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Collateral Damage In The Pesticide Wars

The troubling story of Dr. Omar Shafey

By Karen Charman

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Chances are, you know someone who has contracted an unexplained disease: a young, healthy woman who gets breast or ovarian cancer, or an otherwise energetic person who suddenly develops chronic fatigue syndrome, chemical sensitivity, multiple allergies, or fibromyalgia.

Most people assume public health officials are working diligently to solve these mysterious afflictions. But the troubling story of Dr. Omar Shafey demonstrates how government agencies sometimes conspire to protect the interests of influential industries rather than the public they are entrusted to serve.

In February 1998, the Florida Department of Health (FDOH) hired Dr. Shafey to track pesticide-related health problems. Although pesticide usage in Florida is comparatively high, cases of pesticide poisoning have been woefully underreported there for years.

In Shafey, Florida got both credentials and enthusiasm. An epidemiologist, he has a PhD from Berkeley in Medical Anthropology. After being hired, he traveled the Sunshine state investigating complaints. He uncovered previously unrecognized pesticide exposure routes. He worked to educate physicians on how to diagnose health problems caused by pesticides -- something barely covered in medical school. He wrote recommendations for protecting the public health based on the data he compiled.

Initially Shafey's hard work paid off. He was honored with appreciation awards by state and county health departments for "professional, caring and compassionate" service. And he earned the respect of diverse communities: colleagues, academics, farm workers, and ordinary citizens.

Yet two years after Shafey began his job, he was fired and forcibly removed from his office in Tallahassee after allegedly overcharging his department \$12.50 on a travel reimbursement claim.

Shafey claims he was harassed and ultimately sacked for resisting pressure from his supervisors to present results more pleasing to powerful agriculture interests. He is suing the Florida health department and two of his former bosses for wrongful dismissal under whistleblower statutes as well as for infringement of his First Amendment rights.

Department policy prevents commenting on pending litigation, says spokesperson Bill Parizek, so Florida health department staff could not answer questions about Shafey or his lawsuit.

Shafey's star began its meteoric descent after he refused to alter his recommendation against spraying urban areas with malathion to control an agricultural pest. Malathion is a widely used organophosphate insecticide, a nerve agent (like many pesticides) of the same chemical family as sarin gas. After analyzing medical reports and interviewing patients, Shafey concluded the spraying was making people sick.

Florida deployed malathion against an outbreak of Mediterranean fruit fly, or medfly, long considered horticultural enemy number one. The females lay their eggs in about 250 different crops. The medfly is an invasive species, neither established nor tolerated in the U.S. or Japan. An outbreak results in quarantines that prevent growers from selling fresh produce in either country.

A medfly outbreak hit Florida in 1997-1998, during which eradication efforts subjected more than a million people, mainly from Tampa to Sarasota, to malathion spraying. Call it collateral damage in the pesticide wars. Public outrage over the spraying led to the passage of a state law in early 1998 mandating the health department to set up a citizen complaint and referral hotline. The law also requires the department to verify complaints, educate health care professionals and refer patients to doctors who know how to treat chemical poisonings. Shafey joined the department soon after the law took effect.

Stripped

One of Shafey's first investigations began after medflies were found in an abandoned orange grove in April 1998 in Umatilla, a rural town in central Florida's citrus country. A medfly emergency was declared in Lake and Marion counties. After the area was sprayed, the county health department received 14 complaints.

Some of those complaints came from Charmaine Kaiser, now 36, her fiancé Dennis Robinson, 38, and the six children in their combined family. Kaiser says authorities were supposed to notify residents door-to-door before spraying so that people would stay inside, but that didn't happen. "The helicopters were right above, not very high up, and they sprayed our house. I ran out to get the kids who were playing outside, and we all got coated," she says.

Immediately after the spraying, Kaiser, who works for a local pediatrician, says her family and a lot of neighbors were very ill with long bouts of flu-like symptoms. "Two or three weeks later, I remember we were all vomiting," Robinson adds. "I was just lying on the couch, and every one of us had a bucket or something by us. It was horrible." Since the spraying, Robinson says he has been hospitalized twice a year for pneumonia, and Kaiser and her kids still suffer from respiratory complaints.

A few weeks after the spraying, more medflies were found in densely populated Manatee County, just south of Tampa on the west coast, and another emergency was declared. Shafey says throughout the duration of spraying there, the health department received dozens of complaints daily, eventually totaling 199.

By October 1998 Shafey had confirmed 123 cases of illness related to the spraying, a finding that was later published in the U.S. Centers for Disease Control and Prevention's Morbidity & Mortality Weekly Report.

The same month Shafey wrote the report that he and colleagues say led to reprisals against him: a draft on the health effects of the medfly eradication program recommending that the department prevent aerial spraying in non-agricultural areas. The final medfly report FDOH issued was stripped of both Shafey's recommendation and his name.

Pressured

Shafey says he was pressured for months by his supervisors to change his recommendation and conform to health department policy that was much less aggressive about documenting cases of pesticide poisoning than he was. In early December 1999, he says his boss, David Johnson, suggested Shafey consider money and politics as driving forces behind the way the department treated health issues involving pesticides, and that if Shafey could not "bend" to accommodate FDOH policy, he should leave. Johnson denied the conversation, both in e-mail to Shafey copied to his boss and later in court documents.

Shafey's boss suggested he consider money and politics as driving forces behind the way the department treated health issues. Johnson wasn't the only one who stood in Shafey's way. For more than a year, department lawyers had denied him access to worker's compensation data that would have helped him protect workers against future poisonings. Eventually, the National Institute of Occupational Safety and Health (NIOSH) in Washington intervened on Shafey's behalf and sent a letter to Sharon Heber, the head of Shafey's division, urging her to help get the worker's comp data. Three days later, she asked the department's Inspector General to investigate a business trip that Shafey took the month before to see if he had submitted a fraudulent travel claim. Shafey had gone to Immokalee to investigate a methyl bromide spill at an agricultural chemical supply house that injured about 40 people. Heber suspected Shafey had traveled out of the way at the state's expense for his own benefit. Though Shafey flew to Miami, which was farther from his destination than other places, the inspector-general's report acknowledged Shafey saved the state \$47.11 because he had no hotel expenses.

The inspector-general did conclude Shafey defrauded the department \$12.50 on his next trip to the American Public Health Association (APHA) annual conference in Chicago, where he presented his medfly data. The inspector-general said he should have claimed reimbursement for three-quarters of a day's per diem instead of a full day when he returned to Tallahassee, a charge Shafey disputes.

Over the next month, Shafey's responsibilities diminished, according to health department correspondence. A cornerstone of the pesticide surveillance program is to categorize to what extent medical complaints are likely linked to pesticide exposure. Despite protests from NIOSH, which funds Florida's pesticide poisoning tracking program, Johnson took the classification task away from Shafey.

Something Really Underhanded

On March 1, 2000 Shafey was presented with a detailed letter informing him that the department was considering firing him on March 13 for falsifying a travel claim and conduct unbecoming a public employee. The second charge stemmed from some emails Shafey sent to several colleagues at various state and federal agencies questioning whether the state's use of potassium chloride to execute prisoners by lethal injection was a misuse of pesticides, because the chemical was not registered for that use.

Although tensions had been rising between Shafey and his supervisors, he was surprised and upset by the move to fire him. At the time, state employees who were not political appointees were protected from being sacked for policy differences with management, so Shafey thought his job was secure. Incidentally, that changed on July 1, 2001, when Florida Governor Jeb Bush's plan to remove career service protection for Florida state workers went into effect, throwing nearly 17,000 positions -- including the one Shafey occupied -- into "at will employment." Now any state worker who refused to bow to the kind of pressure Shafey was subjected to can be fired without cause.

After he received the termination letter, there was an incident during which Shafey says Johnson provoked him. Shafey closed his office door on Johnson and admits to calling him "a low life" and "a piece of shit."

The next day Shafey was told he could no longer come into work pending an investigation of the "door slamming incident" the previous day. Shafey denies that he slammed the door but just closed it while Johnson was on the other side. "Anything I did at that point was blown all out of proportion," he says. "I think they were afraid I'd go postal, because they knew they were doing something really underhanded." He was instructed to go home and wait to be called in.

On his last day Shafey was told to come in immediately to meet with Heber (Shafey's division head) even though his lawyer could not be present under such short notice. Shafey went in and was told he was terminated immediately without any right to appeal because he used abusive language and created an "emergency condition." Then the sheriff was called to escort him out.

Burying the Controversy

The Farmworker Association of Florida viewed Shafey's ouster as a major setback to their efforts to address pesticide issues on behalf of the state's 400,000-plus farm workers. Tirso Moreno, the association's executive director, says Florida's pesticide safety regulations are too lax to protect workers, and the few laws on the books are not enforced, so pesticide poisonings are rampant.

Aside from dealing with acute symptoms associated with individual exposures, Moreno says his community seems to have unusually high rates of birth defects, skin problems, respiratory complaints, and autoimmune diseases, like lupus.

Dr. Mohammed Abou-Donia, a professor at Duke University, says it's likely that pesticide exposures are responsible for the health problems of Florida farm workers, but proving it is fraught with pitfalls. Since there is no way to measure all of the pesticides and other contaminants that people are exposed to, it is impossible to link exposures of particular chemicals back to chronic health problems. "We're put to such high standards of toxicological proof, that you can't meet it," says Marion Moses, MD, director of the pesticide education center.

The Farmworker Association has been trying to get FDOH to help for years, but until Shafey showed up, he says nobody took their concerns seriously. "When we had workers who had a problem, we always called him," Moreno says. "We don't feel that way now. And since his firing, we haven't expected much from FDOH."

Public health colleagues have also expressed regret at Shafey's dismissal. University of Florida health professors Leslie Clarke and Joan Flocks wrote in a letter to former Health Secretary Robert Brooks, that Shafey brought "courage and objectivity" to the often controversial and

heated public debate surrounding pesticide use, and they urged the department to reinstate him. The American Public Health Association publicized Shafey's ordeal in a Fall 2000 newsletter of its Occupational Health and Safety Section, and concluded that his tenacity in carrying out his public health duties led to reprisal against him. The International Society for Environmental Epidemiology, a professional organization representing more than 800 environmental scientists, endorsed Shafey's medfly spraying conclusions and said his termination "appears highly irregular."

Soon after his sacking, Shafey sued FDOH for wrongful dismissal seeking reinstatement and damages under whistleblower provisions. Such legal actions tend to take time, and Shafey's case is no exception. His first hitch was a report by Occupational Safety and Health Administration inspector Dennis Russell on whether Shafey's complaint was justified. Russell concluded in July 2000 that the department did not retaliate against Shafey, although he talked only to the Florida health department and never tried to interview Shafey. After repeated attempts, Russell could not be reached for comment.

Florida has pursued a concrete wall defense. Using a newly popular tactic, the state has invoked -- and the court has accepted -- a "sovereign immunity" defense, which basically says that states are immune from legal action by individuals. Though the doctrine was articulated more than a century ago, recent U.S. Supreme Court rulings have given states new power to use it, explains Michael Kohn, a lawyer representing the National Whistleblower Center. He calls it "a critical assault" on public health and environmental defense.

Meanwhile, before the sovereign immunity decision Shafey amended his complaint to name Sharon Heber and David Johnson individually. Shafey has also filed another action claiming Heber, Johnson, former Secretary Brooks, and Governor Jeb Bush violated his constitutional rights to free speech and due process of the law.

On November 1, 2001 the court ruled that Shafey's case can proceed. Meanwhile, Shafey's attorney William Moore of Henrichsen Siegel Moore laments the uphill trudge: "We've been waging this battle for one and a half years now, and we haven't been able to have any discovery yet in the case. I think it speaks volumes about the merits of Dr. Shafey's case and the fact that the state has done so much to try to avoid sitting down and talking about this situation."

Harassment of public interest-minded health officials, scientists and technical experts is widespread and rising, says Mary DeVany, chair of the Industrial Hygiene Association's Social Concerns Committee. "There's a lot of pressure being put on people to modify, soften their tone, or hedge their reports to say something is possible instead of 'here's the evidence that it happened,'" she says. "We're talking about an increased acceptance of unethical behavior -- about supervisors and managers putting pressure on their technical professionals to perform unethical acts."

De Vany characterizes this phenomenon as "the good corporate soldier syndrome." But the increasing allegiance to corporate interests among public health officials does little to help Florida farm workers or the Charmaine Kaisers, Dennis Robinsons, and other victims among us.

