FROM THE COURTS

From Page A1

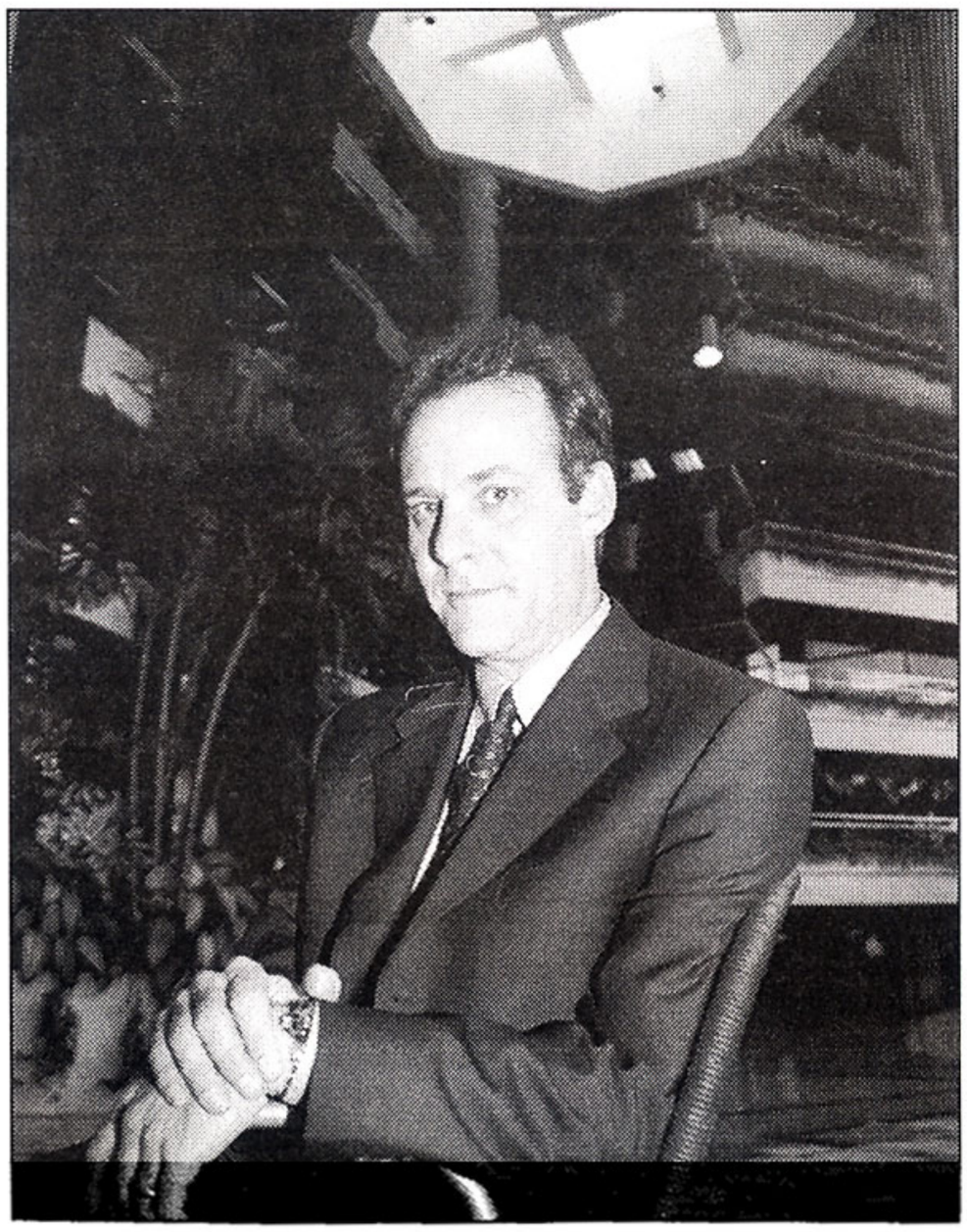
Immediately after receiving the letter, Strobis asked for, and three months later received, a peer review hearing. The committee, made up of doctors selected by Humana, came back with a recommendation that Strobis be monitored and placed on probation, but committee members apparently didn't think the violations warranted his termination.

Regardless, Humana rejected its own panel's recommendation and terminated his privileges a second time. Humana told Strobis the decision was not final and that he could have another hearing. But by this time, says his attorney, **Ned Kimmelman,** Strobis was losing patients left and right and his office was in chaos. Because his privileges were terminated, Humana would not continue to pay him.

Consequently, Strobis was forced to bring in another doctor to care for his Humana members, who at the time made up the bulk of his practice.

"He had his entire lifeline cut off ... The patients are going to go somewhere else," said Kimmelman, a Boca Raton solo practitioner.

By the time Strobis got a second hearing — more than a year after he was first notified that he had been fired — his practice was a shell of what it once was, according to Kimmelman, who filed a lawsuit Oct. 18 against Humana. The suit alleges that Humana interfered with the doctor's relationship with his patients and that the HMO improperly terminated Strobis' privileges by failing to first allow him to go before a peer review committee. Strobis declined to be interviewed, referring questions to his attorney.



PHILIPPE JENNEY / ARGENT

ALLEGATION: Lawyer Ned Kimmelman says Humana violated a 1986 law granting physicians due process and hearing rights.

Pam Gadinsky, a spokeswoman for Humana Health Plan of Florida in Miramar, said she could not comment, noting that the company had just been served with the lawsuit and had not yet reviewed it.

Strobis approached Kimmelman after learning the lawyer had successfully handled two other cases in which HMOs were alleged to have run physicians out of business.

In a case involving Dr. Alan Leavitt, the Deerfield Beach chiropractor sued United Healthcare of Florida Inc. alleging that the HMO cut his fees and then hired away one of his physicians to work at a new center United opened across the street. When Leavitt tried to sell his health center, United, which then had an exclusive contract with the doctor, nixed the deal, saying he could sell only to them. In August 1997, an arbitration panel awarded the doctor $820,000.

In May 1999, United Healthcare of Florida again was ordered to pay $500,000, this time to Dr. Louis Witonsky in a case Kimmelman described as a "bogus peer review." The Boca Raton primary care doctor was suspended from the HMO's panel of physicians in 1998, letters went out to his patients that he was being terminated before he was able to get a peer review hearing.

"Every time there is an administrative action, a doctor is entitled to a hearing," said Dr. Andrew Richman, a health care consultant who was called in as an expert witness in the Witonsky case. "In the Witonsky case, [the HMO] moved his patients before he had peer review."

The Health Care Quality Improvement Act of 1986 (HCQIA) says hospitals and other health care entities, including HMOs, must provide physicians with due process and hearing rights if they want immunity from damages under state or federal law. By terminating Strobis' privileges, which resulted in his inability to treat his patients, Kimmelman said Humana not only violated the law, but has lost any purported immunity.

"HCQIA specifically says they had to give him a hearing before they terminated his privileges and they didn't," Kimmelman said.

On Aug. 17, 1995, Humana sent Strobis a letter canceling his contract and saying he was a danger to his patients. The letter came despite the fact Humana had promised Strobis a second peer review hearing, which he had not yet had. It wasn't until September 1996 that Humana allowed Strobis to have that second hearing. The committee again ruled in the doctor's favor and recommended that he be reinstated. Again Humana rejected the recommendation without giving him any reason, according to Kimmelman.

"He lost a practice worth millions, his reputation was destroyed. He has alleged it's tortuous interference with his patients' relationships," said Kimmelman, who is at a loss to explain why Humana would fire Strobis.

"From the records I have reviewed it is my opinion that it was reckless disregard for patient relationships with their doctors. Just an indifference, thinking they can do what they want to whomever they want," he said.

Richman, the health care consultant, said, "Usually the health care entity, in this case the HMO, will follow the recommendation of its own hearing committee."

John Shipley of **Searcy Denney Scarola Barnhart & Shipley** in West Palm Beach, says this case is a new one on him. Shipley represented the estate of Neil Dostal, a patient who sued Strobis and Humana after he failed to get the treatment he needed and eventually died of prostate cancer.

"Mr. Dostal kept going in and saying. 'I want to see my doctor.' No one at the office told him that Dr. Strobis had been fired," said Shipley. "If you are an insurance company and you are going to boot a doctor, you have to give notice to your patients, tell them what is going on, give them a chance to select another physician. None of this happened, it was a mess," he said.

Dostal's case was settled out of court for an undisclosed amount of money.

Strobis, meanwhile, is just getting back his financial footing and that is why he has decided to file suit now, said Kimmelman.

"John Strobis has just gotten it together to the point where he can say, 'Is there anyone who can help me?' " Kimmelman said. "Emotionally, financially, it takes a long time when you are devastated, all you want to do is scratch back to where you were." ■