

The Jones family, believing the data to be correct, relied on the data in selecting General Hospital as their preferred hospital.

Ethical and Legal Issues

1. Describe the ethical principles and values violated in this case.
 2. Describe what the role of an organization's ethics committee should be addressing this or similar issues.
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DOCTRINE OF RESPONDEAT SUPERIOR

Respondeat superior is a legal doctrine holding employers liable for the wrongful acts of their agents (employees). This doctrine is also referred to as vicarious liability, whereby an employer is answerable for the torts committed by employees. The following elements must exist in order for liability to be imputed to an employer: (1) a master-servant relationship must exist between the employer and the employee, and (2) the wrongful act of the employee must have occurred within the scope of the employee's employment.

The question of liability frequently rests on whether persons treating a patient are independent agents (responsible for their own acts) or employees of the organization. The answer to this depends on whether the organization can exercise control over the particular act that was the proximate cause of the injury. The basic rationale for imposing liability on an employer developed because the employer possesses the right to control the physical acts of its employees.

The employer is not without remedy if liability has been imposed against it for an employee's negligent act. Because the law holds negligent persons responsible for their negligent acts, employees are not absolved from liability when a health care facility is held liable through the application of respondeat superior. Not only may the injured party sue the employee directly, but also the employer, if sued, may seek indemnification (i.e., compensation for the financial loss caused by the employee's negligent act) from the employee.

Independent Contractor

An *independent contractor* relationship is established when the principal has no right of control over the manner in which the agent's work is to be performed. The independent contractor therefore is responsible for his or her own negligent acts; however, some cases indicate that an organization may be held liable for an independent contractor's negligence. For example, in *Mehlman v. Powell*,⁵ the court held that a hospital may be found vicariously liable for the negligence of an emergency department physician who was not

capacity of an independent contractor. The court reasoned that the hospital had control over billing procedures, maintained an emergency department in the main hospital, and represented to the patient that the members of the emergency department staff were its employees.

CORPORATE NEGLIGENCE

There are duties that the corporation itself owes to the general public and to its patients. These duties arise from statutes, regulations, principles of law developed by the courts, and the internal operating rules of the organization. If a corporation has a duty and fails in the exercise of that duty, it has the same liability to the injured party as an individual would have.

Corporate negligence is a doctrine under which the hospital is liable if it fails to uphold the proper standard of care owed the patient, which is to ensure the patient's safety and well-being while at the hospital. This theory of liability creates a nondelegable duty which the hospital owes directly to a patient. Therefore, an injured party does not have to rely on and establish the negligence of a third party.⁶

Corporate negligence occurs when a health care corporation fails to perform those duties it owes directly to a patient or to anyone else to whom a duty may extend. If such a duty is breached and a patient is injured as a result of that breach, the organization can be held culpable under the theory of corporate negligence.

Liability extends to nonemployees who act as a hospital's ostensible agents. For example, in *Thompson v. Nason Hospital*,⁷ a Pennsylvania court recognized that hospitals are more than mere conduits through which health care professionals are brought into contact with patients. Hospitals owe some nondelegable duties directly to their patients independent of the negligence of their employees, such as duties to use reasonable care in the maintenance of safe and adequate facilities and equipment; select and retain only competent physicians; oversee all persons who practice medicine within their walls as to patient care; and formulate, adopt, and enforce adequate rules and policies to ensure quality care for their patients.



CASE: DARLING—HEALTH CARE'S BENCHMARK CASE

In 1965, the landmark case *Darling v. Charleston Community Memorial Hospital* had a major impact on the liability of health care organizations.⁸ The court enunciated a "corporate negligence doctrine" under which hospitals have a duty to provide adequately trained medical and nursing staff. A hospital is responsible, in conjunction with its medical staff, for establishing policies and procedures for monitoring the quality of medicine practiced

Darling involved an 18-year-old college football player who was preparing for a career as a teacher and coach. The patient, a defensive halfback for his college football team, was injured during a play. He was rushed to the emergency department of a small, accredited community hospital where the only physician on emergency duty that day was Dr. Alexander, a general practitioner. Alexander had not treated a major leg fracture for 3 years.

The physician examined the patient and ordered an X-ray that revealed that the tibia and the fibula of the right leg had been fractured. The physician reduced the fracture and applied a plaster cast from a point 3 or 4 inches below the groin to the toes. Shortly after the cast had been applied, the patient began to complain continually of pain. The physician split the cast and continued to visit the patient frequently while the patient remained in the hospital. Not thinking that it was necessary, the emergency department physician did not call in a specialist for consultation.

After 2 weeks, the student was transferred to a larger hospital and placed under the care of an orthopedic surgeon. The specialist found a considerable amount of dead tissue in the fractured leg. During the next 2 months, the specialist removed increasing amounts of tissue in a futile attempt to save the leg until it became necessary to amputate the leg 8 inches below the knee. The student's father did not agree to a settlement and filed suit against the emergency department physician and the hospital. Although the physician later settled out of court for \$40,000, the case continued against the hospital.

The documentary evidence relied on to establish the standard of care included the rules and regulations of the Illinois Department of Public Health under the Hospital Licensing Act; the standards for hospital accreditation, today known as the Joint Commission; and the bylaws, rules, and regulations of Charleston Hospital. These documents were admitted into evidence without objection. No specific evidence was offered that the hospital had failed to conform to the usual and customary practices of hospitals in the community.

The trial court instructed the jury to consider those documents, along with all other evidence, in determining the hospital's liability. Under the circumstances in which the case reached the Illinois Supreme Court, it was held that the verdict against the hospital should be sustained if the evidence supported the verdict on any one or more of the 20 allegations of negligence. Allegations asserted that the hospital was negligent in its failure to (1) provide a sufficient number of trained nurses for bedside care of all patients at all times, in this case, nurses who were capable of recognizing the progressive gangrenous condition of the plaintiff's right leg, and (2) failure of its nurses to bring the patient's condition to the attention of the hospital administration and staff so that adequate consultation could be secured and the condition rectified.

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when the professional care rendered by the attending physician should have been reviewed, who should have reviewed it, or whether the case required consultation.

Evidence relating to the hospital's failure to review Alexander's work, to require consultation or examination by specialists, and to require proper nursing care was found to be sufficient to support a verdict for the patient. Judgment was eventually returned against the hospital in the amount of \$100,000.

The Illinois Supreme Court held that the hospital could not limit its liability as a charitable corporation to the amount of its liability insurance.

[T]he doctrine of charitable immunity can no longer stand . . . a doctrine which limits the liability of charitable corporations to the amount of liability insurance that they see fit to carry permits them to determine whether or not they will be liable for their torts and the amount of that liability, if any.⁹

In effect, the hospital was liable as a corporate entity for the negligent acts of its employees and physicians. Among other things, the Darling case indicates the importance of instituting effective credentialing and continuing medical evaluation and review programs for all members of a professional staff.

Ethical and Legal Issues

1. Describe the legal issues in this case.
2. Describe how the hospital failed in its ethical duty to the patient.

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CORPORATE DUTIES AND RESPONSIBILITIES

Along with the corporate authority that is granted to the governing body, duties are attached to its individual members. These responsibilities are considered duties because they are imposed by law and can be enforced in legal proceedings. Governing body members are considered by law to have the highest measure of accountability. They have a fiduciary duty that requires acting primarily for the benefit of the corporation. The general duties of a governing body are both implied and express. Failure of a governing body to perform its duties may constitute mismanagement of such a degree that the appointment of a receiver to manage the affairs of the corporation may be warranted.

The duty to supervise and manage is applicable to the trustees as it is to the managers of any other business corporation. In both instances, there is a duty to act as a reasonably prudent person would act under similar circum-