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Agency—Physician a Corporation Employee

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AGENCY

Physician a Corporation Employee

Plaintiff was required as a prerequisite to gaining employment with defendant corporation to submit to a blood test.[1] Defendant's physician negligently administered the test, which resulted in injury to plaintiff's arm, for which she sought damages against the corporation. In a unanimous decision the Court held,[2] the physician was an employee of the defendant, as opposed to an independent contractor, therefore imposing vicarious liability on the defendant.

Formerly New York exempted charitable hospitals from liability for the negligent conduct of their physicians and nurses in the treatment of patients.[3] This was later extended to exempt private corporations from liability where the negligence of their physicians resulted in injury to company employees.[4] This immunity has since been disavowed by the courts of this state, and now exemption from liability must rest solely on the status of the physician as an independent contractor. The rationale underlying the exemption for the physician's negligence was based on the theory that the institution in question did not undertake to cure the patient's malady, but was merely the functional instrumentality to obtain the proper physician or nurse.[5]

Analogous to the instant case was *Jones v. Tri-State Tel. & Tel. Co.*,[6] where an x-ray picture was taken of a company employee solely for the benefit of the employer. Through the negligent operation of the x-ray machine by the physician, the employee sustained injury. The Minnesota court held the doctrine of respondeat superior could be invoked to shift the liability to the employer; the physician did not undertake to cure the employee, and the x-ray pictures were taken solely for the employer's purposes.

In *Dillon v. Rockaway Beach Hospital*,[7] the Court laid down the test of looking to the nature of the function performed by the doctor or nurse in determining the liability of the hospital, rather than the capacity in which the function

1. Sanitary Code & Regulations §148, Reg. 22, City of New York ordinance compelling a prospective employee to take a blood test to ascertain whether applicant is suffering from a communicable disease.
2. *Mracheh v. Sunshine Biscuit Co.*, 308 N. Y. 116, 123 N. E. 2d 801 (1954).
3. *Schloendorff v. Society of N. Y. Hospitals*, 211 N. Y. 125, 105 N. E. 92 (1914.)
4. *Laubheim v. De Koninglyke N. S. M.*, 107 N. Y. 228, 13 N. E. 781 (1887); *Schneider v. N. Y. Tel. Co.*, 249 App. Div. 400, 292 N. Y. Supp. 399; *aff'd*, 276 N. Y. 655, 13 N.E.2d 47 (1937)
5. *Bernstein v. Beth Israel Hospital*, 236 N. Y. 268, 140 N. E. 694 (1923).
6. 118 Minn. 217, 136 N. W. 741 (1912).
7. 284 N. Y. 176, 30 N. E. 2d 373 (1940).

was performed. Thus, when an administrative act is negligently performed the doctrine of respondeat superior becomes operative to attach liability to the hospital.[8] In the instant case the physician was not utilizing independent judgment but was performing a mere administrative, as opposed to a medical, act. His function was no more than to report his findings of fact to his superiors; he was a regular employee of the defendant corporation and worked on defendant's premises in an office equipped by defendant.

Respondeat Superior; Jury Question

Cadicamo v. Long Island College Hospital was an action by a father as administrator of the estate of a day old infant against the hospital for pain and suffering and wrongful death. The infant burned to death after a nurse placed an unguarded light bulb within three inches of its blanket in order to raise the infant's temperature, which was subnormal. The Court, unanimously reversing both the trial court and the Appellate Division,[9] stated that it was a jury question whether the attending nurse's being called away from her vigil over the child, to perform administrative duties, constituted sufficient grounds on which to impute liability to the hospital.[10] In addition, the Court indicated that placing the unguarded light bulb in such "dangerous proximity" to the helpless infant, who could not be expected to lie motionless, coupled with the lack of supervision by the nurse, would justify a jury finding of liability.

The New York rule regarding this type of action is that while a hospital authority will not incur liability for medical treatment by doctors or nurses, provided that reasonable care had been exercised in their selection, it will be liable for any of their negligent acts or omissions not directly concerned with medical treatment, so long as such acts were performed in the capacity of servants of the authority.[11] Liability is not occasioned by the status of the person performing the negligent act, but by the nature of the act being performed.[12] In the instant case, the Court concedes that the act of placing the light bulb so dangerously near the infant was a medical act. This conclusion was all but forced on the Court by an earlier case[13] where the decision of a nurse not to remove a hot water bottle from a patient's feet was held to be a professional (medical) decision. The Court

8. *Sheehan v. North Country Community Hospital,* 273 N. Y. 163, 7 N. E. 2d 28 (1937).

9. 283 App. Div. 953, 130 N. Y. S. 2d 889 (2d Dep't (1954).

10. *Cadicamo v. Long Island College Hosp.,* 308 N. Y. 196, 124 N. E. 2d 279 (1954).

11. CLERK & LUNDSELL, TORTS (6th Ed.) 274.

12. *Dillon v. Rockaway Beach Hospital,* 284 N. Y. 176, 30 N. E. 2d 373 (1940).

13. *Sutherland v. New York Polyclinic Medical School & Hospital,* 273 App. Div. 29, 75 N. Y. S. 2d 135 (1947); *aff'd,* 298 N. Y. 682, 82 N. E. 2d 583 (1948); *re-argument denied* 298 N. Y. 794, 83 N. E. 2d 477 (1948).