US university hospital suspends its black lung unit

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On November 1, Johns Hopkins University in Baltimore abruptly suspended its black lung unit. The action was taken after the release of a series of reports detailing how a small group of radiologists at the university's hospital has been instrumental in preventing thousands of coal miners from receiving black lung benefits over the past four decades.

The year-long investigation, entitled "Breathless and Burdened," was conducted by the nonpartisan investigative The Center for Public Integrity in conjunction with ABC News.

Johns Hopkins issued a statement explaining, "Following the news report we are initiating a review of the pneumoconiosis B-reader service. Until the review is completed, we are suspending the program."

Black lung is the common name for coal workers' pneumoconiosis, an irreversible and debilitating lung disease contracted from the inhalation of coal dust. Miners afflicted by the painful disease slowly lose the ability to breathe, eventually suffocating to death over a period of years. According to the Centers for Disease Control, while black lung is incurable, it is "entirely man-made, and can be avoided through appropriate dust control."

After declining precipitously in the aftermath of the 1969 Coal Mine Health and Safety Act, which established legal dust limits and implemented the black lung compensation program, the disease has experienced an alarming resurgence since the 1990s, according to numerous reports and studies. Both the rate and overall number of coal miners with black lung have more than doubled, including among younger miners whose entire careers have been spent under the lower dust limits set by the 1969 legislation. (See: Black lung on the rise among US coal miners.)

According to the National Institute for Occupational Safety and Health (NIOSH), a federal government agency, more than 76,000 miners died from black lung between 1968 and 2010. Between 1995, when NIOSH first recommended tightening the dust limits, and 2010, the last year for which statistics are available, black lung killed 13,675 miners.

The Center for Public Integrity focuses on the work of 78-year-old Dr. Paul Wheeler, "the leader [of the black lung unit] and most productive reader [of chest X-rays for black lung] for decades." The Center found that Dr. Wheeler has never once found the severe form of the disease—complicated coal workers' pneumoconiosis—in the more than 1,500 black lung cases decided since 2000 in which he read at least one chest X-ray. By contrast, other doctors reading the same X-rays found this advanced stage of the disease in 390 of those cases.

Overall, Dr. Wheeler has read more than 3,400 X-rays for black lung cases since 2000, but has found the disease present less than 4 percent of the time. In 80 percent of these positive readings, Wheeler saw only the earliest stages of the disease. On more than 750 of the same X-ray films, other physicians interpreted more severe forms of black lung.

In applying for black lung benefits, both miners and the coal companies are allowed to submit the medical opinions of doctors of their choosing. The prestige of Johns Hopkins—recently ranked the nation's best hospital by *U.S. News and World Report* —overrides the opinion of whichever doctor, or multiple doctors, a miner can produce.

As the Center notes, "Their [Johns Hopkins' doctors'] reports—seemingly ubiquitous and almost unwaveringly negative for black lung—have appeared in the cases of thousands of miners, and the doctors' credentials, combined with the prestigious Johns Hopkins imprimatur, carry great weight. Their opinions often negate or outweigh whatever positive interpretations a miner can produce."

The coal companies pay the Johns Hopkins radiologists up to 10 times what miners typically pay their physicians for an X-ray reading. While the radiologists at Johns Hopkins do not receive these exorbitant fees directly, the money flows to the university and indirectly supports their work and research as professors at the medical school and physicians at the hospital.

Once the competing opinions are received in court, judges are forced to rule in favor of the most compelling evidence. "[T]o discredit [Wheeler's] readings and award benefits to a miner," the Center notes, "judges must identify a logical flaw or some other reason not to give his opinion greater weight than those of other doctors."

In the rare cases that a sympathetic judge questions Dr. Wheeler's opinion and breaks with this legal standard in favor of a miner, the rulings have been appealed to, and overturned by, the Benefits Review Board—the highest appeals court in the administrative system. The Center reports that, "Judges at

varying times have called Wheeler's opinions 'disingenuous,' 'erroneous,' 'troubling' and 'antithetical to…regulatory policy'."

In one 2009 ruling highlighted by the Center, Administrative Law Judge Stuart A. Levin wrote that Wheeler and his colleagues "so consistently failed to appreciate the presence of [black lung] on so many occasions that the credibility of their opinions is adversely affected." He added, "Highly qualified experts can misread x-rays on occasion; but this record belies the notion that the errors by Drs. Wheeler [and his colleagues] were mere oversight."

Dr. Wheeler's method, the Center explains, is to consistently read submitted chest X-rays as positive for other lung diseases, typically tuberculosis or histoplasmosis—an illness caused by a fungus in bird and bat droppings. His criteria "are at odds with positions taken by government research agencies, textbooks, peer-reviews scientific literature and the opinions of many doctors who specialize in detecting the disease, including the chair of the American College of Radiology's task force on black lung," the Center reports.

In covering his back, Dr. Wheeler sometimes admits that X-rays could be compatible with black lung, but that tuberculosis or histoplasmosis is most likely, thus essentially negating his own finding of black lung. Moreover, he always advocates miners undergo a biopsy—an invasive and medically risky operation not required by law to diagnose black lung—to remove a piece of the miner's lung for analysis.

The Center attributes Dr. Wheeler's methods largely to his personal biography. Wheeler adheres to a strict criteria for identifying black lung he learned from his mentor Dr. Russell Morgan, who helped NIOSH develop the X-ray reading criteria in the early 1970s and from whom he took over the Johns Hopkins black lung unit upon his death. Wheeler has not departed from this early criteria even though the medical community's understanding of black lung, much of which he disputes, has advanced and evolved significantly over the succeeding decades.

Dr. Wheeler was also influenced by his work with Morgan in the 1980s involving the wave of asbestos-related lawsuits. Morgan often testified on behalf of companies defending themselves against such claims and Wheeler testified before Congress in 1984 that false asbestos claims were rampant and that plaintiffs should be required to submit biopsy results to prove their conditions.

Successful black lung claims, as opposed to those in the case of asbestos, range from just $600 to a maximum of $1,250 a month for a miner with three or more dependents, actually working as a disincentive for lawyers to even take on these cases. Moreover, settlements are not allowed in black lung cases, and miners have to prove they are totally disabled by the disease.

The low compensation involved was seen as a tradeoff in part for the lower burden of proof required from miners claiming black lung established in the 1969 Coal Mine and Safety Act. Under the legislation, miners were presumed to be at particular risk for the disease, eliminating the need of proof beyond all doubt. Dr. Wheeler takes issue with this aspect of the law, demanding that biopsies be undertaken if miners wish to dispute his conservative X-ray readings.

"I think if they have [black lung], it should be up to them to prove it," says Wheeler. The Center found that biopsies or autopsies "provided undisputed evidence of black lung" in more than 100 cases decided since 2000 in which Wheeler had offered negative X-ray readings.

However, it would be wrong to view the problems with the black lung benefits program as simply that of one misguided doctor, or even one hospital.

There are immense pressures working against miners in their battle against black lung. Mining is one of the few remaining jobs with decent pay open to workers without an education in the impoverished rural areas where mining is still dominant. The meager compensation benefits offered for black lung are a fraction of what a miner can make if he continues to work.

To complain about and fight against the dust levels in a given mine—a condition bound up with production levels and thus the coal company's profits—invites intimidation and even dismissal. The United Mine Workers union, what's left of it, has been transformed into a junior partner of the coal industry and has no interest in protecting workers from victimization. If miners turn to the underfunded and largely impotent MSHA, the only "positive" result would be the closure of the mine and loss of work.

The requirement that a miner prove he is totally disabled by the disease only adds to these pressures. If he has contracted the early forms of the disease, he has the right to be relocated to a safer area of a mine, but in a capacity that almost always involves less pay. His only option is to continue working until the disease completely disables him physically. Even then, however, he still faces years of legal wrangling to prove his disability, which is often only conclusively determined by an autopsy following death.