

LEGAL ALERT

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HEALTH CARE NOTES

March 2003

- **Liability May Be Imposed On Non-Treating Physicians.** In *Campbell, et al. v. Sottiurai, et al.*, 2003 WL 257405, 2002-C-2223 (La. App. 4th Cir. 1/29/03), the court concluded that a physician, who never actually examines or treats a patient, may be liable to the patient if (1) he provides an uninformed opinion to the patient's treating physician; (2) the treating physician relies on that opinion; and (3) the patient is injured as a result. In reaching its decision, the court reasoned that:

. . . [t]he [plaintiffs] have alleged in their petition, among other things, that Carol Campbell signed a contract with Pendleton Hospital, consenting to treatment by their staff physicians, and that Dr. Steven D. Jones relied on relators' opinions in treating Carol Campbell, opinions that were given without research or examination of the patient. [Plaintiffs] argue that it was the reliance on these uninformed opinions that ultimately resulted in the death of Carol Campbell. We find that these allegations, accepting them as true, articulate a valid cause of action against the relators. Judgment on the facts of these allegations should be made at trial.

The defendant physicians are seeking review of this decision by the Louisiana Supreme Court.

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- **Standard of Care Breached in Failure to Obtain Tests Due to Patient's Financial Concerns.** In *Costa v. Boyd*, (36,584 (La. App. 2nd Cir., 01/30/03), 2003 WL 202611) a patient was awarded damages resulting from the defendant-doctor's failure to timely order a blood test which apparently would have detected the patient's declining renal function and ultimately her chronic renal failure.

The trial court found that the defendant-doctor breached the standard of care when he failed to order baseline renal function and periodic follow-up lab studies for the patient who was suffering from hypertension and who eventually suffered renal failure.

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The doctor testified that the patient told him at their first meeting that she wanted to speak with him only and, for financial reasons, did not want a lot of tests done. The doctor documented in her chart only that the patient wanted to “speak with him only”; the doctor did not state in his note that the patient voiced financial concerns. The physician admitted that with a new patient with hypertension, he would normally order a lab study. The patient denied telling the doctor that she was having financial problems.

In its opinion, the appellate court articulated that, if the doctor believed that the patient could afford only incomplete treatment, the doctor should have refused to treat the patient when she first voiced concerns about spending money on lab work. The court reasoned that the patient did not present him with an emergency situation during the first visit, so he should have referred her to LSU Medical Center for complete treatment of her hypertension at that time.

The lesson to be learned from this case is that a physician may commit malpractice even in a non-emergency situation, by failing to require that the patient submit to certain necessary tests, even when a patient is concerned about the cost of those tests.

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LAGNIAPPE

Our **Helpful Tools for Dealing with Payment Issues Seminar** was held Wednesday, March 26 at Juban’s Restaurant. Speakers included **Linda Rodrigue** and **Clay Countryman**, “Overview of Federal and State Laws That Address Provider Payment Issues;” **State Rep. Troy Hebert**, “Prompt Payment and Balanced Billing Legislation;” and a panel discussion including **Richard O’Shee**, Dept. of Insurance; **Ed Silvey**, Baton Rouge Clinic; and **Clay Countryman**. For a copy of the handout materials from this seminar, e-mail **client_services@keanmiller.com** or go to our website at **www.keanmiller.com** to our Health Care Resources page.

Clay Countryman presented “HIPAA: Compliance Issues for Physician Practices” at the Southwest Louisiana Managers Association meeting in Lake Charles on March 12.

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