



medicolegal news

A publication of the American Society
of Law & Medicine, Inc.

"continuing medicolegal education"

Vol. 4, No.1

January, 1976

Lecture Series on Patient Rights To Begin in Early February

An ASLM sponsored lecture series on "The Rights of Hospital Patients and the Consumers' Role in Health Care Policy" will begin on February 4, 1976 at 4:00 p.m. in the Ames Courtroom at Harvard Law School. The lecture series will run for six weeks, from February 4 to March 10, and will meet every Wednesday at Harvard Law School from 4:00-6:00 p.m. Topics to be covered include hospital and physician liability, the emergency room, malpractice, informed consent, human experimentation, patients' rights, the right to refuse treatment, the "living will," unionization of hospital personnel, OSHA, certificate of need, the consumer's role under the National Health Planning and Resources Development Act of 1974, and confidentiality and privacy of medical records (including PSRO profiles).

Program Director and principal lecturer will be George J. Annas, J.D., M.P.H., author of *The Rights of Hospital Patients* (Avon, 1975). Other experts will also participate, both as guest lecturers and as commentators on the lectures. The fee for the entire program, including all course materials, is \$75.00 for ASLM members and \$90.00 for nonmembers (single sessions are \$15 for members and \$25 for nonmembers). Full time students, interns and residents can register for \$30 for ASLM members and \$35 for nonmembers. The lecture series will be accredited for continuing education credits by the American Academy of Family Physicians and the Federation of Nursing Home Administrators. Physicians may also elect to receive credit from the American Medical Association, *Physicians Recognition Award* (Category II).

For a descriptive brochure, write the ASLM, 454 Brookline Avenue, Boston, MA 02215.

GUIDE TO PUBLISHED "STANDARDS OF CARE"

by
Elliot L. Sagall, M.D.

Recent court decisions and legislative enactments in the medical and hospital malpractice areas suggest a growing trend toward substantial easing of the traditional plaintiff's burden of proof in defining the standard of professional conduct that he alleges was breached by the defendant physician, hospital or other health-care provider leading thereby to his suffering harm.

In an increasing number of jurisdictions, the pool of expert medical witnesses available to plaintiffs in malpractice actions has been significantly enlarged by court or legislature abolition of the long prevalent evidentiary requirement that an expert witness testifying as to the applicable standard of care be from the *same* community as the defendant (the locality rule) by allowing the expert to be drawn from the *same or similar* community and, in the case of specialists, applying a "national" standard. Also, in many states, the plaintiff can compel the *defendant physician, even though an adverse witness, to take the stand to provide through his own testimony a definition of the standard of care he is alleged to have breached.*

In regard to the admission in evidence of published standards of professional conduct and care, several states have, for some time, permitted the introduction, following due notice of intent, of medical texts and "learned" treatises without requiring that the author or authors be made available for cross-examination. Now, with widespread adoption by state legislative bodies of mandatory arbitration and pretrial screening panel hearings in medical malpractice cases, it can be expected that a wide variety of published definitions of "standards of care" for physicians, nurses, dentists and hospitals will be made available for inspection and consideration by arbitration board or panel members, and even by juries, to be considered as at least one acceptable mode of professional conduct against which the action of the defendant (or defendants) can be measured.

Accordingly, physicians, attorneys and others involved in medical and hospital malpractice actions must be aware of the types and sources of "standards of care" currently available in published form to avoid the obvious problems that will arise should such writings first come to their attention when produced by the adversary party in a courtroom or other legal forum.

To aid in the pretrial or prehearing evaluation of a given instance of alleged medical or hospital negligence or other form of malpractice, the following is a listing of categories of currently available published definitions and guidelines of medical care that might be accepted as a "standard of care" and the major bibliographic tools by which these writings can be located. Although every attempt has been made to make this compilation comprehensive, it is recognized that other potentially useful source data undoubtedly exist. To enhance the reference value of this material in future up-dates, *Medicolegal News* readers are urged to submit additional pertinent information to the attention of the author.

Even if these standards do not clear the evidentiary hurdles of admissibility, they are extremely useful to attorneys and physicians in determining appropriate conduct and procedures relevant to the issues at bar.

"Standards" Produced by Hospitals

Most hospitals publish for internal use a wide variety of material that, in part or in whole, outlines recommended or prescribed professional and administrative conduct in the area of patient-care and, therefore, can be considered as their own definitions of minimal acceptable "standards of care." Included among these are: admission and discharge procedures for out-patients, in-patients, emergency room, intensive care, recovery room and similar units; rules and regulations affecting staff physicians, department heads, interns

Continued on page 7