

## Health Maintenance Organizations: Court Lets Patient's Lawsuit Go Forward For Nurse's, Physicians' Errors And Omissions In Patient's Assessment.

The US Employee Retirement Income Security Act (ERISA) sharply limits the rights of health insurance beneficiaries and HMO and PPO members to sue for benefits or for treatment to which they believe they are entitled.

For one thing, ERISA says the lawsuit must be filed in Federal District Court. Members of Congress sided with the health insurers. They assumed Federal judges would be more business than consumer oriented and because Federal judges are appointed securely for life they would not be affected by political pressure as much as elected judges in the local courts where most medical malpractice cases are heard.

In a move to make health insurers, HMO's and PPO's more responsive, some Federal courts are seeing a difference between benefit allocation decisions, over which lawsuits are still highly restricted by ERISA, and ordinary common-law medical-negligence issues, which are not restricted ERISA.

The US District Court for the Middle District of Florida kept a case in Federal court but allowed the suit to go forward for negligence against a neurologist, his office nurse and the patient's health-plan primary care physician.

A patient came to the neurologist's office complaining of headaches. The neurologist waited for a CT scan to be approved by the primary-care physician. While they were waiting the nurse saw the patient in the office and misjudged the seriousness her condition. She died two days later from an intracranial hemorrhage.

It was more than just a suit against the health plan for the cost of a CT scan. The care providers could be found guilty of malpractice and significant damages could be awarded. **Krasny v. Waser**, 147 F. Supp. 2d 1300 (M.D. Fla., 2001).

## Surgical Hardware: Court Rules It Is Hospital's Responsibility To Select, Provide Proper Screws.

A few days after spinal disk surgery the patient's surgeon discovered he had used pediatric rather than adult pedicle screws.

He promptly informed the patient of the error. He urged her to have the surgery completely re-done. The screws he used were too small and were wholly inappropriate for a person of her height and weight. She was at risk for the screws to give way which could cause her significant new injuries.

The patient and her husband sued the surgeon, the doctor who assisted the surgeon and the hospital.

The county judge dismissed the hospital from the case. The patient and her husband appealed that decision while the court case went forward against the two physicians.

***Hospitals have to supply the right equipment for the care of their patients.***

***The manufacturer's rep delivered one complete set of back-surgery hardware and screws.***

***Somehow the hospital sent the wrong screws into the operating room.***

***The surgeon used pediatric pedicle screws instead of adult-size screws along with adult-size hardware for a spinal fusion.***

COURT OF APPEALS OF TEXAS, 2001.

The Court of Appeals of Texas ruled there were grounds for the suit against the hospital.

A hospital has a legal responsibility for proper selection of supplies, instruments and equipment used in treating patients at the hospital, and that is still true even when the physician is also at fault as in this case.

Somewhere the chain of responsibility broke down at the hospital. The sales rep brought a complete set of hardware to the hospital's central supply with all the pieces and screws available in all sizes. Someone sent the wrong screws into the operating room and the circulating nurse and scrub tech passed the wrong screws to the surgeon. No one caught the error. **Cobb v. Dallas-Fort Worth Medical Center**, 48 S.W. 3d 820 (Tex. App., 2001).