The Liabilities

Of Technicians in Medicine

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WITH the advances in medicine and surgery, it has become obvious that many technical functions must be delegated to those without a medical degree. From this has developed the "medical technician" who now performs many functions—usually clinical—formerly performed by physicians. As a result, several aspects, other than medical, arise. The physician, licensed to practice medicine without limitation, delegates to an unlicensed person, duties that formerly were his exclusively. The question of the legal implications arises immediately, requiring a discussion of basic common law aspects of the problem.

In all questions involving liability of a person for the negligence of another, the status of the agency relationship between the two parties must be established. It is basic to our system of jurisprudence that a person who commits a tortious or negligent act is liable for any damage or injury to another. In certain situations, another person may become liable also for these same negligent acts—the so-called doctrine of vicarious liability. Legally speaking, one must establish agency between these two people—the primary tort feasor and the person vicariously liable for the tortious act.

Agency

According to basic hornbook law, agency is divided into three categories—the independent contractor, the principal-agent relationship, and the master-servant relationship. The independent contractor is one who has contracted with another to perform a given act. He is solely liable for any negligence which he performs during the commission of this act. The classical example in medicine is the physician. In most instances, the physician is classified as an independent contractor inasmuch as he alone is licensed to practice medicine. All those who perform technical acts operate under the direction of the physician, under his direct supervision and control, and are considered his agents. Should they perform a negligent act, then the physician is as liable for such an act as they.

The category of agency, known as principal-agent, has limited application to the practice of medicine. However, the category of master-servant relationship, or, in our present system of terminology, employer-employee, the employer is responsible for the acts of the employee so long as they are performed within the scope of employment. It is in this category that we find most hospital employees.

The Physician

It has been stated previously that the physician is an independent contractor. He agrees to treat a patient who seeks consultation with him. In the law, this is considered a contract and upon the completion of the services, the physician expects to receive reasonable compensation. Should he perform these medical acts negligently, then he is liable in a suit for medical malpractice.

But, it has been stated that in the present type of practice, it is no longer possible for the physician to personally perform all of the acts of medical care. As a result, we have seen the advent of the nursing profession. Currently we are witnessing the advent of the allied health professions. This type of person is, in effect, an extension of the physician's hands, enabling him to devote his attention to more difficult matters involving judgment and performance of unusual technics.

The Technician

Speaking in the broad sense, the technician is, according to custom, the employee of the hospital. As a result of this relationship, the technician is the servant of the hospital and is responsible directly to the administrator, the principal agent of the Board of Trustees of the hospital. He, the administrator, is responsible for the hiring of qualified people to perform specified acts. This is known as administrative agency and therefore administrative liability in the event of a suit.

Dual Agency?

However, the technician practices usually under the direction of a physician. As a result, physicians usually are named as parties defendant when an accident or negligent act is performed by a technician. Thus, as a result of agency, we find that the hospital is liable for administrative agency and the physician becomes liable for professional or medical negligence. We

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usually find that the plaintiff attorney takes the pragmatic approach and names as parties defendant all those involved in the treatment of the patient. I hasten to add, however, that the plaintiff attorney usually is seeking the financial resources either of the hospital or of the physician's professional liability carrier.

It was stated above that a physician is liable only when the negligent act is performed in situations where he is in direct control. In the operating room, there is little doubt that the surgeon would be named in the event of an accident involving the extracorporeal circulation. In some jurisdictions it is necessary, of course, to name the primary tort feasor—namely, the extracorporeal technologist.

Insurance

As a general rule, physicians and hospitals have adequate insurance coverage. However, inasmuch as the technologist will be named as a party defendant, it becomes incumbent upon the technologist to carry at least a minimum of professional liability insurance. Not only should this insurance cover participation in the payment of any judgment rendered against the technologist, but also should include the cost of counsel, records, and trials. In most instances, the latter category of expenses will be significant.

Precautionary Measures

One word of warning. Particularly in such a hazardous field as extracorporeal circulation, the technologist operating such a piece of apparatus should be adequately trained and skillfully competent. Indeed, if available, certification by a board of registry would be additional evidence of technical ability. But the institution should, too, have investigated this whole area and have in personnel files letters attesting thereto. In the same vein, the institution and the operating room committee should have rules and regulations for the operation of the extracorporeal team. In addition, an in-service training and refresher course should be conducted within the institution. All of these can be entered into evidence in favor of the technologist in the event of a suit.

Symposium

With this issue, we start a new feature. Your Journal, as the bulletin board of the Technology, feels that it should express the consensus of opinion and rationale on procedures, techniques, and ideas that are, and have been, a part of our working habits. This feature, which will be called SYMPOSIUM, is designed to stimulate participation in the dissemination of information. Each issue, two statements will be made followed by a brief explanation of what is desired in way of an answer. Replies, in the form of letters with any illustrations you might want to include, will be collected over the ensuing three-month period and published in the subsequent issue.

Your reactions to the following problems are requested:

1. *Given: Development of anemia in a patient undergoing chronic hemodialysis.*

   Question: Describe the technique and rationale to which your team adheres in preventing and/or treating this complication.

2. *Given: A patient with an aneurysm of the descending or thoracic aorta.*

   Question: Describe and explain the pump-oxygenator circuitry your team prefers in dealing with this lesion.

If you have a response to these questions or a problem you would like to see covered in SYMPOSIUM, send it to:

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