

Medical malpractice suit draws big legal guns

By Tim Richard
staff writer

The big guns of the legal profession roared at each other in the Michigan Supreme Court over a Livonia woman's medical malpractice suit.

"Such an enmity to the medical malpractice profession," said Southfield attorney Geoffrey Fieger. He represents Carol J. Domato, now 49, in a suit against Dr. Joseph Rowe, Annapolis Hospital and Garden City Medical Center, PC.

The Michigan Trial Lawyers Association sent Morton E. Schneider to support Fieger in oral arguments last week before the high court. Schneider said hospitals "want to educate" the treating doctor (and explain the "malpractice crisis." That's what this is all about."

David Cooper of the Association for Defense Trial Counsel went to the aid of J. Kelly Carley, representing Rowe and the hospital. They argued there was "nothing unethical or unsavory" about Carley's interview with a key witness in Domato's case.

THE SUPREME Court will decide whether Domato gets a new trial in Wayne Circuit Court and whether the key witness may testify.

The legal issue is the ground rules for how lawyers defend a medical malpractice case — whether Carley violated the patient-physician confidentiality rule in his "ex parte" (one-sided) interview with the second of

Domato's doctors. Politically, medical people and insurers are telling state lawmakers that costs are getting out of hand. The Michigan Trial Lawyers Association has hired a new publicist to denounce the "crisis" as trumped up by insurers and harmful to innocent victims of medical malpractice.

THE CASE began when Domato, then 43, was operated on by Dr. Rowe in January of 1985.

Before the month was over, she was discovered to have a damaged bladder. Fieger insisted Rowe did

the damage during the first operation. The defense said the cause was a tumor.

The urologist who discovered and successfully repaired the damaged bladder was Dr. A. Abbasian. Fieger used Abbasian as a witness in a 13-day trial before Wayne Circuit Judge Marianne O. Battani.

But defense counsel Carley also used Abbasian as an expert witness, blaming a tumor and not Rowe for the damage.

The jury verdict favored Rowe and the hospital.

FIEGER ASKED a new trial with Abbasian's testimony either eliminated or prohibited.

His brief called Carley's "secret contacts" with Abbasian "reprehensible" and "a betrayal of his patient."

"This is a stake through the heart of any medical malpractice case," Fieger told the justices in oral arguments. "The overwhelming majority of doctors will not allow themselves to be used this way."

Schneider of the trial lawyers group said defense lawyers use such interviews to turn around a treating

physician.

DEFENSE COUNSEL Carley said Domato in effect waived the patient-physician privilege during pre-trial proceedings.

Added defense counsel Cooper: "The defense attorney wishes to meet informally with the treating physician to find out what the physician is really gonna say." They said the interview helps settle cases.

"There was no coercion or impropriety of any kind during the meeting," Carley's brief said. Carley's brief painted a picture of

Fieger trying to intimidate Abbasian during videotaping of his testimony. "He then vehemently attacked Dr. Abbasian for betraying his patient and threatened to sue him for breach of the physician-patient privilege if he testified. Dr. Abbasian was obviously affected by Mr. Fieger's diatribes and refused to go forward with the deposition . . .

"The shock tactic employed by (Fieger) was clearly done in the hope of intimidating Dr. Abbasian into not testifying," Carley said, calling Fieger's behavior "unethical."

Workshop speaks to diversity

Friday is the last day to pre-register for a workshop presented by the Oakland University Continuum Center to help counselors, educators and other professionals become more competent in our increasingly cross-cultural society.

The center will sponsor "Many Different Needs: Multi-Cultural Awareness" from 9 a.m. to 4 p.m. Tuesday, April 16, at the OU campus in Rochester.

Elton Waters and Jacqueline Moase-Burke will explore various ethnic backgrounds and the approaches needed to help foreign-born newcomers adjust to the culturally strange American setting. The emphasis is on reducing the frustration of cultural differences that may cause job-related frustration.

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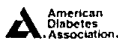
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