

CRIME LAB REPORT

Media and public policy analysis for the forensic science community

Kindred spirits? Pharmacists, doctors, and forensic scientists.

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All professions have errors. But some are more dangerous than others.

In a February 2008 exposé entitled “Prescription for Errors,” *USA Today* called attention to the increasing number of errors involving the improper filling of prescriptions in the nation’s leading pharmacies.

Investigative reporters Kevin McCoy and Erik Brady researched legal documents and sanction-records from state pharmacy boards and identified multiple factors contributing to the problem:

- Too few pharmacists to handle the workload
- An increased emphasis on efficiency and speed
- An over-reliance on technicians to assist the pharmacists
- Bonuses for increases in prescription volume
- Limited face-to-face counseling with customers

Anyone who has recently visited a major metropolitan pharmacy knows just how busy it can get behind that tall counter. Three or four people can usually be found working at a dizzying pace with little time to interact with customers. Wait for your prescription, are you kidding? One pharmacist told *Crime Lab Report* that pharmacists are in such high demand that twelve-hour shifts are common. And if they do get a meal break, it’s usually right at their work area.

Listen to what one pharmacist told Erik Brady of *USA Today*:

“.....corporate will tell you ... that there is no pressure to increase speed and that pharmacists are supposed to use their professional judgment and go at a pace where they're not going to make errors. Well, that's fine and dandy coming from corporate, but what filters down to middle management is completely opposite. They're in the stores pushing the volumes.

"I was one who counseled every one of my patients. The corporation didn't like that because I wasn't getting the dollars into the cash register (fast enough). They have a results department that gave the parameters for how these stores were to be staffed — the hours, the budgets — and not one of these people is a pharmacist.”

Fortunately, not everyone shares the same opinion. Another pharmacist acknowledged the fast pace but insisted that it is not a problem:

"....I really don't know how volume fits into it at all. I think it's more a matter of communication. When volume is high, it's important that you have a good support team. You have good technicians with you or additional pharmacist staffing. The technicians will take the brunt of the cashier duties, things of that nature, which allows you to counsel a patient and verify the prescriptions.

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"That's one of the joys I have in pharmacy, the ability to counsel patients. Because if you don't get to counsel them, you don't get to see firsthand how you're impacting them. It's when you get out there and discuss with patients about their medication and regimens, that's when you get to meet people, and that's what is most enjoyable."

Does any of this sound familiar?

Crime Lab Report believes that many publicly-funded crime labs are dealing with some of the same problems that were identified in the *USA Today* study. Some are so understaffed that they can't handle their caseloads. And with budgets being cut and many facilities exceeding their expected life spans, an increased emphasis on productivity and efficiency can wear down even the most committed scientist.

In many crime laboratories, productivity standards are enforced with varying degrees of strictness. Sometimes, scientists' earning potential may be predicated upon their ability to meet these expectations. While this kind of strategy is not inherently bad, it can be abused to the extent that scientists are encouraged to focus on productivity at the expense of quality.

Then, there is the challenge of communicating adequately with customers and other stakeholders.

The receipt of a laboratory submission form and the issuance of an official lab report are often the only communications that take place regarding the testing of forensic evidence. And when it's time to prepare for court, prosecutors are often unable to facilitate the kind of collaboration that is needed between scientists and other officers of the court, including defense attorneys.

Unfortunately, both prosecutors and defense attorneys are just as busy as the scientists and don't often have the luxury of conferring with crime lab witnesses - except maybe in the hallway just prior to testifying. Most forensic scientists would tell you that this is one of the most frustrating aspects of their job.

Crime Lab Report has been very encouraged by a study led by Max Houck and West Virginia University known as *FORESIGHT*. Patterned after a similar initiative undertaken in Europe, it involves standardizing definitions and parameters for various work processes and linking accurate financial information to them. While *FORESIGHT*'s main purpose is to assist forensic science managers with resource allocation, efficiency maximization, and increasing the value of services, it is hoped that a clear picture emerges as to what constitutes an acceptable workload for each forensic discipline.

The National Association of Medical Examiners (NAME) was able to link workload to its requirements for accreditation. Perhaps the rest of the criminal justice system should follow suit.

Regardless of how these functional problems may adversely affect criminal proceedings, *Crime Lab Report* has maintained that prosecutors, defense lawyers, and judges are - and should be - the ultimate controllers of quality in our criminal justice system. Not only must they be empowered with adequate resources and better training, they must collectively acknowledge their responsibility to prevent miscarriages of justice and admit when they have failed to do so.

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In 2008, Jon Gould, a professor of law at George Mason University and chairman of the Virginia Innocence Commission, pointed to the medical community as a model for criminal justice professionals. "If there is any profession that might have feared liability for openly acknowledging its errors, it is medicine, which has to deal with attorneys and ensuing malpractice suits." But if doctors can admit their errors and work to remedy and prevent them, then law enforcement officers and lawyers should be willing to do the same."

In fact, medical errors are some of the most frightening examples of professional failure. In 1991, the *New England Journal of Medicine* published the results of a landmark study that reviewed more than 30,000 hospital admissions in the state of New York. Approximately 4% of these patients were found to have suffered complications that prolonged their hospital stay or caused disability or death.

Dr. Atul Gawande summarized the above study in his 2002 book titled "Complications" in which he argued that the traditional paths followed by lawyers for punishing mistakes and compensating victims through litigation "are a remarkably ineffective remedy" for dealing with medical malpractice. According to Gawande, "The deeper problem with medical malpractice suits is that by demonizing errors they prevent doctors from acknowledging and discussing them publicly."

This sounds quite familiar as well.

Where medicine and criminal-justice part company, however, is in how errors are actually identified.

Medical mistakes and pharmacy errors are almost always self-evident and can be identified through basic research methods. As a result, the percentage of patients harmed by instances of malpractice can be estimated with a reasonable degree of certainty and accuracy.

But in our justice system, the criminal culpability of a defendant is, and will always be, a determination to be made by fellow human beings left to sort through the evidence as best they can. There is no special time-capsule to afford justice professionals a first-hand look at the actions of a defendant, or lack thereof, in the commission of a crime for which he or she was convicted. If this were possible, no trial would have been necessary in the first place.

Therefore, we are left only with subjective interpretations. If we are lucky, we can rely on scientific evidence to render that subjectivity as inconsequential as possible. But even science is an endeavor undertaken by imperfect people.

For such a system, then, to remain trustworthy, it must be well cared for. When it becomes overworked and neglected, it will eventually fail.

Admittedly, forensic scientists are an increasingly important part of this system. For forensic scientists, just like pharmacists, surgeons, attorneys, and a multitude of other professions,

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striking the proper balance between productivity and quality is a challenge that must be consistently overcome. For the modern forensic science laboratory, *Crime Lab Report* believes that the robust systems of quality assurance mandated by accreditation are the most effective means of insuring the accuracy of the work being carried out.

But even in accredited labs, worker stress and organizational decline are not always so easy to recognize or measure.

Some people are naturally adept when working under pressure, others are not. The recent suicide of a forensic scientist after a quality-assurance audit revealed some irregularities in his casework should be a wake up call to everyone in the community. Forensic scientists are human beings and therefore are not perfect. In a profession where a single mistake can jeopardize an entire career, it is vital that management find creative and constructive ways to balance the realities of budget with the reasonableness of the workload.

These difficulties are certainly not unique to forensic science laboratories, but neither is the need to prioritize organizational strength and optimal working conditions. It doesn't matter if an employee is processing physical evidence in the FBI Laboratory, assembling cars for Ford Motor Company, or distributing medicine from a Walgreen's pharmacy. When any organization is subjected to the kind of hyper-demand and/or systemic erosion experienced in many of America's criminal justice agencies, periodic failures in the delivery of products and services will surely result.

The ultimate miscarriage of justice is a wrongful conviction. But given the slow and persistent devaluing of criminal justice services by many of our elected leaders and fellow taxpayers, no reasonable person should be surprised that they happen.

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