Responsibility and Liability of Trainees in Medical Errors

Salah Zeineldine, MD FACP

Medical Malpractice, Errors and Disclosure

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Disclosure

- No conflict of interest and No consultancy fees with any resident or patient !!!

Outline

1. Legal implications
2. Ethical dimensions
3. Modifiable dimensions

Alswanger vs. Smego (1)

(Post Op fibroma)

- The plaintiffs claim against the hospital rested on the theory of "respondent superior" (employers are liable for harms caused by the negligence of their employees, acting within the scope of employment).
- The defendant hospital, however, argued that the first-year resident was a "borrowed servant". The hospital contended that a surgeon may replace a hospital as a master of a hospital employee by exercising supervision and control over the employee, thereby assuming liability for negligence of the "borrowed servant" .

AMA Journal of Ethics, *Virtual Mentor.* March 2003, Volume 5, Number 3

Alswanger vs. Smego (2)

(Post Op fibroma)

- Since the first-year resident was under the surgeon's—not the hospital's—control during the procedure, the hospital could not be found liable. The court agreed with the hospital.
- During the operative procedure, the resident was the "borrowed servant" of Dr. Smego . Thus, the resident and hospital could not be liable for medical negligence.

AMA Journal of Ethics, *Virtual Mentor.* March 2003, Volume 5, Number 3

Lilly vs. Brink

(Indigestion and cardiac death)

- Virginia courts have allowed recovery against resident physicians. The court distinguished between the resident as a student and the resident as a physician. The resident had diagnosed indigestion and released the patient, who died later that day from a cardiac event.
- The court determined that the physical exam and assessment were not training exercises for a second-year resident. Rather, the resident used his own discretion in diagnosing, treating, and releasing the patient. The court viewed this performance as equal to that of any fully licensed physician, so the resident should also be treated as one.

AMA Journal of Ethics, *Virtual Mentor.* March 2003, Volume 5, Number 3

Painful Twist (Blog)

- Second year resident places a dialysis catheter accidently in the Carotid artery. Carotid surgical repair was complicated and patient passed away.
- Hospital was sued **(not the resident)**
- Resident in question discusses and presents the case in a M&M like forum.
- The defendant lawyer requests access to the document.
- Is access granted?
- **The only way to acquire the presentation was to sue the resident.**

Magnitude

- Resident physicians in a pediatric teaching hospital were named in 26% of malpractice cases.

Arch Pediatr Adolesc Med. 1996 Jan;150(1):87-90.

The 4 Elements

- Duty
- Breach of duty
- Causation
- Damages

- All residency programs are required to provide medical liability coverage for their residents and fellows because this is an (ACGME) requirement.

Bailey, Annals of Emergency Medicine v61 issue 1, Jan 2013 pp114-117

Different Practices

- Rush vs. Akron General Hospital (Glass in wound), the resident was held to the same standard of care as residents of similar skill and training level.
- Clark vs. University Hospital (NGT & aspiration), the resident was held to the same standard of care as a general practitioner.

Bailey, Annals of Emergency Medicine v61 issue 1, Jan 2013 pp114-117
Clin Orthop Relat Res. 2012 May; 470(5): 1379–1385.

Experience & Expertise

- Whiteside vs. Lukson, When complications occurred during the very first laparoscopic cholecystectomy, the issue was whether or not the resident should have disclosed the lack of experience to the patient in **obtaining informed consent**.
- Data was collected from 743 hand and wrist claims filed between 1993 and 2007 in the Netherlands .
  - Treatment in the ED accounted for 64.9%.
    - Residents were involved in 287 claims (59.5%).
    - Of accepted claims in the ED which involved a resident, 93.2% involved a general surgery resident.

Clin Orthop Relat Res. 2012 May; 470(5): 1379–1385.
J Hand Surg Eur Vol. 2010 Jun;35(5):381-4

Implications on Supervisors

- Residents orders:
  - Prescribing Quinolone to an elderly patient on Coumadin
  - Not prescribing Vit. K as instructed
  - Patient died

Journal of Healthcare Risk Management
Volume 27, Issue 3, pages 31–41, Summer 2007

Implications on Supervisors

- "Borrowed Servant" & "Captain of the Ship"
- Mother Institution and Affiliated Centers
  - Role of Affiliation Agreement (ACGME)
  - County of Riverside and Loma Linda University

    (injury with forceps delivery)

J Leg Med. 1994 Dec;15(4):485-531.

Moonlighting

- Moonlighting Radiology Resident missing a pelvic abscess for a bladder diverticulum.
- Hiring group and resident settled with plaintiff as 2 separate entities.

AJR, September 1998, Volume 171, Number 3

Ethically!!!

- **Do No Harm…**
  - Patients are not testing material
  - Patients are not practice tools
  - Miss or Negligence may be catastrophic
  - Professionalism and Experience (No shame)

Ethically

- Survey looking at Resident Sense Making:
  - Inevitable, Recourse, Unrealistic Expectations and Gamble…
  - Mostly looking at medication errors…
  - It is not our Ass…

Health Communication
Volume 20, Issue 1, 2006

What can we change?

- Avoiding Sleep Deprivation (ACGME)
  - 6-8 hours/day
  - Power naps
  - Caffeine
  - Patient risk and self risk (accidents post night calls and needle pricks…)
- Recognizing the Impaired Physician (ACGME)
  - Self or colleague
  - Confidential
  - Innate or self-inflicted

What can we change?

- Reducing Duty Hours (ACGME)
  - 80 hrs/wk moving to 74 hrs/wk
  - Paradox with Moonlighting!!!
- Simulation and Practice
  - Virtual training
  - Simulation encounters (SPs and HF/LF Models)

What can we change?

- Appropriate Supervision (ACGME & JCI)
  - Training Level based
  - In any unclear circumstances
- Disclosing Errors
  - Didactic sessions
  - Clinic based simulations
  - Real life witness

What can we change?

- Disclosing Errors
  - what to include in and how to introduce error discussions
  - to deal with a patient's emotional reaction
  - to respond to questions regarding how an error occurred
  - to recognize one's own emotions when discussing errors.

J Grad Med Educ. 2009 Sep;1(1):114-8

My Surprises

- **MALPRACTICE: liability of hospital, resident, and staff physician.**
  - **JAMA 1954, May 1;155(1):71-2**
- **One way to teach malpractice: 'Sue a resident on his first day'.**
  - Emerg Dep News 1984 Jul;6(7):1, 4-5.

Thank You

sz01@aub.edu.lb