

Narcotics Diversion: Nurse Has Right To See Other Patients' Charts, If Patients' Identities Are Protected.

A hospital staff nurse was terminated from her employment because of irregularities in the way narcotics were being administered and recorded. She exercised her right to appeal her termination to the state's Department of Labor.

As part of her defense the nurse's attorney sent a subpoena to the hospital for the medical charts of certain patients in the hospital who were being cared for by other nurses at the time of alleged narcotics irregularities that had led to the nurse's termination.

The attorney's rationale for the subpoena was that the other patients' charts could reveal alternate explanations for the alleged narcotics irregularities other than diversion by the nurse in question.

The hospital objected to the subpoena on grounds of patient privacy, pointing to the US Health Insurance Portability and Accountability Act (HIPAA) which now places strong Federal privacy protection on patients' medical records.

The New York Supreme Court, New York County, ruled that the nurse in question did have the right to the information her attorney sought to use in her defense. The hospital had no right to rule out access to its patients' charts.

Nurse Has Right To Charts Identifying Information Must Be Blocked Out

However, the HIPAA requires that all personal references be whited out from the records so that the patients' actual names cannot be discerned.

Further, there must be a protective order in conjunction with the subpoena that the records will only be used for the specific purpose of the nurse's legal defense and then will be returned to the hospital to be destroyed upon the termination of the nurse's case. **Chapman v. Health and Hospitals Corporations**, __ N.Y.S.2d __, 2005 WL 697435 (N.Y. Sup., March 24, 2005).

When served with a subpoena a healthcare facility can disclose the contents of patients' medical charts without violating the US Health Insurance Portability and Accountability Act (HIPAA).

Assuming the individual patient has not given written consent for his or her medical information to be disclosed, the patient's individually identifiable health information must be "de-identified."

That is, before the chart is turned over in response to a subpoena the chart must be stripped of identifying material such as name, address, telephone number, social security number, date of birth, etc.

Further, the subpoena is required to state that the information will only be used in connection with the proceeding itself.

Re-disclosure of patients' health information is a criminal offense under Federal law punishable by ten years imprisonment and a \$250,000 fine.

NEW YORK SUPREME COURT
NEW YORK COUNTY
March 24, 2005

Nursing Home Residents' Bill Of Rights: Patient Allowed To Lie In Waste, Lawsuit Allowed.

The Court of Appeal of Louisiana has reiterated that it is considered a violation of the state's Nursing Home Residents' Bill of Rights for a resident to be allowed to lie in her own waste for an excessive period of time.

The family's lawsuit claims the patient suffered abuse and loss of personal dignity by being allowed to lie in her own waste for extended periods of time.

If so, that is a violation of the Nursing Home Residents' Bill of Rights. That is not a malpractice case and the family does not need an expert witness.

If the patient developed bedsores as a result, that would be malpractice and expert testimony would be needed.

COURT OF APPEAL OF LOUISIANA
April 6, 2005

The family is allowed to sue on the resident's behalf for non-economic damaged for the resident's loss of her personal dignity. There is no need to jump through the pre-trial procedural hoops for bringing a medical malpractice case and no expert-witness testimony is required.

If the family lawsuit also goes into issues of skin integrity breakdown, however, that would be a malpractice case and expert testimony would be needed. **Burks v. Christus Health**, __ So. 2d __, 2005 WL 767008 (April 6, 2005).