



FEATURED ARTICLE

SECRECY, CONFUSION SURROUND LEGIONNAIRES' OUTBREAK AT SYRACUSE HOSPITAL



Syracuse, N.Y. -- St. Joseph's Hospital Health Center has been secretive about a Legionnaires' Disease outbreak that prompted it to do extra testing of its water system and make patients stop using tap water for drinking and showering.

Hospital officials are also giving out confusing and conflicting information about the outbreak. They have not answered several key questions, including:

- On what dates were the patients with Legionnaires' admitted?
- When did St. Joe's discover they caught the disease in the hospital?
- Were the patients treated in the same part of the hospital or with the same equipment?

The hospital issued news releases on Saturday, October 24 and Monday, October 26, announcing steps it is taking to protect patients after preliminary tests found Legionella bacteria in its water system. That bacteria can cause Legionnaires', a severe form of pneumonia that can be deadly for the elderly and people with lung disease and weakened immune systems.

But it wasn't until Monday, October 26 that a top hospital official, when questioned by syracuse.com, revealed at least two patients caught Legionnaires' in the hospital within the last month and that those cases prompted the additional water testing and the water use restrictions.

That official, Dr. Sandra Sulik, a hospital vice president, also said St. Joe's had a third case of Legionnaires' during the last month, but was unable to determine if the patient got the disease in the community or caught it in the hospital. That patient died and she said it was unclear if the death was caused by Legionnaires' or the patient's other serious medical problems.

St. Joe's did not explain why there was no mention of the hospital-acquired Legionnaires' cases in its announcements. "We provided information about hospital-acquired Legionella every time we were asked," Betsy Bedigian, a hospital spokeswoman, said in an email. She also denied the hospital had a Legionnaires' outbreak. But the federal Centers for Disease Control and Prevention says Legionnaires' outbreaks occur when two or more people, such as hospital patients, become ill in the same place at about the same time.

Hospital officials have given out confusing information about the Legionnaires' cases. The hospital said Saturday it had one patient in the hospital that day with Legionnaires' the patient caught in the community. At first, Bedigian said that patient, who was sent home, was one of the three cases Sulik discussed Monday. She later said that patient was not one of the three cases discussed Monday.

Lisa McGiffert, director of Consumers Union Safe Patient Project, said the hospital should have disclosed the outbreak in its news release. "Withholding this information seems to me to be a way of keeping it a secret from the public," she said.

Suzanne Mattei of New Yorkers for Patient and Family Empowerment, a consumer group, agreed. "This is something the public should know," she said. "It's particularly troubling because a hospital patient is someone whose health is already at risk."

In an email, Bedigian said: "As soon as a potential risk was identified, we focused on attending to patients and building issues and provided as much information as possible to protect our patients and the public."

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RECENT RESULTS

\$2,250,000 — medical malpractice settlement for 62-year-old woman whose radiologist misread her mammogram results and failed to diagnose breast cancer.

\$975,000 — medical malpractice settlement for 54-year-old woman who didn't receive proper diagnosis and treatment of a post-operative wound infection.

\$725,000 — medical malpractice settlement for obstetrical failure to advise mother during pregnancy of baby's congenital kidney condition, causing severe loss of kidney function.

\$300,000 — trip and fall at a residence due to failure to provide handrail on stairway as required by local code, causing numerous fractured ribs, respiratory failure, prolonged hospitalization and medical complications.

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ALAN W. CLARK SELECTED FOR 2015 NEW YORK METRO SUPER LAWYERS LIST



ALAN W. CLARK, ESQ.

Alan W. Clark, Esq., Managing Partner and Founder, The Law Firm of Alan W. Clark & Associates, LLC, has been selected to the list of New York Metro Super Lawyers for 2015. This is the eighth consecutive year Mr. Clark was recognized in the practice area of Plaintiffs Personal Injury – Medical Malpractice. No more than five percent of the lawyers in the state are selected by Super Lawyers.

Mr. Clark often takes on complex cases. Twenty-five years ago, he represented Charlie Leal, a mentally handicapped blind man who became permanently disabled after suffering neurological injuries as the result of physician negligence and error. The \$2.5 million verdict Mr. Leal received set a precedent for protecting severely disabled individuals.

In addition to the New York State Courts, Mr. Clark is admitted to the U.S. District Court for the Eastern and Southern Districts of New York and the U.S. Court of Appeals, Second Circuit. He is also a sustaining member of the American Association for Justice, the New York State Trial Lawyers Association, and the New York State, Nassau County and Suffolk County Bar Associations. He has also been a frequent guest speaker before local bar associations.

Mr. Clark is also Past President of the Long Island chapter of the New York State Trial Lawyers Association; he continues to serve on its Board of Directors and has been a sustaining member since 1978. He also serves on the Nassau County Bar Association's Grievance and Supreme Court Committees. He has garnered an AV-Preeminent rating from Martindale-Hubbell, its highest peer-

reviewed rating. He has also been recognized by *The New York Times* as one of Long Island's Ten Leaders in Civil Trial Law.

He received his Juris Doctor in 1977 from New York Law School, where he serves on the school's Board of Trustees and on the recently formed Public Safety Initiative Committee. He has been published in various publications, including *The Nassau Lawyer*. His article "Impeachment by Medical or Scientific Literature: The Magic and Elusive 'Authoritative' Rule" was published in the July/August 2014 issue.

Mr. Clark resides in Westhampton.

"My efforts are dedicated to advocating for patient health and safety and reducing negligent medical errors that result in preventable injuries," Mr. Clark said. "I seek accountability, fair and just compensation for those victims who have suffered serious injuries, disabilities and/or economic losses caused by the unsafe practices and wrongdoing of doctors and hospitals."

Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys.

The Super Lawyers lists are published nationwide in *Super Lawyers Magazines* and in leading city and regional magazines and newspapers across the country. *Super Lawyers Magazines* also feature editorial profiles of attorneys who embody excellence in their practice of law. For more information about Super Lawyers, go to SuperLawyers.com.

MEDICAL MALPRACTICE ATTORNEYS AND THE MEDICAL PROFESSION: DO THEY HAVE TO BE ADVERSARIES?

BY DEBORAH S. KURTZ, ESQ

I think we can all agree that the well-being, safety and health of individuals should be everyone's goal. As the saying goes, "if you have your health, you have everything."

Unfortunately, oftentimes, the medical profession and attorneys are seen as adversaries. This does not need to be the case.

As an attorney, I have been involved for more than 30 years representing individuals who were injured as a result of claims of medical malpractice. I have two main objectives in representing my clients. The first is to obtain fair and just compensation for my clients. Since the harms and losses cannot be undone, the only remedy is fair and just compensation to help the injured clients try to put their lives back together.

The second driving force in my representation is to help eliminate system failures so that the next time the doctor or hospital finds themselves in a similar medical scenario, the medical error is not repeated. It has recently come to light that the corrections of systemwide medical errors help save lives and prevent injuries.

The medical profession is often at odds with the legal profession. In the Eighties, the medical lobby and the insurance companies lobbied successfully to reduce the legal fees medical malpractice attorneys earn. The hope of the lobbyists was that the attorneys would take only large cases, since the legal fee was smaller. Prior to that, the statute of limitations (the time to bring an action

against a physician) was shortened from three years to two-and-a-half years. Again, an action to limit lawsuits and individual rights.

Another example of the tension between the two professions is that every year, "tort reform" legislation is introduced into Congress and the state legislatures. One of the main purposes of tort reform is to place "caps" on the recovery victims of medical malpractice can receive. Thus, instead of an injured individual obtaining fair and just compensation, Congress and the state legislators want to put a limit (cap) on what an injured party can obtain from a settlement or from a jury. This cap would insulate doctors and their insurers, but obviously not protect the injured patient from medical errors.

Although it is clearly understandable that a doctor or hospital does not want to be named as a defendant in a medical malpractice action, if our goal is to enforce patient safety and protect the well-being of the patient who is seeking quality medical care, are attempts to discourage attorneys or the placing of limits on a patient's just compensation the way to go?

I believe it is not. It is important that our society have checks and balances so that we all act responsibly and in the best interests of others.

Although I do not believe in an overly litigious society, I believe that, if a doctor or hospital has not treated a patient in accordance with the standards of care and patient safety required by his/her peers and the law, then there should be accountability, so that we are all safer. Without accountability, it is

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The state Health Department also did not mention the outbreak in a news release it issued Sunday, detailing how it sent staff to St. Joe's to do further testing. The department did not respond to an inquiry from syracuse.com, asking why it did not disclose the St. Joe's Legionnaires' cases in its announcement.

The testing that showed Legionella bacteria in the hospital's water system was done by the state Health Department. The state used a test that provides rapid results, but is not always accurate, hospital officials said. Final culture test results of the St. Joe's water system, released November 2, confirmed the presence of the Legionella bacteria.

Legionnaires' is not spread person to person. People get it when they breathe in a mist or vapor containing the bacteria. People also can get it when drinking water if some water gets in their lungs through aspiration, often referred to as "going down the wrong pipe."

Most Legionnaires' outbreaks in hospitals can usually be traced to their hot water systems where the bacteria that cause the disease can flourish, according to a Legionnaires' expert.

"That's where the Legionella gets the right temperature and nutrients to grow," said Janet Stout, director of the Special Pathogens Laboratory in Pittsburgh. "Then it's delivered through faucets and showers."

It can take a lot of investigating to pinpoint the source of a Legionnaires' outbreak in a hospital, she said.

Stout said she's heard of cases where a tube or other piece of medical equipment is rinsed in tap water, then inserted into a patient. "That's how bacteria can gain entry into a patient," she said.

Some hospital Legionnaires' outbreaks have been linked to oxygen humidifiers and decorative water fountains.

St. Joe's has a decorative water fountain in its lobby. St. Joe's said the fountain, which was shut off several months ago, has been tested and cleared.

Instead of being widespread throughout a hospital's entire water system, the bacteria can be lurking in an isolated unit or associated with a certain procedure, Stout said. "A little detective work needs to be done on what procedures these patients underwent when they were in the hospital," Stout said.



CLIENT TESTIMONIALS

In April, I fell and broke my wrist after tripping on a "pothole" on the sidewalk in front of a parking garage. Sadly, the garage offered no help. I walked to an emergency room in the neighborhood.

The next day, a friend suggested I call Deborah Kurtz and ask her advice. I've never sued anyone, but I knew the medical bills were going to start piling up.

We spoke on the phone and I sent her all the info and photos she needed to start my case. She came to my office and we discussed my case and signed a contract to begin legal action. I emailed medical and expense updates each week and Deborah kept me in the loop every step of the way. She called, texted and emailed info keeping me informed about my case. I felt secure that she would have my back the whole way.

In the end, I was lucky enough not to need to go to court, though I was prepared to go. I'm chalking that up to Deborah's hard work.

She negotiated a very decent settlement in only 6 months. No time or money wasted in court. Deborah and her team did all the legal work while I worked at healing.

If you ever get hurt and need someone to back you up, call Deborah. You'll feel relieved that she's in charge of your case.

- Deb from Brooklyn

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human nature for some to stray. Medical malpractice actions help maintain the safety and health of patients and deter negligent medical errors from causing individual harms and losses.

There is a requirement in New York that, prior to commencing a medical malpractice action, the attorney representing the injured party (plaintiff) must sign an affidavit stating that a medical expert has reviewed the case and the expert is of the opinion that there has been a deviation from good and accepted medical practice. This requirement is a check against frivolous lawsuits and is a welcome requirement. We all need accountability from the lawyers, the doctors and the hospitals.

Patient safety should be of paramount interest to both doctors and lawyers. We do not need to be adversaries. Fair checks and balances need to be in place for both professions, ultimately for the well-being of you and me, the patients.



ALAN W. CLARK

& ASSOCIATES, LLC

650 Wantagh Avenue, Suite 1, Levittown, NY 11756

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650 WANTAGH AVENUE, SUITE 1
LEVITTOWN, NY 11756
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