ings in such areas as nursing care, infection control, patient rights, and life safety will be provided on a comparative basis. Also available for comparison will be facilities' overall summary grid scores, which are the basis for accreditation decisions.

Healthcare organizations will be able to review and comment on the data in the Joint Commission performance reports prior to publication. Official survey reports will remain confidential.

Meanwhile, the Joint Commissions board recently approved plans to begin evaluating delivery networks by January 1994. In addition, the board decided to resume evaluating hospices and to ask hospitals to collect and provide data voluntarily next year for the Joint Commissions indicator monitoring system.

FROM: ***Trustee.*** Chicago, IL: American Hospital Association; July 1993.

Court Rules That Patient May Sue HIV-Infected Doctor for Emotional Distress

A California state appeals court, in reversing a lower court's decision, ruled that the fear of contracting AIDS (even without proof of contamination) constitutes a compensable injury, at least for the period between learning of the doctor's condition and receiving the patient's negative HIV test results. Setting out the limits for a "reasonable window of anxiety," the court added that the patient's claim became unreasonable and thus uncompensable once the patient had received reports that no exposure had occurred, received the negative HIV test results, and had the opportunity for counseling on the accuracy and reliability of the test methods and the remote possibility of seroconversion more than 18 months after exposure.

The case began in 1986 when a surgeon removed the fibroid uterus of one of his patients. In April 1988, the patient learned of the surgeon's condition after an announcement on a televised news broadcast. The broadcast was connected with an AIDS discrimination suit filed by the surgeon against his medical partners, who had refused to let him return to his surgical practice after recovering from an AIDS-related illness. The patient underwent an HIV test the next day and found out two weeks later that she was not HIV positive. Nonetheless, the patient subsequently sued for damages for emotional distress.

While noting that the majority trend among other state courts holds that emotional distress damages are unrecoverable without proof of actual exposure to the AIDS virus or if it is "substantially likely" the patient was not infected and will not contract AIDS, the court accepted that the patient's fear, at least initially, was a valid cause of action.

In light of this case, concern has been expressed that by taking action to terminate an HIV-infected physician, a medical group may expose itself to potential liability not only to the individual whose employment has been terminated, but also to members of the public who have been treated by that individual.

FROM: Kerins v. Hartley, California Court of Appeals, 2nd Appellate District, Div. 2, no. B 065917. July 30, 1993.

Physicians Liable for Taxes on Vaccine Inventories

President Clinton's new five-year federal budget includes amendments to the National Childhood Vaccine Injury Compensation Act. Besides creating a new immunization program for low-income children, amendments to the act reinstate the federal vaccine excise tax used to fund a compensation program for victims of adverse reactions from immunization. In effect since 1988 to address escalating liability concerns of drugmakers and providers, the tax lapsed late last year when former President Bush vetoed a bill that contained its renewal. Since January 1, vaccine manufacturers have not collected the tax.

The tax has been reinstated to previous levels: $4.56 per dose of diphtheria, pertussis, and tetanus vaccine; $4.44 for measles, mumps, and rubella vaccine; $0.29 for polio, and $0.06 for diphtheria and pertussis. It does not cover hepatitis B or *Haemophilus influenzae* type b vaccines because they were added to the childhood immunization schedule after the tax went into effect. The budget bill states that providers are liable for tax on vaccines they had in stock on August 10, 1993. The Internal Revenue Service has advised that the tax will be due by February 28, 1994, but has not offered any further details.

Once taxes on existing inventories are collected, the inconvenience for doctors should diminish because vaccine manufacturers will collect the tax on new shipments. But many doctors are unsure of how to handle the inventory problems. It may be easy to determine what was in stock on August 10 for those physicians who keep detailed records. However, this may be difficult for those physicians who do not keep detailed inventories.

Critics say that reinstatement of this tax is ludicrous because it adds to a $600-million fund for claims of adverse reactions from immunizations given after 1988, and the surplus is one of the reasons it was allowed to lapse. Even those who agree that funding should be reinstated say it could have resumed without taxing inventory.

This will create a nightmare for many states that

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