



Tri-City abandons suit vs. surgeon



Effort deemed pointless since practice is broke

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OCEANSIDE — The Tri-City Healthcare District is asking a Superior Court judge to dismiss a lawsuit it filed to recoup \$583,000 it lent a surgeon to start a medical practice that failed.

A Tri-City attorney said it was senseless to pursue the suit because Dr. Thomas d'Amato's medical practice is broke and the district wouldn't see any of the money.

“We didn't think it would be worth the legal fees to obtain a default given the practice has no assets,” said attorney Amy Hoyt, who represents the public hospital district that runs Tri-City Medical Center in Oceanside.

D'Amato claimed in his court filings that his cardio-thoracic practice failed because the district inflated its potential patient base and recruited him on false pretenses.

He said the district's decision confirms that.

“The fact they dismissed it because there was no money is an attestation to the fact that there was no need for another cardio-thoracic surgeon in the district, so therefore it was flawed,” d'Amato said Thursday from his Pennsylvania home.

According to a document called a “request for entry of default” filed in San Diego Superior Court on Nov. 18, the district claimed d'Amato owed \$583,300 on an outstanding loan, plus \$129,600 in interest.

It also stated the district spent \$61,100 in legal fees to pursue the claim, which targeted d'Amato's practice and not his personal assets.

The next legal step would have been for a judge to determine the amount d'Amato's practice owed the district.

It was initially filed in May 2007.

D'Amato, a former Navy surgeon, left San Diego County in 2005 and does independent contract work for other surgeons.

Tri-City recruited d'Amato in 2002, promising there were enough patients in the district to support a third cardio-thoracic surgeon. The district covers most of Oceanside, Vista and Carlsbad.

It also lent him money to help establish his practice on grounds that d'Amato would pay the district back as his practice flourished.

However, the recruitment agreement called for d'Amato to join the practice of Dr. Theodore Folkerth, whom d'Amato paid \$410,526 between 2002 and 2004, according to court documents, plus \$12,000 in monthly expenses.

Two years after he signed the agreement, d'Amato took a leave of absence, saying there weren't enough patients to sustain his part of the practice.

After a new four-member majority took office with the Nov. 4 election, that bloc dismissed the district's old law firm, Best, Best & Krieger on Dec. 18 and replaced it with Burke, Williams and Sorensen. The district's board of directors engaged its current legal strategy not to seek repayment from d'Amato's practice.

In responding to the district's lawsuit, d'Amato argued that the recruitment agreement he signed with Tri-City violated a federal law that prohibits one doctor from benefiting directly from the recruitment of another physician.

The San Diego U.S. Attorney's office prosecuted Tenet Healthcare Corp. and Alvarado Hospital in 2002, contending the hospital and its chief executive signed relocation agreements with doctors that violated the federal anti-kickback statute.

Two trials that targeted 100 such agreements ended in hung juries, and in May 2006 Tenet agreed to pay \$21 million and sell Alvarado to settle the outstanding criminal and civil charges.

The court didn't rule on d'Amato's argument, saying the doctor couldn't represent his corporation and needed an attorney. D'Amato said he couldn't afford one.

D'Amato declined to say whether he thought the district's decision to dismiss its lawsuit confirmed that it violated the anti-kickback statute.

“That would be up to a court to decide,” he said.

Hoyt, Tri-City's attorney, said the district denied that allegation before she took over the case.

The district's dismissal request is “without prejudice,” meaning it can reopen the case if d'Amato revives his practice under its existing name.

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