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Doctor who voiced protest wins \$4.3 million judgment

Thursday, June 24, 2004

By Steve Twedt, Pittsburgh Post-Gazette

A California physician featured in a Pittsburgh Post-Gazette series about doctors facing reprisals from their hospitals has won a \$4.3 million judgment in federal court.

Dr. John Ulrich Jr., a general practitioner, has not treated patients for six years as he battled the San Francisco Department of Health and county-owned Laguna Honda Hospital about his tenure and departure from the medical staff.

A U.S. District Court of Northern California jury says the hospital violated Ulrich's first amendment right of free speech and denied him a fair hearing to clear his name.

Ulrich's attorney, William Gordon Lewis, said the six-person jury returned its verdict in four hours.

"It was a credibility question between the hospital administration and Dr. Ulrich, and the jury rather resoundingly answered that one," Lewis said.

Matt Dorsey, spokesman for the San Francisco city attorneys' office, said yesterday that "we were very surprised by the jury's decision" and promised they will "vigorously" appeal the verdict.

"This is not an instance of reprisal," Dorsey said. "We remain convinced there is not a shred of credible evidence to indicate wrongdoing on the

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part of the city. We consider this outcome an aberration and remain confident that it's not going to stand in the end."

Lewis said Ulrich had worked at Laguna Honda for nearly 10 years and "never got into any trouble at all" until he began openly raising patient care concerns.

In 1998, Ulrich stood up at a medical staff meeting and called the health department's decision to cut two staff positions "an injustice to patients."

The following week, he and other physicians sent a letter of protest to department officials.

Less than two weeks later, hospital officials told Ulrich that he was under investigation for incompetence "spanning the full range of hospital care" including incomplete diagnoses, inappropriate diagnostic orders and overall poor management of patients' hospitalizations.

A later review by the California Medical Board found no problems with Ulrich's care of patients.

At the time, though, Ulrich believed he was being unfairly targeted for speaking out and resigned, posting his resignation letter at a nurse's station.

Days later, Ulrich learned that the hospital could report him to the National Practitioner Data Bank because he had resigned while under investigation. Ulrich then tried to rescind his resignation pending a resolution to the investigation, but the hospital refused.

The hospital also refused to remove Ulrich's data bank report after the state medical board cleared him. With the jury's favorable verdict, Lewis said they will now seek a court order to force the hospital to void the data bank report.

The data bank, which lists doctors who have lost malpractice lawsuits or have lost their hospital privileges, was established by the Health Care Quality Improvement Act of 1986 as a means to prevent incompetent doctors from hopping from state to state. Hospitals check the data bank when considering physicians for appointment to their medical staffs.

But, as the Post-Gazette series published in October showed, the threat of a data bank report also can be used to intimidate or silence physicians who speak up about poor patient care because those with those reports often have difficulty finding other positions.

Once a physician is listed in the data bank, only the reporting hospital can void the report. Although a doctor can appeal to the U.S. Health and Human Services secretary to remove a data bank report, fewer than 5 percent of those appeals have been successful. Ulrich is among those

physicians whose appeals to HHS were denied.

Ulrich's experience, Lewis said, shows "the hospital administration can abuse the peer review system to stifle physicians who are speaking out in favor of patient care. It's a perversion of the system."

Lewis said Ulrich has lost more than \$400,000 in income the past six years while working temporary jobs as a medical coder for insurance or pharmaceutical companies. Most recently, Ulrich has been unemployed "for the past couple of months."

If he is able to have his data bank report voided, Ulrich likely will seek work in a hospital again, Lewis said.

"He loves patient care. That's what he wants to do," Lewis said. "The past six years has been a nightmare for him."

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