

### Trial Case 3

A 60 year old male was working on his computer one morning reading about new reimbursement and privacy and security regulations related to Telehealth. About 15 minutes into his work he begins to lose feeling in his left side. He attempts to get up from his desk, but collapses on the floor and is unable to get up. His wife, upon waking up finds him on the floor and calls 911. She is not sure how long he has been on the floor, since he is a very early riser and is having difficulty speaking.

The patient is rushed to the Ruralview Hospital Emergency Department. Upon arrival the patient is semi-conscious, with slurred speech. The Emergency Department staff quickly figures out that he cannot perform simple tasks with his left arm and he has a facial droop. His NIH Stroke scale value is estimated by the attending physician to be 10. The patient is sent immediately for a CT scan.

The attending physician calls Urbansprawl Hospital and asks for the Board Certified Vascular Neurologist on call. The two physicians begin the conversation of what to do with this patient given the estimated NIH stroke scale value and the verbal description of the patient's condition to the Neurologist. During the conversation the CT results become available and it appears that the patient is having an ischemic stroke. Both physicians and the patient's wife are unsure of the time the stroke began and the Neurologist isn't that comfortable with the ED physician's NIH assessment or the description of the case. As they continue to debate patient's condition and the treatment options, the patient symptoms worsen, he begins to have a seizure. tPA was not given because the consultation between the attending physician was already at 3 hours and no one was sure when the on-set of symptoms began. Over the next several days, his condition continues to deteriorate and he requires complete care. After a week in the hospital with no improvement, he is discharged to a skilled nursing facility where he will need to reside for the rest of his life. The patient remains non-verbal and unable to feed or assist with his own care.

During this case, the Neurologist was overheard by a nurse in the Ruralview Hospital to say.... "if I had only laid eyes on that patient at the beginning, I think we could have done more for this patient". This comment was relayed to the patient's wife.

The patient's wife decides to file a malpractice law suit due to the long term disability of her husband that may have been prevented or minimized if treated differently. During the legal proceedings the prosecuting attorney finds that both the Ruralview and Urbansprawl physicians had mobile phones with videoconferencing capabilities in their pockets during the consultation. However, those videoconferencing capabilities were not used. During the trial, the prosecuting attorney brings up the "if I had only laid eyes on the patient" comment and asks both the emergency room physician and the neurologist why they did not use the video tools they had at their disposal. Both physicians answered they didn't think the technology would meet the HIPAA requirements for privacy and security; and they did not want to violate the law.

During closing arguments, the prosecutor told the jury that "my client is permanently disabled and requires 24 hour nursing care for the rest of his life. It is entirely possible that he would be able to have a productive life style if the physicians had used the videoconferencing tools they had at their disposal so that the neurologist could see my client's condition in real time. Unfortunately, they chose not to do this because of a privacy and security regulation. So now we have to explain to his wife that the law prevented these physicians from doing the right thing – using the tools that could have allowed her husband to have a meaningful life." The prosecuting attorney closes by saying.... "How on earth do you justify this outcome to her?"