

HIV Status: Hospital Not Required To Notify Extended Family Caring For HIV-AIDS Patient.

Since the patient was a known IV drug abuser, his physician and other hospital staff strongly suspected his symptoms indicated he had begun to develop AIDS when he was admitted to the hospital. A blood sample was drawn to be tested for HIV, but the results did not come back to the hospital until the day after he was discharged. His discharge summary, which according to the court record in the Court of Special Appeals of Maryland was not dictated until three months after his discharge, indicated he was HIV-negative on discharge.

He was discharged from the hospital to his sister's home, where for ten months he was cared for by his sister, another sister, two brothers, several nieces and nephews and four of the patient's own children. Care included bathing, shaving, assisting with toileting, changing diapers, etc. There were also expressions of affection such as hugging and kissing the patient.

The patient deteriorated. He was readmitted to the same hospital, for advanced AIDS. His physician at that time told the patient he was HIV-positive, based on the earlier test. The patient told his family. They all tested HIV-negative, but sued anyway for malpractice.

The court ruled there was no basis for a lawsuit against the hospital by the family. The false or back-dated information in the discharge summary was irrelevant. Even had the hospital known the patient was HIV-positive on discharge (as was strongly suspected, based on history and symptoms), or found out a day later, the hospital was at no time under any legal obligation to inform family members who would be offering personal care to the patient that the patient was HIV-positive, absent expressed directions from the patient to provide such information to them. **Lemon vs. Stewart**, 682 A. 2d 1177 (Md. App., 1996).

A healthcare provider has no obligation to inform family or others who are giving personal care to a patient who the family does not already know is HIV positive. The risk of HIV transmission to them is minimal while providing such care.

When a healthcare provider gets a patient's positive HIV test result, the provider must:

Notify the patient of the positive result;

Provide the patient with information from local and state public health agencies describing counseling and other services available to persons with HIV;

Counsel the patient on the desirability of voluntarily informing his or her sexual and needle-sharing partners;

Offer to assist in notifying any sexual or needle-sharing partners whom the patient will consent to being informed;

Take any further steps to notify public-health authorities as specifically required by local and state public-health laws.

COURT OF SPECIAL APPEALS OF MARYLAND, 1996.

Extra Lab Testing On Blood Sample: No Liability For Non-Consensual Treatment.

The physician told the patient he would be drawing blood to test for cytomegalovirus (CMV.)

He also intended to test the patient for human T-cell leukemia virus (HTLV). However, he did not pass this intention along to the patient, did not get her consent to have blood drawn for HTLV testing and did not get her consent for the lab to test her blood sample for HTLV.

For the record, the New York Supreme Court, Appellate Division, assumed one needle puncture was made, that the first tube of blood extracted was sent for CMV testing, and that a second tube was drawn from the same needle puncture, for HTLV.

For a medical malpractice lawsuit based on lack of informed consent there must be an invasion of the patient's physical integrity for which the patient has not consented.

If the patient has consented to blood being drawn for a particular test or tests and one or more additional tests are done the same sample without the patient's consent to the additional tests, the patient cannot sue.

NEW YORK SUPREME COURT, APPELLATE DIVISION, 1996.

The court did not express approval for the physician's actions. However, as there was only one actual breach of the patient's physical integrity, and there was consent for it, the patient had no right to sue over a second tube of blood being drawn or over its being tested (positive) for HTLV. **Hecht vs. Kaplan**, 645 N.Y.S. 2d 51 (N.Y. App., 1996).