
Nurse Nursing Malpractice.

An agency nurse caring for a post-surgical patient was accused of accidentally dislodging the patient's central venous catheter while helping the patient to sit up in bed. The patient suffered brain damage from an air embolus. The agency nurse, her agency, another nurse, several physicians and the hospital were sued for professional negligence.

The Appellate Court of Illinois upheld the lower court's decision to let the nursing agency out of the suit. This nurse was an independent contractor, not an employee of the nursing agency. She received a Form 1099 to document her earnings from the agency as an independent contractor, not a W-2 as an employee. She paid all of her own employment taxes and obtained her own workers' compensation coverage.

The nursing agency had no legal right of control over the manner in which the nurse performed her clinical duties at the hospital. With no ability or right to control her clinical performance, the court would not impose legal responsibility for the nurse's conduct. Hansen vs. Caring Professionals, Inc., 676 N.E. 2d 1349 (Ill. App., 1997).

A nursing agency is not in the business of treating patients. It must verify that the nurse's license is valid and evaluate the nurse's performance annually based on information provided by healthcare facilities.

The hospital determined which patients would be assigned to the nurse and directly supervised her clinical performance. It was up to the nurse to use her skill, training, experience and education to perform the work competently that the hospital assigned to her.

A nursing agency should not be held liable for a nurse's acts of negligence.

APPELLATE COURT OF ILLINOIS, 1997.

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