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## Hep C outbreak case hits courts

By HOLLY RAMER  
The Associated Press  
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The probe into a hepatitis C outbreak at Exeter Hospital's cardiac catheterization lab reached the courts yesterday, with the attorney general's office announcing a criminal investigation and a civil lawsuit being filed on behalf of one of the infected patients.

Twenty people, including a hospital worker, have been diagnosed with the same strain of the liver-destroying virus since state public health officials began investigating last month. On Wednesday, public health director Dr. Jose Montero said evidence so far points to drug diversion as the likely cause, which generally involves someone using a syringe to inject medication meant for someone else and then re-using the syringe on patients.

Attorney General Michael Delaney said his office is working with police to determine if any crimes occurred. Meanwhile, a Concord law firm filed a class-action lawsuit in Rockingham County Superior Court accusing the hospital of negligence. The case was brought on behalf of a 49-year-old man, referred to only as 'Joe Doe,' who was treated for heart problems at the hospital in August and was notified this week that he tested positive for hepatitis C, a viral infection transmitted by blood that causes inflammation of the liver and can lead to chronic health issues.

'He thinks he's getting better from heart surgery, then he hears, 'Hey, you might have a terminal illness,' ' attorney Peter McGrath said. 'My client's wish is that this doesn't happen to anybody else.'

Since then, the man has suffered bouts of sleeplessness, high stress, and pain and suffering, according to the lawsuit. The suit alleges that the hospital failed to properly administer safe intravenous treatment, monitor safe blood samples and oversee the security and control of its laboratory and cardiac units.

'Negligent supervision is really what it is, not keeping eye on things,' McGrath said.

In an interview with WMUR, the hospital's president and CEO apologized to the infected patients.

'If it is determined that we're responsible for this outbreak, we will be responsible for that cost,' Kevin Callahan said.

Hospital officials declined to comment yesterday on the lawsuit, which must be certified as a class-action by a judge and make it through a special screening panel that evaluates all malpractice cases in the state in order to proceed.

Officials initially asked anyone treated at the lab since August to get tested; on Wednesday, Montero said that request has been expanded to include all of the lab's patients since October 2010.

State and local health departments aren't required to report such outbreaks to the Centers for Disease Control and Prevention, but the agency was notified of 13 outbreaks nationwide between 2008 and 2011. Of those, seven occurred in outpatient facilities, and most were traced to unsafe injection practices.

At least two have resulted in criminal charges, including a Colorado woman who was convicted of stealing syringes filled with painkillers from two hospitals where she worked and replacing them with used syringes. The syringes were later used on surgical patients, and up to three dozen were found to have hepatitis C after being exposed.

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### Exeter

#### Patients slam hospital, N.H. in hep C cases

**Author(s):** Molly A.K. Connors Monitor staff / **Date:** September 22, 2012

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Jane Doe, 36, received a shot of pain medication in the emergency room at Exeter Hospital last November - a follow-up appointment after a car accident, she told reporters yesterday. Several months later, at 5:30 on a Friday night, she said she got the call from the New Hampshire Division of Public Health Services.

Doe, a single mother, had been infected with hepatitis C, a liver-killing virus.

"I can't sleep at night," said Doe, whose real name and other identifying details were withheld at a press conference in Concord yesterday.

"I'm not eating. My boyfriend's left me. And it's a nightmare, and no one should ever have to go through this."

She started to cry and sat down.

Doe was one of three people - all of whose real names were withheld - who spoke out yesterday against Exeter Hospital and the state for what they said was an incompetent and insensitive treatment of their involvement in a hepatitis C outbreak earlier this year.

They are among 169 people represented by **Peter McGrath**, a Concord-based attorney, in a lawsuit filed against Exeter Hospital and Triage Staffing Inc., a Nebraska-based staffing firm. The patients allege that they were infected with the virus by David Kwiatkowski, a 33-year-old laboratory technician who was arrested in July at a Massachusetts hospital.

Kwiatkowski, who is due in court Oct. 9, is accused of drug diversion - stealing syringes full of powerful painkillers at Exeter Hospital's cardiac catheterization laboratory and emergency room and leaving behind used syringes full of saline-like fluid as a decoy. Authorities said 32 people have been confirmed to have the same variety of the

virus as Kwiatkowski.

So far, more than 1,000 former cardiac catheterization lab patients have been tested. Thousands more treated at Exeter Hospital's operating room and intensive care unit between April 1, 2011, and May 25, 2012, need to be tested, the state announced in August, and thousands more in seven other states - Arizona, Georgia, Kansas, Maryland, Michigan, New York and Pennsylvania - need to be tested because Kwiatkowski, a traveling lab tech since 2007, worked in hospitals there.

McGrath said he called the press conference because the media have been asking so often to interview victims of the outbreak and because he wanted the public to be more educated about the virus.

About 3.2 million people are "chronically infected," with hepatitis C, according to the Centers for Disease Control and Prevention. It causes more deaths annually than HIV, the virus that causes AIDS.

Even those who don't appear to have the virus are suffering, McGrath said. Many of them need to be retested in the future and in the interim have been told to show extreme caution in their daily lives - even married couples shouldn't have "unprotected intimacy," he said, and should wear gloves when cleaning up blood.

And there is the social cost of being associated with hepatitis C, McGrath said.

"There's a stigma in this society for these people, and they have to live with that," he said.

That's just one of the concerns that Betsy Smith has for her 5-year-old daughter, who went to Exeter Hospital's emergency room last November after an accident at school.

Holding her child - who initially was frightened of the cameras but eventually came forward with a stuffed-animal kitten in her arms - Smith said she remembered seeing Kwiatkowski when her daughter was treated.

At the urging of friends, Smith called the hospital for advice about whether her daughter should be tested.

"They did not call me back," Smith said. "I had to continue calling them. While I was waiting for three days, I called Attorney McGrath's office because there was stuff on the news and in the newspaper. And then they had more of an open response when I called when I said, 'I

have an attorney, I need to know what to do. This is my daughter's life.' "

In a letter provided to reporters, one woman, who tested negative for hepatitis C, described what she felt was incompetent and insensitive behavior by the state and hospital staff.

After being treated for a heart attack, she said she learned in June that she needed to be tested. At the testing site at Exeter Hospital, she said she wasn't allowed to fill out her own forms. Instead, she had to verbally provide the information. Later, she had to be retested, she wrote, because the person took her information down incorrectly. She was called so frequently by state and hospital officials to come in for more and more testing that she felt it bordered on harassment, she wrote.

"It was most apparent that the state wasn't working/communicating with Exeter, Exeter was not working/communicating with the state," she wrote. She felt such severe stress that she vomited frequently, she said.

And in July, when she received an apology letter from the CEO of Exeter Hospital, she was "infuriated." It was just too late, she said, for apologies.

"You are just covering your backside," she said she thought.

Jane Doe, who awaits a final analysis of her diagnosis from the CDC, said Exeter Hospital had refused to help her pay for medical treatment at another facility because the hospital disputed whether her strain was the same as Kwiatkowski's.

McGrath said he struck an agreement on her behalf with hospital attorneys an hour before the conference.

In a press release issued yesterday afternoon, Exeter Hospital said it was "surprised" at what was said at the press conference.

"For months now, Exeter Hospital has been caring for patients affected by this tragic situation. Just (Thursday), in our latest discussion with Mr. McGrath, we reviewed how his clients could make use of the health care services Exeter Hospital is providing to patients who tested positive for the strain of hepatitis C tied to David Kwiatkowski. We also discussed how we could help patients obtain care even if their hepatitis C is not connected to the Exeter outbreak," the statement said.

"(Thursday) Mr. McGrath did not suggest that there were any access issues or concerns. In fact, he has clients who are now being actively treated by Exeter Hospital."

John Doe, a 49-year-old grandfather who has been married for 30 years, said hospital staff were "rude" to him when he first started asking for help.

Since his diagnosis, Doe said he's been on a "mental roller coaster" and can't get certain treatment for the illness because of other medical complications.

"Depression's kicked in, like I've never seen before," he said.

McGrath said he represents 169 people involved in the outbreak at Exeter Hospital and several others who were treated at facilities in other states where Kwiatkowski has worked.

Of the 169, 11 have tested positive for hepatitis C. Of those 11, six have a strain Exeter Hospital agrees matches Kwiatkowski's, McGrath said. A hearing will take place in November over whether the case will be certified as a class action suit, he said.

For her part, Smith holds more than Kwiatkowski - whom she called a "cruel, cruel person" - responsible for exposing her daughter to such risk. The punishment for all involved should be "severe," she said.

Until then, she'll continue to try to explain it all to her daughter, who's been confused and frightened by all the tests and trips to the doctor, Smith said.

"We're supposed to be able to trust doctors," Smith said.

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