Nurse Registry or Agency Work

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As has been discussed in prior Professional Liability Bulletins, when a nurse has allegedly injured a patient due to his or her professional negligence, the lawyer representing the injured patient will also name the nurse's employer in the suit under the theory of *respondeat superior* and/or under the *Corporate Theory* of liability.

In the following case, whether the nurse was an employee of the hospital where the injury occurred or an employee of the nurse agency by which she was referred to the hospital was the focus of an appeal taken by the plaintiff.

The female patient was admitted to the hospital for a surgical procedure which occurred without incident. A central venous catheter (CVC) was placed in her jugular vein after surgery. Three days after surgery the CVC allegedly became disconnected when one of the nurses assisted the patient into a sitting position in her hospital bed. This resulted in air entering into the patient's bloodstream and an air embolus traveled to her brain, causing severe brain damage and total disability.[1]

The patient's husband filed a professional negligence suit and named several defendants, including several physicians, the nurses who had cared for his wife—one of which was an agency nurse–, the hospital, and the nurse agency who sent one of the nurses named in the suit. The trial court granted the nurse agency's summary judgment motion, holding that neither common law principles nor the state Nurse Agency Licensing Act requires an agency to be legally responsible for an injured patient for any negligent acts performed by its nurses while working at a hospital.[2]

The Appellate Court carefully examined the evidence presented at the hearing for summary judgment at the trial level. The affidavit of the director and manager of the agency clearly stated that the agency, licensed under the state law, functioned as a "referral service" for RNs and LPNs. Hospitals contracted with the agency to obtain qualified nurses to fill staff positions on a temporary basis when needed. A hospital paid the agency an hourly fee based on the type of nursing services were provided and the agency in turn paid the agency nurse.

The agency nurse who cared for the patient testified in her deposition that her contract with the agency clearly stated that the relationship between the two was an "independent contractor, not employer-employee". Because of this defined relationship, the nurse was required to obtain her own professional liability insurance, pay her own income and social security taxes, and general property damage insurance. The nurse was always provided a 1099 (independent contractor form) not a W-2 form.[3]

In addition, the nurse testified that the agency had no control over the manner in which she performed her duties while at any hospital. The hospital supplied the equipment she used in caring for patients and instructed her in the use of the equipment.

The Appellate Court opined that the agency was a referral agency only and not in the business of treating patients; it did not have any control over the "manner and method" in which the care of the nurse would be provided; and the nurse agency cannot be held vicariously liable for the negligent acts of the nurse because the Nurse Agency Licensing Act does not support this type of liability. The Court upheld the Summary Judgment Motion of the nurse agency.

It is unknown what happened with the case after this decision. The nurse, hospital and other named defendants may have settled the case with the patient's husband or it could have gone to trial with a verdict in favor of the patient's husband. A verdict against the husband could also have occurred if he were not able to prove that the nurse's negligence proximately caused the patient's injury.

Regardless of the outcome, this case is an important one for those of you who do registry or agency work. Although the case was based on both common law and a specific state statute, it has implications for you in whatever state you work. They include:

1. Always provide nursing care in a non-negligent manner, regardless of your status as an employee or non-employee;
2. Keep in mind that you always carry your employer's liability on your shoulders under the theories of *respondeat superior* and/or the *Corporate Theory* of liability;
3. Regardless of an employer's being named in a suit, your own individual liability can result in you being a named defendant;
4. Carefully read your agency or registry contact in order to be clear about what your legal status is with that agency or registry;
5. If you have an independent contractor status with the agency, be certain to obtain your own professional liability policy, pay estimated withholding payments, pay income and social security taxes, and obtain coverage for workers' compensation in the event you are injured while working; and
6. Consult with a nurse attorney or attorney to determine the law in your state concerning who is your employer when working registry or agency, with a focus on case law decisions or statutes that might affect your status.

FOOTNOTES

1. Hansen v. Caring Professionals, Inc., 676 N.E. 2d 1349 (Ill. App. Dist., 1997), 1350.

2. Id.

3. Id., at 1351.

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