

In-Service: Court Says Nurse On Errand For Hospital While Driving Home.

After her twelve-hour shift, even though she stated she was very tired, even though other nurses were routinely excused from attendance when they were too tired, a nurse had to stay two additional hours for a required annual in-service skills update session.

On the way home she caused a motor vehicle collision which killed two people. Apparently she fell asleep at the wheel.

The jury found the nurse 75% at fault and the hospital 25% at fault. The Court of Appeal of California, in an unpublished opinion, dismissed the hospital's appeal and let the verdict stand.

Ordinarily an employer is not responsible for a motor vehicle accident that occurs while an employee is commuting to and from work.

On the other hand, when an employee is performing a special errand for the employer, even in the employee's own vehicle, the employer can be liable.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
February 28, 2003

The rationale the court stated was that driving home after staying two hours late for an in-service was not the nurse's usual commute. Instead, she was on a special errand for her employer, as the law phrases it, which meant she was acting in the course and scope of her duties as a hospital employee when the crash occurred and the hospital is vicariously responsible for her negligence. Glander v. Marshall Hospital, 2003 WL 649127 (Cal. App., February 28, 2003).

Operating Room: Court Questions Whether Proper Surgical Stapler Was Used.

A healthcare provider's deviation from a medical-device manufacturer's warnings and contraindications, if it can be proven, is the type of negligence for which no expert testimony is needed to establish the standard of care.

The surgeon is responsible for knowing which size device is appropriate for the specific case and for ordering it from the hospital's perioperative staff.

The hospital's perioperative staff must provide the specific size medical device the surgeon has asked for.

The hospital's perioperative staff are also responsible for knowing and understanding the manufacturer's specifications and for appreciating how they relate to the patient's case.

Staples that are too large used in surgical anastomosis can damage the bowel, while staples that are too small can fail to seal the bowel sections.

The surgical technicians have to load the staples properly, although this stapler apparently would not work at all if improperly loaded.

COURT OF APPEAL OF LOUISIANA
February 25, 2003

In a complex and difficult opinion, the Court of Appeal of Louisiana opened the door to liability being placed on a hospital's perioperative nurses and surgical technicians for improper choice of medical devices used in surgical procedures.

Specifically, the court ruled that the perioperative staff as well as the surgeon can be held responsible if the wrong size stapler and staples are used to resect the patient's bowel.

That is, too large a stapler and staples can damage the bowel, the court said, while too small a stapler and staples can fail to seal the anastomosis properly. Consequently, the manufacturer's warning package inserts specify the ranges of bowel thickness, expressed in millimeters, appropriate for each size stapler and staple set.

Choice of Instruments Surgeon's Traditional Responsibility

It has been accepted legal doctrine that the surgical staff are responsible for providing the specific make, model and size of the device chosen by the surgeon. The surgeon is responsible for making the selection and for making sure the proper make, model and size were handed over.

However, according to the court, the hospital's perioperative staff can also be held responsible in their own right for knowing, understanding and following the manufacturer's warnings, indications and contraindications for a specific make, model and size surgical device *vis a vis* the parameters of the individual case.

In this case there was confusion over which size stapler was actually used, which the perioperative record did not specify. The billing records seemed to say the wrong one was used, although it was not clear the billing coder knew the difference or would appreciate the consequences of listing a model number in the billing records that did not match the thickness of the patient's bowel. Christiana v. Sudderth, ___ So. 2d ___, 2003 WL 468699 (La. App., February 25, 2003).