

HOSPITAL RESPONSIBLE FOR PATIENT'S SURGICAL BILL
WHERE DOCTOR DOESN'T PARTICIPATE WITH PATIENT'S INSURANCE PLAN

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A recent decision by the New Jersey Superior Court should end any remaining doubt about the ability of the government to control a physician's activities and ability to earn a livelihood. In a Superior Court decision, the Court ruled that where a hospital advised a patient that it accepts her insurance, and a physician, who does not accept that insurance, is then called in to care for the patient, the physician cannot bill the patient for his services, but must look to the hospital for payment.

In October of 2006 a patient was diagnosed with a kidney infection and was sent to Shore Memorial Hospital by her primary care physician. When she arrived at the hospital she claims that she was told that her insurance would cover the treatment, except for certain additional hospital charges. The hospital was an "in-network" provider for her insurance company.

Despite this warning, the Court found that the patient was not explicitly told that her surgeon was not employed by the hospital, did not accept her insurance, and would bill separately for his services. After undergoing various tests at the hospital, according to the decision, "the hospital staff concluded she had a kidney stone requiring emergency surgery."

The following day, the patient returned to the hospital and consulted with the surgeon before her surgery. The surgeon, according to the court, did not inform the patient that his fees were separate from those of Shore Memorial or that he did not accept the patient's insurance. However, the patient consented to the surgery which was successfully performed on the same day.

When the patient returned to the surgeon for a follow up visit, she claims that she first discovered that he did not accept her insurance plan. She, therefore, cancelled her appointment and made an appointment for follow-up with a doctor who did accept her insurance. When she received a bill from the surgeon for his services, she refused to pay.

The court concluded that when a patient presents herself to a hospital, and is told her insurance is accepted by the hospital, it is reasonable for the patient to assume that the services she receives from an independent doctor were performed on behalf of the hospital, and that she would not be liable for payment of his services.

In its decision the court found that because hospitals have a duty to accept and treat all patients, regardless of their ability to pay, the hospital had a duty to treat the patient when she entered the hospital and sought treatment. The court then found that the physician, who was not a hospital employee, was fulfilling the hospital's duty when he performed surgery on the patient and that both the patient and the hospital received a benefit from the surgeon's services.

The court also found that since the rate setting scheme established by the Hospital Rate-Setting Commission sets rates for medical services high enough to compensate for those cases in which a hospital is never paid, it is better able to bear the cost of the surgeon's services than the patient and that the surgeon should sue the hospital for his fees, rather than seeking payment from the patient.

In making its decision the court also held that a reasonable person entering a hospital and being told that the hospital accepts her insurance would not have understood her obligations to include a separate bill from an independent doctor.

Of particular interest in the case is the fact that there is no indication that the patient was indigent or in any way lacked the resources to pay for her care. The natural extension of this court created doctrine is that a hospital must provide every patient, regardless of ability to pay, a physician both qualified to handle the patient's complaint and also a participant in the patient's insurance plan. Can a complete government takeover of healthcare be far behind?

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