LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Budgetary Issues: Court Says Partner, Corporate Officer Can Be Held Liable For Substandard Patient Care.

The nursing home was owned by a limited partnership. The limited partners in a limited partnership are not personally responsible for negligent acts or omissions by personnel employed by the limited partnership.

Every limited partnership must have at least one general partner responsible for operation of the partnership business. The general partner can be held liable for errors or omissions by persons employed by the limited partnership to carry out the partnership's business.

In this case the managing partner in the partnership was a corporation. In general, the stockholders and officers of a corporation are not personally responsible for negligent acts or omissions committed by corporate personnel.

All that being said, the District Court of Appeal of Florida ruled there were grounds for a deceased resident's family to sue the principal businessman who had set up the whole arrangement when he purchased the nursing home.

The principal was the sole member of the governing body of the nursing home required by Federal regulations (42 CFR 483.75(d)) to make and implement patient-care policies.

Even if corporation law shielded him from personal liability, the long-term care regulations would not shield him, the court believed.

The court said he apparently ignored complaints of inadequate staffing while cutting operating expenses. The deceased resident's family alleged in their lawsuit that the resident suffered from pressure sores, infections, poor hygiene, malnutrition and dehydration as a direct result of understaffing.

The court ruled that the jury was entitled to find, if the evidence supported that conclusion, that the principal was negligent and could be found civilly liable for valuing profit over patient care. **Estate of Canavan v. National Healthcare Corp., __ So. 2d __, 29 Fla. L. Weekly D1705, 2004 WL 1635000 (Fla. App., July 23, 2004).**

Nurse Failed To Control Unruly Children In E.R. Waiting Room: Hospital Can Be Held Liable.

A mother arrived in the emergency room accompanied by her six children. When she and the child who needed medical attention went into a treatment cubicle the other children were left alone in the waiting room.

According to the New York Supreme Court, Appellate Division, the unsupervised children were horseplaying, running around and climbing on the beds.

An E.R. nurse more than once instructed the children to stop running. Nevertheless one of the children, about five hears old, accidentally ran into a fifteen month-old toddler whose mother had brought him to the E.R. and was waiting to be seen, knocking him down and causing him to break his arm. His mother sued the hospital on his behalf.

A hospital has a duty to protect its patients from injury. In general, any business owner must maintain the premises in a reasonably safe condition for the benefit of its patrons.

The nurse knew the unruly children were a hazard but did not take reasonable steps to control them for the benefit of other persons who might be injured by their horseplay.

NEW YORK SUPREME COURT
APPELLATE DIVISION
August 5, 2004

The court ruled the nurse should have appreciated the hazard to other patients and done more to control them, such as calling hospital security or moving the fifteen month-old somewhere where he would be safer.

The direct import of the court's ruling was only to send the case back to the lower court for a jury trial to determine whether the nurse was negligent, given the nature of the situation and the resource options available to her.

The court said the hospital had no parental responsibility toward the one mother's other five children, but rather had a business owner's general responsibility to make its premises safe for its patrons from known hazards. **Rodriguez v. 1201 Realty LLC, 2004 N.Y. Slip Op. 06300, 2004 WL 1746329 (N.Y. App., August 5, 2004).**

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