

## PROFESSIONAL ISSUES

### Defamation award could chill peer review

#### A Dallas cardiologist won \$366 million in a lawsuit claiming a peer review panel intentionally ruined his career.

By [Myrle Croasdale](#), AMNews staff. Oct. 4, 2004.

It's unusual to win a defamation award in a peer review case. Combine it with a jury award of \$366 million and it becomes a verdict in a class of its own, legal experts said.

A judge could still toss out the award, and it's likely the decision will be appealed, yet the fact that a jury found a hospital and three of its physicians liable for unfairly suspending a cardiologist's privileges is sending shivers down the spines of physicians involved in the peer review process.

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"This puts a very real question mark on our ability to police ourselves," said Warren Lichliter, MD, president of the Dallas County Medical Society.

Of the \$366 million, the hospital is to pay \$161 million, the hospital's chair of internal medicine \$141 million, the head of the cardiac catheterization lab \$32 million and the hospital's chief of cardiology \$32 million.

The case is that of cardiologist Lawrence Poliner, MD, who convinced a Dallas federal district court jury that Presbyterian Hospital of Dallas and three of its physicians defamed him, violated his contract and inflicted emotional distress, his attorney said. Originally 10 physicians were named as defendants in the case.

"There's a lot of discussion of the chilling effect of this case and the verdict's effect on physicians' willingness to serve on peer review panels," said Michael Logan, Dr. Poliner's lead attorney. "Dr. Poliner's belief is that peer review is vital to the medical profession. Doctors policing themselves is important and has to be done.

"The important part of the verdict from our perspective is that the jury concluded that this was in a fact a malicious peer review and Dr. Poliner's privileges should not have been taken away as it was done."

According to the lawsuit, Dr. Poliner's catheterization laboratory privileges were summarily suspended after a review of one case. According to the plaintiff's

complaint, Dr. Poliner lost his privileges without being given the opportunity to defend his handling of the case.

Eventually his conduct in that case, and others that were reviewed later, was cleared by a risk review committee. Though his privileges were restored after seven months, when Dr. Poliner asked that the adverse action be expunged from his record, his request was denied, according to the court filing.

In the suit, Dr. Poliner, who had recently opened a solo practice, claimed that all but one physician on the peer review panel were his economic competitors and that the move to suspend his hospital privileges was an effort to eliminate competition.

In his lawsuit, Dr. Poliner claimed that once he regained hospital privileges, he was not included in emergency department call, a main source of acquiring patients. Other physicians in the community stopped referring patients to him, and even when he was added to the emergency department call list, he was rarely contacted, virtually ending his practice, according to the lawsuit documents.

The hospital denied these charges in its court brief and, among other arguments, stated that Dr. Poliner's presence meant an increase in business for the hospital.

Douglas D. Hawthorne, president and CEO of Texas Health Resources, which owns Presbyterian Hospital of Dallas, said the verdict could lead to a greater reluctance by physicians to serve in department leadership capacities, to make peer review recommendations and to testify in court cases, for fear of personal liability.

"If hospitals and their medical staff committees cannot evaluate physician performance through peer review, then quality and patient safety will be compromised," Hawthorne said.

Richard Willner, president of the Center for Peer Review Justice, a group that advocates against sham peer reviews, said the verdict should help clean up the process. "The people who do the shamming know they are not personally responsible and there's no financial responsibility," Willner said. "This will send a message -- even if the verdict is reversed -- that this could happen to them."

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