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Even winners are losers in ongoing hospital fray

By WILL ASTOR

Mohini Mehra M.D. got lucky when ViaHealth closed Genesee Hospital—sort of.

Unlike nearly two dozen other physicians formerly employed by Genesee—who still are trying to get their hands on retirement accounts with balances as high as \$1 million—Mehra managed to reclaim a little more than half of the \$413,000 in her deferred compensation.

In all, former Genesee doctors left a total of \$3.2 million behind in deferred-compensation accounts when ViaHealth closed the hospital in 2001. Mehra is the only one to see a penny. But her apparent good fortune has its own set of problems.

Genesee last year commenced a state Supreme Court case seeking to dissolve legally and absolve itself of some \$100 million in debt.

It is as part of the latter effort that Mehra, along with other former Genesee physicians, is embroiled in a court battle with Genesee's court-appointed receiver Douglas Gates of Gates & Adams P.C.

Gates is seeking a court order stating the doctors are not entitled to the deferred compensation they authorized the hospital to hold out of their paychecks.

That money is just another amount to go into a general fund for distribution to all of Genesee's general unsecured creditors, receiver's attorney Warren Rosenbaum of Shapiro, Rosenbaum, Leibschutz & Nelson LLP maintained in a court session last month.

To the doctors, the deferred pay is money set aside for their retirements and should be held sacrosanct, countered Nelson Thomas of Dolin, Thomas & Solomon P.C. He is representing most of the ex-Genesee physicians in the case, but not Mehra.

Mehra is in the dispute, but in her own private corner. And because her circumstances differ from the others, Mehra has hired her own lawyer, Elizabeth Wolford of Wolford & LeClair LLP.

Insurance companies and investment firms that had been holding on to the doctors' deferred pay are caught in the middle.

Lawyers for those companies say their clients had contracts with Genesee and not with individual doctors, and cannot release sums to individuals without the hospital's permission—which it has declined to give.

Four companies holding the deferred accounts—Prudential Insurance Co. of America, Diversified Investment Advisors Inc., Northwestern Mutual Investment Services and Ing Life Insurance and Annuity Co.—have side actions going in the case.

Each action asks the court to take the money and hold it until it decides whether it should go back to the doctors or into Rosenbaum's fund for general unsecured creditors, or at least to relieve them of liability until it is decided.

Court papers Thomas filed in the case on the physicians' behalf state Genesee and ViaHealth refused requests of doctors who tried to claim their deferred compensation after Genesee closed.

As explained to the court by Rosenbaum last month, the hospital's position is the deferred-compensation dollars are not to be considered wages until the doctors collect them, and under the terms of agreements they inked with Genesee, the physicians were never eligible to collect.

How Mehra got her deferred cash is not clear, Wolford said. Mehra along with several other doctors with funds held by Diversified Investment Advisors called and asked for their money, Wolford said. For the other physicians it was no go.

But after referring Mehra to a series of

individuals, the company sent her a check for \$286,000, holding back \$71,000 to pay income taxes that would come due for Mehra upon her receipt of the funds.

This sounded good at the time. But Diversified Investment Advisors never paid the taxes, Wolford said. Mehra had to fork over the money to the Internal Revenue Service. Wolford has filed a cross-complaint against the investment firm seeking \$71,000 for Mehra plus interest of 9 percent a year.

At the June 20 court hearing, an attorney for Diversified Investment Advisors said turning over the \$286,000 to Mehra was a mistake. When the firm realized it had released funds in error, officials decided not to duplicate the faux pas by paying Mehra's tax bill.

Mehra also has \$63,000 in a second deferred-compensation account with Prudential Insurance Co. of America, which did not agree to pay her any money. So on that score, she is in the same boat as the other former Genesee doctors.

The outcome for Mehra or the other doctors is far from clear. Much depends on how the court views ViaHealth's role.

ViaHealth, which runs Rochester General Hospital, was merging Genesee's and Rochester General's operating certificates when it closed Genesee. But at the time of Genesee's closing, the hospitals were legally separate entities. Genesee's dissolution is largely based on the premise that it stands alone and apart from ViaHealth.

Unlike other Genesee doctors, Mehra reclaimed more than half of her deferred compensation.

But at the June 20 hearing, state Supreme Court Justice Thomas Stander questioned Rosenbaum closely on ViaHealth's role regarding the ex-Genesee physicians. Did the doctors merely work for Genesee? Or could they have been said to have worked for ViaHealth?

The doctors worked for Genesee, Rosenbaum staunchly maintained.

But if Stander finds that ViaHealth could be seen as the doctors' employer, it could have far-reaching consequences for the health system and for Rochester General.

Rosenbaum has accumulated roughly \$19 million in Genesee assets, including some \$10 million in charitable donations, which largely are pledged for specific purposes, and \$3.2 million in the physicians' deferred compensation.

He could recover more money from various aging Genesee receivables, but how much is unclear, Rosenbaum said. The remaining \$6.2 million could be all there is to be spread among creditors claiming as much as \$100 million.

If ViaHealth and Genesee remain separate parties, the biggest chunk of any distribution could go to Rochester General, which claims to be owed some \$50 million by Genesee, some \$20 million secured by a mortgage on the closed hospital.

If Stander finds that Rochester General and Genesee are subsidiaries of ViaHealth, it is not clear what the status of Rochester General's creditor claims would be.

The only other secured creditors with a claim are bondholders owed more than \$30 million. M&T Bank as trustee for the bondholders, Allstate Insurance Co. and the Oppenheimer Funds Inc.—Rochester Division, is trying to claim as much of the \$6.2 million as it can.

Standar did not say how long a decision would be in coming.

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