

Student Nurse/Instructor: Court Discusses Host Hospital's Legal Liability.

A former hospital patient sued the hospital for negligence in the administration of one or more intramuscular injections of Demerol and Vistaril.

The injections were given by a student nurse under the direct supervision of her nursing instructor from her community college nursing program.

The patient alleged the student nurse was also under the direct supervision of an unnamed hospital staff nurse but later withdrew that allegation from his lawsuit.

The alleged error or omission by the student nurse was incorrect placement of the needle which punctured the sciatic nerve.

Hospital's Defense Not Hospital Employees

As a general rule persons and corporations are liable for the negligent errors and omissions of their employees whom they supervise and control but are not liable for errors or omissions of non-employee independent contractors over whom they have no right of control and do not control.

The patient's lawsuit was initially dismissed on the grounds the patient could not prove the student nurse and her instructor were hospital employees.

Expanded Definition of Hospital's Agent

The Court of Appeals of Ohio reversed the dismissal and reinstated the patient's lawsuit against the hospital.

In a patient-care setting the patient's expectations when seeking care are more important than strict legal technicalities.

Patients seeking care from a particular institution assume the care they will receive in the institution is provided by the institution. The institution cannot claim after the fact that independent outsiders provided such care. The patient's lawsuit will succeed, the court ruled, if the patient can show his expectations were to receive care only from agents of the hospital. Lovett v. Lorain Community Hosp., 2004 Ohio 598, ___ N.E. 2d ___, 2004 WL 239927 (Ohio App., February 11, 2004).

It is wrong for a court to throw out a patient's negligence lawsuit against a hospital for the errors or omissions of a student nurse and/or the student's nursing instructor on the grounds that neither was a hospital employee.

The important factor is to look for the patient's expectations when entering the hospital for medical care.

The patient looks to the hospital itself for the medical care he or she will receive while in the hospital.

The patient expects that all medical care provided in the hospital is being provided by the hospital rather than outside parties who are independent contractors with no direct connection to the hospital.

The patient most likely sees all hospital caregivers as agents of the hospital.

Unless the patient has been specifically informed and has agreed to accept care in the hospital from persons who are not directly associated with the hospital, all the patient's caregivers will be considered hospital agents for legal purposes.

COURT OF APPEALS OF OHIO
February 11, 2004

Home Health: Court Rejects Physician As Expert On Nursing Care.

The patient filed suit against her home health nursing agency for negligent IV antibiotic therapy at home after discharge from the hospital.

The IV antibiotic gentamicin was started at the hospital on orders from a physician at the hospital.

The physician's report fails to specify his qualifications to state the legal standard of care for nurses monitoring a patient in a home healthcare setting.

He stated what should have been done differently and why, but he did not differentiate between what the hospital did wrong and the home health nurses did wrong or state how the home health nurses are responsible for the patient's injury.

COURT OF APPEALS OF TEXAS
February 10, 2004

The Court of Appeals of Texas ruled it unfair to blame the home health nurses based on a physician's generalized statement of the risks of IV's and prolonged use of a potentially neurotoxic antibiotic.

The case was dismissed because the patient's physician/expert failed to state the specific standard of care for home health nurses continuing IV therapy through a port started at the hospital and how these home health nurses violated that standard. Jones v. Ark-La-Tex Visiting Nurses, Inc., ___ S.W. 3d ___, 2004 WL 235075 (Tex. App., February 10, 2004).