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## Widows' VA suit thrown out

Federal judge: No evidence terminally ill veterans suffered from fraudulent drug studies at Stratton

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First published: Tuesday, December 11, 2007

ALBANY -- A federal judge on Monday dismissed a lawsuit filed against the Department of Veterans Affairs by the widows of five veterans who died after being enrolled in corrupt drug experiments at Stratton VA Medical Center.

In dismissing the case at the request of federal attorneys, U.S. District Court Senior Judge Thomas J. McAvoy cited the fact there is no proof the veterans, all of whom were terminally ill cancer patients, had died prematurely or endured added pain and suffering as a result of being fraudulently enrolled in studies designed to test drugs for marketability.

"Sometimes a court has to render a decision it would not like to render," McAvoy said.

He commented from the bench that what went on at Stratton hospital was "egregious conduct" but he is bound to follow "existing law" which sets no basis for the plaintiffs' families to recover damages in the case.

Alan Milstein, a Philadelphia-area lawyer hired by the widows, argued in court that the widows deserve compensation because their husbands suffered in ways that cannot be measured from forged medical records or the opinions of expert physicians.

Milstein also compared the criminal research violations that went on at Stratton to thousands of cases in which body parts have been stolen from corpses as part of an underground network that traffics human remains for research. In those cases, Milstein said, the victims did not physically suffer but they and their families endured a form of "dignitary harm," which New York courts do not recognize.

The lawsuits against the VA stemmed from a criminal investigation that found dozens of veterans had been subjected to fraud and deception after their medical records were altered to enroll them in drug studies at Stratton. The government admitted wrongdoing in only one veteran's death because it could be proven in that case that the patient died as a result of receiving experimental drugs, according to court records.

The case involved the death of James J. DiGeorgio, a 71-year-old Air Force veteran from Rensselaer County who died at Stratton in June 2001. Last December, the government paid \$500,000 to settle a lawsuit by DiGeorgio's widow.

That settlement left five other widows who pursued a class-action lawsuit, but Monday's ruling effectively ended their case unless they file an appeal.

"When you use individuals, humans, as guinea pigs, you do them harm," Milstein told McAvoy. "What happened at the Stratton VA is a black mark in the history of human subject research. They and their families deserve to be compensated."

Assistant U.S. Attorney Karen Goodwin, who argued the government's motion, declined comment as she left court.

Two people, including the hospital's former cancer research director, Dr. James A. Holland, pleaded guilty to federal criminal charges in connection with the scandal. Holland is scheduled to be sentenced next month for his guilty plea to a misdemeanor count of not keeping proper medical records.

A former Stratton research coordinator, Paul H. Kornak, is serving a 71-month prison term in Ohio for negligent homicide and other felony charges.

"A great wrong was committed here," Milstein said in court. "The question for this court is whether the law will recognize it. ...They committed every kind of research ethics violation imaginable."

The government argued that while the veterans were fraudulently enrolled in drug studies, some of them may have benefitted from the treatments and may have lived months longer than expected. The government's attorneys also said there is no proof the men wouldn't have died if they received standard chemotherapy treatments rather than experimental regimens.

Jayne Steubing, whose husband, Carl, died at Stratton VA after being given a breast cancer drug to treat esophageal cancer, was the only widow in court for Monday's hearing. Steubing and her stepson, Kurt, issued the following statement to the Times Union late Monday:

"We are disappointed in the judicial process and in the judgment itself, as neither brought closure for the families in this case. The fact that the judge himself admitted how painful it was for him to render this decision made it all the more difficult to accept."

Carl Steubing's medical records were altered without his knowledge to qualify him for a drug experiment run by Kornak and Holland, according to court records.

Both Kornak and Holland were fired from Stratton in late 2002, almost a year after the first instance of fraud was discovered by a monitor for a Texas drug company funding one of the studies. Holland blamed Kornak for the scandal, while Kornak has said he was only following orders and that hospital officials knew what was taking place.

Investigators discovered that Kornak, who did not finish medical school, had been posing as a medical doctor when it was widely suspected by hospital staffers -- and reported to Holland -- that Kornak was not a physician.

Holland, who has admitted allowing unqualified workers to handle his medical duties, alleged Kornak sought to earn extra overtime pay by enrolling as many patients as possible in the research studies.

Kornak and at least one other research coordinator gave sworn depositions earlier this year in which they said Holland had pressured them to enroll patients in drug studies because their salaries and job security was at stake.

Steubing was a World War II veteran who enlisted in the Army in 1942 and served for three years, and fought in the Battle of the Bulge. He was awarded the Bronze Star for bravery after leading his platoon to safety when their commanding officer was shot and a Purple Heart for injuries sustained in combat.

Human research studies at dozens of Veterans Affairs hospitals underwent a review as a result of the scandal at Stratton. National hiring reforms also were put in place at VA hospitals after it was uncovered that a VA oncologist had hired Kornak despite the fact he had a criminal record for trying to illegally obtain a medical license.

The widows have 30 days to decide whether to appeal McAvoy's decision. "It's certainly something we're going to think strongly about," Milstein said outside court.

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