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Hospital in hot water after complying with police

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Hospital in hot water after complying with police

Executive Summary

- One hospital refused the police request.
- Police had a search warrant, but the actions might have exceeded it.
- Risk managers should train clinicians to refer police requests to the risk manager and legal counselor for legal assessment and to avoid automatically complying with requests.

A hospital in New Mexico is facing a lawsuit that alleges clinicians there forcibly subjected a man to multiple manual searches of his rectum, along with three enemas, two X-rays, and a colonoscopy — all at the request of police who suspected he was hiding narcotics. After 12 hours in custody, the police finally relented when no drugs were found.

The lawsuit states that 54-year-old David Eckert was subjected to the invasive searches after police officers from Deming, NM, and Hidalgo County, NM, pulled him over for a traffic violation and suspected he was hiding narcotics in his body. Eckert was never charged, but according to the lawsuit, the hospital billed him for the cavity searches to which he did not consent. (For more on the incident, see the story on p. 6.)

Police obtained a search warrant and initially took the man to Mimbres Memorial Hospital in Deming, but doctors there said the requested search was unethical and refused the police request, according to the lawsuit. Officers then took Eckert to Gila Regional Medical Center in Silver City, NM, outside Hidalgo County. The lawsuit alleges that crossing the county line invalidated the search warrant.

The police and both hospitals declined to comment for this story, but attorneys familiar with the laws on forcible searches say Gila Regional might be in serious trouble for complying with the search request and taking it as far as the plaintiff claims. But they also acknowledge that hospital clinicians and administrators can find themselves in a difficult position when police request a blood draw or other invasive search on an unwilling subject.

Hospitals should always require a search warrant before even considering such a request, says David Smith, JD, a partner with the law firm of Garvey Schubert Barer in Seattle. He recently assisted the Washington State Medical Association in updating its guidance to Washington hospitals regarding disclosures to law enforcement, and he has researched the issue raised by a forced body cavity search. (For more on why a search warrant is necessary, see the story on p. 6.)

Even with a search warrant, the hospital still must tread carefully, Smith says. It can be reasonable for the hospital to decline the search, he says.

”Even if you have a warrant and the patient is harmed as a result of the search, you can still be sued. The warrant is not something that immunizes you from liability,” Smith says. “Things like this are fraught with risk, and if a hospital called me with this situation, I would want to talk to the police officer and the judge who issued the warrant before allowing my client to proceed. The risk of being sued is very, very big.”

Clinicians should be trained not to automatically comply with such police requests and to consult the risk manager and legal counsel. If you are sued, the insurance company might refuse to pay because the clinicians intentionally performed the search rather than the tort being the result of an accident or error, Smith says.

A body search at police request goes beyond a question of consent, Smith notes. Even if a person consents to the action by hospital personnel, the subject also must waive the constitutional right against unreasonable search and seizure. That is a legal issue that cannot be addressed solely by an emergency department physician, Smith says.

”The problem is that people often try to apply medical judgment to a problem that actually requires legal judgment,” he says. “A hospital will be in trouble if it just complies with a request from law enforcement without really understanding that situations become very technical when you’re talking about the Fourth Amendment.”

In addition to a civil lawsuit, a public hospital is considered an agent of the state and can be sued under the federal Civil Rights Act, Smith notes.

The plaintiff in New Mexico also alleges that the repeated searches went beyond what was authorized by the search warrant, and Smith agrees.

”The warrant probably authorized a search, but it did not authorize repeated procedures,” he says. “Once you made the first search, you probably have done what the warrant authorizes. Anything done after that probably was done without legal justification.”

Though emergency department clinicians usually try to cooperate with local police, risk managers should counsel clinicians against taking that relationship too far, says Craig B. Garner, JD, an attorney and adjunct professor at the Pepperdine University School of Law, Malibu, CA. He previously was chief executive officer at Coast Plaza Hospital in Norwalk, CA.

”It is reasonable to give the police a presumption that they are acting in good faith, to give them some benefit of the doubt,” Garner says. “But you can’t just follow them blindly.”

Sources