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August 28, 1992

Victoria Vance, Attorney
ARTER & HADDEN
1100 Huntington Building
Cleveland, Ohio 44115-1475

RE: Shirley Bolden vs. St. Luke's Hospital

Dear Ms. Vance:

I was asked to review this case with a focus on whether or not the patient's discharge from the institution was a COBRA violation. Since this patient was admitted to the hospital, I do not believe the emergency physician or Emergency Department could be involved in any potential action for violation of COBRA. However, the COBRA law also considers that discharge from the hospital is a transfer for the purposes of the COBRA Act. There appear to be three restrictions on transfer. The first restriction deals with a transfer at the request of the patient. I do not believe that restriction is operative in this case.

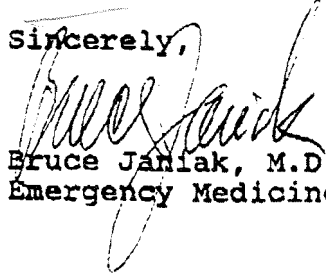
Secondly, unstable patients may be transferred if there is an adequate explanation that medical benefits out-weigh expected risks. I do not believe that provision is operative in this instance, either.

The third transfer instance I do not believe would apply in any case, since it deals with a third party who is transferring a patient from an emergency department rather than from an inpatient setting.

It is clear in this case that the patient was admitted for further evaluation. The record indicates that the patient not only was evaluated, but there was no evidence of a deterioration in the patient's condition while in the hospital. Further, there was no evidence of instability of vital signs. The patient had an medical evaluation and since there was no evidence of instability, it is my feeling that there was no violation of COBRA. Further testing if necessary could be carried out on an out-patient basis.

With regards to the unrecognized CPK-MP enzyme result, the absolute value of that number does not affect the fact that the patient was stable and quite comfortable while an inpatient. Further more, it is my feeling that had an additional CPK-MP test been done later in the patient's evaluation, the results would have been normal or more towards normal, thus supporting the concept of stability.

Sincerely,



Bruce Janiak, M.D.
Emergency Medicine