Vicarious Liability

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It's 8:15 on Sunday morning. This is the first morning you have actually been able to sleep in since you opened the urgent care center five months ago. Truth be told, you drank a glass (or two) of wine too many last night and are still feeling the effects this morning. However, you don't care; you have the day off and you can slouch around till noon and no one will know or care!

What you don't know is that you are about to get a phone call because the resident manning your urgent care clinic this morning (who also happens to be the boyfriend of your sister) just broke off a needle in a patient's rear end while giving an injection.

Despite your hangover, the term *vicarious liability* springs through the cobwebs of your cortex, as does the famous line from the movie *Animal House*: "My advice to you is to start drinking heavily."

Vicarious liability is derivative responsibility for an agent's or employee's negligence based upon the defendant's employer-employee or principle-agent relationship. The responsibility is imposed when the ability to supervise, control, or direct the conduct of the employee or agent lies with the employee or principle.

Put another way, physicians are liable for their own negligent actions and may be vicariously liable for the negligent actions of their employees which occur in the scope of their employment. Moreover, physicians who join a partnership are vicariously liable for the tortuous actions of their partners when the negligent acts are committed within the scope of the partnership.

A physician can be held liable for the negligent or wrongful acts of other individuals if the physician is the employer of the individual and the employee is acting within the course and scope of his or her employment. "Course and scope of employment" is used interchangeably with furthering the purpose of the employer when explaining what employee actions will lead to vicarious employer liability.

If the employee was on the clock, if his actions benefit the employer, if the employee is under the control of the employer, or if an incident occurs at the employer's location or at the authorized time of the work assignment, that will probably be considered to be within the course and scope.

For example, if your medical assistant goes out to mail in her tax return at lunch and runs over a person in the middle of the street, your defense would be that she was not acting under your direction. However, if she was going to the bank to deposit the receipts from the previous day, the aforementioned argument would fail since presumably she was acting on behalf of the business while making the deposit.

Borrowed Servant Doctrine

A physician may also be liable if he or she has the right to control the other professional's work and the manner in which it is performed. This is called the "borrowed servant" doctrine.

The determination is irrespective of whether the physician-employer actually controls the manner in which work is to be performed or simply has the right to control it. This right to control is not based on any one thing, but on a constellation of facts which make up the totality of the circumstances. For example, you may be liable for the negligence of a resident who is working at your urgent care center during a residency-approved rotation even though you never saw nor were consulted on the patient in question.

A physician will also be liable for the negligent acts of other physicians if they are engaged in a joint enterprise or partnership which has never been legally formalized in order to protect the physicians from the imputed liability of his or her partners. Partnerships can be formal when two individuals come together or pursue a common goal.

In the absence of a formal agreement, joint ventures or partnerships may be implied by law when two or more people pursue a business opportunity for profit. For example, if you and a friend from residency open an urgent care center and don't form a business entity which offers you

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