

Ousted physician sues Humana

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"There are very few entities that do whatever they want, to whoever they want, whenever they want," said Strobis' attorney, Ned Kimmelman. "HMOs do."

Kimmelman contends that by initially terminating him without a hearing, then ignoring the recommendation of its hearing committee, Humana violated the federal Health Care Quality Improvement Act (HCQIA).

"It's very unusual for a health-care entity to overturn a decision of its peer review," said Andrew Richmond, M.D., Kimmelman's consultant and expert witness.

Whether it's illegal, though, is less clear. Spokesman Donald Hines of the Health Care Financing Administration said Humana's actions may be acceptable if they're written into the contract they had with Strobis.

'Out of nowhere'

Strobis' problems with Humana began in February 1994, when he was placed on probation for inadequate record keeping. He had been working under an exclusive risk contract for Humana's Medicare plan for about five years. All of his approximately 1,200 patients were insured by Humana.

According to Kimmelman, Strobis was cleaning up his records when the HMO in December notified him of his termination.

"They never gave him enough chance to improve," Kimmelman said. "They terminated him out of nowhere."

Strobis was redeemed in March by three South Florida physicians appointed by Humana to hear his case. They unanimously agreed that he should remain on probation only.

"We do not concur with [Humana's Quality Management Committee's] recommendation for termination," wrote committee chairman John Hayes, M.D.

"We do recommend continued probation and continued close monitoring of Dr. Strobis."

Humana's QMC rejected the committee's decision, according to a letter written by Busch, because "Dr. Strobis was not prepared to present evidence in response to all of the cases which he had been notified would be presented at the hearing."

"Dr. Strobis wasn't prepared?" Kimmelman retorted. "He won."

The Dostal suit

Humana took a year and a half before arranging a second hearing. In the meantime, Strobis hired a physician to care for the Humana patients he hoped to regain. It was during this period that Strobis was accused of malpractice by the estate of Neil Dostal. That suit was settled out of court.

"When Mr. Dostal started feeling bad, he came by to see Dr. Strobis and was told he wasn't available," said attorney John Shipley, who represented Dostal's estate.

Strobis' office personnel allegedly put Dostal off for three or four months before arranging an appointment with the physician caring for Strobis' Humana patients.

"The doctor didn't know any of the patients," Shipley said. "He didn't realize the drop in Mr. Dostal's weight was a sign of something going wrong."

Dostal had been suffering from prostate cancer, which the lawsuit claims could have been successfully treated if diagnosed earlier.

Although he handled the lawsuit against both Strobis and Humana, Shipley sympathizes with the physician.

"He was mad at Humana and I don't blame him," Shipley said. "His peers said he can stay [on Humana's panel]. I think he has a pretty good case."

No money for fees

After the QMC overruled the second hearing committee, in September 1996, Strobis signed on with a new HMO and began building his practice again from scratch. He waited several years to file the lawsuit, Kimmelman explained, because he didn't have enough money to pay for legal fees.

The delay, though, might hurt the physician's case. In a motion to dismiss the lawsuit filed Nov. 2, Humana's lawyers contend Strobis exceeded the four-year statute of limitations on actions for intentional torts.

"We filed a substantive motion to dismiss," said spokeswoman Pam Gadinsky of Human Medical Plan of South Florida. "We believe it's meritless."

Kimmelman said he isn't concerned about the motion.

"It's nothing but a delay tactic," he said. Strobis is counting on his attorney to work the same magic he has for two other South Florida physicians whose practices were wrongfully damaged by HMOs. One was a \$500,000 judgment against United Healthcare of Florida for improperly dropping a fellow Boca Raton primary-care practitioner, Louis Witonsky, M.D. The other involved Deerfield Beach chiropractor Alan Leavitt, D.C., who also successfully sued United.

Physicians can take heart in a new Florida law that may lighten Kimmelman's caseload. The law, which took effect in June, requires HMOs dropping a physician to give a reason in writing.

"If an HMO is terminating for an improper reason," said Jeff Scott, associate general counsel for the Florida Medical Association, "it may make them think twice." ♦

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