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Not what the doctor ordered

Yakima obstetrician Diana Smigaj is tired of fighting Memorial Hospital over her reputation and has filed a lawsuit

By LEAH BETH WARD

Yakima Herald-Republic

A local obstetrician is accusing Yakima Valley Memorial Hospital, its chief executive and two doctors of trying to drive her out of business by ruining her reputation with "spurious" inquiries about the way she practices medicine.

Dr. Diana Smigaj, 60, who has practiced obstetrics and gynecology in Yakima since 1995, alleges in a lawsuit filed in November that the hospital has targeted her over the years because she is a woman and "a serious competitive threat" to its control over birth and maternity care in Yakima County.

She claims Memorial has protected some male Ob/Gyn practitioners who have "committed acts of gross medical negligence in recent years, even causing deaths."

Memorial's lawyers vigorously deny Smigaj's claims and want the case dismissed.

So far, three Yakima County Superior Court judges have recused themselves from the case, which was recently assigned to Judge Blaine Gibson.

Smigaj -- pronounced SMIG-ee -- is taking on a powerful medical establishment in Yakima. It's a rare public battle for a profession that doesn't like to be challenged by members of its own ranks, much less outsiders.

Whether the dispute amounts to more than professional disagreements or personal animosities between physicians with healthy egos would only come out during a trial.

And, if Smigaj's case proceeds, it could offer a rare look inside the closed-door "peer review" process used by hospitals and physicians across the country to discipline their own and weed out incompetence.

The case could also shine a light on the political and economic culture of Memorial Hospital which, under chief executive Rick Linneweh, has grown from a sleepy nonprofit hospital into a regional medical powerhouse with an array of services.

Smigaj said she filed the lawsuit as a last resort after years of battling with Memorial over her reputation. But she said she is also taking a stand on behalf of other doctors who've been scrutinized by what she calls a "sham" peer review process.

"This is not about me. It's about a broken system," she said. "People are afraid to come forward because your reputation is everything. I just at some point said, 'This can't go on.'"

Peer review is the process by which physicians analyze cases that may have had questionable outcomes in the hospital. The goal is to avoid medical mistakes and spot problem doctors.

The internal, secretive process is conducted by medical staff members selected by their peers for their judgment, impartiality and -- to the extent possible -- financial independence from hospitals and clinics.

In a brief telephone interview Friday, Linneweh said Memorial has "one of the most thorough and conscientious peer review processes in the state of Washington."

He called Smigaj's claims about Memorial not disciplining two male doctors "off the mark" and said both male and female physicians review cases during the confidential process.

Memorial has also spent tens of thousands of dollars to bring in outside medical experts from around the country to review the decisions of local peer-review panels, he said.

"This medical community has a very solid record of policing itself."

Details about unsafe medical practices alleged by Smigaj aren't in the lawsuit, and Memorial officials won't discuss them because of confidentiality rules.

Smigaj's lawyer, Robert Meals of Whidbey Island, Wash., declined to comment on the case.

In her lawsuit, Smigaj is seeking a restraining order against the hospital to stop it from reporting information about her record to third parties, in particular insurance companies that decide which physicians they will reimburse for medical services.

She is suing on seven additional counts, including defamation. She also accuses the hospital of breach of contract and violations of the state Consumer Protection Act.

'Old boys network'

If history is any indication, Meals and Smigaj have a difficult legal journey ahead.

Not only are such law-suits rare, but proving any hospital has abused the peer-review process for economic reasons carries a high burden of proof, said Jeff Miles, a nationally recognized hospital defense attorney in Washington, D.C.

"There have probably been 300 of these filed with only a handful winning," he said.

A former colleague of Smigaj's is rooting for her.

Dr. Elton Kerr, who practiced with her in Yakima at Cascade Women's Health Care Associates, said Memorial is controlled by a "good old boys network."

It's a network, Kerr says, that doesn't like physicians who were recruited by the competition or who came to the community uninvited to start their own practices.

"In Yakima, it's a closed shop," he said.

Kerr has firsthand experience with peer review at Memorial. While he was practicing with Smigaj, Memorial reviewed all 300 gynecological surgeries he performed during his 14 months on the job.

The hospital suspended his privileges once temporarily, but he was ultimately exonerated by a peer-review panel at the hospital.

Reviewing their peers

Systems for physicians to review the work of their peers came about in the early 1980s after cases of medical incompetence began drawing widespread media exposure. The medical community responded by developing a semi-judicial system for reviewing cases with questionable outcomes.

Disciplinary actions can vary, from requiring the doctor to take additional classes to suspending his or her privileges at the hospital. Cases can also be reported to a national database used by hospital recruiters and insurance companies for background checks.

State medical boards hold the ultimate weapon of revoking a physician's license. But a sanction or disciplinary action by a local peer review board -- however temporary and confidential -- can be a devastating career blow, according to a 2008 study by the American Medical Association.

Some physicians who were disciplined began suing and winning monetary judgments against their peers. That made physicians reluctant to sit on peer review panels, jeopardizing the system.

To protect the peer-review process, Congress in 1986 passed the Health Care Quality Improvement Act, which gives doctors and hospitals limited immunity from potentially financially crippling lawsuits.

But again there was a backlash. Some physicians said the immunity allowed hospitals to use the peer review process for economic or personal reasons.

The phrase "sham peer review" became the name given to the alleged abuse of a medical peer review process.

But according to the AMA, such abuse is minimal.

"The AMA is aware of only exceptional, isolated instances of peer review determinations that have resulted from improper motivations, rather than a good faith desire to improve patient care," the association concluded in its 2008 report.

Recruited to Yakima

Smigaj alleges her peer review problems began shortly after she was recruited to Yakima in 1994 by Barbara Hood, then the chief executive of Providence-Yakima Medical Center, now Yakima Regional Medical and Cardiac Center.

Hood said in a recent interview that she was impressed with Smigaj's completion of a specialty fellowship in maternal-fetal medicine -- also called perinatology -- at Metro Health Medical Center of Cleveland, Ohio, which provides extra training in high-risk pregnancies. Smigaj received her medical degree from the University of Texas at Galveston.

Hood wanted Smigaj to rebuild the hospital's lapsed obstetrical program.

"Yakima had a very high birth rate," said Hood, who is now retired and living in Louisville, Ky. "And there were a lot of people who wanted an option in terms of where they had their child."

Providence also knew what every hospital knows: If you give a new mom a good birth experience, she'll be a loyal customer for years to come with all her family's medical needs.

At the time, physicians in private practice were considered members of both hospital medical staffs. Smigaj was granted obstetrical privileges at both hospitals.

She arrived with plans to handle difficult births at Memorial, which has a neonatal intensive care unit, and conventional births at Providence.

"I wanted to be in the trenches," Smigaj recalled. "It was kind of my Peace Corps spirit. There were no perinatologists for hundreds of miles around."

According to the lawsuit, Linneweh began questioning Smigaj's work almost immediately by asking the medical quality assurance committee to review several of her cases.

Providence reacted by hiring prominent Seattle antitrust lawyer Douglas Ross. He subsequently warned Linneweh in a November 1995 letter that "colluding to exclude Dr. Smigaj from the Yakima market would be a serious violation of state and federal antitrust laws," according to the lawsuit.

Memorial doesn't deny that the Ross letter exists. Ross declined to comment.

More questioning

Smigaj completed her first "provisional" year at Memorial but the harassment didn't stop, she claims. Linneweh questioned four more cases, but the quality assurance committee took no adverse actions.

"To get Linneweh off her back," the lawsuit states, Smigaj said she agreed to consult on her cases with four other Ob/Gyns for a six-month period.

One of those physicians, Dr. Roger Rowles, chairman of Memorial's perinatal quality assurance committee, concluded in 1998 that Smigaj had "demonstrated the appropriate skills and expertise to manage patients independently."

Rowles is a defendant in the lawsuit, along with Dr. Carl Olden, Memorial's director of quality assurance. Olden also practices at a family practice clinic affiliated with Memorial.

They are named because they were part of the review process Smigaj is challenging and are compensated by Memorial for their work in that capacity, according to the lawsuit. They are also competitors of Smigaj's.

Smigaj said she practiced without criticism for the next five years but that other Ob/Gyns affiliated with

Memorial "made her life difficult" by refusing to cover her -- a professional courtesy doctors typically extend to each other during busy times.

In 2001, Smigaj's five-year obligation to Providence expired and she opened her own practice. The next year, Providence, a nonprofit, was sold to for-profit Health Management Associates, the Naples, Fla.-based chain of rural hospitals. The newly named Yakima Regional Medical and Cardiac Center subsequently shut down its obstetrical services.

Smigaj still had her privileges at Memorial but continued to have run-ins with Memorial's Perinatal Quality Assurance Committee, which is headed by Rowles and designed to review questionable cases. Again, she agreed to continuing education and other conditions.

She and Memorial also disagreed over her use of midwives: Smigaj wanted more midwives admitted to practice at the hospital; Linneweh, according to the lawsuit, wanted to restrict the number of midwives because he felt they would discourage recruitment of Ob/Gyns.

Suspended briefly, then reinstated

Troubles continued for Smigaj.

Last year, an ad hoc peer review committee at Memorial decided to suspend her privileges in September. It cited concerns about her work since 1999, including three inquiries for cases in February, June and August 2008.

The committee presented a letter to Dr. Brian Padilla, then the president of the hospital medical staff, saying Memorial was taking the action after "a determination that failure to initiate ... a suspension may result in an imminent danger to the health and/or safety of any individual or the orderly operations of the hospital."

About two weeks later, the hospital's executive medical committee overturned the ad hoc committee's suspension after examining clinical reviews of Smigaj's cases performed by two out-of-town physicians. They voted unanimously to reinstate her privileges.

Smigaj has recruited another physician to her practice to replace her former colleague at Cascade Women's Health Care Associates, Kerr, whose legal bills from his battle with Memorial became too onerous for them to continue working together. Kerr now practices part-time in Sunnyside and is considering legal action against Memorial.

For her part, Smigaj continues delivering babies at Memorial and vows not to be run out of town.

"I walked into a hornet's nest and I'm too stubborn to leave," she said.

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GORDON KING/Yakima Herald-Republic

Dr. Diana Smigai talks with an expectant mother during an appointment at her office on Jan. 13, 2009. Smigai is accusing Yakima Valley Memorial Hospital and several individuals of trying to drive her out of business.i

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