



GOVERNMENT & MEDICINE

Doctor wins hospital fight

Pediatrician Pejman Salimpour, MD, hopes other physicians will follow his lead and battle exclusive contracts that bar them from practicing at hospitals with such arrangements.

By [Sarah A. Klein](#), *AMNews* staff. May 15, 2000.

Most physicians who find themselves locked out of practice at a hospital because the institution has an exclusive contract with one of their competitors would get angry. They might protest to their colleagues and even lodge a complaint.

But few would go to the lengths that Los Angeles pediatrician Pejman Salimpour, MD, did to ensure that the neonatologists in his practice could treat patients at a Southern California hospital that had closed its neonatal intensive care staff.

Dr. Salimpour's crusade took two years, countless trips to the state capitol and an antitrust lawsuit. But it resulted in a declaration from two state regulators and a judge that exclusive contracts outside the hospital-based practices of pathology, radiology and anesthesiology are illegal in California hospitals that accept state funds.

Just as important, Providence Saint Joseph Medical Center, the Burbank hospital that had refused to allow Dr. Salimpour's neonatologists to see patients, reversed its position and opened the staffs of its neonatal intensive care and cardiac surgery units.

Dr. Salimpour hopes his success will serve as an example to physicians who are barred from practicing at a hospital by an exclusive contract.

Experts say more physicians face that problem as hospitals increasingly use the contracts, which guarantee the exclusive right to treat patients in a unit to one or two medical groups in exchange for managing the department. The excluded physicians say the practice limits patient choice and stifles the introduction of new procedures and practices. The hospitals that use them and their contracted physicians argue the opposite.

"I do think they are misunderstood by the public," said Providence spokeswoman Sue Wyninegar. "We thought it was important to have a medical group there 24

hours a day, seven days a week." Other advocates of the contracts say that they improve care by increasing the volume of procedures each physician performs.

Dr. Salimpour clearly sides with excluded physicians. In letters to everyone from the Health and Human Services' regional secretary to the state Medicaid director, Dr. Salimpour argued that his patients had a legal right to choose their physicians.

To make his case, he used a regulation that appears in the contracts of every hospital that treats state Medicaid patients, which said all hospitals that provide care to Medicaid patients must maintain open staffs. The only exceptions are for pathology, radiology and anesthesiology services.

Dr. Salimpour said the hospital was unimpressed with the regulation until he compelled the state to send the hospital a letter threatening its Medi-Cal contract. Unfortunately, the hospital narrowly interpreted the notice to mean it had to maintain an open staff only for Medi-Cal patients.

Though he tried to work within the hospital's two-tiered system, Dr. Salimpour said it angered him. The practice of checking insurance cards before assigning doctors, "was creating two classes of patients," he said.

Lawsuit and lobbying

To remedy the problem he flew to Sacramento, the state capitol, and lobbied for a law that would make such dual credentialing illegal. At the same time, he filed an antitrust lawsuit, alleging that the hospital and group of physicians with the exclusive contract had engaged in a practice that increased prices for consumers and prohibited competitors from entering the market.

Dr. Salimpour also rallied physician and nurse associations, including the California Medical Assn., to petition the state Legislature and Dept. of Health Services for assistance. What he wanted, and got, was a statement from the agency that clarified whether open-staffing provisions of the Medicaid law applied to all patients or just to those in Medi-Cal.

The response from the California Medical Assistance Commission, which oversees Medi-Cal contracts for the state, was unequivocal. California's Welfare and Institutions Code and the open-staffing provisions of the Medicaid contracts that refer to it "provide plainly and simply that a contracting hospital cannot deny clinical privileges to one physician based upon the existence of a contract with others," the agency wrote.

The California Healthcare Assn., which represents hospitals in the state, quickly warned its members to consider either dropping their exclusive contracts or dropping their contracts with Medi-Cal.

The state's interpretation was reinforced by the California judge hearing Dr. Salimpour's antitrust case. In refusing to dismiss certain elements of the case, Superior Court Judge Paul Boland noted that the plaintiffs had alleged sufficient facts to show a violation of the state's Medicaid law on open staffing. With that, Boland said, the portions of the case based on interference with the medical

group's business practice could go forward.

Ongoing challenge

Because the hospital responded to both developments by opening its staff, Dr. Salimpour is not pursuing the lawsuit. But he still wants other physicians to challenge exclusive contracts.

"I don't want a physician coming out of residency to have no choice about where they practice," he said.

Whether they will be as effective as he was is not clear. Many states have laws that specifically legitimize exclusive contracts -- often introduced by hospitals that argued they needed the contract to ensure round-the-clock care. Other courts have been receptive to the argument that exclusive contracts have value.

"The hospital may feel it needs to have one group that it can turn to for all its needs. Perhaps that is how the department can be most efficiently run," said Richard Raskin, a Chicago lawyer who specializes in antitrust law. "To make the case that a particular exclusive contract is improper or anticompetitive or unlawful, you are going to have to find a way past some of those considerations."

Certainly Dr. Salimpour had substantial political and financial resources for his fight. He is close enough to California Gov. Gray Davis that the governor has been to his home. But Dr. Salimpour discounts the notion that his influence is anything but a moral one.

"When you are on the right side of the issue, people will support you and they will help you," he said.

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