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Public Welfare: Florida Counties Have No Duty to Provide Indigents With Post-Emergency Medical Care (Dade County v. American Hospital of Miami, Inc., 502 So. 2d 1230 (1987))

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PUBLIC WELFARE: FLORIDA COUNTIES HAVE NO DUTY TO PROVIDE INDIGENTS WITH POST-EMERGENCY MEDICAL CARE

Dade County v. American Hospital of Miami, Inc. 502 So. 2d 1230 (Fla. 1987)

Respondent, a private hospital, sought to require petitioner, Dade County's public hospital, to accept transfer of all indigent patients whose emergency condition had been stabilized.[1] The trial court ruled that the petitioner bore a legal duty and financial responsibility to provide post-emergency medical care to qualified indigent residents.[2] The Third District Court of Appeal affirmed based upon constitutional and statutory grounds.[3] The Third District en banc, however, certified petitioner's question as being of great public importance.[4] The Supreme

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1. 502 So. 2d 1230, 1232 (Fla. 1987). Alternatively, respondent sought reimbursement for the reasonable cost of providing the indigent patients with necessary post-emergency medical care. *Id.* Respondent had sought a declaratory judgment and injunctive relief against Dade County and the Public Health Trust of Dade County which operates Jackson Memorial Hospital, the facility to which respondent had attempted to transfer its indigent patients. *Id.* at 1231-32.

2. *Id.* at 1232. The trial court entered a partial summary judgment against the petitioners requiring that the county public hospital promptly accept the transfer of indigent patients whose emergency medical condition had been stabilized. *Id.*

3. 463 So. 2d 232, 233 (Fla. 3d D.C.A. 1984). The Third District held that Art. XIII, § 3 of the 1885 Florida Constitution was adopted as a statute pursuant to Art. XII, § 10 of the 1968 Florida Constitution. The 1885 constitutional provision stated, in relevant part, that:

> The respective counties of the State shall provide in the manner prescribed by law, for those of the inhabitants who by reason of age, infirmity, or misfortune, may have claims upon the aid and sympathy of society . . . .

FLA. CONST. art. XIII, § 3 (1885). This provision sets the stage for two classic strands of statutory interpretation. First, the compulsory term "shall" lends support towards imposing a duty on counties to assist the less fortunate. Second, this provision apparently is not self-executing because it requires an operative statute. Thus, the provision creates a duty in one breath but makes it contingent in another. The majority in the instant court relied upon the second method of construction in support of its decision. 502 So. 2d at 1232-33.

The 1968 constitutional provision states:

> All provisions of Articles I through IV, VII and IX through XX of the Constitution of 1885, as amended, not embraced herein, which are not inconsistent with this revision shall become statutes subject to modification or repeal as are other statutes.

FLA. CONST. art. XII, § 10 (1968). The Third District held that this provision preserved the vitality of the 1885 constitutional enactment. 502 So. 2d at 1232. The court also relied upon the legislative intent underlying Florida Statute § 154.302, which the court held places the ultimate financial obligation for the medical treatment of indigents on the county in which the indigent resides. *Id.*

4. *Id.* at 1231. The certified question was: "Does a county bear a legal and financial duty to provide post-emergency medical care to indigent residents of the county?" *Id.* The Florida Supreme Court had jurisdiction under Art. V, § 3(b)(4) of the Florida Constitution.

Court of Florida quashed the Third District's decision, and HELD, that counties have no existing common law or statutory duty to provide post-emergency health care to their indigent residents.[5]

Indigent health care issues involve vexing questions of moral, ethical, and economic responsibilities.[6] These questions ultimately evolve into legal issues that legislatures and courts must confront. Courts, however, have consistently held that there is no general common law that requires states to provide for their indigent residents.[7] In fact, the United States Supreme Court has found no constitutional grounds requiring states to provide indigents with medical care.[8] The established principle is that the obligation of a governmental entity to provide indigent health care must arise from a legislative, rather than judicial, mandate.[9] In response, many states have established statutory schemes to relieve the financial burden of hospitalization on the state's indigent residents.[10] One method is the establishment of county hospitals to provide qualified low-income residents with health care.[11] A second method is the provision of public relief funds or federally subsidized insurance plans for the poor.[12] A number of states, including

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5. *Id.* Justice Overton wrote the majority opinion joined by Justices Adkins, Ehrlich, Shaw, and Barkett, and Chief Justice McDonald. Justice Boyd filed a dissenting opinion. *Id.* at 1234-36.

6. Early in its opinion, the instant court apologetically recognized that "patient-dumping" is one of these troublesome issues. *Id.* at 1231. *See generally* P. MENZEL, MEDICAL COSTS, MORAL CHOICES: A PHILOSOPHY OF HEALTH CARE ECONOMICS IN AMERICA (1983) (moral and economic analysis of contemporary health care issues).

7. *E.g.*, Mandan Deaconess Hosp. v. Sioux County, 63 N.D. 538, 248 N.W. 924 (1933); Roane v. Hutchinson County, 40 S.D. 297, 167 N.W. 168 (1918); Patrick v. Town of Baldwin, 109 Wis. 342, 85 N.W. 274 (1901).

8. Maher v. Roe, 432 U.S. 464, 469 (1977).

9. 502 So. 2d at 1231. *See also* cases cited *supra* note 7.

10. An innovative example is revenue pooling. Five states including Florida have implemented revenue pools that collect annual assessments from hospitals or insurance providers. New York operates two revenue pools that are funded by a percentage added on to rates paid by private insurers, self-pay patients, and Medicaid. *See* N.Y. PUB. HEALTH LAW § 2807-d (1986). Massachusetts operates a single state-wide pool funded entirely by non-governmental third-party payors. MASS. GEN. LAWS ANN. ch. 6A, §§ 51, 75 (1985). In 1985, West Virginia passed time-limited legislation assessing all non-state hospitals a weighted percentage of their hospital revenues. *See, e.g.*, W. VA. CODE §§ 16-29C-1 (1985). South Carolina assesses hospitals based on the previous year's hospital revenues and applies matching county contributions to the fund. S.C. CODE §§ 44-6-5, 44-6-140, 44-6-20 (1986). For a discussion of Florida's revenue pool and revenue pooling in general, see *infra* note 69.

11. *See, e.g.*, FLA. STAT. ANN. §§ 155.01-.25 (West 1985).

12. The Hill-Burton Act allots federal funds to the states in order to assist state programs for constructing and modernizing hospitals. 42 U.S.C. § 291 (1978). In order to receive Hill-Burton funds, states must provide adequate hospital facilities for all persons who are state residents, and provide needed medical services for all persons unable to pay for them. *Id.* § 291 (e). Although authorities are split on the issue, a number of courts have held that a private action

Florida, also require public and private hospitals to treat all emergency patients without regard to the patient's ability to pay.[13] Yet, private hospitals generally face no continuing statutory care requirement after the initial emergency situation is stabilized.[14] This situation has often led to the immediate transfer of indigent patients to public hospitals, a practice known as "patient-dumping."[15]

Florida has somewhat lessened the patient dumping problem by requiring counties to be financially responsible for treatment provided to their own indigent residents at hospitals in other counties.[16] An indigent's county of residence has the ultimate financial responsibility for medical treatment the indigent receives at a "regional referral hospital."[17] In addition, the Florida Health Care Responsibility Act[18]

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may be maintained under the Act to compel a hospital receiving Hill-Burton funds to provide services to persons unable to pay for them. *E.g.*, Cook v. Ochsner Foundation Hosp., 319 F. Supp. 603 (D.La. 1970). *But see, e.g.*, Stanturf v. Sipes, 224 F. Supp. 883 (D.Mo. 1963), *aff'd*, 335 F.2d 224 (8th Cir. 1964), *cert. denied*, 379 U.S. 977 (1965).

13. *See* FLA. STAT. ANN. § 401.45(1) (West 1985) which states "No person shall be denied treatment for any emergency medical condition which will deteriorate from a failure to provide such treatment at any general hospital licensed under chapter 395 or at any specialty hospital that has an emergency room." *Id.*

14. It is unclear whether *private* hospitals have a duty to treat indigent patients at all. One case involved a child with diphtheria who died fifteen minutes after being released from the emergency room of a private hospital. Because the hospital had a policy refusing admittance of patients with contagious diseases, the child was denied care. The Alabama Supreme Court held that a private hospital owes no public duty to accept any undesired patients. Birmingham Baptist Hosp. v. Crews, 229 Ala. 398, 157 So. 224 (1934). This principle has been followed, at least in dicta, by a number of other courts. *See, e.g.*, Olander v. Johnson, 258 Ill. App. 89, 99 (1930); McDonald v. Mass. Gen. Hosp., 120 Mass. 432, 435, 21 Am. Rep. 529 (1876). *See also* Levin v. Siani Hosp., 186 Md. 174, 46 A.2d 298 (1946) (no hospital has a duty to furnish its services and accommodations to all who apply, whether patient or physician). One Florida appellate court adopted this harsh doctrine where an eleven year old boy who was released from a private hospital when his mother could not produce two hundred dollars needed as an admittance fee. Le Jeune Road Hosp., Inc. v. Watson, 171 So. 2d 202, 203 (Fla. 3d D.C.A. 1965). The *Le Jeune* court stated that a private hospital may reject an applicant for medical services for any reason at all. The court, however, limited its holding to cases not involving emergency treatment. *Id.* at 203-04, n.5. *See also* Ruvio v. North Broward Hosp. Dist., 186 So. 2d 45 (Fla. 4th D.C.A. 1966), *cert. denied*, 195 So. 2d 567 (Fla. 1966) (private hospital has no duty to admit every individual requesting admission). The duty to provide emergency treatment to all applicants has since been codified in Florida. *See* FLA. STAT. ANN. § 401.45(1) (West 1985).

15. *See generally* Dallek & Waxman, *"Patient Dumping": A Crisis in Emergency Medical Care for the Indigent*, 19 CLEARINGHOUSE REV. 1413 (April 1986) (in-depth discussion of federal, state, and local legislation concerning patient transfer).

16. FLA. STAT. ANN. § 154.302 (West 1985).

17. FLA. STAT. ANN. § 154.306 (West 1985). *See* St. Mary's Hosp. v. Okeechobee County Bd. of Commissioners, 442 So. 2d 1044 (Fla. 4th D.C.A. 1983) (regional referral hospital that provided treatment not available in indigent's county entitled only to reimbursement within

places the financial burden of indigent health care on the indigent's county of residence. The residence county is required to pay for all those costs not fully reimbursed by governmental welfare programs or other third-party payors.[19] For example, in *St. Mary's Hospital v. Okeechobee County Board of Commissioners*,[20] the Fourth District Court of Appeal held that a regional referral hospital which furnished emergency medical treatment to residents of another county was only entitled to reimbursement within the guidelines of the Health Care Responsibility Act.[21] A Palm Beach county hospital had sought recovery of its expense in providing extended treatment to three indigent residents.[22] The court, however, permitted reimbursement for only twelve days of medical care, the limit provided in the statute.[23] In dicta, the court agreed that the time limitations were unfair, but stated that the wisdom and fairness of the limitations were issues for the legislature.[24]

Some states, however, have taken a different approach. In *St. Joseph's Hospital and Medical Center v. Maricopa County*,[25] the Arizona Supreme Court held that a county has an obligation to reimburse a private hospital that renders post-emergency medical care to the county's indigent residents.[26] The petitioner, a private hospital, notified Maricopa County that three indigent county residents were being treated for injuries received in an automobile accident. The hospital provided emergency services followed by a long period of skilled nursing care. The county failed to transfer the indigents to a county facility and later refused to reimburse the private hospital.[27] The *St. Joseph's* court held that reimbursement was required for all medical services rendered because the county failed after proper notice

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statutory limits); Shands Teaching Hosp. v. Jacksonville, 398 So. 2d 907 (Fla. 1st D.C.A. 1981) (city of patient's residence required to pay for treatment received at regional referral hospital); Dade County v. Hosp. Affiliates Int'l, Inc., 378 So. 2d 43 (Fla. 3d D.C.A. 1979) (county not liable to hospital for medical care provided to indigent patient transported to hospital under police supervision). FLA. STAT. ANN. § 154.304(4) defines a regional referral hospital as any hospital that provides services to patients who reside in counties other than the county in which the hospital is located. FLA. STAT. ANN. § 154.304(4) (West 1985).

18. FLA. STAT. ANN. § 154.302-.314 (West 1985).
19. *Id.* § 154.302.
20. 442 So. 2d 1044 (Fla. 4th D.C.A. 1983).
21. FLA. STAT. ANN. § 154.306 (West 1985).
22. 442 So. 2d 1045.
23. *Id.* at 1046.
24. *Id.*
25. 142 Ariz. 94, 98, 688 P.2d 986, 990 (1984).
26. *Id.* at 98, 688 P.2d at 990.
27. *Id.* at 96-97, 688 P.2d at 988-89.

to transfer the patient.[28] The court based its conclusion on two state statutes: the emergency transportation statute which required county reimbursement for "all medical services"[29] and a statute requiring reimbursement for emergency medical care for all indigent residents.[30]

An important trend is the increased judicial protection of the consitutional rights of indigents entitled to receive statutory benefits. In *Memorial Hospital v. Maricopa County*, for instance, the United States Supreme Court determined that durational residency requirements were unconstitutional as a precondition for an indigent to receive free county medical care.[31] The Court did not decide the issue of an indigent's right to medical care;[32] it did, however, consider the constitutional ramifications caused by denials of statutory health care rights. In *Maricopa County*, the county had refused to reimburse a private hospital for medical care provided to a resident indigent. The Court first stated that governmental benefits necessary to basic sustenance have increased constitutional significance.[33] Justice Marshall's opinion pointed out that although the indigent did not require immediate emergency treatment, his condition required continued medical care which the state could not deny.[34] Failure to treat a serious illness until it requires emergency hospitalization subjects the indigent to a "substantial and irrevocable deterioration in his health."[35] The Court established that denials of medical services implicate an indigent's due process rights.

The instant court, however, did not address these types of constitutional issues. Instead, the court held that Florida counties have no duty to provide post-emergency medical care to indigent residents.[36]

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28. *Id.* at 98, 688 P.2d at 990.

29. ARIZ. REV. STAT. § 41-1837(A) (1985). The statute states that when a patient is received by an emergency receiving facility from an authorized ambulance, the county shall be liable "to the facility for the reasonable costs of all medical services to such indigent by the facility until each patient is transferred by the county to the county hospital. . . ." *Id.*

30. *Id.* § 11-297.01(B)(2). The statute reads, in relevant part: "The county shall be liable for payment of all costs retroactive to the inception of treatment incurred by a private hospital . . . arising from emergency treatment and medical care administered at such hospital for a patient qualified for such care and treatment . . . when the county does not move the patient from the private hospital. . . ." *Id.*

31. 415 U.S. 250, 269 (1974).

32. *Id.* at 252 n.3.

33. *Id.* at 259. *See, e.g.*, Goldberg v. Kelly, 397 U.S. 254, 264 (1970) (welfare benefits); Shapiro v. Thompson, 394 U.S. 618, 635 (1969) (certain state requirements for welfare held unconstitutional); Sniadach v. Family Finance Corp., 385 U.S. 337, 340 (1969) (pre-judgment garnishment of wages).

34. 415 U.S. at 260-61.

35. *Id.* at 261.

36. 502 So. 2d at 1231.

The court dismissed the three arguments the respondent raised in support of a duty of indigent care. First, the court held that an 1885 Florida Constitution provision which provided that counties had a duty to provide for their poor was superceded by subsequent statutory revisions.[37] In addition, the court held that the provision was not intended to be self-executing; because no statute effectuated the provision, it was nonoperative.[38] Second, the court rejected the respondent's legislative intent argument. The statute's explicit language stated "It is the intent of the legislature to place the ultimate financial obligation for the medical treatment of indigents on the county in which the indigent resides, for all those costs not fully reimbursed by other governmental programs or third-party payors."[39] The court refused to extend this express legislative intent to the situations where counties render medical care to their own resident indigents.[40] The court found that the primary purpose of the statutory chapter was "to establish counties' responsibility for medical costs when one county's resident receives care in another county's hospital."[41] Thus, the court refused to interpret the statutes as broadly as the respondents had urged.

Finally, the court rejected the argument that chapter 155 was intended to apply to public hospitals such as the one in Dade County.[42] Underlying the court's decision was a realization of the economic implications that placing a general duty of indigent care on counties would entail.[43] In defense of its decision, the court noted a number of difficult and apparently unanswered questions the legislature would

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37. *Id.* at 1232. The provision read "The respective counties of the State shall provide in the manner prescribed by law, for those of the inhabitants who by reason of age, infirmity or misfortune, may have claims upon the aid and sympathy of society." FLA. CONST. art. XIII, § 3 (1885). The court rejected the provision's current vitality stating that the provision was repealed by subsequent revisor bills. 504 So. 2d at 1232. These subsequent modification restricted the former Constitutional provision to a "power" of the county to provide indigent health care, not a "duty." *Id.*

38. *Id.* at 1232-33.

39. FLA. STAT. ANN. § 154.302 (West 1985).

40. 504 So. 2d at 1233.

41. *Id.*

42. *Id.* Contrary legislative intent contained in the chapter stated: "Nothing herein shall require the board of county commissioners to expend funds of the county in the maintenance of such hospital or the administration of such trust." FLA. STAT. ANN. § 155.03 (West 1985). The Court, therefore, found it totally unreasonable to hold that the legislature intended to create a duty of indigent care for all counties. 502 So. 2d at 1233.

43. 502 So. 2d at 1233. The Court stated that "[w]ithout question, if the legislature had intended to impose such a substantial duty on the counties it would have done so directly." *Id.*

presumably have addressed had it intended to create such a duty.[44] For example, "Who are indigents and who decides the various classifications of indigency?" and "In the case of catastophic illnesses, is there a limitation or cap on the amount hospitals may bill the County?"[45] Further, the court realized that changing economic conditions and the restructuring of hospital care have complicated indigent health care problems.[46] The court reasoned that indigent care issues require an in-depth legislative investigation and solution, not a judicially-created mandate.[47]

In a strong dissent, Justice Boyd pinpointed an anomaly caused by the court's holding.[48] He queried why a county should be required to reimburse a public hospital outside the county that treats an indigent resident, but not be required to reimburse a private hospital within the county's boundaries.[49] He also noted that private hospitals are now left in a situation where they must either recover the expense of providing indigent post-emergency care by raising fees to their paying patients, or by simply refusing to provide necessary post-emergency care at all.[50] He further noted that a perusal of chapter 154 of the Florida Statutes reveals that the legislature has already provided answers to many of the "unanswerable questions" posed by the majority.[51] He was especially troubled by the majority's "cavalier dismissal" of Florida Statute section 154.302 which he felt was a straightforward statement of legislative intent to impose a duty on counties.[52]

The instant court's statutory interpretation ignored an oft-cited rule of statutory construction regarding legislative relief to the poor. Many courts have held that constitutional provisions and statutes au-

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44. *Id.* at 1233 n.2. The Court included 10 representative questions that Chief Judge Schwartz had raised in his Third District Court dissent. *Id.* at n.2. *See* 463 So. 2d 232, 235 n.4 (Fla. 3d D.C.A. 1984) (complete list of questions).

45. 502 So. 2d at 1233 n.2.

46. *Id.* at 1234.

47. *Id.*

48. *Id.* at 1234-36. Justice Boyd pointed out that due process and equal protection concerns were applicable. Because the County had established a policy of providing some indigent health care, the County cannot arbitrarily choose to provide that service to some and not to others. *Id.* at 1235-36. However, a full discussion of these issues is beyond the scope of this comment.

49. *Id.* at 1236.

50. *Id.* at 1236. Justice Boyd also felt that "public responsibility and accountability for policies in dealing with an essentially public problem are better served by recognizing that there is a public obligation than by compelling private persons to provide free service." *Id.*

51. *Id.* at 1236 n.5.

52. *Id.* at 1236.

thorizing aid to indigents must be given broad construction consistent with their benevolent purpose.[53] The Florida statutes the instant court interpreted are similar to the Arizona statutes the *St. Joseph's* court addressed.[54] Under certain conditions, however, the Arizona statutes impose financial responsibility on counties for indigent care costs that arise following emergency care by a private hospital.[55] Florida statutes contain no similar provisions for post emergency care. Instead of adopting a *St. Joseph's* approach which broadly construed the Arizona indigent care legislation, the instant court's deferrence to the legislature parallels the *St. Mary's* court's approach. Private hospitals must provide indigent care only in situations involving an "emergency."[56] This duty forces these hospitals to make a difficult and recurring ethical and economic choice: whether a particular situation is an "emergency" so that treatment must be provided, or whether no "emergency" exists so the patient may be released without liability.

Defining an emergency has been an elusive task for both courts and legislatures. Only twelve states have enacted statutes defining a "medical emergency" for purposes of providing mandatory indigent care.[57] One court juggled three different definitions of an emergency before holding that the factual question of whether an emergency exists is for the jury to determine.[58] In fact, courts now commonly assign juries this difficult question of whether an emergency existed in cases where the issue is unclear.[59] Thus, private hospital emergency

53. *E.g.*, DeJarnette v. Hosp. Auth. of Albany, 195 Ga. 189, 23 So. 2d 716 (1942); Jones v. Cooney, 81 Mont. 340, 263 P. 429 (1928); Graham v. Reserve Life Ins. Co., 274 N.C. 115, 161 S.E.2d 485 (1968); Ogden City v. Weber County, 26 Utah 129, 72 P. 433 (1903). *But see, e.g.*, Morristown v. Hardwick, 81 Vt. 31, 69 A. 152 (1908).

54. *See supra* note 29.

55. *Id.*

56. FLA. STAT. ANN. § 401.45(1) (West 1985).

57. Three of these use the narrow definition of a condition requiring prompt lifesaving treatment. MASS. GEN. LAWS ANN. ch. 111, § 70E(k) (West 1983); 35 PA. STAT. ANN. § 6923 (Purdon 1985); R.I. GEN. LAWS § 23-17-26(2) (1985). Two require "imminent danger of death or disability." LA. REV. STAT. ANN. § 40:2113.4(B) (West 1986); MICH. STAT. ANN. § 14.15 (20103) (Callaghan 1981). Others define emergency as "any injury or acute medical condition which might cause death or severe injury or illness." CAL. HEALTH & SAFETY CODE § 1317 (West 1979); TENN. CODE ANN. § 68-39-301 (1972); WYO. STAT. § 35-2-115(a) (1977). Florida requires emergency care for "any person whose medical condition will deteriorate from a failure to provide treatment." FLA. STAT. ANN. § 395.0143 (West 1982).

58. Thompson v. Sun City Comm. Hosp., Inc., 141 Ariz. 597, 602, 688 P.2d 605, 611 (1984). The Arizona Supreme Court could not determine the best definition from three choices: Webster's Dictionary definition, the trial court's jury instruction version, or the Arizona statutory definition of an emergency medical patient. *Id.* at 603 n.5, 688 P.2d at 611 n.5.

59. *See generally, Symposium: Health Law - Legal, Ethical and Moral Issues*, 63 U. DET. L. REV. 1-322 (1986) (discussing various problems associated with emergency room treatment and the law).

room attendants are forced to now make three judgment calls:[60] (1) a proper diagnosis of each patient's medical status; (2) an economic evaluation of what level of care a patient's medical status justifies; and (3) a legal prognostication whether an "emergency" does or does not exist.[61]

If a private hospital finds no emergency exists, or finds an emergency and fully stabilizes it, the hospital must decide what to do with the patient. An increasingly likely result in these situations is "patient-dumping." Over the past few years, the number of patients transferred from private to public hospitals after initial examinations or treatments has grown exponentially.[62] Horror stories of critically ill patients being denied treatment due to lack of ability to pay have become commonplace.[63] Only two state legislatures have directly addressed the patient-dumping problem.[64] No such provisions governing premature patient transfers exist in Florida. Therefore, private Florida hospitals may use the instant court's decision as a rationale for patient dumping.[65]

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60. *See generally* S. GOROWITZ, DOCTORS' DILEMMAS: MORAL CONFLICT AND MEDICAL CARE ch. 6, *The Impossibility of Value Free Medicine*, & ch. 11 *Setting Public Policy* (1982) (ethical framework for resolving medical care issues).

61. Hanging over each of these judgments is the possibility that an unknown jury in some distant courtroom may feel the situation warrants emergency treatment.

62. Dallek & Waxman, *supra* note 15, at 1415; Bernard, *Patient Dumping: A Resident's Firsthand View*, 34 THE NEW PHYSICIAN 23 (Oct. 1985). Dr. Bernard reports that the number of patients dumped from private Chicago hospitals to the public Cook County Hospital has increased 1000% in just a few years. He stated: "Every day hospitals send us patients who are at risk of dying in the ambulance on the way over." *Id.* at 25.

63. Tennessee residents were shocked to read about an 18 year-old indigent burn victim who was denied access to the burn unit of a private Tennessee hospital. The boy's leg had to be amputated after he was flown 1,000 miles to a Texas army medical facility for treatment. Dallek & Waxman, *supra* note 15, at 1413 (citing Milner, Kin Blames VU as Burned Son's Leg Amputated, The Tennesseean, Dec. 17, 1984). Another well documented occurrence involved an uninsured man with severe burns who arrived with an IV attached at a Dallas public hospital after being denied treatment at three private facilities. *Id.* (citing Taylor, Ailing, Uninsured, and Turned Away, Washington Post, June 30, 1985).

64. *See* S.C. CODE ANN. § 44-7-355 (Law. Co-op. 1985); TEX. REV. CIV. STAT. ANN. art. 44371 (Vernon 1985). The South Carolina statute provides that no person may be denied emergency medical care regardless of ability to pay or county residence, and exposes hospitals to a potential $10,000 civil penalty for reckless violations. Texas has also approved more stringent regulations allowing transfers of emergency patients for medical reasons only. However, patients who have been medically stabilized, or who are not in need of emergency care, may be transferred for economic reasons. *See* Dallek & Waxman, *supra* note 15, at 1415.

65. The lack of a legal duty to provide post-emergency indigent care, of course, does not preclude a moral duty to do so. Also, because of the increasingly competitive nature of the health care industry, the duty of private hospitals to generate profits for their shareholders clashes directly with any asserted moral duty. *See* P. MENZEL, *supra* note 6, at 1-24.

The instant court's decision also has an adverse effect on the overall standard of care for indigents. If a private hospital is unable to collect county reimbursement for post-emergency care, and the hospital is unable to determine when the "emergency" ends, premature patient transfer is inevitable. Increased transfers will aggravate the already deteriorated state of indigent health care.[66] Results of one study showed that nearly sixty percent of all indigent health care in the United States is provided by twenty-five percent of the hospitals.[67] Other studies indicated that twenty to thirty percent of public hospitals' budgets are earmarked for indigent care compared to approximately four percent for the average private hospital's budget.[68] Despite the attempts of Medicaid and Medicare to provide equal health care to all regardless of income, health care in the United States is often provided according to wealth rather than need.[69]

Other statistics are equally frightening. A Tennessee congressional committee studying the health care habits of 900 uninsured families reported that forty-five percent of those informed by a physician that they required hospitalization did not seek the necessary care.[70] In 1980, more than one fourth of all Hispanics and nearly twenty percent of all blacks under age sixty-five were uninsured compared with nine percent of all whites.[71] These uninsured minorities often received less physician and hospital care, and were forced to travel farther and wait longer for medical attention than white indigents.[72] These prob-

66. *Cf.* Feder, Hadley & Mullner, *Poor People and Poor Hospitals: Implications for Public Policy*, 9 J. HEALTH POL., POL'Y & L. 237 (1984) (discussing the financial problems of hospitals with large percentages of indigent patients).

67. Dallek, *Health Care for America's Poor: Separate But Unequal*, 20 CLEARINGHOUSE REVE. 363 (Summer 1986) citing Hadley & Feder, *Troubled Hospitals: Poor Patients or Management*, 1 BUS. & HEALTH 15 (1984), as cited in Tenenbaum, *Health Care for the Medically Indigent*, 16 NAT'L HEALTH PLAN, INFORMATION CENTER 4 (1985).

68. *Id.* The reasons for this dramatic difference are unclear. But one commentator postulates that because of economic conditions, private hospitals are less able to shift costs of uncompensated care to their privately insured patients. Dallek, *supra* note 15, at 363.

69. *Id.* at 361.

70. TENNESSEE SELECT COMM. ON HEALTH CARE COST CONTAINMENT, A PLAN FOR TENNESSEE HEALTH CARE COST CONTAINMENT 38 (Jan. 1985). In addition, the committee found that another ten percent were rejected by private hospitals after attempting admission. *Id.* Another study of uninsured patients in a rural Wisconsin area found over 40 percent of those requiring hospitalization did not receive necessary care. *See* J. DRAKE & R. PETERSON, THE NEEDS OF WISCONSIN'S RURAL UNINSURED (1986).

71. NATIONAL CENTER FOR HEALTH STATISTICS, PUBLIC HEALTH SERV., DEP'T OF HEALTH & HUMAN SERV., 3 (1984).

72. Dallek, *supra* note 15, at 370. Other studies also illustrate the discrepancies between minority and non-minority patients. One study showed that white children average nearly twice as many physician visits per year than Mexican-American children. NATIONAL CENTER FOR HEALTH STATISTICS, PUBLIC HEALTH SERV., DEP'T OF HEALTH & HUMAN SERVS., NA-

lems will inevitably be aggravated by the instant court's decision as private hospitals will lack the fiscal ability to provide medical care for their needy indigent patients.[73]

The policy implications of this case are troubling. But, as one commentator has aptly stated:

> A system that accepts the existence of 35 million uninsured, most of whom are poor and near-poor; the denial of prenatal and sometimes delivery care to poor women; the transfer ("dumping") of 500 patients a month from private Chicago hospitals to Cook County Hospital; excessive markups on drugs needed to control hypertension and other chronic illnesses; inhuman conditions in many nursing homes; and lately, the premature discharge of elderly patients from hospitals when Medicaid payments prove inadequate to cover the costs of care should be judged harshly.[74]

The Florida legislature has made more progress than most states towards helping the poor receive medical care.[75] However, the benevolent intentions of the legislature have been partially undermined by the instant court's decision. Instead of adopting the Arizona Supreme Court's reasoning in *St. Joseph's* and broadly interpreting the legislative intent of the health care statutes, the instant court has deferred resolution of an important policy issue. Fearful that it might be criticized for judicial legislation, the court has left this issue for the legislature. In time, the legislature may remedy the existing situation. Until then, Florida's private hospitals will continue to dump their indigent patients on public hospitals or dump them on the street.[76]

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TIONAL HEALTH SURVEY, HEALTH INDICATORS FOR HISPANICS, BLACK AND WHITE AMERICANS, series 10, no. 148 (1984). Additionally, 22 percent of black children and 31 percent of Mexican-American children had never received dental care compared with 10 percent of white children. *Id.*

73. Feder, Hadley & Mullner, *supra* note 66, at 241.

74. Dallek, *supra* note 15, at 370.

75. *See* FLA. STAT. ANN. §§ 154.35, 395.101 (West 1985). These statutes create the Public Medicaid Assistance Trust Fund, the first state operated revenue pool to finance indigent health care through direct assessments on hospitals. All hospitals are assessed an annual 1.5 percent of their net operating revenues. These funds are matched by a state general revenue grant, and in part by federal Medicaid funds. For further discussion of this and other indigent health care financing options, see Perkins, Dallek, Dowell & Waxman, *State-based Financing of Indigent Health Care: Promise and Problems*, 20 CLEARINGHOUSE REV. 372 (Summer 1986).

76. 502 So. 2d at 1236 (Boyd, J., dissenting).