



## **BREACH OF PHYSICIAN-PATIENT CONFIDENTIALITY CAUSE OF ACTION ALLOWED TO PROCEED AGAINST HOSPITAL AND TREATING PHYSICIAN, PLAINTIFFS' DECEDENT'S TREATMENT AND DEATH IN THE EMERGENCY ROOM WERE FILMED WITHOUT CONSENT; ALLEGATIONS OF OUTRAGEOUS CONDUCT NOT SUFFICIENT TO SUPPORT INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CAUSE OF ACTION.**

The Court of Appeals, in a full-fledged opinion by Judge Stein, determined plaintiffs had stated a cause of action against the hospital and treating physician for breach of physician-patient confidentiality. At the time plaintiffs' decedent was admitted to the emergency room, a television crew was filming. Without decedent's consent, his treatment and death were recorded and subsequently aired. Although the breach of confidentiality cause of action was allowed to go forward, the intentional infliction of emotional distress cause of action was not. The allegations were deemed not to meet the requirements of the "extreme and outrageous conduct" element of the tort. With respect to the breach of confidentiality, the court explained:

The elements of a cause of action for breach of physician-patient confidentiality are: (1) the existence of a physician-patient relationship; (2) the physician's acquisition of information relating to the patient's treatment or diagnosis; (3) the disclosure of such confidential information to a person not connected with the patient's medical treatment, in a manner that allows the patient to be identified; (4) lack of consent for that disclosure; and (5) damages ... . Here, the complaint alleges that decedent was a patient at the Hospital and that Schubl was his treating physician. In the complaint's fourth cause of action, decedent's estate alleges "[t]hat defendants[] unnecessarily, recklessly, willfully, maliciously and in conscious disregard of [decedent's] rights disclosed and discussed his medical condition with cast members of [the television crew] and allowed them to videotape said conversations and videotape his medical treatment for broadcast and dissemination to the public in an episode of that television show." Asserting that the public does not have any legitimate interest in this information, the complaint states that "[d]efendants' disclosure of [decedent's] medical information constitutes a violation of physician[-]patient confidentiality and an invasion of his privacy and is a violation of State and Federal statutes protecting the privacy of medical records and information." The complaint seeks damages for injuries and loss as determined at trial. [Chanko v American Broadcasting Cos. Inc., 2016 NY Slip Op 02478, CtApp 3-31-16](#)

PHYSICIAN-PATIENT CONFIDENTIALITY, BREACH OF BREACH OF (PHYSICIAN-PATIENT CONFIDENTIALITY CAUSE OF ACTION ALLOWED TO PROCEED AGAINST HOSPITAL AND TREATING PHYSICIAN, PLAINTIFFS' DECEDENT'S TREATMENT AND DEATH IN THE EMERGENCY ROOM WERE FILMED WITHOUT CONSENT)/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (ALLEGATIONS OF OUTRAGEOUS CONDUCT NOT SUFFICIENT TO SUPPORT INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CAUSE OF ACTION, PLAINTIFFS' DECEDENT'S MEDICAL TREATMENT AND DEATH WERE FILMED AND AIRED WITHOUT CONSENT)

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## **Verdict In Favor of Physician Set Aside in "Breach of Implied Covenant of Trust and Confidence" Case**

The Third Department set aside a jury verdict in favor of defendant, plaintiff's former physician. The lawsuit alleged a cause of action for "breach of the implied covenant of trust and confidence inherent in the patient-physician relationship" based upon defendant's breach of "her duty of confidentiality" when she reported the details of a hospital visit with plaintiff to plaintiff's wife. The confidential information apparently at least implied plaintiff posed a danger to plaintiff's wife [Juric]. In setting aside the verdict, the Third Department wrote:

In our view, the record does not contain proof establishing that defendant had a reasonable basis to believe that plaintiff posed an actual, current, imminent threat to Juric as required to sustain her affirmative defense pursuant to Supreme Court's jury charge [the affirmative defense was "justification"]. Thus, even according defendant every favorable inference and considering the facts in the light most favorable to her ..., we agree with plaintiff that there was "no valid line of reasoning and permissible inferences which could possibly lead rational [people] to the conclusion reached by the jury on the basis of the evidence presented at trial" ... [Juric v Bergstraesser, 515333, 3rd Dept, 4-25-13](#)