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Pa. Court OKs Sanction, DQ In Closely Watched Med Mal Suit

By **Dan Packel**

Law360, Philadelphia (November 15, 2016, 9:17 PM EST) -- The Pennsylvania Superior Court on Tuesday upheld a trial judge's decision to disqualify a Philadelphia-area defense attorney and hit her with a nearly \$45,000 sanction in a long-running medical malpractice case that has captivated the region's bar.

Attorney Wendy Raynor previously saw the Superior Court **reverse a separate sanction of nearly \$1 million** over forbidden testimony in the case. On Tuesday, a panel signed off on a separate punishment over a purportedly intimidating letter she sent to the employer of an opponent's expert witness.

Raynor, who runs the Malvern-based Raynor & Associates PC, had been tapped to represent physician Jeffrey Geller as part of the medical malpractice suit in the Philadelphia County Court of Common Pleas, which accused him and a group of other defendants of failing to inform patient Rosalind Wilson about a suspicious nodule that appeared on a chest X-ray that was taken nearly two years before her diagnosis with stage 4 lung cancer.

A second trial in that case, after Raynor had been disqualified by Judge Jacqueline Allen, led to a \$1.976 million verdict for Wilson's estate.

Writing for a three-judge panel, Superior Court Judge Patricia Jenkins said in Tuesday's ruling that "Judge Allen properly disqualified Raynor because her conduct threatened to impede the estate's due process right to a fair trial and the court's authority to administer justice."

"Disqualification alone, however, was not a sufficient remedy, because the estate had to incur substantial expenses in order to obtain the disqualification order," she added.

In the runup to the first trial in the case, Raynor sent a letter to senior counsel at the Hospital of the University of Pennsylvania suggesting that expert testimony a physician was prepared to offer on behalf of Wilson's estate could leave the facility open to significant liability.

The plaintiffs maintained that the letter was an attempt to intimidate the expert into pulling out of the case, and asked for sanctions. Judge Allen, who handled the hearing, forbade Raynor from contacting the plaintiff's witnesses and their employers, and scheduled a hearing on a specific penalty for after the trial.

At that first trial, Raynor faced additional scrutiny after one of her experts violated an order prohibiting the mention of Wilson's smoking history to the jury. The slip-up resulted in Judge Paul Panepinto ordering a second trial and, later, slapping Raynor with the \$1 million sanction.

When Judge Allen held her hearing on the sanctions over the letter, she barred Raynor from representing Geller in the second trial and said she should be forced to pay nearly \$45,000 in costs associated with litigation of the sanctions motion.

That second trial led to a jury verdict against Geller, a hospital and one other doctor. Geller and his practice — having been represented by two other attorneys from Raynor's firm — faced a judgment

of almost \$779,000, representing one-third of the total verdict. He appealed, arguing in part that Judge Allen violated his constitutional rights by disqualifying Raynor.

The appeals court said that Raynor violated three rules of professional conduct by sending the letter. It categorized her conduct as an attempt to interfere with the plaintiff's due process rights and the trial court's authority to impose justice.

"Simply reporting Raynor to the [state] Disciplinary Board under these circumstances would not have been a sufficient remedy," Judge Jenkins said. "A mere request for a regulatory body to commence an investigation might not have dissuaded Raynor from continuing these tactics."

Joseph Messa — the attorney for Rosalind Sutch, who is handling Wilson's estate — praised the court's ruling Tuesday.

"We were confident that this was the right thing and that the verdict would be upheld," he said.

Messa added that he had asked the state's Supreme Court to take up an appeal of the earlier decision that threw out the \$1 million sanction against Raynor, saying that the panel that overturned the award did not have the basis to do so.

"I thought if it was overturned, at most, it would be remanded for a hearing on the amount of the sanctions and the specific basis, because Judge Panepinto made credibility determinations of the witnesses who came before him and testified," he said. "In my humble opinion, that's within the exclusive purview of trial court judges."

Attorneys for Raynor and Geller did not immediately respond to requests for comment.

President Judge Emeritus Kate Ford Elliott, Judge Alice Beck Dubow and Senior Judge Patricia H. Jenkins sat on the panel for the Superior Court.

The plaintiffs are represented by Matthew D'Annunzio of Klehr Harrison Harvey Branzburg & Ellers LLP and Joseph Messa of Messa & Associates PC.

Geller is represented by Cathryn Sollecito of Raynor & Associates PC.

Raynor is represented by Jeffrey McCarron and Kathleen Carson of Swartz Campbell LLC, and James Sargent and Maureen McBride of Lamb McErlane PC.

The cases are Rosalind Sutch etc. v. Roxborough Memorial Hospital et al., case numbers 1836 EDA 2015 and 1852 EDA 2015, in the Superior Court of the State of Pennsylvania.

--Additional reporting by Matt Fair. Editing by Mark Lebetkin.