, only over doctors. (Public records have identified the doctor-owner of the Beverly Hills and West Hills facilities as Michael **Omidi**.)

The court decision tore an enormous hole in the state's medical regulatory fabric, so you'd think the regulators and state legislators would have moved heaven and earth to fill it in. But no. In the more than four years since that ruling, nothing's been done to either return regulatory authority to the public health agency, or get the medical board the tools it needs to do its job.

Last year, when I asked medical board President Barbara Yaroslavsky (wife of Los Angeles County Supervisor Zev Yaroslavsky) why she wasn't screaming from the rooftops about her agency's problems, she explained that she didn't think it was right to "act independently" from the governor's office, which sets her budget.

In other words, she thought it was more important to be seen as a team player politically than to live up to her responsibilities to the state's surgical patients. That's an explanation, of sorts, but the regulatory approach it describes is inexplicable.

Who else has blood on their hands in connection with these surgery centers?

How about health insurers?

Much of the income collected by the **Omidis** -- Shamaan testified he was told it amounts to \$21 million a month -- comes from insurance payments. Yet the whistle-blowers' lawsuit is rife with assertions of fraudulent billings. In the wrongful death case, Dr. Shamaan testified that at Julian **Omidi's** direction he signed 600 fraudulent form letters seeking pre-authorizations for surgeries.

The health insurance industry justifies its existence by maintaining that we need its skill at ferreting out fraud and keeping medical bills reasonable. Lots of good they've done us in this instance.

The insurers aren't shy about telling patients with legitimate conditions that they can't spend an extra day or two in the hospital, but judging from the allegations in the whistle-blower lawsuit and others, not to mention Shamaan's testimony, they may have paid out thousands of dollars, even millions, on inflated or fake claims from clinics affiliated with 1-800-GET-THIN. Think about that the next time your health insurer tries to explain why your premiums are being jacked up, again.

Then there's the accreditation agency known as the Joint Commission, which has given its seal of approval to the **Omidis'** Beverly Hills and West Hills surgery centers. The Joint Commission is one of the independent organizations to which the California medical board has outsourced the duty to inspect and oversee the non-hospital surgical facilities it inherited after that 2007 court ruling.

When the Joint Commission first accredited the Beverly Hills facility in September 2009 -- by then the former Almont Ambulatory Surgery Center was doing business under the name Beverly Hills Surgery Center -- the location's accreditation already had been revoked by one competing accreditation organization and its application had been rejected by another.

But the Joint Commission didn't examine a facility's prior accreditation record as part of its approval process. Why not? It pockets an annual fee from its accredited institutions, so perhaps it has an incentive not to be too particular.

The state Legislature finally closed this loophole last year. Henceforth, a revocation by any one accreditation organization will have to be honored by all. But it's proper to ask whether the Joint Commission has adequately performed its oversight function.

In her lawsuit Deuel, who says she based her account on information from people on the scene, describes frenzied efforts at the West Hills clinic to cover up the circumstances of Paula Rojas's death -- defective equipment removed from the facility and spirited into hiding, the place scrubbed down, records falsified.

This all took place, Deuel says, prior to a pre-announced inspection by state and county officials looking into Rojas's death. But what if there had been an unannounced inspection by regulators, at any time before Rojas went under the knife last Sept. 8? The conditions described by Deuel might have been discovered on the spot, like those discovered in Beverly Hills by the surprise inspection in 2009.

And Paula Rojas might be alive today.

Let us now call the roll of the known departed. Willie Brooks, 1974-2009. Ana Renteria, 1976-2010. Laura Lee Faitro, 1959-2010. Tamara Walter, 1958-2010. Paula Rojas, 1955-2011. According to coroners' reports, lawsuits and other public documents, they all died after undergoing Lap-Band surgery at clinics associated with 1-800-GET-THIN.

The allegations in last week's court filings point to the reasons why this may have happened, and to who looked away and let it happen.

One can only hope that the regulators and all the others who could have acted and failed to do so are haunted by these names to the end of their days. They should act now, before the roll call of victims grows longer.

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Michael Hiltzik's column appears Sundays and Wednesdays. Reach him at mhiltzik@latimes.com, read past columns at latimes.com/hiltzik and follow [@latimeshiltzik](https://twitter.com/latimeshiltzik) on Twitter.

Descriptors: 1 800 GET THIN (COMPANY); PATIENTS; MEDICAL MALPRACTICE; INFORMERS



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Sunday, April 21, 2013

What we should learn from the 1-800-GET-THIN saga

Home Edition, Business, Page B-1

Business Desk

43 inches; 1689 words

Type of Material: Column

By **MICHAEL HILTZIK**,

Today, 19 months after her death, we may finally have a good idea of what killed Paula Rojeski.

According to a lawsuit and public autopsy records, the causes included her doing business with the 1-800-GET-THIN folks and the slicing of her aorta during weight-loss surgery at one of their affiliated surgical centers.

There was also regulatory indifference on a truly majestic scale.

Rojeski, 55, died Sept. 8, 2011, shortly after surgery to implant a Lap-Band at Valley Surgical Center in West Hills, which her family's lawyer says is affiliated with 1-800-GET-THIN and the two brothers behind it, Julian and Michael **Omid**. She was the fifth person since 2009 to die shortly after Lap-Band procedures at clinics affiliated with the 1-800-GET-THIN advertising campaign, according to lawsuits, coroner's records and interviews.

You remember the 1-800-GET-THIN campaign, don't you? For years it blanketed the Southland like a layer of adipose, pitching Lap-Band surgery from billboards, buses and the airwaves. The ads finally disappeared last year after the Food and Drug Administration warned that they misleadingly downplayed the risks of the surgery and after Allergan, the Irvine-based maker of the device, said it would stop selling to the affiliated surgery clinics.

Earlier this month the Los Angeles County coroner's office finally released its report on Rojeski's death, after a delay caused in part by the fact that four state and federal agencies were conducting their own investigations into the death -- the FBI, the FDA, the California attorney general and the state medical board. The outcomes of those probes, as well as an investigation by the LAPD's robbery-homicide unit, aren't known. Rojeski's sister, Michele Pelter, has sued 1-800-GET-THIN, the surgical center and several individuals in Los Angeles County Superior Court alleging fraud and other wrongdoing in connection with her death.

Here's what the coroner did say: There was "negligence" in Rojeski's treatment. The coroner's surgery expert, Dr. Denis Astarita, recommended reporting the case to the California Medical Board for "gross negligence with incompetence." And in the opinion of Earl Strum, chief of anesthesiology at USC's Keck Medical Center, who was called in as a consultant by the coroner, the "major issues" were the "perforation of the aorta" during Rojeski's surgery and the lack of recognition by her anesthesiologist, Deming Chau, that she was bleeding internally. Strum termed Chau's performance "negligent."

Strum found that Chau didn't keep the surgeon, Julius Gee, informed that his patient was in distress after the operation. The indications were that the patient was bleeding, presumably from the aorta, Strum said, and Chau failed to ask for "additional interventions and help." Rojeski lost her pulse at 10:55 that morning, 70 minutes after the operation was completed, and died at a nearby hospital less than an hour after that.

Strum said he didn't label the case "gross negligence" in part because injuring the aorta is a "rare occurrence" during Lap-Band surgery so perhaps it's understandable that the crew didn't think of it. That's fascinating, because in its effort to contest the coroner's report, Valley Surgical produced opinions from at least two of its own consultants that injury to the aorta is a "known complication" of Lap-Band surgery. Valley argues that Rojeski's death was an "accident."

That's among the curiosities raised by the clinic's defense in the Rojeski case. But before going into the others, let's examine the contribution made by our state's inexcusably lazy medical regulators. Because the entire 1-800-GET-THIN saga is really about how California regulators let a public health crisis erupt under their noses.

The story begins in 2007, when an appeals court stripped the state Department of Public Health of jurisdiction over surgical clinics owned by doctors and transferred it to the Medical Board of California. The board had no expertise in regulating surgical facilities but it suddenly had responsibility for more than 700 of them.

The board vested its inspection power in four nonprofit independent accreditation organizations. That didn't work well, because a clinic that lost its accreditation with one often could just move on to another, with no one the wiser: A lost accreditation didn't have to be disclosed publicly.

Eventually, the Legislature mandated that the board make sure the four coordinated with one another, and also that it post the ownership and disciplinary records of every clinic on its website. The law went into effect Jan. 1, 2012; the board still hasn't finished acquiring and posting the information. You want to know who owns Valley Surgical Center, LLC? The board's website says: "Valley Surgical Center, LLC." Thanks a bunch.

The accreditation agency overseeing Valley Surgical is the Illinois-based Joint Commission. This organization's performance in relation to Valley Surgical helps defines what's wrong with leaving oversight of surgical centers to private agencies. The record shows that in the more than three years that the center has been accredited, the Joint Commission has subjected the place to a full survey inspection exactly once -- in November 2010.

That's within the JC's normal time span for full inspections, but it doesn't sound like enough. According to a report it issued last September, after a quick but not full on-site inspection the JC judged the center "out of compliance" in 16 standards, including its "ethical principles," governance and various provisions relating to management, safety, emergency, post-operative care and other things.

Miraculously, the center appeared to have resolved these issues in time for the JC's next accreditation report three months later, because that report gives the impression it had a clean bill of health. It would be fascinating to know how this was achieved, especially given that resolving ethical shortcomings takes some people years, if not a lifetime, of personal introspection. If the management of Valley Surgical really got ethical in just three months, they shouldn't be running a surgical clinic but a spiritual shrine, like Lourdes.

I asked the Joint Commission how Valley Surgical managed to wipe the slate so clean. They didn't say, but perhaps they're not so satisfied with conditions at Valley after all. In the course of a federal lawsuit Valley filed against the county and the coroner's office last month, the surgical center said that it "will likely have its accreditation and certification withdrawn by the Joint Commission" if the coroner's report is released. The center said "the Joint Commission has indicated its intention to rely on this report in determining continuation of Valley's accreditation."

Of course, if you're merely a member of the public checking with the Joint Commission about Valley Surgical's accreditation standing, you wouldn't know that.

Who does own Valley Surgical? Remember, it has to be owned by a doctor to avoid regulation by the California Department of Public Health. The California Medical Board's website doesn't identify any individual owners. The California secretary of state's website doesn't say. Neither does the facility's recently filed lawsuit against the coroner. The state Department of Public Health says it has no record for Valley Surgical.

In May 2007, a medical board record stated that a surgery facility at the exact same address was co-owned by Michael and Julian **Omid**. It was then known as Woodlake Ambulatory Surgery Center. The center filed a public document around the same time that identified Julian **Omid** as its president.

The board's assertion about ownership appeared in a disciplinary proceeding against Michael **Omid** that accused him of several negligent and improper acts, including allegedly allowing unlicensed assistants to perform such medical procedures as suturing patients. The board eventually settled the case by allowing Michael **Omid** to stipulate to violating a couple of legal provisions related to operating in an unaccredited surgical setting. He was placed on three years' probation, which ended in October 2011. Julian **Omid's** medical license has been revoked by the medical board, which cited in its revocation decision his "penchant for dishonesty."

Michael **Omid** sued me for defamation in 2010 for my reporting on his background. The case was dismissed in 2011.

Valley Surgical's lawyers didn't answer questions about the center's current ownership. A medical board spokeswoman, Cassandra Hockenson, says that the board is relying on the Joint Commission to provide it with ownership information for the center, and that the JC has "yet to comply." I wouldn't think the board would be so casual about requiring its proxies to hew to state law when people's lives are at stake, but that's me.

Anyway, this is the California Medical Board, the motto of which appears to be, "Don't wake us, we're sleeping." It's one reason the board has still not acted against those who have been linked by county coroners to the deaths of five Lap-Band patients.

Indeed, one issue is whether the board intends to take action against Dr. Chau. It's had plenty of time to get the wheels rolling, for it knew no later than Jan. 5, 2012, that the coroner was looking into Rojeski's treatment. (Gee, an osteopath, comes under the jurisdiction of the state Osteopathic Medical Board, but there's no indication on that board's website of any action pending against him there, either.)

Among the complaints in Valley Surgical's lawsuit against the coroner is that the coroner's lead anesthesiology expert on the case, Selma Calmes, had a "bias" against ambulatory surgical centers like Valley Surgical, an assertion the coroner's office has rebuffed. The report got released despite the lawsuit.

Valley Surgical has tried to convince the coroner that Rojeski "may have been the cause of her own death," as Konrad Trope, one of its lawyers, wrote in a Dec. 6 letter filed in court. Among other things, he contended that she hid from the Lap-Band doctors her history of having taken drugs related to the infamously dangerous weight-loss medication fen-phen, which might have damaged her heart. (He doesn't explain what that had to do with her aorta getting injured in surgery.)

The lesson there, of course, is that when you troll for your patients through an 800 number and TV ads, you may get patients you don't know anything about except what they tell you.

But the real problem here is the sorry performance of California's medical regulators. They're supposed to be looking out for California's patients. They failed Paula Rojeski, and that means they're failing us all.

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Michael Hiltzik's column appears Sundays and Wednesdays. Reach him at mhiltzik@latimes.com, read past columns at latimes.com/hiltzik, check out [facebook.com/hiltzik](https://www.facebook.com/hiltzik) and follow [@latimeshiltzik](https://twitter.com/latimeshiltzik) on Twitter.



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Sunday, September 28, 2014

How did these claims slip by?

Home Edition, Business, Page B-1

Business Desk

30 inches; 1160 words

Type of Material: Column

By **MICHAEL HILTZIK,**

Here's how the nation's largest health insurance company aided and abetted what it says was a \$43-million healthcare fraud.

In a lawsuit filed recently in federal court in Los Angeles, UnitedHealth Group says it paid out the \$43 million to an interconnected group of doctors and medical clinics, mostly associated with the notorious 1-800-GET-THIN advertising campaign, for weight-loss surgeries and procedures. The company alleges that the providers submitted charges for procedures that were unnecessary or never performed, and inflated bills threefold or more. United is demanding refunds.

The company says it got rooked because it placed "justifiable reliance upon ... this false billing." It implies it had no choice but to "rely on the veracity" of the bills, and woke up belatedly.

But is it plausible that a leading health insurance company -- if it were on its game -- would allow \$43 million to go out the door without realizing that it was being systematically cheated? Or is it more likely that United took the easy way out -- not scrutinizing the medical claims until too late?

Either way, United utterly failed in its role, fundamental to the entire commercial health insurance business, of ferreting out and blocking improper charges. When fraud happens, the costs get footed by customers through higher premiums.

United's apparent dereliction raises an important question relevant to the future of healthcare reform: What use are health insurance companies?

The health insurance industry, which is cemented into a central role in our healthcare system via the Affordable Care Act, brags about its indispensable role in fighting fraud. But let's contrast its PR pitch with UnitedHealth's lawsuit.

America's Health Insurance Plans, or AHIP, the industry's lobbying arm, says this: "Health plans have prioritized reducing healthcare fraud and use cutting edge technology and sophisticated data analysis to prevent fraud from occurring in the first place rather than 'paying and chasing' after the fact."

UnitedHealth, in its lawsuit, says this: "By practical necessity, United reasonably relies in good faith on the claims submitted to it by providers.... United receives nearly 2 million healthcare claims per day and must comply with various laws and regulations mandating that such claims be paid within a short period of time.... United reasonably relied on the misrepresentations contained on the claim forms."

Either the insurers truly have "prioritized" fighting fraud or they've prioritized meeting a deadline. Either they use "cutting edge technology" to combat fraud or they rely "in good faith" on submitted claims. Either they nip fraud in the bud or they file lawsuits to chase down money they've already paid "after the fact."

Paying suspect claims merely to meet the deadline? That's not required by law.

If resources were the problem, the company certainly had the money to spare: From 2010 through 2013, it collected nearly \$387 billion in premiums and recorded profits of nearly \$21 billion. In that period its chief executive, Stephen J. Hemsley, collected more than \$50 million in compensation. United spent \$3.2 billion to repurchase its own shares in 2013 alone.

United doesn't look like a company so overwhelmed by 2 million claims a day that it had to outsource the oversight process to "good faith." It looks like one that "prioritized" outlays to its shareholders and CEO ahead of "reducing healthcare fraud."

United had ample warning about 1-800-GET-THIN and its weight-loss business.

We started raising questions in early 2010 about the people behind the campaign. They were brothers Julian and Michael **Omid**, both of whom had disciplinary records with the Medical Board of California -- Julian's license has been revoked, and Michael's was under probation for the three years that ended Oct. 3, 2011. Michael **Omid** is currently facing an accusation of negligence by the state medical board, according to information on the board's website.

United alleges in the lawsuit that much of the billing at issue arose from Lap-Band procedures, in which a flexible silicone collar is placed around the stomach to suppress appetite. The Lap-Band, which was GET-THIN's stock in trade, is indicated only for morbidly obese patients who have failed to lose weight by conventional means. United further contends it rejected many of the defendants' requests for authorization for the procedure, only to learn later that they concealed the operation within bills for other procedures, such as repairs of esophageal hernias.

United asserts that what it identifies as "the **Omid** network" waived the patients' co-pays and then surreptitiously added them back into the insurance claims.

Under the terms of its coverage, United says, waiving co-pays can invalidate the entire claim. United declined to answer my questions about why it wasn't more vigilant about billings from the Lap-Band clinics. The company also wouldn't say whether it had referred its allegations to law enforcement agencies or government regulators.

As my colleague Stuart Pfeifer reported last week, United's allegations come two years after several law enforcement agencies opened an investigation of the **Omid**s for "potential violations of federal law, including conspiracy, healthcare fraud, wire fraud, mail fraud, tax violations, identity theft [and] money laundering," according to a statement by a Food and Drug Administration criminal agent in a court filing in an unrelated criminal case. No charges have been filed.

The 1-800-GET-THIN campaign was pulled in 2012 after the FDA warned the companies that the advertisements failed to include adequate warnings about the potential risks of Lap-Band surgery.

Five patients died between 2009 and 2011 after Lap-Band surgeries at clinics affiliated with the ad campaign, according to lawsuits, autopsy reports and other public records.

United's lawsuit is a response to a case filed by several of the surgery centers, alleging that United had stopped paying their claims. "Nothing [United has] alleged is illegal or improper," says the clinics' attorney, Daron Tooch. "There's nothing illegal about charging a lot for a service."

At least through the beginning of 2011, United kept paying claims from "the **Omid** network."

The core of United's business as a health insurer is to make judgments about bills submitted by doctors, hospitals and clinics -- whether the charges are reasonable, the procedures necessary and proper, the providers competent. According to its own lawsuit, United failed to do that with respect to some \$43 million in billings.

United's lawsuit against "the **Omid** network" resembles a lawsuit it filed in Northern California in 2012, accusing a group of surgical centers of fleecing it out of \$39 million through kickbacks and inflated claims, such as a bill for kidney stone treatment on which the insurer paid \$97,000, though the average regional price for the procedure was

\$6,851. In that lawsuit, too, United pleaded that because of its volume of claims, it was "not in a position to specifically investigate the veracity of each claim." The case has been scheduled for trial in October 2015.

That's the reality of the health insurance business in a nutshell. The consequences of letting fraud go unaddressed can be laid on the premium payers. The shareholders and CEO, meanwhile, will do just fine.

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Michael Hiltzik's column appears Sundays and Wednesdays. Read his blog, the Economy Hub, at latimes.com/business/hiltzik, reach him at mhiltzik@latimes.com and follow @hiltzikm on Twitter.

Descriptors: UNITEDHEALTH GROUP INC; 1 800 GET THIN (COMPANY); SUITS; BARIATRIC SURGERY; FRAUD

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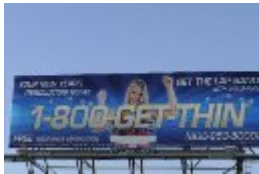


PHOTO: FIRMS OPERATED by Michael and Julian **Omid** advertised for several years on Southern California freeway billboards, a lawsuit alleges. UnitedHealth Group has accused the brothers of defrauding the insurer.
ID NUMBER:20140928LA0003879351
PHOTOGRAPHER:Mariah Tauger Los Angeles Time



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