Surgeon Refused to Operate Because Patient Had HIV, Claims Lawsuit

"Everyone deserves health care without judgement," says the plaintiff.

December 2, 2020 By Trent Straube

A man living with HIV filed a discrimination lawsuit against a doctor and medical group for refusing to perform hip replacement surgery on him because of his HIV status. The plaintiff, Justin Smith of Los Angeles, had been HIV positive for over 30 years, but this marks the first time he has publicly revealed his status.

"Like many long-term survivors, I lost numerous friends and a partner to AIDS. This lawsuit is about the very real stigma people with HIV carry to this day, and my personal experiences being confronted with it," Smith said in a press release from Consumer Watchdog, whose lawyers, along with Theresa J. Barta, represent Smith.

This lawsuit, Smith continued, "is about how I lived with this stigma over 30 years. I kept my HIV status a secret from anyone that did not have to know, even my family. Everyone deserves health care without judgment. Everyone deserves to be treated with dignity. To be understood, and not marginalized. I hope this lawsuit helps get us there."

> An HIV positive man filed a discrimination lawsuit in federal court to coincide with #WorldAIDSDay2020 against a surgeon and medical group for refusing to treat him because of his #HIV status. #worldaidsday #patientsafety https://t.co/nuvVlzhzq8 pic.twitter.com/E6LFeAQsEb
>
> — Consumer Watchdog (@ConsumerWD) December 1,

2020

Smith filed the lawsuit against Jay Patel, MD, of the Orthopaedic Specialty Institute Medical Group of Orange County, on Worlds AIDS Day, December 1.

The lawsuit alleges that when the surgeon found out about Smith's HIV status, he incorrectly claimed that smith was "immunocompromised" and posed a risk to the staff—which is incorrect because Smith adheres to HIV meds. As the introduction to the lawsuit explains:

> Mr. Smith was diagnosed with HIV over 30 years ago but nonetheless has maintained good health. During this three-decade-long period, he has never had any health issue related to having HIV. The presence of the HIV virus is virtually undetectable in his body as a result of his adherence to antiretroviral therapies. Defendants nevertheless blatantly discriminated against Mr. Smith on the basis of his HIV status, in a manner harkening back to the hysteria and baseless discrimination that existed during the earliest days of the HIV/AIDS epidemic.

The doctor's actions are a violation of the antidiscrimination provisions of the Affordable Care Act (ACA or Obamacare) and of the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973 and California's Unruh Civil Rights Act. These laws prohibit discrimination based on disability.

You can read the entire lawsuit here.

The press release points out that this case "is also a cautionary tale for all patients with preexisting medical conditions during the COVID-19 pandemic. Under federal and state antidiscrimination law, doctors must conduct individualized assessments to determine if patients are healthy enough for medical treatment. For example, conditions like diabetes, depression, an intellectual disability or a physical handicap cannot be the sole basis for denying care. Yet there have been significant reports of doctors refusing care on the basis of patients' preexisting medical conditions."

To read about related cases see "Cosmetic Surgeon Must Pay $375K in Damages for HIV Discrimination" and "Lawsuit Claims Restaurant Worker Was Fired Because He Has HIV."

For more information on the ADA and HIV discrimination, visit www.ada.gov/aids. You can file a related complaint at the U.S Attorney's Office at http://www.justice.gov/usao-nj/civil-rights-enforcement/complaint. For more information about the ADA visit www.ada.gov, or call 800-514-0301 or 800-514-0383 (TDD).

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