

Legal aspects of health care

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In determining the liability of the parties, it is necessary that the following be first established by the claimant: a) duty; b) breach of duty; c) causation; d) injury. ("Tort" p. 1) It is clear that once a patient enters the premises of the hospital, an implied contract is thereby created and the hospital is under obligation to attend to the needs of the patient with due care and diligence. This duty was however breached when the hospital employees failed to provide immediate attention to the patient's needs despite the urgency and immediacy of the situation.

It is also clear that the delay of more than one hour from the time the patient was admitted to the hospital despite the finding that the patient needed to undergo immediate surgery is a breach of that duty of care. There is also a proximate cause between the breach and the injury suffered by the patient, which is partial paralysis of his hands. The question left to be determined is who is responsible for the damage suffered. In this case, the nurse committed a breach of her duty of care and was negligent.

Instead of giving immediate medical attention to the patient, the nurse decided to first determine if the patient is covered by insurance. The surgeon also committed a breach of his duty of care and due diligence to patient. The medical profession is founded on the duty of due diligence which doctors owe to their patients. In this case, despite the finding of the need for immediate surgery the surgeon merely proceeded to his way without even referring the patient to other doctors who are on duty and who are not on break.

The x-ray technologist was likewise negligent when he failed to deliver the x-rays to the radiologist for examination despite the urgency of the situation. The fact that there are other patients in the hospital is not an excuse since every hospital is required by law to have an adequate number of medical personnel to attend to the needs of all its patients. Finding that the hospital employees are negligent, the City General Hospital itself cannot escape its liability. Hospitals can no longer escape their liability under the doctrine of charitable immunity. Karen A. Dean, 1999 p. 1) Under the doctrine of respondeat superior, the negligence of its employees is imputed to them because they are the ones who have control and supervision of their employees.

The fact that the hospital is not negligent is not a defense so long as it can be proven that its employees were negligent. Further the recent trend in the new cases is that it is no longer a defense that there is no employer-employee relationship between the physician or the x-ray technician or the nurse to escape its liability (Gene A. Blumenreich p.) The immunity from liability of hospitals is being restricted by the recent cases. The 1992 case of *Uhr vs. Lutheran General Hospital* (226 Ill. App. 3d 236, 589 N. E. 2d 723) confirms that a hospital may be held liable for the negligent acts of an independent contractor. Consider also the 1993 case of *Gilbert v. Sycamore Community Hospital* where the Illinois Supreme Court abrogated the common-law immunity of hospitals for Independent Contractor negligence (156 Ill. 2d 511, 622 N. E. 2d 788) *ib. Yes*. The Emergency Medical Treatment and Active Labor Act (EMTALA) applies in this case.

The law imposes upon hospitals the obligation to provide medical screening examination to determine whether an emergency medical condition exists. This medical screening examination must be conducted regardless of the Medicare status, insurance coverage or the ability to pay of the patient. (Daris McNelice p. 1) The failure to discharge this obligation renders the hospital liable for civil damages to the injury that the patient may suffer. In this case, the nurse who attended the patient when he arrived for treatment did not immediately conduct medical screening examination to determine the patient's condition.

The act of the nurse in providing the patient with a towel was far short of the obligation required by law. Instead the nurse made an inquiry whether the patient is covered by insurance. Though the law does not prohibit the hospital from inquiring into the ability to pay of the patient, it does require that this inquiry should not delay the conduct of the medical screening examination. The purpose of the law is clear which is to protect against discrimination against patients. This was violated in this case.

The patient was lucky that he bumped into a surgeon who determined that he is in a serious medical condition. Despite this however, the hospital still failed to provide proper medical attention to the patient despite the finding that an emergency medical condition exists. Because of the hospital's failure to comply with the provisions of the said law it may be held liable for damages. 2. The liability for negligence of the nurse, surgeon and the x-ray technologist is distinct and separate. Their liability is independent of each other.

It is not a defense in tort cases that the negligence of one is superior to another. The only determining point is that there was a breach of duty committed by these hospital employees and that this breach was the proximate cause of the injury of the patient. As such, the patient who was injured may hold them liable together with the hospital in one suit. However, ordinarily the patients only file suit for damages against the hospital. In case he is able to recover, the hospital has the option of filing claims against these negligent employees who are solidarily liable for their negligence to the hospital.