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Doctors who sued Yale win \$5.5 million

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By Steve Twedt, Pittsburgh Post-Gazette

A Connecticut jury has awarded \$5.5 million to three Yale University radiologists who say Yale retaliated against them for criticizing policies they said had "the potential to cause serious harm to patients."

The university plans to appeal the state Superior Court verdict. Yale spokesman Tom Conroy said yesterday that the university believes the state statute protecting free speech in "matters of public concern" should not apply in this case. "Our view was that this was a workplace dispute," he said.

The three physicians -- Drs. Morton Burrell, Arthur Rosenfield and Robert C. Smith -- said policies implemented by a new department chairman beginning in 1995 threatened patient care. Those changes, according to the complaint, included understaffing, poor training, pressure to hurry reports before diagnostic films were properly read and poor supervision of less-experienced physicians.

As one example, they cited major errors and misdiagnoses that were made in 14 separate cases on two separate days in November 1999, including the missed diagnosis of an abdominal aortic aneurysm in one patient and a missed rectal cancer diagnosis in another.

In response, the doctors were accused of "making waves" and subjected to demotions and reduced salaries. Smith, according to the lawsuit, was told he "had no future" at Yale and eventually left to attend law school.

The jury said Yale retaliated against the three for speaking out and the university should compensate the doctors for both past and future economic losses. Jurors also found that Yale acted "with reckless disregard" to the physicians' right to speak out.

The judge will set additional punitive damages later.



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"It was wrong for Yale to overlook the needs of the patients. That was a big reason for the size of the verdict," said attorney Joseph Garrison, who represented Rosenfield. "It was a complete victory and I think that does say something about the extent of the retaliation."

Conroy said, "The jury verdict is in no way a judgment that supports the other side about the conduct of the department in terms of patient care. Furthermore, we believe that the system that was in place which led to their complaints is a model system and that system remains in place today."

The lawsuit was included in a in October that documented instances of doctors across the United States who faced reprisals **Pittsburgh Post-Gazette series** from their hospitals after reporting patient care problems.

Another doctor featured in the Post-Gazette series, Dr. John Ulrich Jr., last month won a \$4.3 million judgment in federal court against the San Francisco Department of Health and the county-owned Laguna Honda Hospital. The jury said the hospital had violated Ulrich's First Amendment rights and denied him a fair hearing after he openly protested a decision to cut two staff positions.

Ulrich is now trying to have an adverse action report against him in the National Practitioner Data Bank voided.

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