

HEALTH

Why Some Doctors Purposely Misdiagnose Patients

Hundreds of people say a Michigan doctor falsely diagnosed them with epilepsy. He wouldn't be the first to lie to patients about how sick they are.

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The headaches started when Mariah Martinez was 10 years old. It was 2003, and she was living in Dearborn, Michigan, with her mother and two sisters. Whenever a headache struck, she would want to put her head down, stay in the dark, and be alone.

Martinez saw her primary-care physician, who referred her to Yasser Awaad, a pediatric neurologist at a hospital that was then known as Oakwood Healthcare. Right away, Martinez told me, Awaad ordered an electroencephalogram, or EEG, a test that uses electrodes to detect abnormal electrical activity in the brain. In a small room, Martinez was wrapped in bandages and had wires placed all over her head. The procedure required her to be sleep-deprived; she came in on one or two hours of sleep after staying up much of the night watching TV.

After performing two EEGs a week apart, Awaad, according to court documents, told Martinez's mother that her daughter had what are called atypical partial absence seizures. Rather than full-body convulsions, absence seizures are those in which a person stares off into space, blinks, or makes small, repetitive motions. Martinez was confused by the diagnosis; she didn't know what epilepsy was. Awaad, she said, told her that headaches or staring spells could be signs she was having a seizure, or had just had one. So each time she caught herself daydreaming, she thought, *Oh my God, I had a seizure!*

Awaad put Martinez on the anti-seizure medication Lamictal. Several months later, her headaches had gotten even worse, and Awaad increased her dose, court documents say. Over the next four years, Martinez underwent 10 more EEGs under the care of Awaad. He told her that most of them were abnormal. Eventually, Martinez was taking a high dose of 400 milligrams of Lamictal daily. The medication made her tired and withdrawn, to the point where she didn't feel like herself. But she continued taking it, thinking it was good for her health.

Four years after she first saw Awaad, Martinez went to see another doctor, Brian Woodruff, because Awaad had left his practice. Woodruff performed his own EEG, and the result was so surprising, Martinez's mother didn't believe it at first. It was completely normal. "I have come to the determination she never had seizures," Woodruff would later testify in court. What's more, he said, "You don't get headaches like this with absence epilepsy." In fact, Lamictal can cause headaches.

More than a decade later, Martinez is one of hundreds of patients who have accused Awaad of intentionally misreading their EEGs and misdiagnosing them with epilepsy in childhood, all to increase his pay. In June, Martinez's case became the first to go to trial in Michigan. The case shines a light on the grim world of health-care fraud—specifically, the growing number of doctors who are accused of performing unnecessary procedures, sometimes for their own personal gain.

At Awaad's trial, Martinez's lawyers painted a portrait of a man on a quest to conduct as many EEGs as possible, and of a hospital that looked the other way as red flags flew up around him. The lawyers accused Awaad of being hired by Oakwood Healthcare on a contract that compensated him for each EEG he performed. In his time at the hospital, from 1999 to 2007, his salary rose from \$185,000 to \$300,000, and he qualified for bonuses up to \$220,000 if he met certain billing targets. Brian McKeen, Martinez's lawyer, told jurors that Awaad had "turned that EEG machine into an ATM."

In court, Awaad denied Martinez's accusations. He claimed that there were "many reasons" to do an EEG, such as to confirm a diagnosis or to see if a medication was working. Awaad was born in Egypt, and after stints at New York University and the Children's Hospital of Michigan, he told the court, he went to Oakwood to serve the area's many Arabic-speaking patients. (Awaad and his lawyer did not return requests for comment.)

Soon after his arrival, however, there were signs that many of his supposedly epileptic patients did not actually have the disease. In 2001, two years before Martinez saw Awaad, a patient's mother wrote Awaad a letter claiming that he had misdiagnosed her son with epilepsy and mis-medicated him. She wrote that when she asked to view her son's EEG, the office claimed it could not provide it, because it didn't own a printer. She requested that Awaad's office withdraw her

\$523.60 bill. Instead, McKeen told jurors, Awaad turned the bill over to a collection agency.

Several doctors surrounding Awaad also spoke out against him. In 2002, a developmental pediatrician named Susan Youngs, who worked with Awaad, sounded an alarm. Youngs was contractually obligated to refer patients to Awaad, McKeen said, but she demanded an alternative referral source. “I was concerned that he was diagnosing kids with seizures who didn’t have them,” she testified in her deposition. Later, two doctors spoke up about Awaad misdiagnosing kids with epilepsy in a department meeting. Even then, the hospital, McKeen said, did not launch an investigation.

Woodruff, Martinez’s second doctor, said in court that he had treated a half-dozen patients whom Awaad had “labeled as having seizures,” and that he “never found a single patient” who had epilepsy. He said Awaad’s EEGs were repeated more often than other doctors would typically repeat EEGs.

For his part, Awaad told the jurors that he did not know “where those numbers” in his contract came from—in other words, why they appeared to show that he would financially benefit from performing more EEGs. He said he increased Martinez’s Lamictal dose because she was growing. He denied misdiagnosing Martinez intentionally, and said he gave her the best care he could.

Cases like Awaad’s are especially fraught because differing diagnoses of the same patient are common in health care; it’s where the term *second opinion* comes from. Often, the only way a misdiagnosis is discovered is if a patient has another specialist check a doctor’s work. Even then, it’s not always clear whether a wrong diagnosis was intentional or not. As Louis Saccoccio, the head of the National Health Care Anti-Fraud Association, put it to me, “People rely so much on physicians’ professionalism that when that trust is violated, it’s a tough thing to catch.”

McKeen, Martinez's lawyer, told me that Awaad's case was the first instance of fraud involving epilepsy he'd seen. But just in recent years, several American doctors have been charged with performing various types of unnecessary medical procedures. A small snapshot: In 2013, nearly 400 people sued a hospital and doctor in London, Kentucky, for needlessly performing heart procedures to "unjustly enrich themselves," as the *Courier-Journal* in Louisville reported. Last year, a Texas doctor was accused of "falsely diagnosing patients with various degenerative diseases including rheumatoid arthritis," according to CNN. And a different Kentucky doctor was sentenced to 60 months in federal prison for, among other things, implanting medically unnecessary stents in his patients.

Saccoccio told me that while it's hard to determine how common the intentional-misdiagnosis style of fraud is, the more typical variety is called "upcoding": doing a cheaper procedure but billing for a more expensive one. (Awaad is accused of doing this, as well.) U.S. government audits suggest that about 10 percent of all Medicare claims are not accurate, though Malcolm Sparrow, a Harvard professor of public management, told me that's likely an underestimate. He added that it's not possible to know how many of these inaccuracies are false diagnoses, rather than other kinds of errors.

Sparrow speculated that doctors cheat the system because "they believe they won't get caught, and mostly they don't get caught." There's also the fact that doctors often *do* know more than their patients about various diseases. Sometimes, fraudulent doctors lord that knowledge over patients who get suspicious. In 2015, Farid Fata was sentenced to 45 years in prison for administering unnecessary chemotherapy to 553 patients. "Several times when I had researched and questioned his treatment, he asked if I had fellowshipped at Sloan Kettering like he had," one of his patients, Michelle Mannarino, told *Healthcare Finance*.

Some lawyers argue that many of the doctors who get swept up in these kinds of cases are doing honest work: These doctors simply have a different opinion than another doctor who is later asked to review

their diagnoses. Writing in The Wall Street Journal last year, the lawyers Kyle Clark and Andrew George pointed out that a decade ago, most health-care fraud centered on something the doctor failed to do, such as neglecting to treat a patient who was actually sick. Now prosecutors are bringing more and more so-called medical-necessity cases, which focus on a test or procedure doctors did do that they shouldn't have. "Doctors can, and do, honestly disagree by wide margins," Clark and George wrote. "Show two doctors the same image, and you may get wildly varying—yet highly confident—opinions of what it shows."

The most devious doctors, who will harm their patients to line their pockets, make headlines. But in a way, even honest doctors are incentivized to err on the side of excessive care. Most doctors work on a fee-for-service basis, meaning the more they bill insurance plans, the more they earn. Some states and hospitals are trying to avoid this situation by experimenting with paying doctors a fixed amount. But that, Sparrow said, creates the opposite problem: It means doctors are incentivized to do less. Ideally, in his view, there wouldn't be incentives either way. "I don't want a doctor who is richer for treating me more or richer for treating me less," he said. "I want a doctor who is on a salary."

Whether or not Awaad was seeking to enrich himself, he might be parting with his earnings soon. A jury recently decided that he owes Martinez \$2.8 million—though this amount will likely be reduced because it exceeds Michigan's cap on damages. Awaad's hospital, Oakwood Healthcare, merged with Beaumont Health after the lawsuit was filed, and Beaumont plans to appeal. In an emailed statement, a Beaumont spokesman told me, "While we respect the jury's recent verdict, we disagree with the outcome and will appeal. We cannot comment about the specifics of this case or others because of pending legal proceedings and patient privacy laws, but we believe patients were treated appropriately."

Today, Martinez is 26, and she is no longer on Lamictal; Woodruff weaned her off of it. Though she still has chronic migraines, for reasons that aren't totally clear, she said she doesn't trust the medical

system much. She goes to the doctor only if she really has to. The court's decision, she said, "was definitely a relief." It was the kind of relief Awaad had failed to provide.

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