## Medical Records: No Need To Fight A Subpoena Or Search Warrant, Court Says.

When faced with a subpoena or a search warrant for a patient's medical records a healthcare professional or facility has no obligation but to comply, according to the Court of Appeals of Arizona. Medical confidentiality does not impose a duty upon a healthcare professional or facility to go to court to contest a subpoena or search warrant for a patient's records. **Linch vs. Thomas-Davis Medical Centers, P.C., 925 P. 2d 686 (Ariz. App., 1996).**

## Sexual Relationships With Patients: Female vs. Female Can Lead To A Negligence Claim.

According to the Court of Appeals of Wisconsin, a female nurse developing a sexual relationship with a female patient can lead to a valid claim of professional negligence.

In this case the thirty-three-year-old married female patient was admitted to a psychiatric hospital for two months for treatment for depression, post-traumatic stress disorder, suicidal ideation and a personality disorder. She had been a victim of childhood and adolescent sexual abuse.

The nurse was ruled negligent for forming a sexual relationship with a vulnerable patient in her care. The hospital was ruled negligent because its staff failed to detect what was going on and put a stop to it, even though an inappropriate counter-transference reaction had been noted in the patient's chart. **Wright vs. Mercy Hospital of Janesville, Wisconsin, Inc., 557 N.W. 2d 846 (Wis. App., 1996).**

## Freedom Of Speech: Hospital Managers' Claims Thrown Out.

The U.S. Circuit Court of Appeals for the Tenth Circuit (Oklahoma) ruled recently that a group of hospital managers had no basis for claiming that their right to freedom of speech was violated when they were terminated after the hospital board brought in a new management corporation to run the hospital.

The group of managers had signed and presented to the board of trustees a brief letter expressing their support for renewing the existing management contract, advice which the board of trustees chose not to follow.

The court ruled the managers had no right to sue for retaliation for exercise of their right to freedom of speech. According to the U.S. Supreme Court, an employee's right to freedom of speech will outweigh the employer's right to carry out its operations efficiently without dissent only when the employee is speaking out on a matter of concern to the public.

In this case the letter the managers signed and presented to the hospital's trustees expressed nothing more than the managers' opinion that the then-current management company should be retained. The letter offered no reason or explanation for the opinions expressed.

There was nothing in the letter intended to inform the public about the manner in which the hospital was being managed. There was no effort being made by the managers to expose government ineptitude, waste or corruption, or any discussion of concrete facts to be weighed by the hospital board of trustees in selecting one management company over another.

An unsupported statement of opinion is not a matter of public concern, the court ruled. It is not enough to warrant a civil lawsuit for retaliatory discharge from employment under the guise of legal protection for constitutional rights under the First Amendment to the U.S. Constitution. **Withiam vs. Baptist Health Care of Oklahoma, Inc., 98 F. 3d 581 (10th Cir., 1996).**

## Disability Discrimination: Short-Term Condition Is Not A Disability.

The U.S. District Court for the Eastern District of New York recently reviewed the disability discrimination cases coming out of other Federal courts around the country. The court concluded it had to throw out a nurse's claim of employment discrimination stemming from a one-month leave of absence for hypertension.

***An impairment that prevents an individual from working for a period of one month, and that is not expected to recur in the foreseeable future, does constitute a disability within the meaning of the Americans With Disabilities Act.***

UNITED STATES DISTRICT COURT,

The court in this case applied the accepted legal principle that a short-term condition is not considered a disability for purposes of disability discrimination laws. One court ruled in 1996 that a three and one-half month absence for a temporary psychological impairment was not of sufficient duration to be considered a disability. Another court ruled the same year that a two-month recuperation from surgery also was not what the Americans With Disabilities Act intended to define as a disability.

The nurse in this case returned to work after one month with her hypertension resolved and with no medical restrictions from her physician. Her hypertension was related to certain stressful events on the job, and was not expected to recur.

Chronic hypertension can be considered an employment disability, according to the court, but that fact was not relevant because it was not what was present here. **McIntosh vs. Brookdale Hospital Medical Center, 942 F. Supp. 813 (E.D.N.Y., 1996).**