

## LEGAL PRESCRIPTION FOR DOCTORS

Atty. Rodel V. Capule, M.D., FPCP\*

### TRANSFERRING PATIENTS TO OTHER HOSPITALS

Physicians must know the legal requirements when transferring patients to other hospitals or health institutions in order to avoid any liability. Since hospitals as corporations delegate treatment decisions to physicians, it is only prudent that all physicians must know what the law provides when it comes to transferring patients.

Republic Act 8344<sup>1</sup> states that “In *emergency*<sup>2</sup> or *serious cases*<sup>3</sup> xxx by reason of *inadequacy of the medical capabilities* of the hospital or medical clinic, the attending physician *may transfer the patient to a facility where the appropriate care can be given*, after the *patient or his next of kin consents to said transfer* and after the *receiving hospital or medical clinic agrees to the transfer*.”<sup>4</sup> (*Emphasis supplied*) A physician on duty can transfer an emergency or serious case when the hospital or clinic has inadequate facilities or expertise to render reasonable treatment. Another valid reason to transfer a patient is when the hospital has no vacancy or bed to accommodate a patient. However, the fact of such inadequate facilities or lack of accommodation should not be interpreted to mean that the physician on duty is free not to provide any medical intervention at all because under the law he is mandated “to render immediate emergency medical assistance and to provide facilities and medicine *within its capabilities* xxx.”<sup>5</sup> (*Emphasis supplied*) in other words, a physician on duty must render treatment which is considered reasonable under the circumstances. The transfer “shall be done only *after* necessary emergency treatment and support have been administered to stabilize<sup>6</sup> the patient and after it has been established that such *transfer entails less risks than the patient’s continued confinement*.”<sup>7</sup> (*Emphasis supplied*) The patient or his next of kin must also give consent for the transfer but such consent is not necessary when the patient is unconscious, incapable of giving consent and/or unaccompanied.<sup>8</sup>

The law further states that “*no hospital or clinic*, after being informed of the medical indications for such transfer, *shall refuse to receive* the patient nor demand from the patient or his next of kin any deposit or advance payment.”<sup>9</sup> It must be noted that a hospital or clinic has a duty to accept the patient to be transferred after being informed of the medical indications for such transfer. Needless to say, the receiving hospital must have accommodation, adequate facilities and expertise to reasonably treat the patient. The

reasonableness of treatment is of course a question of law.

It must also be emphasized that hospitals and physicians cannot transfer a patient or refuse to render medical care by reason of race, religion, sexual orientation, color of skin or HIV infection. Can a physician refuse to render medical care because the patient has a contagious or communicable disease? In the case of *Bragdon v. Abbott*<sup>10</sup> the Court said that a health care provider can refuse to render treatment *only* if the infectious condition “posed a direct threat to the health or safety of others.” Direct threat is defined to be “a significant risk to the health or safety of others *that cannot be eliminated* by a modification of policies, practices, procedures, or by the provision of auxiliary aids or services.”<sup>11</sup> So, if the refusal is based solely on an unfounded fear of contracting the infectious disease during treatment, a physician may be liable for refusing to render medical treatment. The threat of contracting the disease must exist even with safe and reasonable practices or use of standard universal protection appropriate for handling the infectious disease.

### REFERENCES

1. “An Act Penalizing the Refusal of Hospitals and Medical Clinics to Administer Appropriate Initial Treatment and Support in Emergency or Serious Cases”
2. Emergency case – a condition or state of a patient wherein based on the objective findings of a prudent medical officer on duty for the day there is immediate danger and where delay in initial support and treatment may cause loss of life or cause permanent disability to the patient. Section 2(a), R.A. no. 8344
3. Serious case – refers to a condition of a patient characterized by gravity or danger wherein based on the objective findings of a prudent medical officer on duty for the day when left unattended to, may cause loss of life or cause permanent disability to the patient. Section 2(b), R.A. no. 8344
4. Section 1, R.A. no. 8344
5. Section 1, R.A. no. 6615 “An Act Requiring Government and Private Hospitals and Clinics to Extend Medical Assistance in Emergency Cases”
6. Stabilize – the provision of necessary care until such time that the patient may be discharged or transferred to another hospital or clinic with a reasonable probability that no physical deterioration would result from or occur during such discharge or transfer. Section 2(h), R.A. no. 8344
7. Section 1, R.A. no. 8344
8. Id.
9. Id.
10. 524 U.S. 624; 1998
11. Id.

\*Dr. R.V. Capule is an attorney specializing in medical malpractice, physical injuries and food torts. He is a law professor in Legal Medicine at Arellano University School of Law and a consultant in Legal Medicine at Manila Adventist Medical Center, Makati Medical Center and Metropolitan Medical Center.