

Evidence Destruction: Court Does Not Fault Hospital, Taped Over E.R. Video Recording.

The patient sued the hospital claiming a violation of the US Emergency Medical Treatment and Active Labor Act in that he was denied appropriate care because he was uninsured.

According to his lawsuit, the patient arrived by ambulance incoherent and in excruciating pain. He was eventually taken to an examination room and left there for hours without receiving any pain medication or medical attention. When the physician and nurses finally came into the room they were reluctant to touch him and one nurse actually left the room gagging because of his condition. That caused him embarrassment, emotional distress and extreme humiliation.

The patient claimed that he finally left the exam room, went to the bathroom and then staggered into the E.R. lobby where he collapsed on the floor. He lay there ten minutes while hospital staff ignored him and stepped over him, until a nurse helped him into a wheelchair and wheeled him back to the exam room.

After three more hours he phoned someone to come and get him and take him to another hospital.

Next-Day Email Put Hospital On Notice Of Potential Litigation

The next day the patient sent an email to an assistant to the hospital system's senior vice president complaining about what had happened. The email expressly stated the patient intended to sue the hospital and the physicians and nurses.

The email was forwarded to the hospital's director of risk management. The risk manager and other hospital officials recognized the potential for litigation, but their first concern was compliance with CMS standards which require a prompt investigation and response to a patient's complaint over the quality of his care.

The patient soon received a letter stating that the hospital's investigation revealed that the quality of the care he received was appropriate in all respects. The patient wrote back that he was all the more determined to sue for discrimination, emotional distress and humiliation. Six weeks later he filed suit in the US District Court for the District of New Jersey.

There is no question the patient's email to an assistant to the hospital's senior vice president expressed an intention to sue the hospital over his visit to the E.R. the night before.

That email triggered the hospital's legal duty to preserve relevant evidence that could be useful to the patient in his claim for substandard medical care.

However, it was reasonable for the hospital's risk management department to believe the focus of the patient's complaint was the clinical adequacy or inadequacy of the medical treatment he received or did not receive inside the examination room, where there were no cameras and which was not within view of the camera in the E.R. lobby.

Although it was foreseeable that the E.R. lobby tape might be requested by the patient at some point in potential litigation, it was nevertheless reasonable for the hospital to believe the tape from the E.R. lobby camera was not relevant to the patient's case.

Further, there is no evidence of bad faith in the tape being taped over as routine practice after three weeks.

UNITED STATES DISTRICT COURT
NEW JERSEY
January 24, 2014

Court Disallows Patient's Claim For Spoliation of the Evidence

During pretrial discovery the patient's lawyer made a formal demand for the videotape from the E.R. lobby camera for the night in question which allegedly would show the patient lying on the floor unattended while hospital staff stepped over him.

However, the tape had already been taped over. It was routine practice at the hospital for security camera tapes to be taped over after three weeks, assuming no one took steps to preserve them.

Spoliation of the evidence is the legal term for the destruction or alteration of significant evidence or failure to preserve such evidence so that it can be used by the other side in litigation that is pending or reasonably foreseeable.

There was no question the hospital kept the tape for the night in question for a time and that the tape was later unavailable for the patient's use as evidence because it was taped over. Although no lawsuit had as yet been filed when it was taped over, there was also no question the hospital could reasonably foresee that the patient would sue and might want the tape.

Patient Intended to Sue For Denial of Care

The telling point in the hospital's favor, in the Court's judgment, was that it was reasonable for the hospital to believe that the focus of the patient's lawsuit would be the same as the focus of his email complaint, that is, the clinical adequacy or inadequacy of the treatment he received or did not receive in the examination room.

The E.R. lobby tape had nothing to do with what did or did not happen in the exam room, or at least the hospital had no reason to believe otherwise.

There was nothing in the patient's email and no suggestion in his lawsuit that he was injured by his alleged fall in the lobby. If he had claimed such an injury, the Court expressed confidence that the hospital's risk manager, upon learning of that claim, would have acted correctly and instructed hospital security to preserve the E.R. lobby videotape. **McCann v. Kennedy Univ. Hosp., 2014 WL 282693 (D.N.J., January 24, 2014).**