Health Care Insights

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Intermediate Sanctions and Section 501(c)(3) Status

In the Fall 2008 issue of *Health Care Insights*, we wrote about a Tennessee organization whose Section 501(c)(3) exemption was revoked by the Internal Revenue Service because its charitable contributions and grants were not "commensurate in scope with its financial resources," the so-called CIS test.

Coincidentally, Jack B. Siegel, CPA, writes extensively about this topic in the November/December 2008 issue of *Taxation of Exempts*, the prestigious tax law publication.

> **"....According to Mr. Siegel, '[t]he IRS apparently does not know much more about the test than tax practitioners' and 'acknowledges that the test has been applied inconsistently and with a general lack of understanding since it was first promulgated...'"**

Mr. Siegel notes that "there is no explicit reference to the CIS test in the Internal Revenue Code or regulations." Indeed, the first reference to the idea of CIS appears in a Revenue Ruling issued by the IRS in 1964. According to Mr. Siegel, "[t]he IRS apparently does not know much more about the test than tax practitioners" and "acknowledges that the test has been applied inconsistently and with a general lack of understanding since it was first promulgated . . . ."

That having been said, Mr. Siegel notes that since the initial Revenue Ruling, the IRS has opined on at least 69 other occasions with reference to CIS. This relatively few number of pronouncements suggests that the CIS test is not a major factor in the IRS's administration of tax exempt organizations, he observes.

Perhaps in the future the IRS will seek to require minimum expenditures of assets by exempt organizations, Mr. Siegel speculates. Time, and the second part of his article to be published later this year, will tell.

For further information about this topic, please contact Alan S. Parker 860-541-3318 (aparker@pullcom.com) or Elliott B. Pollack 860-424-4340 (ebpollack@pullcom.com).

Patient's Vertigo Reversed

An elderly patient with very few medical problems experienced several incidents of vertigo over a three-month period before he came to his physician's office.

Dr. Anna Reisman, who practices internal medicine in Woodbridge, notes that "[d]izziness is the third most common symptom in primary care, but it's one that doctors love to hate." Each type of dizziness can produce multiple diagnoses.

Inside this issue:

Are a Medical Expert Witness's Tax Returns Discoverable?

In a medical malpractice action brought by Dariyon Drake against Anne S. Bingham, M.D., the defendant physician requested the income tax returns of the expert witnesses which were disclosed by the plaintiff.

After having granted this request, Superior Court Judge Clarance J. Jones reconsidered his ruling and scheduled the matter for reargument.

After reargument, he *revoked* his order requiring the experts to produce their tax documents.

Generally speaking, the few Connecticut decisions which have addressed this rather controversial issue have permitted adverse parties to "pursue a line of questioning regarding (experts') financial information" at trial or at a deposition. If the expert fully answers all "questions concerning his finances with respect to testifying as an expert . . . ." tax returns will not be required.

Apparently, Judge Jones had actually permitted the physician's lawyers to go after the expert's tax returns- not after the expert had actually refused to answer questions concerning his expert testimony but, rather, if there was "reason to believe that the expert will not answer" these questions.

The mischief which could be generated by permitting litigants to obtain an expert witness's tax return, or sections of it only, is too obvious to mention. Mandatory disclosure of private financial information could have a severely chilling effect on the willingness of many if not most experts to testify, thereby depriving a party of the ability to present his or her case.

Drake v. Bingham, Superior Court, Judicial District of Middletown, Docket No. CV-05-4003332.

Christine Collyer, Esq. 860-424-4329 or ccollyer@pullcom.com can answer questions about this case.

Attorney Notes

Michael A. Kurs will serve as the moderator for a program at the Connecticut Bar Association Annual Meeting on June 9, 2009, on representation of clients before administrative agencies. The program will include the commissioner of the Connecticut Department of Consumer Protection, the Honorable Jerry Farrell, Jr., and the Honorable Joyce Krutick Craig, U.S. Administrative Law Judge (ret.), among others.

Jennifer W. Willcox will speak on February 6, 2009, at the Fair Haven Community Health Center on a topic centered around Medical Records Law.

After many physician contacts, a CT scan, lab tests and other workups, succeeded by various diagnoses, the patient arrived at Dr. Reisman's office.

Employing a technique developed by Dr. John Epley of Portland, Oregon, Dr. Reisman was able to treat the problem, which she diagnosed as benign paroxysmal positional vertigo, by putting her patient through a series of "Epley" maneuvers which "rid a patient's vertigo by directing . . . disruptive calcium carbonate crystals out of ear canals."

As with many other new ways of medical thinking, Oregon physicians rejected Dr. Epley's conclusions. However, studies confirmed its accuracy and, within 10 years, his approach has become well accepted by the medical profession.

Please contact Michael A. Kurs at 860-424-4331 or by email at mkurs@pullcom.com if you have any questions about this article.

"Never Events" Should Never Happen

As of October 1, 2008, Medicare stopped paying hospitals to deal with eight conditions deemed by the Centers for Medicare and Medicaid Services (CMS) to be "reasonably preventable." Among the eight "never events" are removal of foreign objects retained after surgery, vascular catheter associated infection and fall or trauma resulting in serious injury.

While Medicare has paid a meager $47.7 million in the last fiscal year to remove foreign objects retained after surgery, it paid a staggering $3 billion and $6.6 billion, respectively, to deal with the catheter associated infections and the fall or trauma categories.

A consumer advocate has asserted approvingly that "Medicare was right to act on the belief that major safety strides would not occur 'until you start pulling on the hospitals' purse strings,'" according to the article by Kevin B. O'Reilly in the July 14, 2008 *AMA News*.

> "A consumer advocate asserted approvingly that 'Medicare was right to act on the belief that major safety strides would not occur 'until you start pulling on the hospitals' purse strings...' "

This April, Medicare may add 14 more "hospital acquired conditions" to the "never events" list. If it follows through, payment prohibition for these additional "never events" will be implemented October 1, 2009. Among the most significant drain on Medicare dollars was $7.1 billion paid to hospitals in 2007 to deal with deep vein thromboses and pulmonary emboli.

Physician payments are not affected by this radical change although, according to Dr. Robert Wachter, chief of medical service at the University of California, San Francisco, Medical Center, the new rules may be "skewing priorities in ways that are not clinically particularly helpful . . . ."

Jennifer N. Willcox, Esq. at 203-330-2122 or jwillcox@pullcom.com or Michael A. Kurs, Esq. at 860-424-4331 or mkurs@pullcom.com can answer questions about "never events."

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