

Non-Profit Hospitals: U.S. Judicial Panel Refuses to Consolidate Uninsured Patient Litigation Cases

On October 20, 2004, plaintiffs' attorneys attempting to consolidate into one federal district 28 cases pending in the nationwide litigation brought by uninsured patients against non-profit hospitals were dealt a blow when the U.S. Judicial Panel on Multidistrict Litigation refused to consolidate the cases. The Panel reportedly found that consolidation "would neither serve the convenience of the parties and witnesses nor further the just and efficient conduct of this litigation."

Thus, the cases will proceed individually in the respective federal venues where the hospitals are located. While the ruling did not decide substantive legal issues regarding the plaintiffs' claims, it is considered a significant victory for the defendants and will make the plaintiffs' cases considerably more difficult to pursue.

In a related matter, a U.S. District Judge in Birmingham, Alabama, dismissed an uninsured patient suit filed against Baptist Health System and the American Hospital Association. In dismissing the suit, Judge Virginia Emerson Hopkins ruled that claims presented by the plaintiffs had been previously litigated in state court and therefore, under the legal concept of *res judicata*, the plaintiffs were barred from re-litigating the issues in federal court. The judge also found that the Emergency Medical Treatment and Labor Act ("EMTALA") was not implicated by the plaintiffs' claims. In finding EMTALA did not apply, the Judge Hopkins ruled that the two-year statute of limitations to bring an EMTALA claim had passed and that since no plaintiff suffered physical harm as a result of Baptist's actions, the plaintiffs' claims did not qualify as a personal injury suit under EMTALA or state law.

As reported in our prior Alerts, the series of mass-tort-type class action lawsuits have been filed against hospitals, hospital systems and the American Hospital Association challenging the hospitals' and hospital systems' tax-exempt status and billing practices with respect to the uninsured. The suits were filed by a group of prominent plaintiffs' attorneys most recently identified with the mass-tort tobacco litigation cases. The complaints allege that the hospitals are overcharging uninsured patients and failing to provide adequate charity care in violation of tax exemption laws and their agreements with state and federal governments. Specifically, the plaintiffs assert that the defendant hospitals are:

- charging their uninsured and underinsured patients more than patients with Medicare, Medicaid or private insurance coverage;
- harassing uninsured and poor patients by using overly aggressive collection tactics; and
- engaging in these collection activities for the benefit of private interests.

We will continue to follow these cases closely and report any significant developments in future Alerts. Our healthcare lawyers focus on healthcare litigation and have experience in handling hospital business and tax-exemption issues. Duane Morris is able to assist clients in evaluating any possible exposure they may have

regarding these lawsuits as well as in preparing for and defending these lawsuits. Additionally, we advise clients on proactive measures, such as preparation of adequate charity care policies, to help reduce the risk of exposure to these lawsuits and other types of undesirable public scrutiny going forward.

Duane Morris

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For more information on the recent class action lawsuits filed against non-profit hospitals, please contact any of the following Health Law Practice Group members or the Duane Morris attorney with whom you are regularly in contact.

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