

Health Care Alert: Appellate Division Decides that
Identification of Patients is Protected from Disclosure Under the Hospital Patients
Bill of Rights and the Physician- Patient Privilege

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The Superior Court of New Jersey, Appellate Division, issued a published opinion on December 6, 2005 in which it held that the names of hospital patients are protected from disclosure by the Hospital Patients Bill of Rights Act, N.J.S.A. 26:2H-12.7, et seq., and the Physician-Patient privilege, N.J.S.A. 2A:84A-22.1, et seq. Kinsella v. NYT Television, (App. Div., Docket No. A-3308-04T5).

Plaintiff was a patient at Jersey Shore Medical Center who was videotaped for a television program called "Trauma: Life in the ER". Although plaintiff signed a form consenting to the videotaping, he contends that his consent was invalid due to his condition at the time. Plaintiff filed a civil action against the television company as well as the hospital, alleging invasion of privacy. In discovery, plaintiff's counsel sought to obtain the names and addresses of all of the hospital's patients who were filmed in connection with the television show. The hospital provided the names of the patients who consented to being videotaped, but refused to disclose the names of any other patients, claiming that those patients had a confidentiality interest in their admission to the hospital's trauma center.

The trial court ordered the hospital to disclose the names and addresses of all patients videotaped. The trial court held that "the disclosure of the names and addresses of such patients provides no information about the treatment or medical condition of the patient", and therefore, was not protected.

On appeal, the Appellate Division reversed the trial court's order, and held that the Hospital Patients Bill of Rights Act and the Physician-Patient privilege both protect a patient from a hospital's disclosure of his or her admittance to the hospital. As such, the hospital may not disclose even the names and addresses of its patients.

Because the Appellate Division concluded that the names and addresses of hospital patients are protected under these two, New Jersey Statutes, it did not consider the protections of the federal Health Insurance Portability and Accountability Act of 1996, and its implementing regulations (HIPAA). Clearly, HIPAA would prohibit the disclosure of such patient identifying information also.

For more information on the court's decision or any other issue related to patient confidentiality, please contact Brian M. Foley, Esq., or any member of Schenck, Price, Smith & King's Health Care Practice Group.