

Impact of 93-641

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New York legalized the practice of performing abortions. More than three-fourths of their very large practice consisted of performing abortions, with most of their patients coming from out of state. An official of the public health department inspected the premises and concluded that the offices constituted a "clinic" and asked the physicians to file an application for approval of the "clinic." The physicians refused, and the state sought an injunction prohibiting the operation of the "hospital facility." The New York courts found the statute and accompanying regulations to be unconstitutional, vague and overboard in that the term clinic would include private doctors' offices.

Try as they have, the drafters of the proposed federal regulations have not been able to foreclose the possibility of such problems in the future. Thus, according to the proposed regulation, new certificates of need programs will regulate "ambulatory surgical facilities" which are facilities, not a part of a hospital, which [provide] surgical treatment to patients not requiring hospitalization. Such term does not include the offices of private physicians or dentists, whether for individual or group practice.²⁷

If a case arises in the future that presents an issue similar to the one in *Dobbs Ferry*, this definition will not help a court determine whether the practice in question constitutes an "ambulatory surgical facility" or a private doctor's office.

Such a problem cuts both ways, however. Unquestionably there will be physicians in private practice who will try to have their private offices certified as clinics so that they might receive certain benefits, such as increased medicare reimbursements for a "clinic visit" rather than a private office visit.²⁸

Regardless of the accusations of "undue federal interference" the Act and proposed regulations are an advance in the realm of public decision-making. It will help to set up a somewhat unified scheme of health facilities regulation, inspires public participation in health facilities planning and provides a number of safeguard for providers. In addition, it mandates the interaction of planning and regulation, in the hope that each will benefit from the other. It must be pointed out, however, that a large majority of states will be forced to adopt a brand new system of health facilities regulation or amend their present regulatory scheme, and that this will lead to a substantial amount of litigation to resolve the many new questions and conflicts that are certain to arise.

References

1. P.L. 79-725.
2. 89-239.
3. 89-749.
4. Senate Report No. 93-1285, 1974 U.S. Cong. and Ad. News 7842.
5. P.L. 92-603.

Medicolegal Meeting Calendar

Institutional Review Board Workshop

— a one day program for members of IRB's and researchers designed to introduce the issues these committees must deal with in reviewing research proposals. Saturday, October 23, 1976 Boston, Mass. For information, write to William Rollins, Esq. Law-Medicine, Inc., 14 Beacon St., Boston, MA 02215. (617) 227-0082.

The Nurse and The Law: Medical Malpractice And How To Deal With It.

A one-day program co-sponsored by the American Society of Law & Medicine, Inc. and Law-Medicine, Inc. Wednesday, January 26, 1977. For information, write Mary Cushing, J.D., R.N., ASLM, 454 Brookline Ave., Boston, MA. 02215.

Medical Staff Law & Bylaws

seminar sponsored by Aspens Systems Corporation, Royal Sonesta Hotel, New Orleans, Louisiana, September 27-29, 1976 and Caesar's Palace, Las Vegas, Nevada, December 6-8, 1976. For information, write to Aspen Systems Corporation, 20010 Century Boulevard, Germantown, MD 20767.

Seminar on Photographic Documentation of Criminal Investigation.

the Western Conference on Criminal and Civil Problems, Broadview Hotel, Wichita, Kansas, November 4 and 5, 1976. For information, write to WCCCP, Box 8282, Wichita, KA 67208.

Symposium on Medical Malpractice

sponsored by *Modern Medicine*, Cozumel Island, Mexico, November 8-10, 1976. For information, write to Professional Meeting Associates, 205 North Washington Street, P.O. Box 330.

College of Workmen's Compensation,

International Association of Industrial Accident Boards and Commissions, Dunfey's Parker House, Boston, Massachusetts, November 16-19, 1976. For information, write to Dean Harry W. Dahl, IAIABC, College of Workmen's Compensation, 5600 Grand Avenue, Des Moines, IO 50312.

Medical Malpractice: Have Legislative Innovations Solved The Problem?

A one-day conference co-sponsored by the Boston University Center for Law & Health Sciences and the American Arbitration Association. Wednesday, November 17 at Boston University, Boston, Mass. For information write Barbara Katz, J.D., Center for Law & Health Sciences, 209 Bay State Rd., Boston, MA 02215. (617) 353-2910.

Second Annual Institute on Tax Aspects of Nonprofit Health Care Organizations.

The National Health Lawyers Association, Royal Sonesta Hotel, New Orleans, Louisiana, November 18-20, 1976. For information, write to David J. Greenburg, Esq., Executive Director, National Health Lawyers Association, 522 21st Street, N.W., Suite 708, Washington, DC 20006.

Medicolegal Rights of the Physically Disabled.

A one day conference sponsored by the American Society of Law & Medicine in Cooperation with the Rehabilitation Institute of Tufts-New England Medical Center. For information, write to ASLM, 454 Brookline Avenue, Boston, MA 02215.

6. P.L. 93-641 [Hereinafter Act] § 1521(d).

7. Act § 1523(a)(4)(B) and § 1523(b)(2).

8. North Carolina v. Mathews, No. 76-0049-Civ.-5 (E.D. N. Car. filed April 27, 1976).

9. In Re Certificate of Need For Aston Park Hospital, Inc., 282 N.C. 542, 193 S.E.2d 729 (1973).

10. Act § 1512, 1513.

11. Act § 1521, 1523.

12. Act § 1523(a)(4)(B).

13. Id.

14. Act § 1522(b)(13).

15. Act § 1513(b)(2).

16. Act § 1513(b)(3).

17. Act § 1532(c).

18. Act § 1523(c).

19. *Supra* note 14.

20. Act § 1532(c).

21. 41 Fed. Reg. 11687, 11704 § 123.410

(March 19, 1976). [Hereinafter Regs.]

22. Act § 1532(b).

23. Reg. § 123.407(a)(7)(i).

24. See, Davis, *Administrative Law Text* §

7.01-7.05 (3rd ed. 1972).

25. Regs. § 123.401.

26. 40 A.D.2d 324, 340 N.Y.S.2d 108 (1973).

aff'd, 33 N.Y.2d 584, 347 N.Y.S.2d 452 (1973).

27. Reg. § 123.401(b)(6).

28. *Borsody, State Certificate of Need Laws*,

3 J. of i.c. Med. 24, 25 (Oct. 1975).