

Expect More From Your Residents – A Court Will

By: Steven I. Kern*

If you are supervising a young resident, what should you expect from him or her? While you probably would not expect the resident to meet the standards of a fully trained physician, if the resident doesn't, and you are sued for failing to properly supervise, you could be held liable.

Many jurisdictions have now taken the position that a resident, even one just starting training, will be held to the standard of a fully trained physician. As such, if the resident you are supervising fails to meet that standard, and injury ensues, your failure to assure that the standard has been met can lead to your own liability under a theory of negligent supervision.

A recent New Jersey case found that the standard for a resident, regardless of his specialty or years of training, should be the standard applicable to general practitioners. The reasoning behind this decision was borrowed from a Michigan state court decision which held that “although the applicable standard of care for general practitioners is that of the local community or similar communities, the standard of care for a specialist is nationwide.” Because interns and residents are not specialists, the Michigan court reasoned, the applicable standard of care for such persons is that of the local community or similar communities. While the Michigan court never reached the question of whether the standard should be the local community standard for interns or residents, rather than the local community standard for general practitioners, the New Jersey court had no trouble making that leap. It did so, in part, based upon a number of federal court decisions which held, without discussion, that residents or other medical care givers with even less training, to the same standard as physicians. Indeed, in one South Carolina case from 1968, a federal district court held a one-month intern to the same standard as a physician.

In reaching its decision, the New Jersey court reasoned that reducing the standard of care for licensed doctors in their residencies because of the limited nature of their training would set a problematic precedent. The defendants held themselves out as doctors and should be held to the standard of care they claimed to possess. Anything less would not comport with the care the patient expected and was entitled to receive.

An Indiana court came to the same conclusion as New Jersey and Michigan, finding that a first-year resident is a practitioner of medicine required to exercise the same standard of skill as a physician with an unlimited license to practice medicine. In Louisiana, yet another state court held that an unlicensed foreign doctor employed under a temporary permit should be held to the same standard as a doctor and that an intern should be held to the same standard as a doctor.

Ohio by contrast, as long ago as 1957, found that an intern is required to possess only such skill and to use such care and diligence in handling of emergency cases as capable medical college graduates serving in hospitals as interns ordinarily possess under similar circumstances. In a more recent case, from Wisconsin in 2005, an unlicensed first-year medical resident was similarly held to a lower standard of care than a fully licensed physician. In so finding, the Wisconsin Court found that the unlicensed first-year resident's authority was limited. Although he could refer to himself as an “M.D.,” his freedom of action was more restricted than that of a licensed physician, in that he had no authority or privileges to provide primary obstetrical care,” and “was not supposed to act as the primary attending physician.” Rather, “[h]is primary duty was to assess and report findings and differential diagnoses to an upper level senior resident or to the attending obstetrician.” Therefore, the Court determined that the resident should be held to the standard of care applicable to an unlicensed first-year resident based on these unique

restrictions.

Given the recent trends in many states to hold young residents to a higher standard than they are likely to be able to sustain, the obligation on a supervising physician becomes far greater. The supervising physician may need to limit the scope of services delegated to the resident until confident that the resident can handle the assignment, and may need to provide greater access and oversight than previously provided.

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