

## Mental Health Records: Court Ruling On Legal Confidentiality.

In a recent case the Commonwealth Court of Pennsylvania made some important points about the legal confidentiality of mental health treatment records.

It was a case where a fourteen year-old was sexually assaulted by another minor patient while both were receiving inpatient care in a state-run adolescent psychiatric facility. The fourteen year-old was suing the facility, its director and the state department of public welfare.

### Who Owns the Records?

Mental health treatment records are the property of the facility, but it is the patient who has the right of control over release of information from the records.

### Who Can Release Authorize Release of Medical Information?

Only the patient can authorize release of information from confidential records.

Once the patient is of sufficient age (fourteen in Pennsylvania) the patient is the only one who can authorize release of confidential information, not the parents. In this case the facility was right to refuse to honor the patient's parents' signed authorization to release the patient's chart to the patient's own attorney.

Parents can authorize release of confidential information for their children who have not attained sufficient age.

A legal guardian can authorize release of confidential information for persons of sufficient age if the guardian is court-appointed and the guardian's court order of appointment authorizes the guardian to release confidential information.

### Adverse Party in Litigation

The fact one person is suing another person in civil court absolutely does not justify the person suing getting access to the other's confidential medical records without the person's voluntary consent. The court ruled the patient in this case had no right to gain access to his assailant's treatment records. **Christy v. Wordsworth-At-Shawnee**, 749 A. 2d 557 (Pa. Cmwlth., 2000).

## Sponge Left In Vagina After Episiotomy: *Res Ipsa Loquitur* Not Applicable.

As a general rule when a foreign object like an instrument or sponge is sewn inside a patient's body during surgery, the court does not belabor whether it resulted from negligence by the surgeon, scrub nurse, scrub tech or circulating nurse.

The operating room is completely under the control of the surgical personnel. The law considers it unfair for the patient, who was under anesthesia and completely helpless, to have to come up with evidence to prove a case. The law says, "*Res ipsa loquitur*," meaning, "*It speaks for itself*."

Nevertheless, the Appellate Court of Connecticut recently approved a verdict exonerating a physician and other medical personnel. The trial judge refused to apply *res ipsa loquitur* for a gauze pad left in the patient's vagina after childbirth involving an episiotomy.

There was no proof of negligence and the legal rule of *res ipsa loquitur* was not made for this situation, the court stated. **Gilbert v. Middlesex Hospital**, 755 A. 2d 903 (Conn. App., 2000).

## Court Says Nurse Must Use Up All Administrative Remedies.

Many nurses who are public employees can file administrative grievances over personnel decisions.

The right to use administrative processes is also an obligation. The Court of Appeals of Ohio pointed out that not going through the complete administrative grievance process before filing a lawsuit will result in the lawsuit being dismissed. **Frick v. University Hospitals of Cleveland**, 727 N. E. 2d 600 (Ohio App., 1999).

## Family Told In Error Patient Has Died: When Can They Sue?

The New York Supreme Court, Appellate Term, threw out a family's lawsuit against a physician who erroneously told them their ninety-one year-old family member had not been revived from a code, then told them he had survived but would be in a vegetative state.

In fact the patient was revived without incident and lived seven more months.

The court discounted the family members' claims they suffered mental anguish and emotional distress from the incident as alleged in their lawsuit.

The court ruled that family members would have the right to file suit over an incident like this only if there was an anxiety reaction or a similar psychiatric condition caused by the incident that could be corroborated with medical testimony. **Nordbo v. Lutheran Medical Center**, 708 N. Y.S.2d 807 (N.Y. App., 2000).

## Medical Records: Court Denies Nurse Access In Job Dispute.

A research nurse coordinator confronted the physician directing trials of a medication for Alzheimer's over conduct of his she believed was unethical.

He demanded her resignation. Then, she said, he falsely told the hospital administration she was quitting voluntarily.

The Court of Appeals of Michigan had no difficulty with one issue. The nurse had no right to gain access any patients' files to prove her allegations of misconduct against the physician.

A healthcare employee's desire to substantiate a legitimate grievance is no exception to the rule of strict confidentiality for patients' medical records. **Baker v. Oakwood Hospital Corporation**, 608 N.W. 2d 823 (Mich. App., 2000).