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Judges' findings in favor of doctor

 By Deanna Boyd
 Star-Telegram Staff Writer

FORT WORTH - A former John Peter Smith Hospital doctor caused no harm to either of two patients who died under her care, and she should be allowed to keep her medical license, according to a preliminary finding by administrative law judges.

But Dr. Lydia Grotti should be required to get a second opinion from another physician before removing patients from life support during the next three years, Administrative Law Judges Sharon Cloninger and Kerry Sullivan recommended.

In addition, another doctor should be present when Grotti counsels patients or their families regarding "end-of-life" issues for a one-year period, they suggested.

Grotti has been the focus of a state board investigation after allegations that she played a role in the deaths of Lettie McGhee, a 64-year-old woman who had been placed on a ventilator after suffering cardiac arrest in the JPS emergency room, and Charles "Woody" O'Keefe, a 33-year-old diabetic who died 10 hours after he was admitted for hypoglycemia.

The judges, who in May presided over a State Office of Administrative Hearing (SOAH) proceeding regarding possible sanctions against Grotti, filed their "proposal for decision" with the Texas State Board of Medical Examiners this month.

The board and Grotti's attorneys have until Aug. 31 to file exceptions. The judges will present their final recommendation at a board meeting, possibly as early as October.

The board will then discuss those findings and vote on whether to accept the judges' recommendations or do something different, including revoking Grotti's license. Grotti can appeal the board's decision to a state District Court in Travis County.

Brian Esenwein, a Fort Worth attorney who, along with Austin attorney Susan Henricks, is defending Grotti, said he believes the

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judges' findings show great insight and demonstrate Grotti's "unwavering commitment to bring the truth from obscurity."

He said many of Grotti's colleagues and peers have shown courage by speaking on Grotti's behalf even after the doctor endured two years of pain caused by a local TV station's news coverage, Esenwein said.

"It's taken people willing to look beyond that hysteria to find out what happened," Esenwein said. "Now we've got the tragedy with a lot of these families suffering with decisions that were appropriately made.

"The key is she's always maintained she never harmed any of those patients and that's what the evidence shows."

Henricks said Grotti "was glad to finally get a hearing and move this thing along. She has every intention of returning to a medical practice."

Jill Wiggins, a spokeswoman for the Texas State Board of Medical Examiners, said neither the board's attorneys nor executive board members will comment on the judges' proposal because the case is still pending.

The board temporarily suspended Grotti's license on Aug. 16, 2002, after finding that her continuation in medicine "would constitute a real and present danger to the health of her patients and a continuing threat to the public welfare."

A month later, however, a state District Court in Travis County granted a temporary injunction, allowing Grotti to continue working as a physician under certain restrictions until a hearing could be held on the merits of the case.

During the SOAH hearing in May, attorneys for the state board presented emergency room staff who testified that McGhee continued to breathe up to an hour after Grotti pronounced her dead on Dec. 26, 2000.

Another witness and Grotti testified that an hour after pronouncing McGhee dead, Grotti placed her thumb over McGhee's endotracheal tube. Grotti said she blocked the tube to stop what she described as "agonal respirations" or reflexes that occur at the time of death as the brain stem deteriorates.

Grotti testified that she did not transfer McGhee to the last bed in the intensive care unit because that would have meant closing the hospital to more trauma patients.

The judges found that McGhee, although clearly dying, was not legally dead at the time that Grotti declared her so. As a result, the judges found, Grotti violated the Occupations Code, committing "unprofessional or dishonorable conduct likely to deceive or defraud the public."

The judges also found McGhee was not legally dead when Grotti



blocked her endotracheal tube.

"That being the case, Dr. Grotti undertook affirmative action exclusively intended to culminate the death process without consulting the patient's family," the judges wrote. "... This action constitutes unprofessional conduct that is likely to deceive the public."

But the judges stated that numerous mitigating factors work in favor of leniency toward Grotti -- including the lack of harm to McGhee, conflicting views within the medical community regarding when death occurs and the exceptionally busy and tense atmosphere on the night of McGhee's death.

They said Grotti acted with good intentions and even self-reported her action in blocking the tube. They stated Grotti has suffered a great deal as a consequence of the incident, including losing her job, publicity about the accusations against her, being forced into bankruptcy and losing her home.

The judges also recommended that for three years Grotti be required to undergo eight hours per year of risk management training specifically designed to focus on physician practice and documentation issues. She should also reimburse the board the more than \$7,500 in transcript costs, they suggested.

The judges found no reasons for discipline in the O'Keefe case.

The judges stated that when O'Keefe arrived in the JPS Hospital's intensive care unit on April 4, 2001, he had entered the death process and had at least two life-threatening conditions. They found that Grotti did everything within her skill and resources to treat O'Keefe.

"Staff wholly failed to meet its burden to show that Dr. Grotti harmed or caused the death of [Charles O'Keefe]," the judges wrote. "In fact, the greater weight of the evidence is that Dr. Grotti made appropriate clinical judgments with response to [Charles O'Keefe.]"

Grotti, who acknowledged administering morphine to O'Keefe as an end-of-life comfort measure, did not give him enough to harm him, the judges found. The Tarrant County medical examiner had ruled O'Keefe's death a homicide due to an overdose of morphine.

Shannon O'Keefe-Hetter, O'Keefe's aunt, said she is concerned that the judges weren't presented, or didn't consider, information about JPS policies and procedures that she alleges Grotti violated in her nephew's treatment.

"They made no mention that Dr. Grotti had not followed policy and procedures," O'Keefe-Hetter said. "I wonder why we have them if the doctors are not going to follow them."

"I am disappointed and feel like a response from the medical board sure needs to cover some of the things that don't seem to be addressed previously."

Grotti is still the focus of a criminal investigation by Fort Worth police.

Homicide Detective Sarah Jane Waters is working with a Harris County special prosecutor assigned to the case to avoid a conflict of interest by the Tarrant County district attorney's office, which represents the taxpayer-funded hospital. They still plan to present evidence in McGhee's case to a grand jury, Waters said.

"It is proceeding," Waters said. "Regardless of what they decide, we will proceed."

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