

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).



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

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, fol-

lowed 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 (*Prosis 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]).

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]).

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.

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