

The Liability Risk of Hospitals as a Target of Terrorism

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I. Introduction

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II. “Hospital = Target”

III. Potential Liability Exposure

IV. Hospitals’ Response to 9/11

V. Government Action

II. “Hospital = Target”

- Post 9/11
 - U.S. Government strengthens security infrastructure around government buildings, ports, military facilities and airlines/airports
 - What about soft targets??

II. “Hospital = Target”

- Soft Targets

- Person or thing that is relatively unprotected or vulnerable, especially to a military or terrorist attack
- More attractive to terrorists (significant casualties, economic/psychological damages)

II. “Hospital = Target”

- al-Qaeda and affiliated terrorist groups
 - Hotel/Restaurant in Morocco (May 2003)
 - Trains in Madrid (March 2004)
 - Subway/Bus Systems in London (July 2005)

II. “Hospital = Target”

- Hospitals as soft targets
 - Open to the public 24 hours a day, 7 days a week
 - “hospitals have been conditioned over the years to allow scores of people from all walks of life to enter these institutions unchallenged”
 - *Jeff Aldridge*
 - Health care providers and a vulnerable patient population

II. “Hospital = Target”

- U.S. Government acknowledgement of terrorism risk to hospitals:
 - “I think hospitals would be a very soft target.”
 - *Senator Richard Shelby*

II. “Hospital = Target”

- Highlighting the Risk to Hospitals:
 - November 2002: FBI issues an alert to hospitals in San Francisco, Houston, Chicago and Washington, D.C. warning of a vague, uncorroborated terrorist threat

II. “Hospital = Target”

- Highlighting the Risk to Hospitals (cont.):
 - August 2004: FBI and Homeland Security issue a nationwide terrorism bulletin that al-Qaeda may attempt to attack VA Hospitals throughout the U.S.

II. “Hospital = Target”

- Highlighting the Risk to Hospitals (cont.):
 - November 2005: Police in London arrest two suspected terrorists accused of plotting a bomb attack. One of the suspected terrorists was found to have a piece of paper with the words in Arabic, “Hospital = Target”

II. “Hospital = Target”

- Highlighting the Risk to Hospitals (cont.):
 - April 2005: FBI and DHS investigate incidents of imposters posing as hospital accreditation surveyors. JCAHO sends security alert to hospitals.

II. “Hospital = Target”

- Highlighting the Risk to Hospitals (cont.):
 - July 2007: Eight individuals, all of them either physicians or other medical professionals associated with Britain’s National Health Service, were taken into custody in relation to an attempted car-bomb attacks in London and a car-bomb attack at Glasgow Airport in Scotland.

III. Potential Liability Exposure

- Potential devastating consequences for a hospital which is the target of a terrorist attack
- Potential regulatory and civil liability for a hospital and its executives

III. Potential Liability Exposure

1. Regulatory Liability

(a) Medicare Conditions of Participation

- A hospital patient has the right to receive care in a safe setting (42 C.F.R. 482.13(c)(2))

III. Potential Liability Exposure

1. Regulatory Liability (cont.)

(b) State Patients' Bill of Rights/State Licensing Regulations

- “receive care in a safe environment”

III. Potential Liability Exposure

1. Regulatory Liability (cont.)

(c) JCAHO-Standard EC.2.10—requires a hospital to identify its security risks

- “it is essential that a hospital manages the physical and personal security of patients, staff (including the potential for violence to patients and staff in the workplace) and individuals coming to the hospital’s buildings.”
 - » *Rationale for EC.2.10, JCAHO Manual for Hospitals*

III. Potential Liability Exposure

2. Civil Liability

- A duty of hospitals to maintain a safe environment for their patients, staff and visitors
- Is a terrorist attack a foreseeable risk for hospitals?

III. Potential Liability Exposure

2. Civil Liability (cont.)

- 9/11 litigation
 - “While the specific acts of the terrorists were certainly horrific, I cannot find the WTC Defendants should be excused of all liability as a matter of policy and law on the record before me, especially given the plaintiffs’ allegations regarding the defendants’ knowledge of the possibility of terrorist acts, large-scale fires, and even airplane crashes at the World Trade Center.”
 - » *In re September 11 Litigation*, S.D.N.Y., No. 21 MC 97 (AKH), 9/9/03

III. Potential Liability Exposure

2. Civil Liability (cont.)

- 9/11 litigation
 - Lawsuits against the Port Authority claim, among other allegations, that they knew or should have known that the buildings were terrorist targets and that the buildings were inadequately protected against a potential attack.

III. Potential Liability Exposure

- Terrorist attack a foreseeable risk for hospitals in the post 9/11 era?

IV. Hospitals' Response to 9/11

- Since 9/11:
 - hospitals' focus = respond to a terrorist attack
 - Improve preparedness to enhance ability to respond to mass casualties and treat patients contaminated with nuclear, chemical or biological agents

IV. Hospitals' Response to 9/11

- Since 9/11:
 - Have hospitals done enough to prevent themselves from becoming a target for a terrorist attack?

IV. Hospitals' Response to 9/11

- Protective Measures for hospitals:
 - (1) A thorough review of Security/Risk Management Plans to assess the threat of a terrorist attack (including a vulnerability assessment and possible preventative actions)

IV. Hospitals' Response to 9/11

- Protective Measures for hospitals (cont.):
 - (2) Update policies and procedures to set forth how to respond to a possible terrorist attack

IV. Hospitals' Response to 9/11

- Protective Measures for hospitals (cont.):
 - (3) Increase awareness by staff of the threat of terrorism and the policies and procedures in place to respond to a possible terrorist attack

IV. Hospitals' Response to 9/11

- Protective Measures for hospitals (cont.):
 - (4) Collaborate with area hospitals and hospital associations to address the threat of a terrorist attack and how to minimize the threat and respond to a possible terrorist attack

IV. Hospitals' Response to 9/11

- Protective Measures for hospitals (cont.):
 - (5) Cooperate with local, state and federal officials to increase communication regarding the threat of a terrorist attack and the funding needed to prevent such an attack

IV. Hospitals' Response to 9/11

- Protective Measures for hospitals (cont.):
 - (6) Form an ad hoc committee to address all of these protective measures. The committee should, at the very least, consist of individuals from risk management, security, operations, facilities, ED and general counsel's office.

V. Government Action

- Need for the Federal Government to provide hospitals with the funding required to prevent a terrorist attack
- 2005, 2006 and 2007 Homeland Security spending bills included federal funding for security enhancements for high-risk not-for-profit organizations, such as hospitals

V. Government Action

- Department of Homeland Security “Soft Targets Awareness Courses”
 - Addresses hospitals and medical facilities

V. Government Action

- Terrorists entering the U.S. as physicians
- Continued collaboration is necessary between U.S. Department of State, Department of Homeland Security, Bureau of Citizenship and Immigration Services, and the Educational Commission for Foreign Medical Graduates

Questions??