

# S.D. doctors engulfed in spine surgeon saga



Jonathan Ellis, jonellis@argusleader.com 12:18 p.m. CST January 11, 2015



(Photo: Courtesy of Norfolk (Neb.) Daily News)

More than a dozen physicians representing two hospitals have been named as defendants in federal lawsuits that allege they acted in bad faith by allowing a spine surgeon to perform surgery at the hospitals.

The doctors in question served on the committees that approved surgical privileges at Avera Sacred Heart and Lewis & Clark Specialty Hospital, both in Yankton, according to the lawsuits. The doctors are accused of extending Dr. Allen Sossan privileges to perform complex spine surgeries, despite knowing that Sossan had a history of performing unnecessary surgeries and unprofessional conduct. Both Avera Sacred Heart and Lewis & Clark also are defendants.

The two federal cases are in addition to almost three dozen other lawsuits brought in state court by Sossan's former patients or loved ones of patients who died after undergoing surgery. In addition to those, Sossan settled other cases, including one in November. And in late 2013, a jury in Yankton awarded the family of a deceased woman \$933,835 after determining that Sossan performed unnecessary surgeries on her.

The lawsuits have led to the release of dozens of documents that typically are not public. They include memos and board meeting minutes of hospitals and medical staffs that are kept secret under medical peer review rules.

[Suit against Dr. Allen Sossan settles; many more are left \(/story/jonathanelis/2014/11/12/suit-against-sossan-settles/18914283/\)](/story/jonathanelis/2014/11/12/suit-against-sossan-settles/18914283/)

[Botched-surgery claims might tip S.D. law \(/story/news/2014/11/08/allegations-botched-surgeries-might-shift-law-sd/18749519/\)](/story/news/2014/11/08/allegations-botched-surgeries-might-shift-law-sd/18749519/)

[A lawsuit is shining fresh light on specialty hospitals \(/story/news/2014/06/08/lawsuit-focuses-light-specialty-hospitals/10192519/\)](/story/news/2014/06/08/lawsuit-focuses-light-specialty-hospitals/10192519/)

The new federal lawsuits are unusual for South Dakota because they include the doctors who served on the committees that granted Sossan privileges to perform surgeries at the hospitals. One of those physicians is Dr. Mary Milroy, the president of the South Dakota State Medical Association, who was on Avera Sacred Heart's Medical Executive Committee when the hospital gave Sossan privileges.

The lawsuits have sent ripples through the state's medical community. Dr. Lars Aanning, a retired surgeon from Yankton who has aided families in lawsuits against Sossan as an expert witness, resigned from his post as a district representative to the State Medical Association after a confrontation with Milroy in November over Sossan.

Meanwhile, former employees of Sossan have accused the doctor of fraudulent billing and performing unnecessary surgeries in order to boost his income, raising the specter of a possible criminal investigation. Both federal and state authorities said they could not confirm or deny the existence of a criminal investigation.

The cases in South Dakota could pave new legal ground here. The plaintiffs in many of the cases argue that the hospitals were negligent in giving Sossan credentials. Jonathan Van Patten, a law professor at the University of South Dakota School of Law, said the majority of jurisdictions that have considered negligent credentialing have found it a valid cause of action.

But suing the individuals who granted credentials goes a step further. At least one case, Van Patten said, backs the theory that the individuals connected with credentialing can be held responsible, which came in Maryland federal court in 2010.

"If the entity can be sued, then the individuals who act on behalf of the entity can be sued as well, unless they are given immunity for their activities by a specific state immunity statute," Van Patten said. "I'll leave it to the lawyers as to whether South Dakota's immunity statute does so in this case."

## Admissions decrease

The latest documents filed in the Sossan cases include internal memos from Avera Sacred Heart administrators to staff members. Those memos show that Avera Sacred Heart had experienced a large decrease in patient admissions, according to the minutes of a medical staff meeting in October 2006.

According to the memo, the decrease meant less money for doctors and the hospital.

The plaintiffs in the Sossan cases have argued that the hospitals extended him privileges because spine surgeries are lucrative revenue streams.

In April 2008, Avera Sacred Heart President Pam Rezac sent a memo in which she said that recruiting an orthopedic surgeon "will be given the highest priority." At the same time, doctors at Lewis & Clark, who also practiced at Avera, were trying to get Sossan a medical license in South Dakota. Sossan had been practicing in Norfolk, Neb., at Faith Regional Hospital until his privileges were either terminated or rescinded, according to court documents. Sossan was an orthopedic surgeon.

Lewis & Clark extended Sossan privileges to perform surgeries, and Avera later followed. According to the lawsuits, Dr. Dan Johnson, a shareholder at the doctor-owned Lewis & Clark, asked Avera's Rezac to also have Avera extend privileges to Sossan.

Johnson, who is married to Milroy — the state medical association president — denies that he ever talked to Rezac about Sossan.

"It's just flat out untrue," he said in an interview earlier this month. "I would never hesitate to say it on a stack of Bibles in court."

Johnson says he went out of his way to block Sossan from getting privileges at Lewis & Clark. There were "red flags" about Sossan's past, and he said it's "absurd" that he tried to persuade Avera to grant Sossan privileges.

"When we were trying to check Sossan out, we called around," Johnson said. "From my sources I had, there were issues. I never wanted to see this guy come into the community."

#### Problems by 2010

Regardless, Sossan eventually received privileges at Lewis & Clark and Avera Sacred Heart. According to Lewis & Clark board minutes, there already were problems with Sossan by January 2010. Sossan was reprimanded following a board meeting which addressed numerous complaints from patients and family members of patients. During the meeting, Sossan referred to one female doctor as "honey" multiple times, and he called Yankton "fly over country." He also defended his relationship with a female saleswoman who sold him implants used in spine surgeries.

Seven months later, in July 2010, the Lewis & Clark board discussed the results of an employee survey. According to the board minutes, the employees, which included nurses and other staff members, were not happy with Sossan: "The employees feel as though the board has chosen profit over them by allowing Dr. Allen Sossan to become an owner in the facility."

By January 2012, Sossan's privileges at Avera Sacred Heart had been suspended, according to meeting minutes of Lewis & Clark's board. One month later, the doctor-owners at Lewis & Clark were debating what they should do with Sossan, and whether the facility might be liable for his conduct.

"Dr. Sossan currently has his privileges terminated at Sacred Heart Hospital with the chance for an appeal," the minutes read. "There was much discussion regarding the exposure to LCSH and should we seek a temporary privilege suspension." The Lewis & Clark doctors voted to allow a consultant to review Sossan's "history of disruptive behavior and seek their recommendation on how to best proceed in the matter."

Spokesmen for Avera Health and Lewis & Clark have declined comment on the lawsuits.

Milroy has unwittingly become part of the drama. An email she sent to Aanning in November following Aanning's resignation has been introduced as an exhibit in the cases. In the email, she said that Avera's medical executive committee granted Sossan privileges based on legal advice. Her account confirms the story of other Avera doctors who say they were persuaded by Avera lawyer Matt Michels, who also is the lieutenant governor of South Dakota, to give Sossan privileges out of fear that Sossan might sue the hospital if they didn't.

#### Milroy's role

In her email to Aanning, Milroy wrote: "I was at the MEC meeting, and the idea that the money Sossan would bring to the hospital was ever discussed is repugnant and completely false. We were simply informed that there was no documentation in existence on which to base a denial of privileges and by legal opinion could not be done, so a reluctant yes was obtained."

In an interview, Milroy said she could not discuss Sossan and the process by which he obtained privileges at Avera Sacred Heart. But she did address Aanning's resignation as a representative for the South Dakota State Medical Association.

"I think he had lost the support of the members of the district who he represented, and he voluntarily resigned," Milroy said.

When asked whether she thought Aanning's role in helping the plaintiffs against Sossan played a part in his losing the support of other doctors, Milroy responded: "That may have been a part of it. He's not in active practice. I think he's a retired person who is out of step."

Hanning has received notes of support from other doctors. Even so, he said he feels like a pariah in the Yankton medical community.

"I feel like a man without a country," he said.

**The Allen Sossan story**

Dr. Allen Sossan practiced in Yankton from 2008 to 2012 before losing his privileges at Avera Sacred Heart and Lewis & Clark Specialty Hospital. During his time in Yankton, he's accused of performing unnecessary surgeries and other medical procedures, including complex and dangerous spinal surgeries. Despite complaints to the South Dakota and Nebraska medical licensing boards from other doctors, patients and the loved ones of patients who died, Sossan continued to practice.

Evidence also showed that Sossan was convicted of a felony in the 1980s and changed his name to evade scrutiny of his criminal record.

Now, almost 40 lawsuits have been filed against him and the hospitals who allowed him to perform surgeries. And years after complaints were filed against him, the Nebraska Division of Public Health has scheduled a disciplinary hearing against Sossan on Feb. 9.

Read or Share this story: <http://argusne.ws/1BNOWCR>



**MORE STORIES**



**Delegation calls on FEMA to update SF flood map**

[\(/story/news/politics/2015/01/27/delegation-calls-fema-update-sf-flood-map/22399525/\)](/story/news/politics/2015/01/27/delegation-calls-fema-update-sf-flood-map/22399525/)

[\(/story/news/politics/2015/01/27/delegation-calls-fema-update-sf-flood-map/22399525/\)](/story/news/politics/2015/01/27/delegation-calls-fema-update-sf-flood-map/22399525/)

Jan. 27, 2015, 10:06 a.m.



**Project Connect is one-stop shop for needy**

[\(/story/news/2015/01/26/project-connect-one-stop-shop-needy/22372005/\)](/story/news/2015/01/26/project-connect-one-stop-shop-needy/22372005/)

[\(/story/news/2015/01/26/project-connect-one-stop-shop-needy/22372005/\)](/story/news/2015/01/26/project-connect-one-stop-shop-needy/22372005/)

Jan. 26, 2015, 4:23 p.m.