LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Quality Assurance: Court Says No To QA Investigator's Deposition.

In a medical negligence lawsuit the New York Supreme Court, Appellate Division, ruled recently that the patient's lawyers were not entitled to take the deposition of the hospital's quality assurance officer who had investigated the patient's complaint of substandard care.

The investigation, the court determined, had been conducted as part of the hospital's internal quality assurance and peer review processes. The law means to encourage improvement of health care delivery by guaranteeing strict confidentiality to the persons involved with quality assurance and peer review.

However, the court did rule that the patient is entitled to a copy of the patient's own statement, even if it comes from the hospital's confidential internal files and was obtained for quality assurance or peer review purposes. **Van Bergen v. Long Beach Medical Center, 717 N.Y.S.2d 191 (N.Y. App., 2000).**

Dangerous Patient: No Legal Duty To Warn Family, They Knew The Patient Was Dangerous.

As a general rule, when healthcare providers know that a patient has expressed a present intention to harm an identifiable person, there is a legal duty to warn that person of the threat the patient has expressed. When they fail to warn the target person, healthcare professionals risk being held liable themselves for the harm done by their dangerous patient.

However, the New York Supreme Court, Appellate Division, ruled recently that healthcare professionals have no duty to warn family members of the patient who are already fully aware of the patient's violent tendencies.

The court refused to hold two mental health workers liable to a wife who was assaulted by her husband. The wife had been stabbed by her husband on a previous occasion. **Ohlen v. Piskacek, 717 N.Y.S.2d 221 (N.Y. App., 2000).**

Emergency Medical Treatment And Active Labor Act (EMTALA): First Hospital Did Not Violate Law.

An eight year-old child suffered a serious eye injury when a helium balloon exploded in a retail store when he punctured it with a toy from the store's shelf.

The grandparents rushed him to a hospital emergency room. The E.R. physician patched the eye and told them to take him immediately to a specific hospital where an ophthalmologist was available. The child's grandparents elected to take him to a different hospital.

At that hospital the emergency-room receptionist decided it was not an emergency and said they would have to wait more than six hours to see a physician. They went to a third hospital, where the child was treated. However, the delay cost him his sight in the eye.

The parents sued the retail store and the first and second hospitals on the child's behalf.

At the first hospital the patient received a speedy and appropriate emergency medical screening.

The physician realized the child had a serious eye injury that required care by an ophthalmic specialist. No such specialist was available at the hospital.

The grandparents were told to take him to a certain hospital, the nearest one with an ophthalmologist.

UNITED STATES DISTRICT COURT, ALABAMA, 2000.

The US District Court for the Middle District of Alabama dismissed the first hospital out of the lawsuit. No "patient dumping" occurs when a hospital performs an emergency medical screening and determines the patient needs care immediately that the hospital plainly is unable to offer.

The second hospital did not try to claim it did not violate the EMTALA. The patient had an emergency medical condition. He had the right to an emergency medical screening by competent personnel and necessary stabilizing treatment within the hospital's capabilities. **Bowden v. Wal-Mart Stores, Inc., 124 F. Supp. 2d 1228 (M.D. Ala., 2000).**