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### DOCTOR CHARGED WITH IMPROPER TOUCH

SMDC: THREE WOMEN SUE PHYSICIAN AND HOSPITAL, CHARGING  
INAPPROPRIATE BEHAVIOR DURING MEDICAL EXAMS.

*Mark Stodghill/News Tribune Staff Writer*

Three women have filed separate lawsuits accusing a former St. Mary's/Duluth Clinic Health System physician of inappropriately touching them during examinations. The plaintiffs are all former SMDC employees who were injured on the job and had been referred to Dr. John "Jed" Downs, who worked in the Duluth Clinic's occupational medicine department.

Teresa Davis, 42, Mary Lepak, 58, and Maria Swader-Gerard, 55, allege that Downs performed "inappropriate procedures, which included, but was not necessarily limited to, touching (their) chest and pelvic areas" during three separate incidents in 2003 and 2004.

SMDC is also named as a defendant in the lawsuits. The women claim that the health system had received previous complaints about Downs' conduct toward women and that he was supposed to have a witness present during his examinations.

One plaintiff said she asked her daughter to accompany her to the appointment with Downs because she was uncomfortable from past experiences with him. The woman, who had a shoulder injury, alleged that Downs told her daughter, "I want to see your mother naked." The woman said the doctor held her breasts inappropriately and referred to them as "not being silicone."

Downs, 48, referred questions to his Duluth attorney, Charles Bateman.

Bateman said neither he nor his client could comment on the allegations. In their court-filed answer to the complaint, Downs denies any negligence or wrongful conduct.

In an e-mail to the News Tribune, Bateman wrote: "Anyone may file a lawsuit in this country. Physicians make frequent targets of such cases. . . . The fact that it is easy does not make it fair. A physician in such a position cannot defend him or her self. Federal and state law respecting privacy of medical information, and ethical considerations respecting the privilege attached to medical care make it impossible for the physician to even confirm the therapeutic relationship, much less provide details to defend in the news outlet against a non-meritorious complaint. Thus any defense is necessarily restricted to court."

Lepak filed a complaint against Downs with Duluth police on Sept. 24, 2004, more than 14 months before bringing her civil lawsuit. She told police that Downs said he had to check her ribs and then grabbed her breasts and laughed during an examination in December 2003.

Lepak told police that she put an ad in a newspaper seeking others who may have had similar experiences with Downs.

According to the police report, Lepak was advised by investigators in the police sex crimes unit to report her allegations "to the medical community . . . and agreed she would take that course of action." There is no police record of the other plaintiffs filing complaints against Downs.

No criminal charges have been brought against the doctor.

Ruth Martinez, supervisor of the complaint review unit of the Minnesota Board of Medical Practice, said Thursday that there is no history of disciplinary or corrective action being taken against Downs.

Martinez said data practices precluded her from confirming or denying whether Downs is being investigated currently or has ever been investigated by the board.

SMDC spokeswoman Beth Johnson said that Downs "discontinued his practice with the Duluth Clinic on Oct. 10." She said she couldn't elaborate. Bateman said Downs was opening his own practice.

The plaintiffs are being represented by attorneys Robert Randall and Howard **Bolter** of the Borkon, Ramstead, Mariani, Fishman and Carp law firm of Minneapolis.

“We've also been contacted by other women that have the same complaints against Downs,” Randall said. “At this time they are not inclined to commence a lawsuit. We fully believe that there's a good possibility that this has happened to even more women and that the clinic knew about it in all likelihood.”

Randall said his clients were told, after the alleged incidents occurred, by “a person from the clinic who was privy to that information” that Downs was required to have witnesses present during his examinations.

Johnson said it's a personnel matter and she couldn't comment specifically on Downs. She said physicians sometimes sense that a patient is uncomfortable and they will ask for a nurse to come into the examination room.

“If patients had expressed concerns, we would absolutely put a practice of that nature into place and we have done it,” Johnson said. “The reason we would do that is we want to make sure our patients are safe and comfortable. We have more than 400 physicians at the Duluth Clinic.”

Swader-Gerard's complaint accuses Downs of battery and negligence. Davis' complaint accuses Downs of negligence and SMDC of negligent retention and supervision. Lepak's complaint accuses Downs of battery and negligence and SMDC of negligent retention and supervision. The lawsuits allege that SMDC breached its duty of care to the plaintiffs by failing to remove from employment or take actions against individuals such as Downs that they knew or should have known constituted a hazard to others.

Each of the women is asking for more than \$50,000 in damages. Davis' and Gerard's husbands are also named as plaintiffs seeking more than \$50,000 for loss of their wives' “services and consortium” -- the legal right of one spouse to the company, affection and assistance of the other.

Three conferences to set future court hearings are scheduled for January, February and March. MARK STODGHILL reports on legal affairs and public safety. He can be reached weekdays at (218) 723-5333.

**Illustration:PHOTO:** Mug of Dr. John “Jed” Downs

DOWNS: Physician worked in the Duluth Clinic's occupational medicine department until Oct. 10.