

What Physicians Need To Know About A Patient's Right To Know

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December 1, 2001

In response to a growing concern about patient deaths resulting from medical malpractice, New York has enacted legislation that will allow individuals to obtain more information than ever before about their health care providers. This legislation was adopted following publicity concerning the death of Lisa Smart during an operation performed at an outpatient clinic of Beth Israel Medical Center by a physician serving a five-year license suspension for repeated negligence in the treatment of six obstetric patients. In an effort to provide patients with more information regarding their physicians and thus enable them to make educated choices about their care, Gov. George Pataki, on October 6, 2000, signed a bill, (the Patient Health Information and Quality Improvement Act of 2000 §2995 *et seq.*) dubbed "Lisa's law", which will allow patients to access information regarding their physicians via the internet (www.health.state.ny.us) or a toll-free number (800-663-6114). By disclosing physician profiles, New York has joined the ranks of many states, including Massachusetts, that have enacted such legislation.

The Department of Health will be responsible for promulgating rules to implement "Lisa's law" and for the maintenance of the website and providing the physician profiles. Each individual profile will feature a physician's resume and other information regarding his or her education and training. If applicable, the profile will also include any criminal convictions, disciplinary actions taken against the physician by a hospital and certain information about his or her malpractice record.

Recognizing the serious implications that disclosing malpractice information might have, the Legislature concluded that only malpractice verdicts and

arbitration awards incurred within the most recent ten-year period will be published in the profile. The New York State Medical Society fought hard against “Lisa’s law” and won a key concession. Originally, all settlements within the past ten years were to be included in the profile. The Medical Society successfully argued that physicians who choose to settle “nuisance” suits should not be penalized and the legislation adopted a “two-case exclusion” rule. Thus, a physician’s first two malpractice payments will not be included in the profile unless the State Commissioner of Health makes an exception.

Another objective of the new legislation was to widely publicize the availability of physician profiles. Patient’s currently have the right to access a state maintained website to view information concerning state disciplinary actions against a physician, but according to state officials, very few persons are aware of the existence of this website. In order to remedy the situation, the new legislation requires hospitals and physicians to post a notice informing patients about the website and the toll-free telephone number.

Physician profile disclosure is not only an issue being addressed by state legislatures. On the national level, House Commerce Committee Chairman Thomas Bliley Jr. (R – Va.) recently announced plans to introduce legislation that would allow patients to access the National Practitioner Data Bank which presently is only accessible to HMOs and hospitals. Since 1990, the National Practitioner Data Bank (created with the passage of the Health Care Quality Improvement Act of 1986) has recorded malpractice judgments and certain disciplinary actions taken against physicians, dentists and other healthcare professionals. The databank is used for credentialing purposes to alert hospitals, HMOs, professional societies and state medical boards of any action taken against a physician in another state. By allowing citizens access to the database, the federal government would make it possible for a patient to research a physician located in the United States.

The enactment of “Lisa’s law” presents some concern for physicians. For example, the manner in which malpractice litigation is conducted is unique. Often times, every physician involved with the suing patient is included in the lawsuit regardless of liability. Modest settlements have been commonplace in such situations. However, when faced with the limited two-case exclusion referenced above and the possibility of having settlements

listed in their profile, physicians will now have to factor the impact of “Lisa’s law” into their settlement decisions.

On a practical note, the website will not be operational for about a year to allow time to create the physician profiles. Within this time, New York physicians can expect to receive a form from the Department of Health requesting information for the development of the profiles. Physicians will receive a new form periodically in order to keep current the information contained in the profile. Prior to the dissemination of the information to the public, each physician will be provided with a copy of his or her profile and be afforded the opportunity to correct any factual inaccuracies. A physician who knowingly provides materially inaccurate information will be guilty of professional misconduct.

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