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Facebook and Patient Confidentiality

While she did not post the name of the patient she saw in the Westerly Hospital (Rhode Island) emergency department, Dr. Alexandra Thran put out enough information on Facebook so that the patient's identity could be readily understood.

The result: The hospital fired her. She was also reprimanded by the Rhode Island Medical Board and was fined $500. Obviously, personal/social media accounts and professional confidentiality obligations to patients are like oil and water – keep them separate, as Dr. Bradley H. Crotty, of Beth Israel Deaconess Medical Center advises in an editorial published recently by the *Annals of Internal Medicine*.

Michael A. Kurs, Esq., who can be reached at 860.424.4331 or mkurs@pullcom.com, is knowledgeable about patient privacy and HIPAA issues.

Would Specialized "Medical Courts" Help Address the Malpractice Mess?

Dr. Christopher W. Roberts, an emergency physician in Mount Vernon, Washington who also holds a law degree, has observed how poorly the current medical malpractice system operates. Among his many critiques, he points to the patients who may have suffered minor injuries as the result of poor care. Low potential damages equal low legal fees, he notes. A low legal fee equals lack of appeal to many plaintiffs' lawyers. Even fatalities do not generate significant attorney interest if the deceased patient's damage calculus in a wrongful death action are not significant. While medical malpractice litigation is not growing in terms of case volume as many doctors believe, its looming threat affects physician attitudes and practice, he contends.

After reviewing the various efforts undertaken over the last several decades to rein in the excesses of the malpractice system, such as damage limitations, second opinion rules and mandatory mediation, Dr. Roberts suggests that it might be worth trying the creation of specialty medical courts. Such courts would permit assigned judges to develop a significant knowledge base and malpractice expertise. Unfortunately, he does not effectively address the reality that trial judges' impact on litigation in which juries render the final decision can be very limited.

He proposes new laws which would create tougher standards concerning expert qualification and expedited scheduling. Interestingly, he conjectures that such specialized courts "could conceivably direct the improvement of health-care training by identifying doctors with records of multiple allegations and requiring remedial training or other action as a condition of the judgment." Dr. Roberts' thought-provoking article appeared in the February 10, 2011 issue of *Medical Economics*.

Connecticut health care providers will find further encouragement on these issues in an article entitled "Mandatory Malpractice Mediation: A Good Idea" by alternative dispute resolution expert Harry N. Mazadoorian in the February 28, 2011 issue of the *Connecticut Law Tribune*.

For further information, please contact Elliott B. Pollack, Esq. at 860.424.4340 or ebpollack@pullcom.com.

"Recommendation" Letter

The new *Ethicist* columnist of *The New York Times*, Ariel Kaminer, advises a college senior that it was acceptable to draft his own recommendation letter, as requested by his professor, and to submit it to her so that she could "edit as needed," retype it on her stationery and submit it as her own to the admissions offices of various law schools to which he had applied.

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There is no problem with accepting the professor's offer, *The Ethicist* advised. "She could, theoretically, send your words on to the school as her own, but that would not be your fault, any more than if you handed her a blank page and she filled it with a bunch of made-up platitudes."

Health Care Insights editors suppose that *The Ethicist* would have furnished the same answer to a medical school applicant!

Employment partner Daniel Schwartz can be reached at 860.424.4359 or dschwartz@pullcom.com to respond to questions about this subject.

Forget About Red Flags

Almost two years ago, the Federal Trade Commission took the position that lawyers and physicians "who bill their clients after services are rendered" are creditors under the Fair and Accurate Credit Transactions Act of 2003. As a result, the FTC indicated its intention to include these professionals within the scope of its regulatory action, requiring financial institutions and creditors to institute and observe reasonable efforts to protect consumers from identity theft.

Given the burdens that this requirement would impose on professionals, litigation and legislative initiatives were undertaken by the American Medical Association and the American Bar Association. On December 18, 2010, President Obama signed the Red Flag Program Clarification Act of 2010 into law. This Act made it clear that a doctor's or lawyer's willingness to allow a client or patient to defer payments over a period of time, in and of itself, did not render the professional responsible to implement the identity theft protection rules of the initial 2003 legislation.

Health Care Insights editors believe that physicians have enough legal parameters to observe relevant to their direct provision of health care and entitlement to payment without being treated like department store owners offering layaway plans to customers.

For further information about this positive development, please contact Karen A. Daley at 203.330.2143 or at kdaley@pullcom.com.

Invasive Dental Treatment and Strokes

An article in the October 19, 2010, issue of *The Annals of Internal Medicine* advises that "intensive periodontal treatment leads to endothelial dysfunction and elevated markers of inflammation." "Risk for ischemic stroke or myocardial infarction was transiently higher during the first four weeks of an invasive dental procedure" comments *Journal Watch*, a newsletter published by the Massachusetts Medical Society on December 15, 2010.

While further studies are necessary, Dr. Jamaluddin Moloo suggests "if proven accurate, these results could lead to the use of anti-platelet agents in conjunction with invasive dental procedures in high-risk patients."

Attorney Notes

Elliott B. Pollack, health law editor of the ABA *Preview of the U.S. Supreme Court Cases*, wrote about *Sorrell v. IMS Health, Inc.* in that publication in April. Sorrell challenges the Vermont law which allows physicians to withhold consent before their prescription information can be sold by pharmacies and used for marketing purposes by pharmaceutical companies. Argument was heard before the U.S. Supreme Court on April 26; the Court will determine whether the First Amendment to the United States Constitution trumps the Vermont law.

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