The 'Captain of the Ship' Doctrine Gets a New Set of Sails

By Matthew R. Souther

Fields v. Yusuf

Generally speaking, a physician is not liable for the negligent actions of hospital employees and staff who are not employed by the physician. There are, however, two key instances where a physician can be held liable for a non-employee’s negligent actions: 1) when the physician discovers a non-employee’s negligence during the course of ordinary care and fails to correct or otherwise prevent the ill effects of the negligent act; and 2) when the non-employee is under the physician’s supervision and control such that a “master and servant” relationship exists.

Over the past several decades, the viability of this “captain of the ship” doctrine has diminished, for several reasons. The court in Truhitte v. French Hospital, 1982 128 Cal.App.3d 332, 348, explained “that the captain of the ship doctrine arose from the need to assure plaintiffs a source of recovery for malpractice at a time when many hospitals enjoyed charitable immunity, which is no longer the case,” and also noted that other jurisdictions were moving away from a strict application of the doctrine. The Truhitte court also stated that “the theory that the surgeon controls all activities of whatever nature in the operating room is unrealistic in present-day medical care where today’s hospitals hire, fire, train and supervise their nurse employees, implement surgery protocols and can absorb the risks of noncompliance.” The effect of such rulings was that physicians were less likely to be held liable for the negligence of hospital employees and staff. In California, that is no longer the case.

California Appellate Court Speaks

In late 2006, the California Court of Appeal (Second Circuit, Division 2) reviewed Fields v. Yusuf (2006), 144 Cal.App.4th 1381. In that case, a patient presented to the hospital for pain management after she sustained injuries from a fall. Studies revealed that arteries in plaintiff Fields’ right leg were completely blocked due to advanced vascular disease. Dr. Yusuf performed arterial bypass graft surgery to place a new blood vessel in Fields’ right leg, inserting sponges to absorb and stem the flow of blood. The postoperative notes show that two sponge counts were conducted and that the counts were correct.

The next day, Dr. Yusuf performed a second surgery to remove a blood clot that had developed in the graft. He was assisted in this surgery by a registered nurse and a scrub technician. Dr. Yusuf had worked with both of these assistants for several years. During the second surgery, Dr. Yusuf again inserted sponges to absorb and stem the flow of blood. The postoperative notes indicate that there was only one sponge count during this surgery, and that Dr. Yusuf was informed that the count was correct. Unfortunately, a sponge was left in
Fields’ leg during this surgery. Several complications followed, which resulted in the loss of Fields’ leg. Fields filed a complaint for negligence against the hospital and Dr. Yusuf.

At trial, expert testimony established that Dr. Yusuf and the operating room nurses shared a “joint responsibility” for ensuring a correct sponge count. Expert testimony further established that the surgeon, Dr. Yusuf, had the ultimate responsibility to ensure that the sponge counts were accurate. Dr. Yusuf’s expert testified that it was within the standard of care for Dr. Yusuf to rely on the nurses’ sponge count when the count was reported as correct and there were no foreign bodies observed in the operating field. He testified that the number of sponge counts and the manner in which they were performed were the responsibility of the nurses and not the physician. This was established by the hospital’s own policies and procedures. Fields requested that the trial court instruct the jury regarding the “captain of the ship” doctrine, among other instructions. The court refused. Ultimately, the jury found that Dr. Yusuf was not negligent, and the trial court entered judgment in his favor. This appeal followed. The Court of Appeals concluded that it was reasonably probable that the jury might have reached a different result if it had been properly instructed on the “captain of the ship” doctrine. The court’s decision has given the previously ailing doctrine a new set of sails.

What it Means for California Litigants

What is the impact of this decision? For starters, if a surgeon simply has the authority to order a nurse to perform a procedure, the surgeon — not the hospital — can be held liable for the nurse’s negligence. This will give hospitals less incentive to settle cases involving the negligent conduct of its nurses and staff. In other words, this case is the “mother load” for hospitals. Why settle a case when you can shift all responsibility to the surgeon? This will unfortunately lead to more “finger pointing” among codefendants. A unified defense may become a relic of the past in cases with hospital co-defendants. Alternatively, the plaintiff’s bar may be less likely to name hospitals as defendants. Why name a hospital as a defendant when responsibility can simply shift to the surgeon?

Conclusion

Ultimately, the Yusuf case, although producing an interesting opinion, runs contrary to a long line of very sound and well-reasoned legal principles and decisions. Will it be overturned? Only time will tell. Stay tuned.

This article appeared in the June 2007 issue of Medical Malpractice Law & Strategy®

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