

Subject: Town & Country Lawsuit

Hospital lawsuits attract big legal talent By MARY FLOOD

Heavyweight talent has entered a crescendoing legal storm to determine whether Memorial Hermann Healthcare System contributed to the collapse of a startup, physician-owned hospital by improperly pressuring insurers to boycott it.

Houston lawyer Rusty Hardin sued Memorial Hermann Monday on behalf of the defunct Houston Town & Country Hospital that claims its lifeblood — insured patients — was wrongfully cut off.

"We've got Goliath going in there and trying to run David out of business," Hardin said. "You have a tax-supported institution participating in unfair competition and depriving the public of an additional health care choice. I don't think that's what the law allows for a nonprofit to do."

Hardin's suit was added to a state court lawsuit in which a handful of the doctors who invested in the new hospital had already sued Memorial Hermann earlier this month. But those few doctors don't blame just Memorial Hermann, they also blame an inept general partner.

In its own defense, Memorial Hermann skipped state court and filed a lawsuit in federal court a little more than a week ago. In a suit against the smaller hospital, lawyer David Beck asks a federal judge to declare that Memorial Hermann did not lead an insurance boycott of Houston Town & Country Hospital and did not break state or federal antitrust laws.

Beck would not comment for this story, but in the lawsuit, Memorial Hermann asked the judge to find it is free to enter into exclusive or semi-exclusive contracts with insurers, even if they would preclude the smaller, privately owned hospital from contracting with those health insurers.

"We are confident that the claims brought against Memorial Hermann have no merit," system spokeswoman Beth Sartori said Monday in a prepared statement. She said its federal suit was filed "in response to related unfounded allegations."

Sartori said officials would not address specifics in the litigation.

The end battle may boil down to this question: Did Memorial Hermann get so improperly aggressive in business that it lost its charitable direction, or was it intelligently and legally protecting its nonprofit hospitals?

Opened and closed

This already tangled legal tale started when a group of doctors in west Houston wanted more competition, more control and more money and thought they could pool resources and open a new facility not far from Memorial Hermann's Memorial City hospital. But the doors closed in 2006, less than a year and a half after they opened.

There was a lot of finger-pointing and some convoluted negotiations about the facility. It was eventually purchased by none other than Memorial Hermann, which is now selling it.

Hardin, who represents Stealth, the limited partnership that owned and operated Houston Town & Country Hospital, said Memorial Hermann told Houston's largest insurance companies that they would either be denied business at the entire Memorial Hermann system or suffer a price increase if they contracted with Town & Country hospital.

Hardin provided the Chronicle with an April 2006 internal e-mail from Aetna in which one of the insurance company's employees tells another she received a message delivered from the top executives at Memorial Hermann, and it was: "If Aetna contracts with Town and County (sic), Memorial Hermann will demand a 25% rate increase to remain in the Aetna network."

"I asked if the threat applied only to the Memorial City rates, and she replied that he will demand a 25% rate increase for the whole Memorial Hermann system," the e-mail said.

Who's to blame?

The Aetna employee wrote that she's been told other major health care plans had been given the same message, and some had agreed to stay away from the new hospital.

An Aetna spokeswoman had no comment Monday. Spokesmen for the other major insurers in Houston — United Healthcare, Blue Cross Blue Shield and Cigna — also had no comment Monday.

Dr. Robert Vanzant, a doctor who invested in the hospital, said he was happy with the small hospital's progress and blames Memorial Hermann for its closing. Vanzant said, and the lawsuit notes, that he met with a Memorial Hermann executive before the new hospital opened and was told doctors might be de-credentialed, insurers might be threatened and prices might be undercut if the new hospital opened.

"I think they have lost their way and become more of a business venture," Vanzant said of Memorial Hermann. "I think with access to insured patients, it would have been successful."

Memorial Hermann was not the first to be blamed for the demise.

Seven doctors represented by lawyer Richard Zook laid the first legal blame at the feet of the general partner, who has denied responsibility. Though more than 100 doctors invested at least \$25,000 each, Zook said his few clients represent 12 percent of the money.

Going to court

Zook said he didn't add Memorial Hermann to the suit until June 1 for these reasons: The health care system was involved in the purchase of the facility, he wanted further investigation and it's daunting for individual doctors to sue the largest not-for-profit health care system in Texas.

Dr. Roger Schultz, an internist and one of the seven suing doctors, said the bottom line is that the competition would have benefited the consumer. He said he and others were left out of directories and harmed in other ways and he thinks the community needs this lawsuit.

"We need to engage in this discussion, in this fight," Schultz said.

The state court trial is scheduled for January, although the lawyers expect it will be postponed. The lawyers said they assume Memorial Hermann asked a federal judge to absolve it because they'd rather play the fight out in the federal courthouse.

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