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35TH ANNIVERSARY
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Corporate negligence can complicate med mal

Claims of corporate negligence can increase the stakes in a malpractice case, as plaintiffs seek the deeper pockets of the employer who hired and allowed a supposedly deficient healthcare provider to injure a patient.

Corporate negligence claims demonstrate the power of a plaintiff to widen the scope of a malpractice case beyond the physician and the physician's insurer, says **Matthew L. Kinley**, JD, a partner at the law firm of Tredway Lumsdaine & Doyle in Los Angeles. The usual claim is that the hospital or health system should have known the physician was unqualified in some way and should pay for allowing him or her to practice.

A current example is the case of Christian Schlicht, MD, a physician hired by the now-bankrupt Gerald Champion Regional Medical Center in Alamagordo, NM. Trial proceedings recently began for 71 plaintiffs suing Quorum Health Resources, a hospital administration company based in Brentwood, TN, that provided top executives and physicians for the hospital. At issue is whether the hospital and Quorum were negligent in hiring Schlicht and allowing him to continue operating even after they were alerted that he was performing experimental back surgery with devastating results.

Attorneys for the plaintiffs are alleging corporate negligence and claiming the employer and Quorum knew the doctor was performing a spinal procedure, not approved by the Food and Drug Administration, that involved bone cement. In opening arguments, one plaintiff's attorney noted that the procedure was not allowed anywhere in the world and amounted to "absolute human experimentation." Schlicht was performing that procedure and others considered just as risky and unsuccessful up to a week before he quit his $450,000 job at the hospital.

Quorum contends that the hospital's board of directors was liable for the damage Schlicht caused and that medical staff were responsible for supervising surgeons. The plaintiffs counter that the company should never have hired the surgeon and knew about his repeated failures with experimental surgery. "These cases can get quite complicated because you get into asking, what is the role of the trustees, the board of directors, and the medical staff?" Kinley says. "Corporate negligence also can involve situations like a piece of equipment failing at a critical time. The question then is whether the hospital had policies and procedures in place to respond to that failure in the appropriate way."

In years past, corporate negligence was more difficult to prove in a straight medical malpractice case because the physician generally was considered to be the "captain of the ship" in every way, with ultimate liability falling there, Kinley says. That theory has shifted now so that hospitals and health systems have much responsibility to credential and monitor physicians and more liability if they fail to do so.

That responsibility is partly because healthcare employers have so many more resources now for investigating the background and training of physicians, Kinley notes. Failure to check the National Practitioner Data Bank, for example, would be seen as a major oversight by the employer, he says.

In addition, courts and juries now expect employers to monitor the performance of physicians by randomly auditing patient records and reassessing performance at regular intervals, Kinley explains. Not committing fully to that oversight can lead to large jury awards.

"The courts have ruled that juries get to look at different things in determining the standard of care. So if you have a risk management policy about how and when you are supposed to review physicians, and you didn't, that is almost negligence per se," he says. "Be aware that a jury is going to be looking at your rules and regulations to determine if you met your own standards of care." ■

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EXECUTIVE SUMMARY

Corporate negligence is a common claim used by plaintiffs in medical malpractice cases. Successful use of this strategy will make the hospital or health system liable for what otherwise could have been attributed to an individual.

- A current case involves claims of corporate negligence for allowing a surgeon to perform allegedly experimental spine procedures.
- Equipment failures also could lead to corporate negligence claims.
- The surgeon is no longer the "captain of the ship."