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Introduction

In this country, it is estimated that more than 1 billion venipunctures or blood drawings are performed by phlebotomists each year. According to Ogden-Grable (2005), phlebotomy errors can cause serious harm to patients; up to and including death, either directly or indirectly. Therefore it is vital to establish, implement, and practice quality control which can help in preventing the number of errors made in this area of clinical service. I

conducted my research on the Maryland state appellate case between the Board of Trustees, Community College of Baltimore County and Patient First Corporation.

The Court of Special Appeals of Maryland reviewed the case on August 29, 2014 which involved a student phlebotomist's negligence during a routine blood drawing of a six year old child. Being that I am a mother of two young children, this case really hit home for me because every year I take them for annual check-ups, vaccinations, and blood work. It really opened my eyes to see some of the possible risks that can arise during a simple blood drawing. Our Pediatrician often utilizes students from local colleges and universities to assist her with patients both independently or with limited supervision. The healthcare field requires hands-on experience, but it should be carefully monitored to prevent accidents.

The care of children should never be put in jeopardy due to negligence or lack of properly trained healthcare workers. The appellate case between Patient First Corporation (" Patient First") and the Board of Trustees of the Community College of Baltimore County (" CCBC") involved an agreement in which Patient First allowed CCBC venipuncture students to work at Patient

First centers in the Baltimore area in order to gain “ supervised clinical experience.” The agreement between the parties was drafted by CCBC and contained a section entitled “ Indemnification,” which stated that CCBC would indemnify Patient First for any liability arising from negligent acts of CCBC students. The pertinent part of the Agreement is as follows:

7. 1 [CCBC] will defend, indemnify, and hold [Patient First] harmless from any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorneys’ fees) which arise out of the negligent acts or omissions of [CCBC], its agents, employees, or Venipuncture Students in connection with this Agreement. . . . The obligations of [CCBC] under this subparagraph 7. 1 are subject to and limited by its liability under Section 5-301 et [s]eq. [a]nd 5-519, Courts and Judicial Proceedings, Annotated Code of Maryland, as amended.

It is further understood and agreed that [CCBC] is not waiving or relinquishing in any manner any defenses that may be available to [CCBC] including, but not limited to, government sovereign immunity or breach of contract or otherwise, nor is [CCBC] relinquishing any defenses that may become available to it at any time during the term of this Agreement, but that [CCBC] is free to assert all defenses that may be available to it at law or in equity.

According to the Merriam-Webster dictionary, indemnify is to protect someone by promising to pay for the cost of possible future damage, loss or injury. The terms of the agreement held CCBC financially responsible for any negligent actions of their venipuncture students and required them to

indemnify or reimburse Patient First for any expenses incurred as a result of claims, damages, losses, and or injury caused by their students. Background

On January 13, 2007, a CCBC student phlebotomist working at a Patient First clinic accidentally stuck herself with a needle and then proceeded to withdraw blood from a six year old child using the same contaminated needle exposing the child to unknown possible diseases. The student phlebotomist later tested positive for the disease Hepatitis C. Subsequently the child was tested for a whole year and fortunately never tested positive for the highly contagious disease. As a result of the student's negligent actions, on December 14, 2009, the child's mother filed a lawsuit against Patient First, Patient First affiliates, and the student phlebotomist. The complaint specifically asserted that the student " acted as an actual and/or apparent agent, servant, and employee of Patient First. It further stated that the defendants, including both Patient First and the student, owed a duty of care, which included " the performance of a simple blood draw without injury and protection of the plaintiff from contaminated needles" (Graham, 2014).

On March 16, 2011, the parties' settled on an agreement, in which Patient First agreed to pay \$10, 000 toward the \$50, 000 requested in the lawsuit. In accordance with the Agreement, Patient First demanded CCBC to indemnify them for the student's negligent actions. CCBC refused Patient First's request for indemnification which resulted in Patient First filing suit against them for breach of contract. Patient First's lawsuit petitioned the court for CCBC to reimburse them in the amount of \$88, 937. 39 in damages consisting of the \$10, 000 settlement payment and \$78, 937. 39 in costs and attorneys' fees. In CCBC's answer to the complaint, CCBC admitted that the <https://assignbuster.com/appellate-opinion-research-project-essay-sample/>

student was negligent but asserted that “ the contract does not indemnify (Patient First) against its own negligence” and “ to construe the contract to indemnify (Patient First) for its own negligence would violate public policy (Graham, 2014).”

CCBC’s position was that the Agreement stated that the students would work as phlebotomists under “ supervised clinical experience” and that Patient First failed to provide adequate supervision to the student who was found negligent. After hearing testimony from both parties’, the circuit court determined that the experts who offered opinions about the Patient First clinic all had vaguely different views of what supervision was required of the phlebotomy students. The lower court agreed with Patient First in finding that in order to determine whether Patient First breached the appropriate standard of care, “ some expertise” was required because it was not apparent in the Agreement. Because the court did not know the applicable standard of care it could not “ independently determine whether Patient First breached it.” Therefore the lower court concluded that liability was established based upon the breach by the student herself but questioned whether the evidence presented was sufficient enough to show breach by Patient First. Accordingly, the circuit court awarded Patient First \$87, 097. 08 in damages which included \$10, 000 paid in the settlement and \$77, 097. 08 for attorneys’ fees and costs. Issues

CCBC disagreed with the lower court’s ruling and filed an appeal to have the case further reviewed. In the appellate case, the Court of Special Appeals of Maryland was asked to determine two issues (1) whether the circuit court erred in finding that the indemnification provision of an agreement required

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CCBC to indemnify Patient First for its defense of the negligence action; and (2) whether the circuit court abused its discretion in allowing testimony regarding the reasonableness of Patient First's attorneys' fees, and in awarding attorneys' fees based on that testimony. After reviewing the record, the Honorable Judge Kathryn Grill Graef affirmed the decision of the lower court in favor of the appellee, Patient First.

In analyzing the first issue, the appellate court was asked to establish whether the circuit court did make a mistake in determining that the indemnification provision of the Agreement required CCBC to indemnify Patient First for defense of its own negligence. CCBC asserted that Patient First could only recover losses for its own negligence if the Agreement clearly stated it in which their agreement did not. Generally when there is an absence of indubitable language, there is a presumption against indemnification for a service provider's own negligence. Patient First contended that the circuit court ruled in their favor for two very important reasons. Firstly they believed in order to determine if the issue of whether the presumption against indemnification applied, CCBC had to first prove Patient First was indeed negligent. Secondly even if CCBC did prove that Patient first was negligent the language used in the Agreement was sufficient to show that it applied only to the provider's or CCBC's own negligence.

CCBC never disputed that the student phlebotomist was negligent and under the plain language of the Agreement, CCBC would be required to indemnify Patient First for the student's negligence. However, CCBC argued that there is an exception to this requirement due to its assertion that Patient First was

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negligent in its supervision of the student and the general rule is “ contracts will not be construed to indemnify a person against his own negligence unless an intention so to do is expressed in those very words or in other unequivocal terms” (Kreter v. Healthstar, Inc., 172 Md. App. 243, 254(2007)). Nonetheless, the contract did not contain language that CCBC would indemnify Patient First for its own negligence therefore the court must further determine if Patient First was in fact negligent and who had the burden to prove the negligence or lack of negligence thereof. Because there does not appear to be a Maryland case directly addressing this issue, other courts have and hold that the party seeking to deny payments on the ground that the indemnitee or Patient First was negligent, the indemnitor or CCBC must be able to prove the affirmative defense.

The appellate court agreed with this analysis and upheld that CCBC, the indemnitor, seeking to avoid payment under an indemnity agreement, has the burden to prove that Patient First, the indemnitee’s negligence.

Accordingly the circuit court focused on whether CCBC established that Patient First was in fact negligent. The court found that CCBC failed to show that Patient First was negligent and that there was not a meeting of the minds regarding the supervision requirement. “ CCBC’s argument.... is that there was a failure to supervise.... and for me to then figure out what is the standard of care in that context and whether it was breached...requires something other than individual people’s opinions on what it should be.... It required some expertise because its not something that’s apparent on its face..... I don’t know what the standard is and, therefore, I can’t independently determine whether Patient First breached it” (Graham, 2014).

In general, expert testimony is required to establish a professional standard of care for a negligence claim, unless negligence is obviously proven.

According to one case study, the party alleging negligence, “ bears the burden of overcoming the presumption that due skill and care were used” (Crockett v Crother, 264 Md. 222, 224 (1972)). Without a jury finding Patient First negligent, or any other evidence of Patient First’s negligence, the circuit court properly found that CCBC was required to indemnify Patient First for its losses. The next issue the court reviewed asked the following question “ Did the circuit court abuse its discretion in allowing testimony regarding the reasonableness of Patient First’s attorneys’ fees, and in awarding attorneys’ fees based on the testimony?” As a rule when there is an award of attorneys’ fees, the losing party has a right to have that amount of fees and expenses proven with assurance and under standards normally applicable for proof of contractual damages.

CCBC contended that the circuit court abused its discretion in allowing Mr. McCoy, Patient First’ Counsel to testify about the reasonableness of the Hancock firm’s fees and it erred in awarding \$77, 097. 08 in attorneys’ fees based on deficient testimony. CCBC asserted that Mr. McCoy was not identified nor qualified as an expert, but the court allowed him to express an opinion as to whether the bill was reasonable. CCBC alleged that Mr. McCoy’s testimony was insufficient to prove that Patient First was entitled to attorneys’ fees where there was no testimony regarding the reasonableness of the rates charged or the work done. According to the plain language of the Agreement, Patient First was indeed entitled to indemnification for its attorneys’ fees. The indemnification language contained in Paragraph 7. 1 of

the Agreement expressly provided that CCBC “ will defend, indemnify, and hold [Patient First] harmless from any and all losses, claims, liabilities, damages, costs, and expenses (including reasonable attorneys’ fees)” for claims that arise out of negligence of a CCBC student(Graham, 2014).

However, Patient First believed that Mr. McCoy was in deed competent to testify to the reasonableness of the fees and that the trial court did not make a misjudgment in awarding them attorneys’ fees. In fact, Patient First contended that they provided sufficient testimony as well as documentation for the court to evaluate the reasonableness of the fees. Accordingly, the party seeking fees bears the burden to provide the evidence necessary for the fact finder to evaluate to decide the reasonableness of the fees requested. In addition, a circuit court’s determination regarding the reasonableness of attorneys’ fees is a factual determination within the sound discretion of the court and will not be overturned unless it is clearly erroneous. Patient First provided detailed billing statements from the Hancock Firm that was admitted into evidence. The statements provided a breakdown of the charges incurred in responding to the lawsuit.

The itemization included the date, the amount of time, the attorney, the attorney’s rate, and a description of the task for each task completed in connection with the lawsuit. Additionally Mr. McCoy testified in his experience as General Counsel for Patient First that the fees charged were reasonable. Consequently the appellate court upheld the lower court’s ruling and found there was no abuse of discretion in the circuit courts findings that Patient First attorneys’ fees were reasonable and the court did not err in awarding these fees as damages against CCBC. Relative Course Objectives

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There are two course objectives that relate to the details of the appellate case. Course objective six recognizes the different types of authorities and identifies situations in which a principal will be bound by the acts of its agent. During this course we learned about the agency relationship which involves the principal, agent, and third party. An agent's ability to transact business for a principal depends on the scope of authority given to him/her. This can be determined orally or by written consent of the principal, the principal's conduct, or by the business for which the agent is employed. An agent can possess various types of authority such as actual, implied, apparent, or necessity (emergency) authority. In relating the appellate case to the course objective, the complaint filed by the child's mother asserted that the phlebotomist "acted as an actual and or apparent agent, servant and employer of" Patient First (CCBC v Patient First).

This allowed the plaintiff or mother to take legal action against the principal or Patient First and the agent or student phlebotomist. In apparent authority a principal can be bound by the unauthorized acts of its agent if the agent appears to have authority to act. This arises when the principal creates an appearance of authority in an agent that leads a third party to reasonably conclude that the agent has the authority to perform certain acts for the principal. Apparent authority cannot be created by an agent, but can only exist when the principal acts so as to lead a reasonably prudent third party to believe that the agent has certain authority. The third party in this case was the mother who believed that the student had been given actual and or apparent authority to act on behalf of Patient First.

Another course objective relative to the case is course objective ten which identifies whether a contract has been breached, and what remedies are available to both the seller and buyer for a breach of contract. According to Wikipedia, breach of contract is a legal cause of action in which a binding agreement or bargained-for exchange is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. After the circuit court heard the case, it determined that CCBC did breach the contract when they failed to indemnify Patient First for its losses and awarded Patient First a judgment in the amount of \$87,097.08. When a contract has been breached both parties have the right to take legal action in defending its actions to mitigate and or recover its losses.

Conclusion

In conclusion I agree with the appellate court's decision to affirm the lower court's ruling in favor of Patient First. CCBC's argument was that the student was negligent because Patient First failed to provide adequate supervision and therefore they were not liable to Patient First as a result of their own negligence. However, CCBC in avoiding to indemnify Patient First held the burden of proving Patient First was negligent. CCBC who drafted the Agreement, could have clearly stated what their standards for "clinical supervision" entailed. The court could only rule based on its interpretation of the contractual terms and conditions which plainly stated that CCBC would be required to indemnify Patient First for any losses, claims, liabilities, damages, costs, and expenses incurred, including attorneys' fees as result of negligent acts of their students. The contract failed to have a common

intention or a meeting of the minds which undoubtedly expressed Patient First's responsibilities in supervising CCBC's students.

This made it very difficult for CCBC to persuade or prove to both courts that Patient First was actually the negligent party. I spoke personally with Jhanelle Graham, who authored the opinion for the case and she expressed how courts will interpret a contract exactly as it is written and will give the benefit of the doubt to the author of the contract. In this case it was CCBC and because they failed to distinctly communicate the terms and conditions of the contract to include what their definition of clinical supervision implied. If CCBC was able to prove that Patient First was indeed negligent, there would have been a different outcome all together.

Because this is a recent appellate case, there are no known public policy issues that have come about thus far; however the state of Maryland has a duty to protect the health of its citizens, and a standard of care should be established and followed when using inexperienced healthcare workers. Obtaining on hands experience in clinical service is imperative but should be closely monitored to prevent accidents and or negligence from prevailing. It is so important that when drafting a contractual agreement that both parties make their terms as crystal clear and concrete as possible. This will save both parties wasted time, money, and resources in defending a breach of contract or other contractual issues.

References

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