BY S.Y. TAN, M.D., J.D.

LAW & MEDICINE

Liability of Supervising Physicians

Question: A medical resident in the emergency department administered gentamicin to a renal patient, but failed to adjust the antibiotic dose. He had not consulted the supervising attending physician, who was on call from home. In a lawsuit for this medical error, which of the following is best?

A. Unsupervised or poorly supervised house-staff officers increase the risk of medical negligence.

B. Unless it can be shown that medical error caused patient injury, the health care providers will win this lawsuit.

C. Under tort law, a trainee is judged by much the same standard as that of a fully qualified doctor.

D. The attending physician is generally liable for resident malpractice under the doctrine of vicarious liability.

E. All are correct.

Answer: E. A review found that in 200 consecutive malpractice cases involving residents working in the emergency department, 64 cases (32%) "were attributable to house officers apparently functioning in a nonsupervised capacity, or to residents on rotation from specialty training or moonlighting in an unsupervised capacity" (Ann. Emerg. Med. 1984;13:709-11). Malpractice liability accrues only when patient injury is proximately caused by the negligence of tortfeasors, and medical residents are generally held to the same standard of care as a qualified doctor ("House Staff Liability," Law & Medicine, June 15, 2010, p. 52). Attending physicians are directly liable for their own negligence, as well as vicariously liable for residents' actions because of their supervisory role, although some authors have considered failure to supervise a form of direct rather than vicarious liability (JAMA 2004;292:1051-6). Some courts have viewed the attending physician as the captain of the ship and the resident as a borrowed servant who has been "loaned" to the physician in charge of the case (JAMA 1970;213:181-2).

In *Rockwell v. Stone,* an anesthesiology resident missed the patient's vein when he tried to inject sodium thiopental. The intra-arterial or extravasated injection (which one happened was unclear) of this induction agent led to arterial vasospasm and thrombosis, irreversibly compromising the blood supply to the patient's arm and eventually necessitating amputation. The chief of anesthesiology, who was the resident's supervisor, was found vicariously liable for the resident's negligence (173 A.2d 48 [Pa. Super. 1961]).

In another case, an ob.gyn. resident performed a tubal ligation, but the patient subsequently became pregnant and underwent a therapeutic abortion, followed by a hysterectomy. The court decided that "even though the surgical procedure was actually performed by a resident, the attending physician and hospital were under a duty to see that it was performed properly. It is their skill and training as specialists which fit them for that task, and their advanced learning which enables them to judge the competency of the resident's performance" (*McCullough v. Hutzel Hospital,* 276 N.W.2d 569 [Mich. App. 1979]).

What about the liability of the on-call attending physician who customarily takes calls from home, and may not have previously met the patient? Although there is a duty to supervise the trainee(s), the on-call status alone may not be enough to create a doctor-patient relationship. Decisions are mixed on this point. One court dismissed a negligence claim for failure to supervise two emergency department residents in the treatment of a young girl who died with undiagnosed chicken pox pneumonia (*Prosise v. Foster,* 544 S.E.2d 331 [Va. 2001]). Yet an on-call agreement was sufficient for another court to impose a doctor-patient relationship upon the supervising attending, with concomitant duty of due care to the patient. That case involved mismanagement of labor that resulted in serious neurologic injury to the newborn (*Lownsbury v. VanBuren,* 762 N.E.2d 354 [Ohio 2001]).

Mealtime therapy can fit into cubicle #8.

Humalog® KwikPen™, part of the Humalog® approach, is designed to help fit mealtime therapy into your patient's life. It's small, doesn't need refrigeration after the first use, and can be used almost anywhere. To find out more, go to www.Humalog.com or see your Lilly sales representative.

Humalog is for use in patients with diabetes mellitus for the control of hyperglycemia. Hypoglycemia is the most common adverse effect associated with insulins, including Humalog.

For complete safety profile, please see Important Safety Information and Brief Summary of full Prescribing Information on adjacent pages.

Please see full user manual that accompanies the pen.

Humalog® KwikPen™
insulin lispro injection (rDNA origin)

A supervisor may not be liable when the trainee was performing tasks that he or she is reasonably expected to know. In *Richardson v. Denneen,* the surgical attending asked the resident to finish suturing and dressing an incision before leaving the operating room. The resident applied phenol instead of alcohol to the skin, with subsequent injury. The court found that it was proper practice for an attending to leave the operating room while the resident sutured the skin—a simple task (82 N.Y.S.2d 623 [N.Y. Super. 1947]).

In another case, a neurology resident failed to respond to calls from the recovery-room nurses who had noticed that the patient was displaying decreased movement of the extremities. As a result of the delay, the patient eventually expired from a blood clot that had compressed the spinal cord. The resident was found liable for negligent care ("The proper medical standard is to evacuate the blood clot as quickly as possible. … That is something that you are told in the first 2 weeks of your training"). However, the supervising neurosurgeon escaped liability, as the resident had not informed him of the clinical findings, and thus he could not have prevented the mishap (*Parmelee v. Kline,* 579 So.2d 1008 [La. App. 1991]).

Finally, the hospital may be vicariously liable for a resident's negligence through the doctrine of respondeat superior if the resident is deemed an employee of the hospital. Whether residents are considered employees or students with respect to the hospital is debatable. The National Labor Relations Board, the Internal Revenue Service, and state courts are at odds over the definition. Although trainees clearly have an educational purpose in their work, courts have frequently ruled that they are hospital employees for purposes of ascertaining vicarious liability. ■

DR. TAN *is professor of medicine and former adjunct professor of law at the University of Hawaii, Honolulu. This article is meant to be educational and does not constitute medical, ethical, or legal advice. It is adapted from the author's book, "Medical Malpractice: Understanding the Law, Managing the Risk" (2006). For additional information, readers may contact the author at siang@hawaii.edu.*

Indication

Humalog (insulin lispro injection [rDNA origin]) is for use in patients with diabetes mellitus for the control of hyperglycemia. Humalog should be used with longer-acting insulin, except when used in combination with sulfonylureas in patients with type 2 diabetes.

Important Safety Information

Humalog is contraindicated during episodes of hypoglycemia and in patients sensitive to Humalog or one of its excipients.

Humalog differs from regular human insulin by its rapid onset of action as well as a shorter duration of action. Therefore, when used as a mealtime insulin, Humalog should be given within 15 minutes before or immediately after a meal.

Due to the short duration of action of Humalog, patients with type 1 diabetes also require a longer-acting insulin to maintain glucose control (except when using an insulin pump). Glucose monitoring is recommended for all patients with diabetes.

The safety and effectiveness of Humalog in patients less than 3 years of age have not been established. There are no adequate and well-controlled clinical studies of the use of Humalog in pregnant or nursing women.

Starting or changing insulin therapy should be done cautiously and only under medical supervision.

Hypoglycemia

Hypoglycemia is the most common adverse effect associated with insulins, including Humalog. Hypoglycemia can happen suddenly, and symptoms may be different for each person and may change from time to time. Severe hypoglycemia can cause seizures and may be life-threatening.

Other Side Effects

Other potential side effects associated with the use of insulins include: hypokalemia, weight gain, lipodystrophy, and hypersensitivity. Systemic allergy is less common, but may be life-threatening. Because of the difference in action of Humalog, care should be taken in patients in whom hypoglycemia or hypokalemia may be clinically relevant (eg, those who are fasting, have autonomic neuropathy or renal impairment, are using potassium-lowering drugs, or taking drugs sensitive to serum potassium level).

For additional safety profile and other important prescribing considerations, see accompanying Brief Summary of full Prescribing Information.

Please see full user manual that accompanies the pen.

Humalog® is a registered trademark of Eli Lilly and Company and is available by prescription only.
Humalog® KwikPen™ is a trademark of Eli Lilly and Company and is available by prescription only.

insulin lispro injection (rDNA origin)

HI62001 0110 PRINTED IN USA ©2010, LILLY USA, LLC. ALL RIGHTS RESERVED.

Lilly