SINCE 1854

Daily Law Bulletin

Wednesday, August 17, 2005 Thirty-six pages in two sections 95 cents

No shield for triage data in med-mal suit: panel

By BILL MYERS
Law Bulletin staff writer

A south suburban hospital should release triage information on 28 patients even though the patients are not parties to a couple's medical malpractice lawsuit against the hospital, an appeals panel ruled.

In a case of first impression, a three-judge panel of the 1st District Appellate Court ruled Wednesday that patients' treatment times are not privileged.

"Although the physician-patient privilege does afford some level of protection to the medical records of nonparty patients, this protection is not absolute," Justice Thomas E. Hoffman wrote for the court.

"Here, the information requested contains neither the nonparty patients' names, nor a history of their prior or present medical conditions, treatments or diagnoses. As such, we believe that the nonparty patients' identities could not be determined from the information the court ordered Ingalls to disclose," Hoffman wrote.

Michael and Eleanor Tomczak are entitled to know triage times — that is, the time at which a doctor or nurse first assessed a patient in the emergency room — as well as the triage designations and times at which treatment began for 28 patients at Ingalls Memorial Hospital because the Tomczaks' suit alleges that Ingalls was slow to diagnose and treat their daughter, the appellate panel ruled.

"To support this theory, the plaintiffs seek to establish that other emergency department patients were examined before the decedent in contravention of the procedures established by Ingalls' emergency department," Hoffman wrote in the 13-page opinion.

Wednesday's decision vacates Cook County Circuit Judge Joseph N. Casciato's order holding Ingalls in contempt for refusing to divulge the patients' information. The Tomczaks' malpractice suit now returns to Casciato for trial.

The Tomczaks sued Ingalls in 2001, several months after the death of their daughter, Victoria.

As part of their malpractice suit, the Tomczaks requested triage times for other patients who were in Ingalls' emergency room on the night that Victoria Tomczak died.

Casciato granted the Tomczaks' motion and eventually held Ingalls in contempt for refusing to hand over the records.

Ingalls appealed, arguing that the information the Tomczaks were seeking constituted the patients' sensitive records and therefore should not be disclosed under section 8-802 of the Code of Civil Procedure.

That section states in part that "no physician or surgeon shall be permitted to disclose any information he or she may have acquired in attending any patient in a professional character, necessary to enable him or her professionally to serve the patient," 735 ILCS 5/8-802.

In affirming the Tomczaks' right to the triage records, Hoffman said the Appellate Court was guided by two New York decisions cited by the Tomczaks. They were *Gourdine v. Phelps Memorial Hospital*, 336 N.Y.S.2d 316 (1972), and *Holiday*

Triage data – page 24

Little change in first-year salaries: study

By STEPHANIE POTTER
Law Bulletin staff writer

Starting salaries for associates at large law firms have remained flat over the last several years both nationally and in Chicago, according to a survey released earlier this month.

Local experts attributed the trend to the stock market downturn that began in

Department, said that they orchestrated a series of lectures on the topic over the next year, on college campuses and to conservative groups, including the American Enterprise Institute and the fledgling Federalist Society, which was founded by law students in 1982 as a debating club.

Leo, then a student at Cornell who was taking a semester off to work as an aide for the Senate Judiciary Committee, remembers attending the Federalist Society speech.

"It had an enormous influence on me," he said. "It was a fairly young crowd, lawyers, a lot of Reagan Justice officials. It was quite an affair. Certainly a heady moment for me as a student."

Meese scheduled breakfast and lunch lectures on originalism at the Justice Department, as well as off-site seminars, applying the principles to contemporary

sored by Meese early in his career, some liberals say, may be less telling than the careful and pragmatic choices he has made over the course of his legal career.

"I would be shocked if he turned out to be a strict constitutionalist like Scalia or Thomas," said Sanford V. Levinson, a law professor at the University of Texas. "This is a guy who went out of his way to say he was never a member of the Federalist Society. It's possible that he has waited until this moment to shake up the world, but I would be very surprised."

For Meese and those championing the cause he took up two decades ago, the mere fact that court watchers continue to judge candidates based on the criteria he helped to define is reason enough to claim victory.

"I don't know that we ever anticipated all of this," he said, "but it did indeed have a considerable impact."

ways to deal with ju
before trial besides l

"They did some t
in Cook County, mac
changes," Payne sai
after-school progran
offenders out of inst

In 2000, Payne he
reform to Lee Coun

Since that first ye
juvenile offenders w
detention dropped fi
2003, Payne said.

In the same time
of days that juvenile
detention in Lee Co
654 to a 16.

"We've increased
year," Payne added.

He said one of th
has been to keep ju
Lee County while tl
instead of sending t
facility 90 miles aw

Triage data

Continued from page 1

v. Harrows Inc. 458 N.Y.S.2d 669 (1983).

In both cases, the court ruled that a patient's "time data" were not privileged. Hoffman said the Illinois panel agreed with its New York counterparts.

"As stated above, the privilege acts to bar the disclosure of information obtained by or for a physician which is necessary to enable the physician to serve the patient," Hoffman wrote.

"Ingalls, however, has failed to present any facts showing how the mere times at which a patient is assessed by a triage nurse or initially treated by a physician are necessary to enable the physician to care for or treat the patient," Hoffman wrote.

Similarly, triage acuity — a nurse's or doctor's instant judgment of how urgent a patient's needs are — "does not refer to a specific symptom, ailment, or complaint" and therefore should not be considered privileged, Hoffman wrote.

Ingalls also argued that Casciato's decision violated guidelines established in the Health Insurance Portability and Accountability Act of 1996. The appellate panel disagreed.

The guidelines require that court subpoenas and orders demanding the information be accompanied by a protective order that is designed to keep the information from being seen by outside parties.

Not only did Ingalls waive the right to raise this issue on appeal by failing to raise it with Casciato, but also the regulations are "inapplicable" in this case because the information requested by the Tomczaks is not protected under HIPAA, Hoffman wrote.

Justices Themis N. Karnezis and David A. Erickson joined Hoffman in Wednesday's decision.

The Tomczaks were represented by William A. Cirignani of Cirignani, Heller, Harman & Lynch LLP. Ingalls was represented by Anderson, Bennett & Partners LLP.

Michael Tomczak and Eleanor Tomczak v. Ingalls Memorial Hospital, et al., No. 1-04-1746.

Possessio

Continued from p

Rather, the evide
that the defendant
vehicle at the time
him. Such being the
Court held that the
case should not hav
was sufficient evide
defendant knew the
glove compartment
fact that he was dri

The Appellate C
however, to examir
means available un
which the knowled
possession charge
Appellate Court no
Bailey, 333 Ill.App.
exclusive four-fact
the Illinois Suprem
People v. Davis, 50
identified.

It is worth notir
relates specifically
weapon is found in
a more specific tes
Smith-McCarter in

The four *Bailey*
following:

- The visibility
the defendant's lo
- The amount
defendant had to o
- Any observe
movements by the
an effort to retriev
weapon.
- The size of t

Applying the *B*
led the Appellate
conclusion: the st
Hampton's knowl
of the gun in the c
sustain the jury's
Court noted that t

Salaries

Continued from page 1

are cyclical.

"You would expect as the economy improves, as the rate of business activity picks up, demand for corporate legal services would increase," he said.

Fred Thrasher, deputy director of NALP, said part of what drove salaries up in the late 1990s was competition between dot-coms and law firms for law-school graduates. Bob Nelson, a professor of law and sociology at Northwestern University and director of the American Bar Foundation, said that competition has abated.

"With the end of the tech bubble, there was enough associate labor that it

for new law graduates has hovered at or near 89 percent for three years.

Among the salary survey's other findings:

- Nationwide, the median salary for first-year associates ranged from $67,500 in firms of two to 25 attorneys to $125,000 in firms of more than 500 lawyers. For all firms, the median was $100,000.
- The median salary for first-year lawyers in large firms varied by region. It was highest in the Northeast, at $125,000, and lowest in the Midwest, at $95,000. The median salary for firms in the West was $112,500; it was $105,000

Court re