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Pa. Hospital's Atty Must Pay \$1M For Witness Instruction Flub

By **Caroline Simson**

Law360, New York (November 06, 2014, 5:13 PM ET) -- A state judge has ordered a Philadelphia hospital's defense attorney to pay nearly \$1 million in sanctions for allowing an expert witness in a malpractice trial to reference the smoking history of a plaintiff who died of lung cancer. Philadelphia Court of Common Pleas Judge Paul P. Panepinto found Nancy Raynor of Raynor & Associates PC violated the state court's pretrial order in May 2012 that precluded the hospital's expert witnesses from "presenting any evidence, testimony and/or argument regarding decedent's smoking history," according to court records.

Calling her conduct "dilatory, vexatious and obdurate," Judge Panepinto ordered Raynor to pay \$615,000 to [Klehr Harrison Harvey Branzburg & Ellers LLP](#) and \$160,000 to Messa & Associates PC, the plaintiff's firms, and \$170,000 to the plaintiff for actual costs.

The order was filed Tuesday, the same day that the plaintiff's family was awarded nearly \$2 million after a jury found that doctors at Roxborough Memorial Hospital had been negligent following a two-and-a-half week jury trial. Plaintiff Rosalind Wilson sued the hospital in 2009 because she was never told about a suspicious nodule that had appeared on her chest X-ray until 20 months later, when she was diagnosed with stage IV lung cancer. She filed the suit in July 2009 and died several weeks later.

Raynor said Thursday that she plans to appeal the sanctions order and that the issue of whether there was any attorney misconduct is "hotly, hotly disputed."

"This is not only an issue of amount of sanctions, it's the underlying issue as well," she said.

Raynor allegedly violated the order by not stopping Dr. John J. Kelly from referencing Wilson's smoking history during the trial. But Judge Panepinto granted a new trial in October 2012 after the jury awarded the plaintiffs \$190,000, and he determined that the court had erred when it failed to declare a mistrial. A state appeals court upheld the decision for a new trial in December 2013.

Raynor's attorney, Jeff McCarron of [Swartz Campbell LLC](#), called the sanctions order "grossly

excessive."

"The finding of misconduct cannot be reconciled with the testimony of corroborating witnesses and Dr. Kelly's testimony acknowledging he was told about the order not to mention smoking," he said, noting that the sanctions were awarded without a hearing to challenge the amount.

It wasn't the first sanctions order in the suit for Raynor, who caught the court's ire in 2012 before the first trial took place in May and June of that year. In August 2012, another state judge sanctioned her \$44,000 and disqualified her from representing the hospital because she had allegedly wrote a letter to the plaintiff's expert witness that the court later decided amounted to witness intimidation, according to one of Wilson's attorneys, Matthew D'Annunzio of Klehr Harrison Harvey Branzburg & Ellers LLP.

D'Annunzio said Thursday that he and his clients, including Wilson's daughter, Rosalind Sutch, who had continued with the suit after her mother's death, appreciated that the court recognized the "hardship" that was imposed on them following Raynor's actions.

"To have this conduct occur two and half weeks into that very emotional trial was very difficult," he said. "We really appreciate that the court found accountability for that. It's so unfortunate the amount of proceedings we needed to finally to get to a verdict where negligence was so obvious."

Another attorney for Sutch echoed D'Annunzio's comments Thursday.

"The granting of the award appropriately balances that harm to the plaintiffs, who had to go through an entire trial to get a proper resolution to the case that should have occurred in the original trial but for the violation of the court order," said Joseph L. Messa Jr. of Messa & Associates PC.

The plaintiffs are represented by Klehr Harrison Harvey Branzburg & Ellers LLP and Messa & Associates PC.

The defendants are represented by Raynor & Associates PC, Young & McGilvery PC, McCann & Geschke PC, [Post & Post LLC](#), [Marshall Dennehey Warner Coleman & Goggin](#), [German Gallagher & Murtagh PC](#), Wynn McGarry LLC and Swartz Culleton PC, among others.

The case is Rosalind W. Sutch as executrix of the estate of Rosalind Wilson, deceased v. Roxborough Memorial Hospital et al., case number 090700901, in the Court of Common Pleas of Philadelphia County.

--Editing by Katherine Rautenberg.

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