

Beat: News

Judges power at the heart of the issue in stent case

St Joseph stent scandal continues...

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STEVE LASH via THE DAILY RECORD - The judge who oversees Baltimore County Circuit Court overstepped his authority when he overturned a trial judge's decision about how best to handle the litigation against Mark G. Midei and St. Joseph Medical Center Inc., an attorney for the healthcare facility told Maryland's top court Friday.

In 2010, St. Joseph Medical Center notified nearly 600 patients of Dr. Mark Midei that they may have received unnecessary cardiac stents. Midei's license was revoked in 2011 and his defamation action against the hospital was dismissed last year.

Decisions on how a specific civil trial should proceed rest exclusively with the trial judge, attorney Andrew D. Levy told the Court of Appeals.

Attorneys for the patients, however, argued that Administrative Judge John G. Turnbull II's decision was well within his power.

Levy is seeking to force Turnbull to withdraw his order and reinstate Judge Nancy M. Purpura's decision to split, or bifurcate, the medical malpractice claims from the fraud and conspiracy counts in two lawsuits by people who claim they received unnecessary cardiac stents.

Purpura concluded bifurcation was the most efficient method because the plaintiffs cannot prevail on the fraud and conspiracy counts unless they can first prove medical malpractice or a lack of informed consent.

On Nov. 2, however, Turnbull vacated Purpura's order "" and prohibited any other judge in the circuit from considering such a request, saying he alone can rule on bifurcation motions in the stent cases.

Turnbull's position as administrator does not give him license to engage in such a "usurpation of judicial power," Levy said in seeking a writ of mandamus, or court order that a judge yield.

"We have one judge overruling another, [but] as an administrative judge," Levy added, "Levy, who with Midei's counsel had requested bifurcated trials. "The ruling [by Turnbull] on bifurcation can only be made when he's wearing his judicial hat."

Levy was opposed by lawyers for Turnbull and two former patients who are suing the doctor and hospital.

Turnbull's attorney said decisions regarding whether a lawsuit calls for one or separate trials properly belong to an administrative judge, who is in the best position to know what courthouse resources are available for the complex litigation.

"The writ of mandamus is an extraordinary one," added Deputy Maryland Solicitor General William F. Brockman, whose office defends judges acting in their official capacity. "The issues below are quite ordinary."

The patients in the two cases "" Glenn L. Weinberg and Carl W. Sullivan "" were represented in court Friday by attorneys William H. "Billy" Murphy Jr., of Murphy, Falcon & Murphy in Baltimore, and Howard A. Janet, of Janet, Jenner & Suggs LLC in Pikesville.

The patients' lawyers said Turnbull's order overturning bifurcation was a routine decision for an administrative judge "" an argument that drew scorn from Judge Lynne A. Battaglia.

"Routine practices can't trump judicial authority," Battaglia said.

But Judge Glenn T. Harrell Jr. said administrative judges presumably can with "a deft hand or a heavy hand" reassign pending cases to themselves and issue a contrary ruling with regard to bifurcation, which is essentially what Turnbull did.

The arguments before the high court continued the legal travails of Midei and St. Joseph, whose relationship began in 2008 and helped the hospital become nationally known for its cardiology work.

By 2010, however, the hospital had suspended Midei and notified nearly 600 of his patients that they may have received unnecessary stents, which open blocked coronary arteries.

Hundreds of patients responded by suing Midei and the medical center.

Judge Shopping

The cases brought by Weinberg and Sullivan came before Purpura, who said her bifurcation decision would not only save the court time but would ensure the doctor and hospital were not unfairly prejudiced by being accused of "" and having to defend against "" malpractice and conspiracy to defraud in the same trial.

After overturning Purpura's ruling, Turnbull reassigned the pending case to Judge Susan Souder.

Levy and Midei's counsel, J. Michael Sloneker, then petitioned the Court of Appeals for a writ of mandamus or prohibition, which would overturn Turnbull's order. Sloneker is with Anderson Coe & King LLP in Baltimore.

Levy told the high court that Turnbull's order, if left standing, could signal other administrative judges that they can reassign cases to themselves or another colleague if they do not like a trial judge's pre-trial ruling.

"This is the judicial equivalent of judge shopping," said Levy, of Brown, Goldstein & Levy LLP. "It's bad for the system."

That comment spurred Brockman to rise and tell the high court that Turnbull's order barring bifurcation was not improper but was for court convenience, efficiency and the good of the system.

The Court of Appeals did not indicate when it will rule on Levy's petition for a writ of mandamus in *St. Joseph Medical Center Inc. et al. v. Turnbull*, Misc. No. 21, September Term 2012.

The State Board of Physicians revoked Midei's license in July 2011 after concluding he had engaged in unprofessional conduct, willfully made a false medical report, grossly overutilized health care services, violated the standard of care and failed to keep adequate medical records.

The board said Midei had "implanted cardiac stents unnecessarily in four of the five patients in question. In every one of the patients, he falsified the extent of blockage of the patients' coronary arteries by reporting that it was in reality lower "" and in most cases much lower."

In April 2012, Baltimore County Circuit Judge Mickey J. Norman dismissed a \$60 million defamation suit Midei had filed against St. Joseph, alleging the hospital had made him the fall guy to deflect attention from a Medicare fraud investigation.

St. Joseph agreed to a \$22 million settlement with the federal government in November 2010.

St. Joseph's owner, Catholic Health Initiatives Inc., sold the hospital to the University of Maryland Medical System last year. Under terms of the asset purchase, the new entity "" University of Maryland St. Joseph Medical Center "" assumes no liability for past legal actions against the hospital.

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