

Nursing Records: Legal Effect Of “Spoliation” De- fined By Court.

This case has been the subject of at least three published opinions of the Alaska courts. (*Legal Eagle Eye Newsletter*, Vol. 3, No. 7, April, 1995). The Supreme Court of Alaska's latest opinion states that loss or destruction of documentation, in this case the nursing records of a complicated course of events in a hospital's pediatric intensive care unit, results in a presumption that the medical care providers were negligent in rendering care.

In general, it is for the alleged victim of medical, nursing or other alleged negligence in the health care setting to prove that the providers were negligent. However, the court ruled in this case, after reviewing pertinent case precedents from other states whose courts have ruled on the issue, that when the pertinent medical or nursing documentation has been lost, destroyed or tampered with, the defendant health care providers *must prove they were not negligent* in order to avoid legal liability.

In the latest opinion, the court said that it does not matter whether the pertinent documentation was destroyed negligently or intentionally. Either way, if the records are missing at the time of trial, the health care providers will be presumed negligent and will be liable for payment of an award of damages, unless the health care providers can come forward and convince the judge and jury that they were not negligent.

The court modified its previous ruling, which had said that the health care provider is automatically negligent when “spoliation” of the records occurs. The providers are now allowed to come forward and try to prove they were not negligent. As a practical matter, however, in the absence of documentation, it would be very difficult for a provider to actually do this. [Sweet vs. Sisters of Providence](#), 895 P.2d 484 (Alaska, 1995).

Forced Administration Of Psych Meds: Court Says Anti- Dyskinetics May Be Given.

The Court of Special Appeals of Maryland has ruled that an involuntarily committed psychiatric patient may be required to take medications intended to combat the side effects of anti-psychotic medications which were also being administered to him on an involuntary basis.

The patient was getting Haldol and Depakote to control his psychotic symptoms. He had been offered these medications in oral form, but when he refused them, a panel was convened pursuant to the state's mental health treatment regulations. The panel ruled that Haldol and Depakote could be given IM on a forced basis, with the dosage to be titrated according to the attending physician's day-to-day orders, for a period of ninety days, while the patient's involuntary hospitalization continued.

According to the court record, although the patient initially refused to take the anti-psychotic medications, the propriety of administration of these medications was not raised an issue in this particular case.

The issue was whether the patient could have Cogentin administered to him on a forced basis during involuntary psychiatric hospitalization. Cogentin, as stated in the court record, is an anti-dyskinetic drug used to treat parkinsonism, which is a commonly-observed side effect of anti-psychotic medications.

The court upheld the decision of the administrative mental-health panel which had ruled that Cogentin could be administered involuntarily to this patient. To give an anti-dyskinetic medication involuntarily, it is necessary for the hospital to follow the full procedural format for involuntary administration of anti-psychotic medications to an involuntarily-committed patient. [Beeman vs. Department of Health & Mental Hygiene](#), 658 A. 2d 1172 (Md. App., 1995).

Psychiatric medications may be forced upon a non-consenting patient only in an emergency, or in a non-emergency when the patient has been hospitalized involuntarily and the medications have been approved by a hearing panel convened under state law.

Under state law, the hearing panel must give the patient twenty-four hours notice, so that the patient can prepare his or her objections and/or consult with a legal advisor. The panel must consider the clinical need for the medications, risks, benefits and side effects.

Involuntary administration of psychiatric medications may be approved if the panel determines that the medication was prescribed by a psychiatrist for the purpose of treating the patient's mental disorder, that the administration of the medication represents a reasonable exercise of medical judgment, and that without the medication the patient is at substantial risk.

This procedure applies to anti-psychotics, and to medications used to control the side effects of anti-psychotic medications.

COURT OF SPECIAL APPEALS OF
MARYLAND, 1995.