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One in, one out in VA cases

Court decisions made for pharmacists who blew the whistle on alleged abuse of cancer patients

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Years of court battles by two pharmacists who reported alleged abuse of cancer patients at Stratton Veterans Affairs Medical Center have ended with one man keeping his job and the other losing a bid to get his back.

The cases of Anthony Mariano, the hospital's former pharmacy director, and Jeffrey Fudin, a clinical pharmacy specialist, are woven into the backdrop of an ongoing federal investigation of allegations that cancer patients were used as unwitting guinea pigs in research programs.

A federal whistle-blower court in Washington, D.C., recently ordered the hospital to stop trying to fire Fudin, saying the Department of Veterans Affairs had no right to appeal a lower court's ruling in Fudin's favor. The hospital sought to fire Fudin by claiming he wrongly prescribed controlled substances several years ago.

In a separate ruling, a federal appeals court in Washington, D.C., said in July that Mariano lost his right to sue for reinstatement when he resigned and accepted a financial settlement from the VA three years ago. But Mariano claims he accepted the settlement under duress and that he thought he could still have his case heard by a federal whistle-blower court.

Mariano contends he lost his bid to get his job back because the federal Office of Special Counsel, which investigates whistle-blower retaliation, never investigated his case.

"Where I really got screwed is the Office of Special Counsel had five years to investigate my case and they didn't do it, and because they didn't do it I had to leave," Mariano said. "It just goes to show that when you charge wrongdoing against VA officials you can't have an internal investigation conducted on the government. It just doesn't work."

Earlier this year, the Office of Special Counsel came under fire when a former staffer charged that massive backlogs prevented hundreds of whistle-blower cases from being investigated. Mariano and Fudin never attained legal status as whistle-blowers.

Both men claim the retaliation began in 1995, when Fudin warned hospital administrators that cancer patients were at risk of dying because they were being given experimental drugs outside approved medical protocols. Mariano supported Fudin's contention. Each alleges that hospital administrators subsequently plotted to fire them.

Mariano said he was fired just five hours after he questioned a VA decision to switch cardiac patients to less expensive drugs in 2000, which he claims may have led to the deaths of at least 10 patients.

A year earlier, in 1999, hospital officials moved Mariano's office to a vacant wing on the psychiatric ward and limited his contact with other employees. The isolation continued for four months, until a House Veterans Affairs subcommittee staff member learned about it and ordered Stratton administrators to stop it.

Hospital officials said they are prohibited from discussing Mariano's case under the settlement agreement that resulted in Mariano's resignation.

Both pharmacists said they were left disenchanted with a system that was designed to protect whistle-blowers, but ended up costing them tens of thousands of dollars in legal fees.

"You have to jump through so many hoops the average person would not be able to afford it or have the wherewithal to understand the things they need to do to protect yourself; plus, you're an individual fighting against an entire system," Fudin said. "It has a tremendous impact physiologically and psychologically and it takes a tremendous toll on you and your family."

VA officials continued their court battle to fire Fudin even after the Times Union in May reported that a former Stratton doctor had acknowledged that he was told to manipulate a 1995 internal investigation of Fudin's claims.

"They started a coverup," said Dr. Thomas Ferro, a former pulmonary physician who was appointed to head the internal investigation. "I stopped a few months after the fact and I

thought: 'What was the purpose of this whole thing?' The purpose of this whole thing was to thwart the truth."

VA officials in Washington, D.C., have declined comment on Ferro's allegations.

VA officials in Albany on Friday said they do not intend to appeal Fudin's court victory.

"Jeff Fudin's been a hardworking employee since my arrival at the Stratton VA Medical Center Hospital about 18 months ago, and I look forward to his making a continuing contribution to our mission," said Martin Fisher, who is responsible for Stratton VA's pharmacy operations.

Mariano, who now works for a private pharmacy, said he is devastated by the experience.

Meanwhile, a federal grand jury in Albany is hearing evidence against two former Stratton VA researchers who were fired last year when a Texas drug company uncovered problems in the cancer program.

Federal authorities are examining whether a hospital oncologist, Dr. James A. Holland, and his clinical research assistant, Paul H. Kornak, altered the medical backgrounds of patients in order to enroll them in drug study programs. Patients may have died or suffered as a result of the alleged forgeries, and federal authorities said they are weighing manslaughter charges.