

Hiding Behind the Law

It has recently been reported that the Pennsylvania Patient Safety Authority has received reports of 169 “serious events” involving neonatal care in 2022, about twice as many as in 2018.

In seeking information from the hospitals about the reason for the uptick in injuries, the Hospital and Healthsystem Association of Pennsylvania hides behind the law. It claims that it could lose “legal protections” if it provides information sought by the Patient Safety Authority.

The Hospital Association’s Vice President for Population Health and Clinical Affairs, says HAP, does not believe the law requires hospitals to provide information related to internal investigations.

The position of the Hospital Association of Pennsylvania is completely bogus and has no support in the law whatsoever.

When I was President of the Pennsylvania Trial Lawyers Association, I demanded that Pennsylvania create a patient safety authority as a price for restricting lawsuits against doctors and hospitals. My position was informed by a recent recommendation by the Institute of Medicine entitled, “To Err Is Human, Building a Better Healthcare System”. The recommendation for a patient safety authority was made in 1999, and we were able to have the law passed and signed by the Governor in 2002. The Governor’s pen, signing the legislation, hangs on a wall in my office.

I was one of the first, perhaps the first, Senate appointees to the Pennsylvania Patient Safety Authority, and I served proudly for 15 years.

During the entirety of my service, the Hospital Association of Pennsylvania exercised its considerable lobbying ability to make the Patient Safety Authority as ineffective as possible.

The hospitals in Pennsylvania have an absolute legal obligation to cooperate with the Patient Safety Authority and the Department of Health in turning over their investigations of possible unnecessary neonatal deaths. We wrote that into the legislation.

Section 304(a) indicates that the Patient Safety Authority’s contractor may directly advise reporting medical facilities of immediate changes that can be instituted to reduce serious events and incidents. Without the cooperation of the hospitals, the Patient Safety Authority contractor could not do this.

Section 304(b) permits anonymous reports to the Authority, and requires the Authority to perform its own review of serious events and may refer a medical facility and any involved licensee to the Department of Health for failure to report serious events pursuant to law.

There is a requirement to notify patients or their families of serious events. This often is observed in the breach. Without meaningful information reported to the patient or the patient's family, the whole concept behind patient empowerment for their own medical care is an illusion.

Under Section 309 of the law, hospitals must have a patient safety officer. In accordance with Section 310, the hospital must have a patient safety committee. The patient safety committee is required to receive reports from the patient safety officer, evaluate investigations and actions of the patient safety officer on all reports, review and evaluate the quality of patient safety measures utilized by the medical facility, make recommendations to eliminate future serious events and incidents, and report to the administrative officer and governing body of the medical facility with respect to the number of serious events and incidents. If the Patient Safety Authority and Department of Health cannot monitor these obligatory requirements, the law will become a toothless tiger. That is exactly what the Hospital Association of Pennsylvania desires.

There is confidentiality given to hospitals, which is very robust, in Section 311 of the law. However, hospitals cannot hide behind the confidentiality to protect wrongdoers within the hospital system or to hide the product of hospital investigations. Original source documents utilized by internal patient safety operatives at a hospital are always subject to disclosure. The protections given to hospitals are routinely raised by the hospitals in civil litigation when a patient or the patient's family files a legitimate and serious personal injury claim.

The Hospital Association of Pennsylvania is attempting to leverage protections afforded them from disclosing bad medical care by claiming that if they comply with the law, citizens, taxpayers and patients may discover quality of care concerns. The bottom line is that not only are the hospitals also attempting to protect themselves financially, but also the Hospital Association is doing everything it can to disempower patients and to create a system of medical care in which preventable medical errors are covered up rather than exposed and eradicated. The vision of the Institute of Medicine in recommending a patient safety authority, and the reason why legislature passed it, was to enhance patient safety, disclosure, and a partnership between hospitals and regulators. The purpose of the law was not to shield hospitals from disclosure. Where there is secrecy, bad medical care can thrive and will not be revealed. Where there is openness and transparency, it is possible to ferret out problems within the healthcare system which sometimes represent a systemic failure by the hospital itself.

The law very specifically creates a system for discovering, addressing and remediating systemic failures. What are systemic failures? That is where healthcare goes wrong because of an overall dangerous approach to providing medical care. In one

hospital, it was recently discovered that a number of infants suffered or died because doctors were putting dirty hands on ophthalmoscopes when they looked into the eyes of the babies. In another case, an operating room fire occurred, scarring a man for life, because a doctor decided not to follow recommendations as to the proper equipment to use. Other hospitals have had problems with wrong site surgery. These frequently are institutional failures that could be remedied by a proper investigation and a policy of providing truthful information to patients and the public promptly and honestly.

Pennsylvania, thankfully, has a two-tiered system. On the one hand, we attempt to remedy problems in hospitals through a partnership between internal mechanisms that hospitals are required to have and state agencies such as the Patient Safety Authority. On the other hand, we have a tort system which financially provides for patients and their families where there has not been reasonable due care provided. Both systems need to be protected and to be robust.

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