



Fla. jury rules for hospital that deported immigrant patient

The lawsuit has raised questions over how to provide health care to uninsured illegal immigrants.

Amy Lynn Sorrel

AMNEWS STAFF

In a case that could have lessons for health reformers in addressing a large and growing population of uninsured illegal immigrants, a Florida jury found that a hospital did not act unreasonably when it sent a patient with serious brain damage back to Guatemala, over his family's objections, after having provided him with \$1.5 million worth of long-term care.

Legal and policy experts believe the case to be the first of its kind and say it highlights a largely unresolved dilemma facing hospitals that must shoulder the financial burden of caring for illegal immigrants who lack health care coverage. Federal law requires hospitals to treat any patient who presents to their emergency departments, regardless of ability to pay, until the patient is stabilized or can be discharged to a facility that can meet the patient's needs.

"The fact that this is an illegal alien issue just adds to the wrinkles, because you can't sustain that kind of care requirement if you are taking in hundreds of thousands of poor people a year," said Mark Krikorian, executive director of the Center for Immigration Studies, a nonprofit, nonpartisan policy research group that supports immigration reform.

Most illegal immigrants fall below the federal poverty level, and they make up an estimated 15% of the na-

tion's roughly 47 million uninsured, according to statistics from the Pew Hispanic Center.

Krikorian said the health reform legislation pending before the House does propose expanded coverage for illegal immigrants.

Democrats serving on the House Ways and Means Committee in July stopped an amendment that would have required applicants for government-subsidized health coverage to prove eligibility — a move that effectively would bar illegal immigrants from getting benefits.

But whether illegal immigrants end up in the emergency department or in a government health plan, "it still doesn't do anything to change the cost," Krikorian said.

In a statement praising the jury verdict, Florida's Martin Memorial Medical Center insisted it had acted in Luis Jimenez's best interests the entire time. But Mark E. Robitaille, the hospital's president and CEO, said the situation demonstrated that state and federal leaders must find a national solution, rather than relying on individual doctors and hospitals to sort it out on a case-by-case basis.

"Unfortunately none of the proposed national health care reform bills currently being debated in Washington address the issue of how to adequately provide health care for undocumented immigrants in a way that is fair and equitable to everyone," he said. "That means there are still cases like Luis Jimenez's in hospitals across the country, and there will continue to be cases like Luis Jimenez's."

UNINSURED IMMIGRANTS

While policymakers grapple with how to pay for the care of uninsured illegal immigrants, physicians and hospitals often are left to bear the costs. An estimated 15% of the nation's 47 million uninsured are illegal immigrants.

■ 11.9 million illegal immigrants were living in the U.S. in 2008; 7 million, or 59%, were uninsured.

■ 1.5 million illegal immigrant children were living in the U.S. in 2008; 675,000, or 45%, were uninsured.

■ 4 million children born in the U.S. to illegal immigrant families were living in the U.S. in 2008; 1 million, or 25%, were uninsured.

SOURCE: "A PORTRAIT OF UNAUTHORIZED IMMIGRANTS IN THE U.S.," PEW HISPANIC CENTER, APRIL, BASED ON THE MARCH 2008 CURRENT POPULATION SURVEY

A legal quandary

Martin Memorial treated Jimenez for roughly three years after he arrived at the hospital in 2000 with a traumatic brain injury. A drunk driver had hit the 31-year-old's van. Jimenez was appointed a guardian — his cousin's husband — because he was incapacitated by the injury.

Because of Jimenez's indigent status, however, the hospital could not find a long-term-care facility willing to provide the man's rehabilitation care. After obtaining a court order and support from the Guatemalan government, the hospital in 2003 chartered a

plane and flew the patient back to his native country into the care of a local rehabilitation and orthopedic hospital. The trial court found that remaining at Martin Memorial would not improve Jimenez's condition and that the acute-care hospital could not best meet his long-term therapy needs.

Jimenez's guardian, who had objected to the transfer, appealed the order. In 2004, the Florida Court of Appeal found that the trial court lacked the authority to decide the deportation matter, which is traditionally left to the federal government. The court also found that the hospital's discharge plan was not specific enough to meet federal regulations.

That reversal came too late for Jimenez, who already was in Guatemala. The case ultimately went back to a jury to decide if Jimenez was entitled to \$1 million to cover his future care, and to other punitive damages, from Martin Memorial for falsely imprisoning him. Jurors on July 27 found that the hospital's actions were

not unwarranted.

Jimenez's family is requesting a retrial before considering other appeal options. His lawyer, William B. King, acknowledged that hospitals are in a tough spot and that Congress must address the issue. But they still have a legal obligation to the patient, he said.

"The hospital can't just send someone to a medical abyss where he is not going to get the care he needs," King said. "And the hospital has a higher obligation than just following a court order."

Effect on future cases

With little case law on the issue, the appeals court opinion likely will provide some guiding legal precedent, said Helenmarie M. Blake Moore, a partner with Fowler White Burnett PC in Miami.

"It may have some repercussions not only for health care facilities, but any other provider that tries to find alternate placement for illegal immigrants," she said. "When discussing

the best choices for the patient, doctors and hospitals may want to be more cautious in terms of how they place patients who are illegal immigrants [who] need long-term care."

Blake Moore recommended that doctors seek to avoid liability by involving the patient's family and hospital administrators in the decision-making — and seeking legal counsel if that conversation proves difficult.

As with any other treatment decision, doctors should follow the standard of care, said Jay Wolfson, a law professor at Stetson University College of Law and associate vice president of health law, policy and safety at the University of South Florida.

"Had there been an adverse event or the hospital dumped him on the street, that would be considered inappropriate," he said. "But here the physicians and the hospital did everything they could do to bring [Jimenez] to the maximum level of improvement possible. ... And when all is said and done, what the law requires is reasonableness." ♦