

The Legal Angle

Spring 2006

**An Electronic Newsletter from Davis & Davis, P.C. Covering Legal Issues
for Healthcare Providers.**

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HOSPITAL STAFFING DURING A HURRICANE EVACUATION

With the arrival of hurricane season, a number of hospitals have raised issues about whether hospital employees can be required to come to work during an emergency evacuation. In fact, some hospitals have been advised that it is illegal to require employees to work during an evacuation. This raises a concern for hospitals that are in an evacuation area but do not close during an evacuation. For example, although a hospital may evacuate inpatients, there may be some patients who cannot be transported out. Further, hospital licensing regulations issued by the Texas Department of State Health Services require that hospital emergency departments be staffed “at all times.” How can a hospital ensure that it has sufficient staff to care for patients during an emergency without violating the law?

Legal Requirements

Texas law allows for recommended emergency evacuations, and mandatory evacuations. The law gives county judges and mayors the authority to order a mandatory evacuation of “all or part of the population” under their jurisdiction, with the final authority resting with the county judge in case of a conflict.

Texas law also prohibits employers from discharging or discriminating against an employee who leaves the employee's place of employment to participate in a general public evacuation ordered under an emergency evacuation order. This law, however, exempts from the prohibition certain employees, including those who are

“necessary to provide for the safety and well-being of the general public” and “emergency services personnel” if the employer provides adequate emergency shelter for those individuals. The definition of emergency services personnel includes employees who are “required, in the course and scope of their employment, to provide services for the benefit of the general public during emergency situations.” Although the law is not entirely clear on this point, a good argument can be made that key hospital personnel who are necessary to ensure adequate patient care are exempt under this law and can be required to remain at work during an emergency evacuation order.

Recommendations

The following recommendations are made to assist hospitals in adequately staffing their facility during an emergency evacuation while staying in compliance with the law:

1. Have a policy and plan in place that addresses staffing during emergency evacuations. The policy should state that in the event of an emergency evacuation during which the hospital stays open, certain key personnel will be required to report for and remain at work and that if designated personnel fail to show up to work under those circumstances, they are subject to being disciplined. The policy/plan should identify the key areas and/or positions that will need to be staffed in the event of an emergency evacuation. The policy/plan should require that the specific individuals who will staff the hospital during an emergency evacuation be identified in advance. This should be done first on a voluntary basis. If an insufficient number of employees volunteer for the duty, the hospital should then select the additional employees who will be needed during an evacuation. This process should include consideration of the particular needs of the employees and whether it is feasible for them to work during an evacuation, such as whether they have family members that they will need to care for or evacuate during an emergency. If possible, have the designated employees acknowledge in writing that they understand and agree that they will staff the hospital in the event of an emergency evacuation.
2. Attempt to coordinate in advance with your local county judge and mayor and have them agree that, in the event a mandatory evacuation is

ordered, they will exempt key hospital personnel from the evacuation order.

3. If designated key personnel fail to report to or remain at work during an emergency evacuation, proceed carefully with any disciplinary action and seek the advice of legal counsel before taking such action. Careful consideration should be given as to why the employee failed to show up, whether the employee had a good reason, and what is the appropriate level of discipline.

The Texas Department of State Health Services is currently working on revised hospital licensing rules and disaster preparedness issues are being considered as part of these new rules. Davis & Davis is working with the Texas Hospital Association in an attempt to help the Department provide clear rules concerning hospital staffing during emergency evacuations.

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About Our Firm...

Davis & Davis, P.C. is known for exacting standards, attentiveness to clients large and small, cost-efficient and aggressive representation, and a degree of legal sophistication more common in the nation's largest cities.

C. Dean Davis established the Firm in Austin Texas in 1961. The Firm continues to be A.V. rated and attributes its success to well-respected clients and the issues that concern them.

More information on Davis & Davis can be found on the Internet at:

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