

LEGAL EAGLE EYE NEWSLETTER

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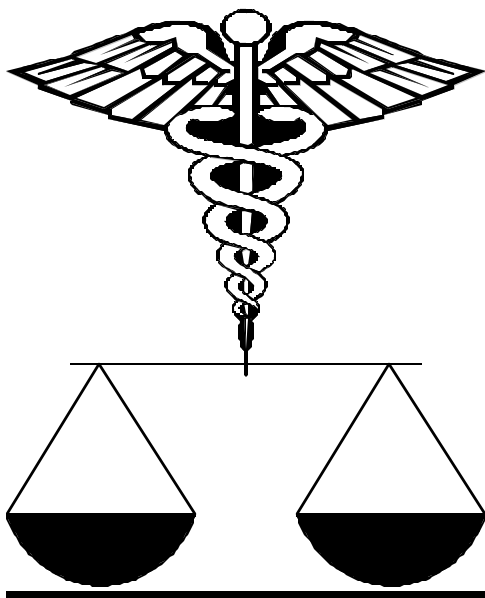
CMV: Caregivers Must Warn Patients Of Danger Of Contact With Persons At Risk.

In a case recently handed down by the Superior Court of Pennsylvania, a mother gave birth to a child with certain abnormalities which gave rise to a suspicion of cytomegalovirus (CMV) infection. Mother and child were tested and both were diagnosed as infected with CMV.

Despite their diagnosis, the mother and child were visited at home by a friend who assisted with feeding and bathing the infant and with changing the diapers. The friend herself had just become pregnant. The friend continued to visit the mother during the first two trimesters of her own pregnancy and often assisted the mother with the baby.

The court believed the critical contact between the pregnant woman and the infant occurred in the mother's home after she and her newborn had been discharged from the facility where they were diagnosed with CMV.

Six months after she began visiting with the mother and assisting with her infant's care, the friend learned for the first time that CMV is highly contagious and poses a special threat to pregnant women. She also learned that she herself had become infected with CMV, most likely from contact with her friend or her friend's infant.



Healthcare professionals are well aware of the risk CMV poses to unborn infants. While they are not expected to know of all pregnant women who will come in contact with a patient who is infected, they must warn such patients that CMV is highly contagious and that they should avoid contact with pregnant women.

SUPERIOR COURT OF PENNSYLVANIA,
1996.

The mother's friend's infant was born three months later. The friend's infant died from CMV, having been affected by CMV *in utero*. The friend filed suit against the medical facility which tested and diagnosed her friend and her friend's infant, claiming damages for the death of her own infant and for her own infection with CMV.

The court ruled that healthcare professionals have the legal duty to warn their patients who have highly contagious diseases, like CMV, hepatitis C and HIV, of the possibility of spreading their diseases to others in certain specific circumstances, and to point out to their patients examples of persons with whom they might come into contact who are particularly at risk of contracting their diseases from them.

When a healthcare professional fails in the legal duty to warn a patient of the danger the patient's disease poses to others, a person who gets a highly contagious disease from the patient can sue the healthcare professional for negligence, if the court can find, as in this case, that the healthcare professional's failure to warn of the danger of contagion to persons at risk was the reason the person suing contracted the disease. **Troxel vs. A.I. Dupont Institute, 675 A. 2d. 314 (Pa. Super., 1996).**

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