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Journal of Consumer Advocacy



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CASE FILE

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federal law is meant to protect the privacy of medical information. One of the things prohibited, according to most courts around the nation, is the practice of the defendant's attorney talking to the victim's subsequent doctors outside of the presence of either the victim or his attorney. Oklahoma courts, however, have continued to allow this abusive practice – that is, have allowed until just recently.

Frasier, Frasier & Hickman, LLP, decided to fight this abuse. On several occasions over the last few years they have filed original actions with the Oklahoma Supreme Court to stop this practice. Each time the Supreme Court has refused to hear the issue. But the last time, they agreed to hear the issue and now they have put down stringent requirements to limit the one-sided contacts.

In the recent case of *Holmes v. Judge Nightingale*, the Supreme Court ruled that any medical information released, even in a malpractice action, must have first been ruled relevant to the action by the court. The court also ruled that a protective order should be in place prohibiting the information gained from being distributed other than on a need-to-know basis. The court also noted that a doctor giving out information illegally may be subject to heavy fines and penalties from the federal government.

Although the Oklahoma Supreme Court did not rule on the HIPAA issues – those are a matter of federal, not state, law – the recent ruling appears to put a severe crimp in the style of the defense lawyers, all to the benefit of the victims of medical malpractice.

certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ.

When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.

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CONSUMER INFORMATION FOR THE CLIENTS AND
FRIENDS OF FRASIER, FRASIER & HICKMAN, LLP

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CASE FILE

Discrimination case brought to a close

Francoise Christopher, a native of France, married an African American man and moved with him to Tulsa. She found work at the Ambassador, a Tulsa hotel upscale of the Doubletree or Marriott. Ms. Christopher was welcomed as an employee at the Ambassador because her accent and bearing gave the hotel a European flair.

Ms. Christopher did a good job and she was promoted from the front desk to be the director of sales. Part of her compensation was a commission that was based upon achieving sales goals. When she exceeded by a significant amount her sales goals, the hotel raised her goals even higher. Still, Ms. Christopher continued to exceed her sales goals and receive the maximum commission to which she was entitled.

Then, two things happened to mar this scene.

First, America went to war in Iraq and our French allies declined to participate. Suddenly, french fries became "freedom fries" – and the hotel's attitude towards its French sales director changed completely.

Second, Ms. Christopher's husband, active in Amnesty International and the movement to obtain reparations for the Tulsa Race Riot, steered attorney Johnnie

Cochran, a Harvard law professor, and other African Americans to stay at the Ambassador. When an African American delegation stayed at the hotel at about the same time as conservative political commentator Oliver North was staying there, it was too much for the hotel's management. Ms. Christopher was terminated the next week.

Although the Ambassador claimed that Ms. Christopher was terminated because of poor sales, still on the day it terminated her employment the hotel paid her the maximum commission that she could earn for sales. The conclusion seemed obvious: the hotel's action was discriminatory based on Ms. Christopher's national origin and the color of her husband and his associates.

Frasier, Frasier & Hickman LLP brought a court action against the Ambassador, on behalf of Ms. Christopher. As the case reached the point of trial, the Ambassador finally offered to allow Ms. Christopher to have judgment against it.

Finally, she was able to obtain closure from that something that a citizen – or guest – of our city and country should never have to endure.

An Ounce of Prevention is Worth a Pound of Cure

Thanks to the World Wide Web – more commonly known as the Internet – patients and consumers of health services can now perform their own check-ups on the providers of those services.

Several websites allow the public to investigate the license status and specialties of health practitioners licensed by the state – along with any disciplinary actions taken against them. Many of these same websites also assist consumers in filing complaints against these health professionals.

The Oklahoma State Board of Medical Licensure and Supervision licenses the state's medical doctors, along with professionals in a number of allied health fields. Information about Doctors of Osteopathy, albeit less information than MDs – can be found at a website operated by the Oklahoma Board of Osteopathic

Examiners.

Similar websites operated by the state boards of Dentistry, Chiropractic Examiners and Nursing offer information about dentists and hygienists, chiropractors, and registered and licensed practical nurses.

"The Internet offers public access to many important licensing and regulatory agencies – and consumers should take advantage of this resource," said Jim Frasier. Consumers who do not have computer access often can get help through public libraries.

"Patients can avoid experiencing many problems by doing a little homework themselves. Check out your current or prospective health profes-

For more information

Oklahoma State Board of Medical Licensure and Supervision
www.okmedicalboard.org

Oklahoma Board of Osteopathic Examiners
www.docboard.org/ok/ok.htm

Oklahoma Board of Dentistry
www.dentist.state.ok.us

Oklahoma Board of Chiropractic Examiners
www.okchiropracticboard.com/education.htm

Oklahoma Board of Nursing
www.youroklahoma.com/nursing

sional. Find out if they are properly licensed, practicing the correct specialty, or have been subject to disciplinary action," Frasier said.

Remember: An ounce of prevention is worth a pound of cure.

Oklahoma Center for Consumer and Patient Safety a Watchdog for Citizen Interest

The Oklahoma Center for Consumer and Patient Safety is an Oklahoma-based advocacy and awareness organization focused on consumer and patient safety.

The Center is a nonpartisan advocacy organization that works to raise awareness of issues, policies and legislation that threaten consumer and patient safety. It fights to make sure the voices of consumers and patients are heard in Oklahoma City and Washington. It also aims to educate and provide tools to citizens so they can advocate for the rights and safety of consumers and patients.

For more information on the Oklahoma Center for Consumer & Patient Safety – or to subscribe to its newsletter and Action Alerts, call 800-994-6025 or visit the Center's website at www.okccps.org.

To that end, the Center has put together a number of resources in such areas as patient advocacy, avoiding hospital mistakes, and understanding the pitfalls of a number of scams.

"Our goal is to educate and provide tools to our citizens. We want to create an avenue to ask big questions that lead to big solutions," said Center Director Hugh Robert. "The Center will fight to make sure the voices of consumers and patients are heard in Oklahoma City and Washington."

The Center produces an informative electronic newsletter that is distributed by email. It features legislative alerts and other timely consumer-oriented information. The e-newsletter is free and can be received by contacting the Center.

Scholarship Applications Available

The Julia Fredin Fraiser Foundation is accepting scholarship applications from high school seniors preparing to continue their education. The Foundation also is accepting renewal applications for those students who have previously received scholarships.

Applications for new and renewal scholarships may be obtained by calling, writing or coming into the office of Frasier, Frasier & Hickman LLP. The application deadline is June 1, 2007.

Julia Fredin Frasier passed away in 1996. She was married for 50 years to the firm's founding partner Tomy Frasier. The Foundation was organized in recognition of her great interest in the education of young people. During her life, Julia Frasier financially helped many students and encouraged many more to continue their education. She set an example that the Foundation aspires to continue.



“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”

**Franklin D. Roosevelt
January 20, 1937**

Fortunately, organizations such as the Oklahoma Trial Lawyers Association (OTLA) and the Oklahoma Center for Consumer & Patient Safety (OKCCPS) are busy working to protect the interests of all Oklahomans.

But these organizations cannot do it alone. They need your help. How? Pay attention. Get involved. Know who your elected representatives are and let them know how you feel about your rights.

Remember, even though they are away at the Capitol for most of the week, your legislators normally are home from Thursday night to Monday morning. Give them a call. Contact them. And let them know you care.

—Jim Frasier

Beware! The Oklahoma Legislature is in session. The 51st Session began in early February with a solid 55-47 Republican majority in the House and 24-24 tie in the Senate between Democrats and Republicans. Lawmakers will meet until May.

During their four months of work at the Capitol – Monday through Thursday – our citizen legislators will decide the spending priorities for a \$7 billion budget and the fate of more than 2,000 bills that were filed this year.

With these facts in mind, watch your wallet – and protect your rights.

The influence of Big Business and the “health industry” – hospitals and other medical providers and insurers – is growing as Republican Party influence has increased over the past few elections in Oklahoma. So-called “tort reform” has been a rallying cry for the state Chamber of Commerce and other business interests that want to erode consumer protections in our state for the sake of greater profits. Also, in recent years, the rights of workers and their families have been chipped away as employers assume less and less responsibility for workplace injuries.

And by all early indications, this year is no different.

For example, one Senate bill (filed by a Republican) aims to prevent medical patients from the being compensated when they are injured by a preventable error. Another bill filed in the House of Representatives (filed by a Republican) would go even further. It would target the most seriously injured patients, women, children, and the elderly, to reduce the liability of hospitals and doctors when they make serious preventable errors.

CASE FILE

Oklahoma SC Does Something for Patient-Victim Privacy Rights

Oklahoma has long had special legislation to protect the healthcare industry from liability for its own malpractice. One aspect has been to strip all privacy rights from the patient-victim with regard to medical care. Oklahoma provides that, upon filing a lawsuit, the injured party thereby waives any medical privilege he would otherwise have.

The law with regard to other injury victims is not so broad. A person injured in a car accident, for example, must permit the defendant to gain information relevant to the injuries claimed in the car accident, but that information can only be obtained with the knowledge and supervision of the injured party’s attorney. Malpractice victims, on the other hand, have had no such protections – the defendant attorneys could talk to the victim’s doctors without any

notice to the victim or his attorney.

In practice, this has worked a great benefit to the healthcare industry. In one case, after the victim’s subsequent doctor had been prepared to testify about the defendant’s malpractice, the defendant’s attorney secretly talked with the doctor so that when he got on the witness stand the next day, his story was totally different—the defendant doctor had done nothing wrong! Such abuses have long given an unfair advantage to the medical profession in malpractice cases.

In one letter that “somehow” came to light, an attorney who regularly represents the medical profession in malpractice cases rejoiced in what success the medical profession in Oklahoma had had in keeping its doctors in line so that they would all sup-

port a defendant who was sued.

The motivation of the medical profession, if nothing else, is that they are insured by their own insurance company and a verdict against one raises the rates for all. Despite this obvious conflict in interest, the courts have refused to allow the jury to know what is really going on. In one case, the jury let the defendant doctor go, thinking that if he really had committed malpractice, the injured person would have been able to find a doctor in Oklahoma to say so. What the jury was not and could not be told was the cohesiveness of the medical profession because of the common monetary advantage.

A small wrench has been thrown into the medical profession’s well-oiled machine. Known as HIPAA, a recent
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