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FILE NO. S-1204

PUBLIC RECORDS AND INFORMATION: Releasing Information to the Press Media Concerning Patients Brought to a County Hospital's Emergency Room

Honorable Allen Large
State's Attorney
Lawrence County
Lawrenceville, Illinois 62439

Dear Mr. Large:

I have your letter wherein you ask the following questions:

1. What information, if any, must a County Hospital release to the press media concerning patients brought to its emergency room?

2. If any information must be released, must the patient or his physician permit the release of the information?

3. If any information must be released, may the patient or his representative hold the Hospital

or his physician liable for the release of the information?

There is no express statutory provision governing the question of what, if any, information in possession of a county hospital regarding patients brought to its emergency room is considered open to the general public. Although the public has a common law right to inspect records of governmental agencies (People ex rel. Gibson v. Peller, 34 Ill. App. 2d 372), which is to be liberally construed (Weinstein v. Rosenbloom, 59 Ill. 2d 475), the right to inspect such records is not without qualification. There are interests such as confidentiality and privacy that justify withholding such records from public inspection. (People ex rel. Better Broadcasting Council, Inc. v. Keane, 17 Ill. App. 3d 1090.) It is apparent from an examination of the applicable statutes that it is the public policy of the State that the only information regarding patients brought to a county hospital emergency room that is available for public inspection is clerical information such as the patient's name, address, age, date of commitment and discharge.

Section 3 of "AN ACT providing for a lien for nonprofit hospitals, and hospitals maintained and operated entirely by a county rendering treatment and maintenance to injured persons" (Ill. Rev. Stat. 1975, ch. 82, par. 99) provides:

> "Any party to a cause pending in a court against whom a claim shall be therein asserted for damages resulting from such injuries shall, upon request in writing, be permitted to examine the records of such hospital in reference to such treatment, care and maintenance of such injured person. Any hospital claiming a lien under this Act shall, within 10 days of being so requested in writing by any such party, furnish to such party, or file with the clerk of the court in which the cause is pending, a written statement of the nature and extent of the injuries sustained by and the treatment given to or furhished for such injured person by such hospital and the history, if any, as given by the injured person, insofar as shown by the records of the hospital as to the manner in which such injuries were received."

The very inclusion of this section in the statutes indicates a legislative view that hospital records are not intended to be made available to the general public. Further support for such a position is found in section 9 of the Hospital Licensing Act (Ill. Rev. Stat. 1975, ch. 111 1/2, par. 150):

> "The Department shall make or cause to be made such inspections and investigations as it deems necessary. Information received by the Department through filed reports, inspection, or as otherwise authorized under this Act shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the denial, suspension, or revocation of a permit to establish a hospital or a proceeding involving the denial, suspension, or revocation of a license to open, conduct, operate, and maintain a hospital, or in other circumstances as may be approved by the Hospital Licensing Board."

See also, section 1 of "AN ACT relating to hospital records" (Ill. Rev. Stat. 1975, ch. 51, par. 71).

The problem of disclosure of county hospital records is closely tied to the statutorily acknowledged doctor-patient privilege found in section 5.1 of "AN ACT in regard to evidence and depositions" (Ill. Rev. Stat. 1975, ch. 51, par. 5.1):

> "No physician or surgeon shall be permitted to disclose any information he may have acquired in attending any patient in a professional character, necessary to enable him professionally to serve such patient, except only (1) in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide, (2) in actions, civil or criminal, against the physician for malpractice, (3) with the expressed consent of the patient, or in case of his death or disability, of his personal representative or other person authorized to sue for personal injury or of the beneficiary of an insurance policy on his life, health, or

> physical condition, (4) in all civil suits brought by or against the patient, his personal representative, a beneficiary under a policy of insurance, or the executor or administrator of his estate wherein the patient's physical or mental condition is an issue, (5) upon an issue as to the validity of a document as a will of the patient, (6) in any criminal action where the charge is either murder by abortion, attempted abortion or abortion or (7) in actions, civil or criminal, arising from the filing of a report in compliance with the 'Abused and Neglected Child Reporting Act', enacted by the 79th General Assembly.
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I refer you to opinion No. S-1140, issued August 19, 1976, in which I held that all hospital records kept regarding psychiatric patients may be disclosed only to those parties and agencies enumerated in section 12-3 of the Mental Health Code (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 12-3) and under the conditions stated therein. Section 12-3 reads as follows:

> "The hospital records of and other information including both clerical and clinical data pertaining to patients are not open to inspection by the general public, or any person representing any agency of a local, state or Federal government or any other political subdivision, but may be examined by the Director; by the State's Attorney of the county from which the person is admitted or in which

> he resides or in which the hospital is located; by the patient; by an attorney for the patient; by any circuit court in which the mental condition of the patient is or has been a matter of inquiry or question; or by a State or Federal agency for the sole purpose of enabling the patient to acquire eligibility for benefits under any State or Federal law. Provided, however, clerical data and the presence of a patient in a State-operated hospital or institution may be disclosed, in response to a request relating to a specific patient, to the United States Secret Service when, in the judgment of the Director, it is necessary to protect the life of persons whom the Secret Service is required by statute to protect.
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> For the purposes of this Section, clerical data includes, but is not limited to a patient's name, address, age, date of commitment or discharge, and whether or not a person has been a patient of the Department."

It is true that the legislature could have provided a section similar to section 12-3 in regard to hospital records of all patients in general had it intended to restrict disclosure of such records. However, the other statutory sections previously cited in this opinion would appear to be unnecessary if the legislature considered hospital records to be open to the general public.

It is interesting to note that section 12-3 distinguishes between clerical and clinical data. Clerical data

as defined in section 12-3 is not included within the ambit of protection afforded by section 5.1 of "AN ACT relating to evidence and depositions". The key to determining what constitutes confidential information under the doctor-patient privilege is the phrase in section 5.1 referring to information "acquired in attending any patient in a professional character, necessary to enable him [the physician or surgeon] professionally to serve such patient". Accordingly, a patient's name, address, age, date of commitment or discharge is not protected by the physician-patient privilege. In Cannell v. Medical and Surgical Clinic, 21 Ill. App. 3d 383, 385, the court cited approvingly the case of Emmet v. Eastern Dispensary and Casualty Hospital, 395 F. 2d 931, 935, in which the Court of Appeals said, "The responsibilities of physicians and hospitals to protect their patients' medical facts from extrajudicial exposure spring from the confidential nature of the physician-patient relationship". Had the legislature intended to make hospital records relating only to clerical data confidential, it could have provided an appropriate section analogous to section 12-3 of the Mental

Health Code. Clinical data contained in hospital records appears protected from disclosure by the patient-physician privilege. I can find no statute or rule of public policy that requires that strictly clerical information in county hospital records be kept confidential.

Therefore, in my opinion, a county hospital must release to the press media that information concerning patients brought to its emergency room that may be characterized as clerical, including name, address, age, date of commitment or discharge. Any information characterized as clinical would be protected from disclosure by the physician-patient privilege found in section 5.1 of "AN ACT relating to evidence and depositions".

To answer your second question, once information is adjudged to be available to the general public, as clerical information in county hospital records would be, the question of the patient or his physician permitting the release of such information is not applicable. Information open to the general public requires no one's permission in order to

be disseminated. Likewise, in answer to your third question, liability for the release of such information cannot lie with anyone.

Very truly yours,

A T T O R N E Y G E N E R A L