

## New Jersey Residents Held to Higher Standard of Care

By: Steven I. Kern\*

What is the standard of care that a resident will be measured against if sued for malpractice? The answer will depend upon the jurisdiction. 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 is 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, according to the Court, 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, concluding 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, a state court similarly 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.

By contrast, Ohio, since as long ago as 1957, has 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, having regard to same or similar localities and opportunities they afford for keeping abreast of advances in knowledge and science. More recently, a Wisconsin court, in 2005, held that an unlicensed first-year medical resident was not to be held to the standard of care of a licensed physician. Rather, the Court found that the first-year resident's authority was limited and, though 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.”

In conclusion, though common sense dictates that a first year resident will have far less training an experience than a fully licensed physician, New Jersey courts have decided to ignore this fact and hold them to the same standard of care. This decision not only unfairly increases the risks on residents practicing in New Jersey, but on those who supervise them as well.

\*Steven I. Kern is a principal in the healthcare law firm of Kern Augustine Conroy &

Schoppmann, P.C., with offices in New Jersey, New York, Pennsylvania and Chicago. He is a nationally recognized expert on Healthcare law, an Editorial Consultant to Medical Economics Magazine, a Member of the Editorial Board of New Jersey Lawyer, and former New Jersey Deputy Attorney General assigned to the State Board of Medical Examiners.