



Legal Updates 2018

Power Issues in Medico-Legal Defense Law

- Legal Indemnity
- Computer Records
- Status of Tort Reform



Legal Indemnity

- Definition of Indemnity
- Explanation of Pre-Reform Law
- Tort Reform's Impact-Several Liability
- Ramifications on Physician/Hospital Defense

Several Liability

Defendant will only be held liable for his/her/its percentage of liability.



Indemnity

Individual takes on the obligation to pay for any loss or damage that has been or might be incurred by another.





Pre Tort Reform Joint and Several Liability

Impact of Several Liability on Medical Malpractice Litigation

- Procedural for Pretrial Litigation
- Strategy/Tactics of Plaintiff Attorneys to Create Conflict
- Strategy/Tactics of Defense Counsel
 - Focus on apportionment of fault
 - Challenging the "common defense" mindset
- Procedural for Trial

Plaintiff Attorney Case Tactics

- Choice of Party Defendants
- Waiting to Sue Potential Targets
- Forcing Defendants to Consider Adding other Un-Named Doctors



Defense Tactic Modifications

- Required!!
- Communication from the Outset
- Complete Openness with Clients and Carriers
- Understanding of Why





Impact of Electronic Medical Records



Event Management for Medical Records

Audit Trails

- Shows Who
- Shows What
- Shows When
- Shows How Long



Request for Production:

Produce the "audit trail" pertaining to the medical records of Susan Smith and Cindy Lou Smith's April 1, 2016 hospital admission. This request specifically seeks the documentation the defendant is required by federal law to maintain documenting the access to these patients' medical charts.

Spoilation

- Computer Records
- Mobile Devices



To: My Client
 From: Plaintiff's Counsel

Dear Sir/Madam:

As you know, insurance adjusters are often not represented by counsel. If you have been retained, please advise me of your status so that I may correspond with them directly.

As you know, the law in this instance is clear. As a result of the insurance policy, you are obligated to preserve all records, including but not limited to, computer records, mobile devices, and any other records pertaining to the case. It is your duty to preserve all records, including but not limited to, computer records, mobile devices, and any other records pertaining to the case. It is your duty to preserve all records, including but not limited to, computer records, mobile devices, and any other records pertaining to the case.

Specifically, the records sought are all records that you possess or control, including but not limited to, computer records, mobile devices, and any other records pertaining to the case. It is your duty to preserve all records, including but not limited to, computer records, mobile devices, and any other records pertaining to the case.

My demand for preservation of evidence records is set forth below:

1) The medical records of [redacted] including but not limited to, EHR's, lab, medical test results, and any other records pertaining to the case.

New Challenges:

- Record Security
- Record Production
- Witness Preparation
- Need For IT Experts to Explain Data
- Dealing with Inaccuracies in the System



Status of Tort Reform

12 Okla. Stat. 19.1

- Affidavit of Merit
- Accounting of Claimed Damages
- Medical Authorization



Unconstitutional in 2017

Johns v. St. Francis

HOLDINGS: [1]-[Okla. Stat. tit. 12, § 19.1 \(Supp. 2013\)](#) was declared an impermissible barrier on a plaintiff's guaranteed right to court access and an unconstitutional special law, because the provision imposed a heightened burden on an expert negligence class that was clearly not applicable to the general negligence class, and impinged on a district court's adjudicative authority; the provision operated to delay, and in some instances deny, adjudication of claims for a plaintiff's failure to satisfy the provision's procedural hurdles.

Existing Reform

12 Okla. Stat. Sec. 3009.1
\$350,000 Cap on Non Economic Damages


