

Duluth News-Tribune (MN)

February 17, 2006

Section: LOCAL & STATE NEWS

Edition: FINAL

Page: 01D

EIGHT MORE WOMEN SUE DULUTH DOCTOR

COURTS: ELEVEN WOMEN HAVE FILED LAWSUITS AGAINST JOHN ``JED" DOWNS ALLEGING HE INAPPROPRIATELY TOUCHED THEM DURING EXAMINATIONS.

MARK STODGHILL NEWS TRIBUNE STAFF WRITER

Eleven women have filed separate lawsuits accusing a former St. Mary's/Duluth Clinic Health System physician of inappropriately touching them during examinations. Eight complaints against Dr. John ``Jed" Downs were filed Thursday in St. Louis County District Court in Duluth by Robert Randall and Howard **Bolter**, attorneys for the Minneapolis law firm that represents three other women who made similar allegations against Downs in lawsuits brought in December.

Downs had worked in the Duluth Clinic's occupational medicine department. SMDC also is named as a defendant in the suits. 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.

All of the suits accuse Downs of inappropriate procedures that included touching the women's breasts, buttocks and pelvic areas.

Randall said more than a dozen other women contacted his law firm with complaints about Downs, but their claims could not be filed because the statute of limitations -- four years for medical malpractice claims and two years for battery claims -- had run out.

``Based upon the many calls and the consistency of the complaints, we feel that the cases we have filed are strongly supported by proof," Randall said.

He said the women were interviewed individually before the decision was made to pursue their claims.

``Their allegations were remarkably consistent," Randall said. ``We didn't get six people in the room and then they fed off each other. We're only interested in bringing forward meritorious claims."

Downs, 48, left his practice at the Duluth Clinic on Oct. 10 and is in private practice. After the first round of complaints, Downs and his Duluth attorney, Charles Bateman, filed court documents denying the allegations.

Downs was reached by phone at his home Thursday afternoon.

``In the process of doing the type of medicine I do, I use osteopathic manual techniques that do involve touching patients," Downs said. He said he didn't want to violate the Health Insurance Portability and Accountability Act by commenting further.

HIPAA's medical privacy regulations govern the use and release of a patient's personal health information. The statute imposes serious criminal restrictions on dissemination of certain protected health information.

``I don't want to do anything to endanger (patient) confidentiality issues, so it makes it very hard for me to say anything one way or the other," Downs said.

The lawsuits filed Thursday were brought by Shelly Schwartz, Nicole Miller, Julie Myers, Rachel Schock, Tracy Curley, Lois Craig-Johnson and two women identified in court documents by their initials. The plaintiffs' ages and hometowns were not available.

One of the women alleges in her complaint that she told St. Mary's she didn't want to see Downs again, but she was still sent to be examined by him with a nurse as a witness. She said she was touched inappropriately, ``but the nurse did nothing to stop . . . Downs' conduct."

Another woman claims that Downs touched her breast and used enough force on her pelvic area to cause bruising. That woman said she brought her daughter along to an examination to witness Downs' behavior, according to her suit.

The lawsuits allege that SMDC breached its duty of care to the plaintiffs by not terminating Downs' employment or taking action against people who knew or should have known that Downs

constituted a hazard to others.

SMDC spokeswoman Beth Johnson read a prepared statement when reached by phone Thursday.

"The Duluth Clinic had received some complaints from patients regarding their interactions with Dr. Downs," she said. "Safeguards were put in place that we felt were appropriate. When we learned those safeguards were not satisfactory, Dr. Downs left his employment with the Duluth Clinic."

Bateman declined comment Thursday. He referred a reporter to an e-mail he issued in December when the first lawsuits were filed against Downs.

In that e-mail 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."

Ruth Martinez, supervisor of the complaint review unit of the Minnesota Board of Medical Practice, said Thursday that there remains no history of disciplinary action taken against Downs. She said data practices prevented her from confirming or denying whether Downs is being investigated by the board.

MARK STODGHILL reports on legal affairs and public safety. He can be reached weekdays at (218) 723-5333 or by e-mail at mstodghill@duluthnews.com.