RE: Complaint No. MD00019062

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December 6, 2007

BY MAIL AND EMAIL

Dear Ms. Kronmiller,

This is in reference to my letter of June 28, 2007, in which I asked if you could review the complaint I had filed against Holy Cross Hospital. Your agency cited the hospital for failing to have a certificate of condition form in my father's medical record before withholding treatment and allowing him to die. I did not receive a reply, and since that time new information has come to light which I think is important for you to be aware of. This information may well conflict with what you have been told by some of the parties involved. Given its seriousness, I am bringing it to your attention in the hope that you will investigate.

I filed a civil lawsuit against the hospital that led to the deposition of one of the attending physicians (Dr. Shamim) and two of the pulmonologists (Drs. Weiner and Kariya.) Unfortunately, the shocking gap in care described in my complaint has now been substantiated. Dr. Shamim stated that when he found my previously-recovering father in respiratory distress he began the process of evaluating whether intubation was indicated, 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, pivotal visit that I described to Ms. Richards and Ms. Windapo when I met with them last year. 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; you 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 to you: his unequivocal refusal to provide life-sustaining treatment. Dr. Weiner had a statutory 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 of his obligation to provide professional services to my father. Both of these doctors' actions, but especially those of Dr. Weiner, squarely meet the criteria for patient abandonment. They also clearly constitute immoral and unprofessional behavior in the practice of medicine as well as making a willful misrepresentation in treatment. All are violations of the Maryland Medical Practice Act (§14-404) - which is clearly the standard of care in Maryland.

From the perspective of your agency, where was the hospital while this was going on? As indicated above, Dr. Shamim turned all care of his critically ill patient over to Dr. Weiner, while Dr. Weiner denies being present at the time. This put my dear father, now in acute respiratory distress, in limbo - with no doctor 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 normal heart and renal function and no true terminal illness was allowed to remain in distress and to degrade, with no countervailing rationale and absent any documentation that withholding care was to be the new “plan of care.”

Of equal significance, a Patient Relations Worksheet documents a complaint I made about Dr. Weiner during my father's hospitalization, 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 enough to inform 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 elderly patients at Holy Cross. Dr. Weiner's parter, Dr. Kariya, was the first physician to encounter my father in sudden respiratory distress. He walked away, writing "son unrealistic, no new suggestions." As Dr. Kariya is on Holy Cross Hospital's Board of Trustees, is the director of respiratory therapy, palliative care, and sits on numerous other committees, 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 the required form declaring my full-code father to be terminal he replied that the procedure was bureaucratic and that he "didn't see how it would accomplish much."

His first statement negates the possibility of a patient *ever* being able to receive life-sustaining treatment over the wishes of his doctor, or of getting an ethics committee consult; the doctor unilaterally makes the decision. His second one short-circuits the hospital policy and state law designed to protect patients like my father from such unilateral decisions. (The "arduous, bureaucratic procedure" Dr. Kariya refers to is the ½-page Certification of Medically Ineffective Treatment form he would have had to sign if he wished to withhold treatment as futile.)

Ms. Kronmiller, I understand that your agency’s primary goal is to collaborate with hospitals and long-term care facilities in an effort to improve quality and reduce errors. I’m also mindful of the fact that when there is a bad outcome, families will often be angry at the doctors or the hospital. As such, medical institutions should be given the benefit of every doubt. The two pulmonologists who treated my father were indeed convinced from the outset that he was not going to survive his hospitalization - thus any care to be given would be futile. (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, show 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, while hospital staff allowed a full-code patient to remain untreated, to go into respiratory arrest and to choke to death. It seems to me that before taking such a hands-off approach, a hospital has a responsibility to make sure state law as well as its own policies are being followed.

As a Maryland citizen my father had the right to determine the treatment he wanted, and to fight for his life on his terms. I am hoping you will take a closer look at this case and hold the hospital accountable for its actions. I would also welcome the opportunity to discuss this matter with you.

Sincerely,

Al Neustadter