Exeter Hospital Challenges Partial Dismissal of 2012 HCV Outbreak Lawsuit

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Attorneys for Exeter Hospital, the site of a 2012 outbreak of hepatitis C virus (HCV), are asking a federal judge to reconsider the partial dismissal of a lawsuit brought against two employment agencies it alleges were responsible for placing a known injection drug user at the facility. In response, attorneys from one of the agencies, Triage Staffing Agency, are pushing back, Seacoastonline.com reports.

In December 2013, traveling medical technician David Kwiatkowski was sentenced to 39 years in prison for his role in the HCV outbreak at Exeter Hospital, which ultimately infected 46 people across four states. Attorneys for Exeter recently sought compensation from both the American Healthcare Services Association (AHSA) and Triage Staffing for settlements it reached with 188 former hospital patients. Although they tested negative for hepatitis C in the aftermath of the outbreak, these patients alleged “diverse physical and emotional injuries” as a result of the scare.

In October, U.S. District Court Judge Steven McAuliffe ruled that the hospital could not recover the damages from the agencies, saying that the hospital failed to make a plausible case that the patients had been at risk or that they had suffered physical symptoms of anxiety because of the tests they had to take. However, in a November motion following up on the decision, hospital attorneys argued that since the settlement was made to mitigate Exeter’s potential losses and since it was not up to Triage to decide whether those 188 patients would have had successful claims in court, the agencies could still be potentially liable for the payouts.

Attorneys for Triage have since filed a response, arguing that Exeter’s decision to settle cases with its HCV-negative patients was “manifestly unreasonable as a matter of law.” The hospital now has 30 days to file an amended complaint.

Since the 2012 outbreak, Exeter Hospital has additionally settled 33 civil suits out of courts with patients who tested positive for hepatitis C following the outbreak. The hospital has subsequently filed suit against Kwiatkowski, both staffing agencies and the American Registry of Radiologic Technologists in federal court to help make up for the losses. Those cases are still ongoing.

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