Correspondence

Dear Sirs:

I recently attended the **Conference on the Legal Implications of Emergency Medical Care** in New Orleans, and one of the speakers announced that there was no duty to provide emergency transportation and that the refusal to do so would not incur liability. At the conference, I questioned the speakers on this matter and mentioned a case, for which I was unable to give a citation, on the refusal of an ambulance to transport. I am writing so that you may inform the participants that a brief survey by me has demonstrated that there are at least two cases where the refusal to provide ambulance services to transport caused judgments to attach.

The first case, and it is the case which I mentioned at the conference, is *Pettee* v. *Elk Grove Village*, an Illinois case decided June 9, 1978, in Cook County, under docket number 74-L-3810. The *Pettee* case involved a fire department whose chief ordered back an ambulance which had been dispatched pursuant to a call from a woman who was suffering respiratory difficulties and convulsions while eight months pregnant. The plaintiffs in this case lived approximately a half mile from the Elk Grove Village ambulance but were situated in the district of another ambulance. The mother and child died and the jury determined it was due to the refusal of the Elk Grove Village ambulance service to respond to the call. The jury awarded $335,000 to the decedents' estates.

The second case is known as *DeCicco v. Trinidad Area Health Association*, 573 P.2d 559 (Colo. App. 1977). In that case, an employee of a hospital which operated the only ambulance service in the county, was stricken with a cerebrovascular accident at home. When the woman's physician called the hospital for an ambulance to transport her to a different hospital, the hospital where she was employed refused to send the ambulance. The jury decided that the decedent's death was, at least in part, caused by the refusal of the ambulance service to transport and the jury awarded her husband $100,000 in damages ($70,000 of them punitive).

I bring forth these comments not to disparage the speakers but to clear up what was an obvious oversight and which should have been brought forth, I believe, by members of this Society.

Very truly yours,

Kim R. Denkelwalter, Esq.
Denkelwalter & Associates, Ltd.
Chicago, Illinois

Dear Mr. Denkelwalter:

This is to acknowledge receipt of your letter on the question of liability arising from the failure to render ambulance services. As you will remember, during my presentation in New Orleans, I stated that, in the absence of an obligation imposed by contract or by local law, no legal obligation existed which required an ambulance service to respond to a call. You have disagreed with this position and cited two cases: Pettee vs. Elk Grove Village *and* DeCicco vs. Trinidad Area Health Association. *I am familiar with these two cases and would like to respond as follows:*

It is my understanding that in the Pettee *case no contractual obligation existed between the ambulance service and the plaintiff at the time the call was made, but that the plaintiff had been assured during the telephone call that the ambulance would respond. Then, however, the ambulance was recalled without the plaintiff having been notified. There is no written opinion in the case, and, therefore, I do not know how the court dealt with the issue of the obligation to respond. However, I think it safe to say that since the plaintiff acted in reliance upon the promise that the ambulance would be coming, and, therefore, did not contact another ambulance service, that any damage suffered in reliance upon that promise would be compensable. This would supply a basis for recovery and would not raise the question of duty to respond to a call.*

Similarly, the DeCicco *case also appears to turn on the question of reliance. In that case, the decedent was employed at the defendant hospital, had been transported in the vehicle in question on numerous prior occasions, and could be said to have relied on the availability of the service. Regardless of whether or not the reliance argument is valid, the important point in this case is that at no point in the decision does the court of appeals discuss the issue of the legal obligation of an ambulance service to respond to a call. In the last paragraph of its opinion, the court makes a passing reference to the refusal of the ambulance service to respond on grounds irrelevant to the decedent's need or the availability of the service, but the court does not discuss the issue of a common law or statutory obligation to respond to a call for service in the absence of other factors. Accordingly, I believe that my statement at the* Conference on the Legal Implications of Emergency Medical Care *is correct and that neither of these two cases are instructive or even speak to the issue of an obligation to respond to a call for ambulance transportation.*

I would certainly be interested in your thoughts on this and appreciate your continued interest in the question.

Lee J. Dunn, Jr., J.D., LL.M.
General Counsel
Northwestern Memorial Hospital
Chicago, Illinois

Dear Dr. Sagall:

In response to your cordial letter which I received with my certificate of membership in the American Society of Law & Medicine, I would like to inquire if other states might have a ruling which would cover the protection of the medical records of patients who have been hospitalized in a facility which has since been closed.

Attached hereto, you will find a letter from the President of the Northeast Ohio Medical Record Association addressed to the American Medical Record Association requesting advice on the handling of this situation, as well as a copy of a letter from the president of our association to the judge who is hearing this case.

It occurred to me that if other states did have a statute to cover such a contingency, this might be valuable information for our local medical record association.

I will surely appreciate any help you can give me.

Sincerely,

Frances A. Kolbmann, ART
Medical Audit Coordinator
Lorain Community Hospital
Lorain, Ohio

Editor's Reply:

In the letter to the American Medical Record Association that Ms. Kolbmann refers to, it is explained that two Cleveland area hospitals have recently closed, one due to bankruptcy, and that inadequate concern is being expressed towards the disposition of the medical records of these hospitals. In one case, a nearby hospital, which reasonably expected to serve the same patient population, assumed responsibility for the records, but in the other the records are planned for destruction.

According to the letter, the legal opinion of the Greater Cleveland Hospital Association is, that in the absence of a specific Ohio statute, and because the hospital corporation had been dissolved, there is no legal responsibility to make the records available for the continuing care of patients. When the

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