

Who Can Be Named in a Suit?

Avoiding Liability Bulletin - January 1, 2012

In the last Professional Liability Bulletin, a case adapted from Galvez v. Loma Linda University Medical Center was presented. Several issues were listed for you to think about and respond to at the end of the Bulletin. To date, I have not received any comments from you, so I decided to share some of my comments for you to consider. I would still be interested in hearing from you about this case and the issues it presents.

In this Bulletin, the first two questions raised about Nurse Jones will be explored. Would you want her named as a defendant in the suit? (along with your rationale for naming her or not naming her), and, Did she meet the applicable standard of care for CCU nurses in the same or similar community in the same or similar circumstances?

The issue of who gets named in a suit is based on many factors. One factor is there is no limit to the number of individuals or entities that can be named in a law suit. Another factor is those who are named as defendants must be “necessary parties” to the suit. The circumstances surrounding the injury to the plaintiff must be also taken into consideration. And, it is the plaintiff—in this case, Mr. Smith—who determines who will be named as a defendant in a lawsuit.

Remember that it is almost always possible to name a health care facility in a suit whether or not the employee(s) is named individually due to the theory of respondeat superior discussed in the first Bulletin. Because Nurse Jones is an employee, is providing care based on facility policies and procedures, and was providing care while on her tour of duty, she carries the vicarious liability of the hospital on her shoulders.

Mr. Smith, then, can sue AMC Hospital because of the professional negligence of one of its nurses, Nurse Jones. Nurse Jones will testify about her care of Mr. Smith and that testimony, coupled with the opinions of the nurse experts, will guide the jury to decide if the care was negligent. If so, liability would be “transferred” to the hospital and Mr. Smith could win his case. Mr. Smith could also name Nurse Jones “individually and as an employee of ABC Hospital”. Should she be named as a defendant along with the hospital? Clearly, she is a “necessary party”.

Moreover, there may be some controversy between the hospital and Nurse Jones about her care in this situation. As examples, did she follow hospital policy? Was the policy adequate? Had she been written up for not following patient care policies for CCU patients in the past? Is she certified as a CCU nurse? Should she be?

The answers to these, and other questions, lean toward naming her as a defendant along with the hospital because if the hospital can try and place some or all of the liability onto Nurse Jones individually, it may be found not to be 100% vicariously liable for Mr. Smith’s injuries.

The second question of Nurse Jones' meeting the applicable standard of care is central to the legal issue of liability for both the hospital and for Nurse Jones and is also central to whether or not to name her as a defendant. Remember that nurse experts—one for Nurse Jones and one for Mr. Smith-- would testify as to what the standard of care is in this situation.

What does the applicable standard of care for a CCU nurse include in this or similar circumstances in the same or similar community?

Take a look at the American Association of Critical Care Nurses' publication, Scope and Standards For Acute and Critical Care Nursing (2008) (1) and make your decision.

Let me know what you think. To paraphrase Frasier, in the TV comedy series, Frasier, "I'll be listening".

FOOTNOTES

(1) The Scope and Standards publication is available at www.aacn.org. Click on the "Standards" link on the home page and scroll down the list to reach this publication. Accessed 12/28/11.

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