

From: Al Neustadter <an@aneustadter.com>

To: cjensen@dfmc.org

Date: November 26, 2007 at 8:05 AM

Subject: My Father

Dear Dr. Jensen,

This is regarding your letter to me of July 12, 2006 pertaining to my complaint about my father's care at Holy Cross Hospital. I understand that your organization properly followed its review process and fulfilled its contractual obligation to the CMS in its investigation. However, new information has come to light which would have surely factored into your determination had you been aware of it. This information may well conflict with what you have been told by some of the parties involved. Given your commitment to the improvement of health care in the state of Maryland, I felt I should at the very least bring it to your attention in the hope that you will look into it.

I filed a lawsuit in this matter that led to the recent deposition of one of the attending physicians (Dr. Shamim) and two of the pulmonologists (Drs. Weiner and Kariya). Unfortunately, the shocking gap in care that I described in my complaint has now been substantiated. Dr. Shamim stated that when he saw my father in respiratory distress he began the process of evaluating whether intubation was required, but then turned my father's care completely over to Dr. Weiner. [He described in detail](#) how he ordered tests on Dr. Weiner's behalf and how he observed Dr. Weiner in the room talking to me at length about my father's condition. This was clearly not an incidental or brief visit, but rather the extended visit that I described to you in my original complaint. Dr. Shamim testified that he left the hospital and never checked back, leaving my father's life totally in the hands of Dr. Weiner. None of the above is documented in the records; we would not have known it but for the deposition.

[Dr. Weiner denied](#) seeing my father at all on the day in question. He lied under oath, and, I believe, confirmed what I described in my complaint: his unequivocal refusal to provide life-sustaining treatment to my father. Dr. Weiner had an implicit legal and ethical obligation to provide his services until such time as my father, and I, as his surrogate, could be reasonably expected to be able to find a replacement. Instead, after Dr. Weiner's emotional and abusive display at my father's bedside on 3/26/03 as described in my complaint, both he and Dr. Shamim walked away - Dr. Weiner telling me that my father was "dead the day he got here."

Drs. Shamim and Weiner were apparently trying to hide Dr. Weiner's presence entirely. Just as there is [no record of Dr. Shamim handing off care to Dr. Weiner](#), there is no record anywhere of Dr. Weiner treating my father; he did not even bill Medicare for this visit. This constituted a willful rejection and repudiation of his contractual obligation to provide services to my father. Both of these doctors' actions, but especially those of Dr. Weiner, squarely meet the criteria for patient abandonment. Their actions also clearly constituted immoral and unprofessional behavior in the practice of medicine as well as making a willful misrepresentation in treatment. All of these are violations of the Maryland Medical Practice Act ([§14-404](#)) - which is clearly the standard of professional care in Maryland.

Violations of the **Medicare Conditions of Participation for Hospitals:**

1. [§482.13 Patients' Rights](#): Holy Cross failed to provide to my father, or to myself as his representative, the required "notice of rights," informing him that he was entitled to receive all the hospital care necessary for the treatment of his illness, and whom to contact if he believed his treatment to be substandard. [This document](#) is signed by a hospital staffer affirming that the patient and his representative were unable to receive it upon admission, even though the [Nurses' Progress Notes](#) show me to have been with my father the entire time.
2. [§482.23 Nursing Services - Staffing and delivery of care](#): A registered nurse failed to properly supervise and evaluate my father's nursing care from the time of his medical emergency until death, and the hospital failed to ensure that a plan of care was kept up-to-date. As indicated above, Dr. Shamim turned all care of his critically ill patient to Dr. Weiner, while Dr. Weiner denies being present at the time. This put my dear father in limbo, with no one responsible for his care. Where were the nurses? What was their responsibility? Nursing care virtually stopped, with [only one minor entry in the chart](#) for that whole day of 3/26/03. A full-code patient with good heart and renal function and no terminal illness was allowed to remain in respiratory distress and degrade, without countervailing rationale or documentation.
3. §482.12 Governing Body Requirement: Holy Cross Hospital has failed to hold its medical staff accountable to the governing body for the quality of care provided to patients. Since a November 30, 2005 meeting at which Drs. Steve Kariya and Ahmed Nawaz were present, Medical Director Dr. Blair Eig has known irrefutably that the doctors failed to offer my father life-sustaining treatment, and that they placed false entries into his medical record. Multiple independent witnesses as well as senior hospital management were in attendance and can recount what was said.

More significantly, a [Patient Relations Worksheet](#) documents a complaint I made about Dr. Weiner during my father's hospitalization on 3/25/03, in which I describe him as expressing "hostility to the notion of my father's recovery" at my father's bedside where he could hear. The Customer Services investigator found this to be alarming and informed the Medical Director's office that same day. Had that office acted in a timely manner, Dr. Weiner's act of abandonment could have been prevented. Dr. Eig has refused to investigate this matter and has refused to hold his staff or any of the doctors accountable for their actions, to this day.

This case has clear implications for the safety of the elderly in our state. Dr. Weiner's parter, Dr. Kariya, was the first physician to encounter my previously-recovering father in sudden respiratory distress. He walked away, writing "son unrealistic, no new suggestions." Dr. Kariya is on Holy Cross Hospital's Board of Trustees and is so deeply involved in day-to-day hospital affairs that his statements must be taken as hospital policy as well as personal policy. At his deposition on October 10th [he explained](#) that you don't intubate everyone; only people whom you think it will benefit. When asked why he didn't fill out a required certificate of condition declaring my father terminal he replied that the procedure was bureaucratic and that he "didn't see how it would accomplish much."

His first remark negates the possibility of a Medicare patient ever getting life-sustaining treatment over the wishes of his doctor (or getting an ethics committee consult for that matter,) while his second one short-circuits the hospital policy and State law designed to protect patients from doctors like himself. I note parenthetically that the "arduous, bureaucratic procedure" Dr. Kariya refers to is a one-page [Certificate of Condition](#) form.

Considering that most Medicare patients are elderly, you should be concerned about the frequency with which this kind of behavior may be occurring. The two Pulmonologists who treated my father were convinced from the outset that he was not going to survive his hospitalization - thus any care to be given would be futile care. (In reality this was far from certain. To the contrary, all of the [progress note entries](#) by the admitting and attending doctors as well as the nurses, indicate a patient with no underlying terminal illness or multiple organ failure - improving each day and on the road to discharge.) But they knowingly acted against the patient's and the surrogate's wishes. An unambiguous message needs to be sent to doctors that they are never permitted to bypass the law under any circumstances, even when convinced of the direction in which a patient is going.

I ask you to please reconsider your determinations in this case in light of the above. I am mindful of the Latin phrase you use in your emails, *Dum tempus habemus, operemur bonum*. Although we can't give my father back what he was deprived of, your agency can, even at this late date, accord him the posthumous respect he deserves by holding the bad actors accountable and creating a future deterrence.

Sincerely,
Al Neustadter