

## Agency Nurses: Court Says The Client, Not The Agency, Is Liable For Wrongful Conduct.

While giving an enema the nurses abused the patient. The nurses were agency nurses who filled in regularly at the hospital to cover day-to-day staff shortages.

The patient sued the hospital and the nursing agency. The Court of Appeals of Arizona did not seem to question that there were grounds for a lawsuit against someone over what happened to the patient. However, there was a legitimate question raised by the nursing agency whether it was liable to the patient.

The court sided with the nursing agency and let it out of the lawsuit.

### Employer's Legal Liability

The general rule is that employers are legally liable for their employees' wrongful conduct. The rationale is that when one person is acting on behalf of another, the other should bear responsibility for what goes wrong. When one person supervises and controls or has the right to supervise and control another, that person is responsible for what the other does.

### Right of Control

The nursing agency in this case had no practical or even theoretical right to control how its nurses carried out their clinical responsibilities.

There was an ongoing relationship where the same nurses often came from the same agency to the same hospital units. Nursing supervisors could tell the agency whom to send, and whom not to send if there had been a problem.

The agency wrote up evaluations of its nurses, but it was based entirely on what the agency was told by client facilities.

### Nursing Agency's Responsibility

A nursing agency must ensure that its nurses are licensed and must stand behind what the agency represents to the client in terms of a nurse's education, experience, certifications, etc. Beyond that, the client institution, not the agency, is on the line if a patient decides to sue. **Ruelas v. Staff Builders Personnel Services, Inc.**, 18 P. 3d 138 (Ariz. App., 2001).

***Agency nurses are employees of the nursing agency.***

***In legal terminology the nursing agency lends its employees to the general employer. Agency nurses are considered lent employees.***

***The medical facility is the general employer.***

***If the general employer controls or has the legal right to control another employer's employees who have been lent to the general employer, the general employer is legally responsible for their wrongful conduct, and the employer who lent them to the general employer is not.***

***A nursing agency is not legally liable for wrongful conduct of its nurses on the job, if the client hospital has full control over how the agency's nurses do their jobs.***

***This is an exception to the general rule that employers are legally responsible for their employees' wrongful acts.***

***The basic legal principle is that control or the right of control over another person makes one responsible for the other person's conduct.***

COURT OF APPEALS OF ARIZONA, 2001.

## Patient's Fall: Court Sees Malpractice As The Issue.

The patient was in the hospital participating in rehabilitation after a stroke. He was partially paralyzed.

A staff nurse responsible for his care assisted him to a bedside commode, then left the room to give the patient some privacy. He started convulsing and fell off the commode. His injuries were not specified in the court record. He sued the hospital and the nurse for negligence.

***The patient's lawsuit alleged ordinary negligence.***

***However, the court saw the issue as professional malpractice.***

***The issue was whether the nurse properly assessed the patient's condition and made a competent professional judgement to leave the patient on the bedside commode and step out of the room to give the patient some privacy.***

***Unless the patient offers proof the nurse was guilty of malpractice the court has to dismiss the case.***

NEW YORK SUPREME COURT,  
APPELLATE DIVISION, 2001.

The New York Supreme Court, Appellate Division, dismissed the case. There was no evidence the nurse committed professional malpractice.

A professional malpractice lawsuit is harder for a patient to win than a case of ordinary negligence, the court pointed out. A nurse's assessment of a patient's capacities and need for assistance is a professional judgment, the court ruled. **Harrington v. St. Mary's Hospital**, 720 N.Y.S.2d 693 (N.Y. App., 2001).