

February 1962

Torts--Private Hospitals--Liability For Refusal to Provide Emergency Treatment

John Templeton Kay

West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Medical Jurisprudence Commons](#), and the [Torts Commons](#)

Recommended Citation

John T. Kay, *Torts--Private Hospitals--Liability For Refusal to Provide Emergency Treatment*, 64 W. Va. L. Rev. (1962).

Available at: <https://researchrepository.wvu.edu/wvlr/vol64/iss2/10>

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

the evidence any facts to which it was applicable. It is within the discretion of the trial court to determine whether sufficient evidence has been adduced to support a theory propounded by the instruction. *Rowan & Co. v. Hull*, 55 W. Va. 335, 47 S.E. 92 (1904); 10 M.J. *Instructions* § 20 (1950).

The rule in West Virginia concerning an abstract instruction on contributory negligence, offered by the defendant, is that it does not constitute reversible error if it is a correct statement of the law, does not mislead the jury, and the theory it enunciates is supported by the evidence. The principal case reaffirms this view by disapproving the holding of the *Walker* case, thus eradicating any variance from our deep-rooted law on the doctrine of contributory negligence.

David Mayer Katz

Torts—Private Hospitals—Liability For Refusal to Provide Emergency Treatment

P's four month old child had been suffering from diarrhea. *P* knew that the child's physician was not in his office on Wednesdays, so they took the child to the emergency ward of *D* hospital for medical assistance. The nurse refused to give treatment because of the danger that the hospital's medication might conflict with that of the attending physician. The nurse did not examine the child, but the child was not in convulsions and was not crying or coughing. The child died later that afternoon. In an action for wrongful death the trial court refused *D*'s motion for summary judgment. *D* appealed. *Held*, affirming the trial court, that a private hospital maintaining an emergency ward is liable for refusal of medical care in case of an unmistakable emergency. *Wilmington Gen. Hosp. v. Manlove*, 174 A.2d 135 (Del. 1961).

The principal case represents a new concept in the liability of private hospitals. Formerly the courts held that a private hospital had no duty to accept anyone whom it did not desire. In other cases under similar circumstances, the courts have not even considered the duty to admit patients. In these cases liability hinged on whether the person had been admitted as a patient and then negligently discharged. The principal case, however, has broadened the range

of a private hospital's liability by holding it liable for refusing medical care in the case of an unmistakable emergency.

A private hospital is one founded and maintained by a private person or corporation, and one which the state or local government has no voice in management or in formation of its rules. *Hogan v. Hospital Co.*, 63 W. Va. 84, 99 S.E. 943 (1907). A private hospital is not converted into a public or quasi public hospital merely because it receives public funds or is exempt from taxation. *West Coast Hosp. v. Hoare*, 64 So. 2d 293 (Fla. 1953); *Levin v. Sinai Hosp.*, 186 Md. 174, 47 A.2d 298 (1946); *Akopiantz v. Board of County Comm'rs*, 65 N.M. 125, 333 P.2d 611 (1958).

Generally the courts of this country hold that a private hospital is liable for negligent injury to a patient after he has been admitted to the hospital for treatment, except where the private hospital is immune from tort liability because it is a charitable institution. *Meade v. St. Francis Hosp.*, 137 W. Va. 834, 74 S.E.2d 405 (1953); *Koehler v. Ohio Valley Gen. Hosp. Ass'n*, 137 W. Va. 674, 73 S.E.2d 673 (1952); *Jefferson Hosp. v. Van Lear*, 186 Va. 74, 41 S.E.2d 441 (1947). However, there have been few cases deciding the liability of a private hospital for refusing to admit a patient. Most of the cases deciding admission have considered the right of physicians and other professional personnel to practice in private hospitals. It was held in *Natale v. Sisters of Mercy of Council Bluffs*, 243 Iowa 582, 52 N.W.2d 701 (1952), that there is no absolute right in individuals to claim the benefit of a private hospital's privileges, even when the hospital receives government funds.

In *Birmingham Baptist Hosp. v. Crews*, 229 Ala. 398, 157 So. 224 (1934), a two year old child, suffering from diphtheria, was given emergency treatment but was refused admittance to the hospital because she had a contagious disease. The child died soon after she was taken home. The court denied recovery for wrongful death stating that a private hospital owes the public no duty to accept any patient not desired by it, and it is not necessary to assign any reason for its refusal to accept a patient for hospital service.

In *O'Neill v. Montefiore Hosp.*, 202 N.Y.S.2d 436 (App. Div. 1960), the hospital refused emergency treatment to the plaintiff, who was suffering from a heart attack, because his hospital plan was not recognized in that hospital. The plaintiff died after walking

several blocks back to his home. The court held that the hospital would be liable only if it had accepted the plaintiff as a patient and then negligently abandoned him. The court did not consider the hospital's duty to provide emergency treatment, even though the plaintiff was apparently suffering from a heart attack.

These cases are based on the theory that a private hospital has the right to make its own rules and regulations. Therefore, they have the right to refuse to admit anyone they choose. This rule is similar to the duty imposed upon a physician to care for any person who may request his services. A physician is not bound to render professional services to everyone who applies, and he is not liable for arbitrarily refusing to respond to a call or render treatment, even though he is the only physician available. *Agnew v. Park*, 172 Cal. App. 2d 756, 343 P.2d 118 (1958); *Buttersworth v. Swint*, 53 Ga. App. 602, 186 S.E. 770 (1936); *Hurley v. Eddington*, 156 Ind. 416, 59 N.E. 1058 (1901).

The rule in the principal case is not supported by any case. Rather the court advanced the theory that a hospital which has an emergency ward holds itself out to take care of emergency situations. When one applies for the use of these facilities and is refused, it is analagous to the negligent termination of gratuitous services which creates tort liability. RESTATEMENT, TORTS § 323 (1936). In such a case the injured person is in a worse condition than if he had not applied because of the time lost in a useless attempt to obtain medical aid. The scope of this rule, however, was limited to unmistakable emergencies. The court said it was a question of fact whether there was such an emergency, and that a hospital has no duty to keep a physician in the emergency ward at all times to determine when there is an unmistakable emergency.

There are no West Virginia cases deciding this question. However, even though the principal case is not supported by the cases in the area of private hospitals' liability, it seems to be in line with the modern trend of tort liability generally, which seems to be more lenient in granting recovery to plaintiffs when "justice," rather than established legal principles, dictates.

John Templeton Kay, Jr.