

Physician suing Augusta Health

BY BOB STUART The (Waynesboro) News Virginian | **Posted: Sunday, December 16, 2012 6:23 pm**

WAYNESBORO — A physician is seeking \$3.35 million in damages from Augusta Health and the physicians' group at the hospital, saying he was fired from hospital employment last year because he would not make medical referrals solely to the hospital and its specialists.

A hearing in Albemarle County Circuit Court today, requested by attorneys for Augusta Medical Group, is to ask for binding arbitration in the case involving former Augusta Health physician Dr. David Herring. Augusta Medical Group is the hospital-owned entity that employs primary and specialty physicians at the hospital

Herring's suit seeks \$3 million in compensatory damages and \$350,000 in punitive damages for the Waynesboro physician.

Herring's attorney said in the lawsuit that the doctor's judgment was based on the best interests of the patients and that the firing was a wrongful discharge in violation of Virginia public policy law.

The allegation is that Herring refused to violate Virginia Code sections that say referrals can't be made in exchange for potential compensation.

The suit says the defendants "openly and directly" told Herring that the excess fees earned by their cardiology practice go directly to him in the form of a subsidy and salary, and that is why he must make referrals to hospital cardiologists.

A second allegation contained in the lawsuit says that Augusta Health and Augusta Medical Group engaged in a conspiracy to damage Herring's practice and profession.

The suit says he was abruptly forced to start a new medical practice.

An employment agreement submitted by an attorney for Augusta Medical Group says disputes should be settled by binding arbitration.

The employment agreement cites a mandatory arbitrary provision. And the request for arbitration says the employment agreement governed Herring's relationship with Augusta Medical Group.

A Washington and Lee University adjunct professor who teaches employment law, Charles Woody, said binding arbitration is a less expensive and faster means of resolving a dispute.

Woody, a private attorney with a Charleston, W.Va., law firm, said arbitration is common, particularly in situations involving highly compensated individuals such as physicians.

Woody said it is possible that a judge could review the arbitration to be certain all issues in the complaint were addressed.

Herring's attorney, John Davidson of Charlottesville, could not be reached for comment on the suit. Augusta Health declined to comment, citing the pending nature of the litigation.

Herring now practices privately as an internist on U.S. 250 in Waynesboro.

The suit said Herring used his medical judgment to refer patients to the specialists he thought "would serve his patient's unique needs, history, prognosis, risk factors and the like."

The complaint also says that Herring only made referrals when appropriate, and when it was in the best interests of the patient.

The suit charges that the pressure to refer his patients to Augusta Health cardiologists and other patients reached a breaking point in the summer of 2011.

According to referenced e-mails to Herring from Dr. Courtenay Beebe, executive director of Augusta Medical Group and a senior vice president of Augusta Health, Herring was repeatedly asked why he did not support the hospital's cardiologists.

In an Aug. 24, 2011, email, the suit says Beebe told Herring " ... as long as you are cashing my check I expect you will be supportive of the group. And that includes referring to our cardiologist."

The suit says Herring continued to exercise his judgment on referrals without bowing to the financial interests of the defendants.

Herring was fired from Augusta Medical Group in October 2011.

A letter from Beebe to Herring tells him his employment is terminated effective in January of this year.

Beebe's letter also tells him he can see patients in his office through Nov. 9, 2011.

Beebe further tells Herring that Augusta Medical Group has a lease on a building Herring owns on Goose Creek Road, and hopes to continue that lease through its expiration in December of this year.

In terms of the venue of the lawsuit, while Augusta Health is based in Fishersville, the suit says the hospital has an internal medicine practice in Crozet and competes for patients in western Albemarle County.