



Newsletters

Medical Litigation Newsletter - December 2010

December 21, 2010

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The Physician-Patient Privilege: A Three-State Study

The patient-physician relationship is a time-honored bond. It is, at its best perhaps, a relationship built over time and based in mutual respect, trust and shared values. The relationship can be a source of comfort and improved quality of life for the patient; for the physician, the relationship may be professionally fulfilling.

What Will State Estate and Inheritance Taxes Look Like in 2011?

In addition to the federal government, individual states charge death taxes as well. After 2010, the resurrected federal estate tax and any other changes in the federal estate tax may also have significant state estate and/or inheritance tax implications. For example, many states tie their estate taxes to the federal estate tax state death tax credit. Beginning in 2011, barring other changes by Congress, there will be a state death tax credit on the federal estate tax return. In Illinois and Florida, this would mean that those states would impose a state estate tax equal to the state death tax credit allowed on the federal estate tax return. No estate tax exists in either state in 2010. Further, Florida's estate tax did not apply in years that the state death taxes were allowed as a deduction — rather than as a credit — on the federal estate tax return.

U.S. Department of Justice Investigates Hospitals for Cardiac Billing

The U.S. Department of Justice (DOJ) is investigating hospital billing for implantable cardiac defibrillator (ICD) surgery. The DOJ has a broad scope of investigation, potentially encompassing medical necessity and diagnosis-related group (DRG) coding. ICD's are small electronic devices that shock the heart during life threatening arrhythmias. They are not pacemakers, but are life-saving devices.

Hinshaw Representative Matters

Each issue of the Medical Litigation Newsletter showcase a few cases that have recently been handled by Hinshaw lawyers. We are pleased to report the following:

Jerrod L. Barenbaum, a partner in Hinshaw's Rockford, Illinois, office, obtained a defense verdict on behalf of a family medicine physician in a \$3.8 million medical malpractice lawsuit filed against the doctor. A cardiologist and a health

Attorneys

Dawn A. Sallerson



care facility were also named defendants. At the time of the subject incidents, plaintiff patient was 61 years old and had some cardiac risk factors. He saw the family medicine physician, complaining of pain in his arms, back, chest and shoulder after lifting. The physician diagnosed the patient as having musculoskeletal back pain, prescribed Vicodin, and sent him home. The patient died of a heart attack five to six hours later at his home.

A former partner in Hinshaw's Joliet, Illinois, office, represented a hospital in a wrongful death case against three treating oncologists and a primary care physician. Defendants were alleged to have negligently allowed radiation treatment of an open biopsy site, resulting in infection and death. The hospital was named as an apparent principal of the treating doctors. At the close of plaintiff's case — which came at the end of a two-week jury trial — the trial judge found that plaintiff failed to prove that the decedent was unaware of the independent status of the doctors and directed a verdict.

James M. Hofert, an attorney in Hinshaw's Chicago office, recently defended a surgeon in a four-week medical malpractice trial in DuPage County, Illinois. Plaintiff patient had presented to a hospital emergency room (ER) with severe abdominal pain in December 2005. At the time, she was 37 years old and 14-weeks into her first pregnancy. She was assessed in the ER and admitted to the postpartum unit. The patient continued to complain of pain throughout the early morning hours the next day, with deteriorating blood pressures and pulses. She went into septic shock approximately 10 hours following her presentation to the hospital. The surgeon had the patient admitted to the intensive care unit (ICU), where he and the intensivist proceeded to resuscitate her for the next several hours. During the patient's time in the ICU it was discovered that she had lost the baby. Once stable, the patient was taken to surgery, where she was found to have a completely necrotic small intestine due to malrotation. The surgeon removed her entire bowel. The patient went to another hospital for a complete small intestinal transplant. Due to the drugs that the patient must now take, she was highly advised against future pregnancy. She is doing well five years post-transplant. Hinshaw's surgeon client was found to have no liability. The hospital, however, received a judgment against it for \$11.5 million — the second largest jury verdict in DuPage County for an adult woman.

Madelyn J. Lamb and Dawn A. Sallerson, partners in Hinshaw's Belleville, Illinois, office, and William P. Hardy, a partner in the firm's Springfield, Illinois, office, recently successfully defended a medical malpractice case ultimately decided by the Appellate Court of Illinois, Fifth District. Plaintiff timely filed the medical malpractice claim, but during the course of discovery, defendants' counsel discovered that subsequent to the alleged malpractice, plaintiff and her husband filed for bankruptcy and failed to list the malpractice claim in asset schedules filed under oath. The trial court granted defendants summary judgment. The appellate court affirmed, holding that judicial estoppel bars a party from profiting by concealing an asset that properly belonged to the bankruptcy estate. Ms. Lamb and Ms. Sallerson defended the case in the trial court; Mr. Hardy handled the case on appeal.

Michael P. Russart represented the Wisconsin Injured Patients and Families Compensation Fund (Fund) in a case brought by a patient who was paralyzed from T10 down during a lumbar transforaminal epidural steroid injection. The patient alleged that the injection was improperly delivered into an artery, leading the particulate of the steroid to occlude an artery and cause spinal cord shock. She also alleged that the doctor failed to properly inform her of the specific steroid used and to offer her alternative therapies. The patient had been referred specifically for the injection by a chiropractor. The jury found that the physician acted within the standard of care and had properly informed the patient of the risk of paralysis. The patient sought more than \$5 million in damages. A defense verdict was rendered for the Fund, and no damages were awarded.

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