

# **ESTABLISH POTENTIAL AREAS OF HOSPITAL CORPORATE AND INSTITUTION LIABILITY**

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# Hospital Corporate and Institutional Liability

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- **You will always find those who think they know what your duty is better than you know it. – Ralph Waldo Emerson**

# Employee Negligence – When Hospitals And Institutions Are Liable

- Duty of reasonable care
  - “[A] hospital is liable for the negligent acts of its employees done within the scope of their employment.” Ind. Pattern Jury Instruction No. 23.15

# Employee Negligence – When Hospitals And Institutions Are Liable

- Nurses and skilled hospital personnel
  - Skilled hospital personnel have a duty to exercise reasonable care in administering services to patients in the hospital. Ind. Pattern Jury Instruction No. 23.16.
- Employed doctors

# Employee Negligence – When Hospitals And Institutions Are Liable

- Nondelegable duty
  - *Stropes v. Heritage House Childrens Center*, 547 N.E. 2d 244 (Ind. 1989)
  - Course and scope of employment
    - To an appreciable extent to further employer's business, even if predominant intent was to benefit employee
    - Assume responsibility to provide protection
    - Control and surrender of autonomy

# Employee Negligence – When Hospitals And Institutions Are Liable

- Statutory Duties/Safeguarding Welfare of Patients
  - Child abuse or neglect – I.C. 31-33
    - Reporting – reason to believe child is a victim of abuse or neglect
    - Examine, x-ray
    - Withhold Discharge

# Employee Negligence – When Hospitals And Institutions Are Liable

- Statutory Duties/Safeguarding Welfare of Patients
  - Self-inflicted harm
    - *Breese v. State*, 449 N.E.2d 1098 (Ind. App. 1985)
    - Includes physical and mental ailments which may affect patient's ability to look out for own safety

# Employee Negligence – When Hospitals And Institutions Are Liable

- Statutory Duties/Safeguarding Welfare of Patients
  - Domestic abuse
    - *McSwane v. Bloomington Hospital*, 2008 WL 650618 (Ind. App.)
    - Duty not to discharge patient to the care of suspected abuser?
    - Harm inflicted from third parties
    - Dissent
    - Public policy considerations
    - Must submit to panel?



# When Privileges Are Improperly Granted to Hospital Staff and Physicians – Is It Negligence?

- Subject to Medical Malpractice Act
  - *Winona Memorial Hospital v. Kuester*, 737 N.E.2d 824 (Ind. App. 2000)
    - No cause of action against physician on staff – *Roberts v. Sankey*, 813 N.E.2d 1195 (Ind. App. 2004)
    - No general peer review or QA duty on individual members of staff - *Longa v. Vicory*, 829 N.E.2d 546 (Ind. App. 2005)

# When Privileges Are Improperly Granted to Hospital Staff and Physicians – Is It Negligence?

- How Prove or Defend
  - Premised on negligence by physician that proximately caused injury
  - Credentialing responsibility of hospital governing board – I.C. 16-21-2-5
    - Medical staff responsible to governing board – I.C. 16-21-2-7
    - Bylaws
    - JCAHO guidelines

# When Privileges Are Improperly Granted to Hospital Staff and Physicians – Is It Negligence?

- Peer Review Statute – I.C. 34-30-15-1 *et seq.*
  - Privilege
  - Original source exception
  - Waiver
- Administrators cannot serve on medical review panel

# How Nursing Negligence Can Be Identified

- Reasonable care
  - Follow hospital protocols and procedures
  - Follow physician's orders
  - Notify physician of significant changes in a patient's condition
  - Appropriate monitoring, precautions, nursing interventions, documentation
    - Incident reports

# How Nursing Negligence Can Be Identified

- Duty to question doctor's orders contrary to standard medical practice
  - *Sisters of St. Francis v. Catron*, 435 N.E.2d 305 (Ind. App. 1982)
  - Ind. Pattern Jury Instruction No. 23.16
- Expert testimony
  - *Methodist Hospitals v. Johnson*, 856 N.E.2d 718, (Ind. App. 2006)

# Sort Through the Confusion Related to Non-Employee Negligence

- Independent Contractors
- Apparent Agency
  - *Sword v. NKC Hospitals, Inc.*, 714 N.E. 2d 142 (Ind. 1999)
    - Hospital based physicians
    - Reasonably cause third party to believe is agent
    - Reliance
    - Performing nondelegable duty
    - Written notice

# Sort Through the Confusion Related to Non-Employee Negligence

- Nonparty Liability

- Pleading requirements for qualified health care providers – I.C. 34-51-2-17
- Comparative Fault Act does not apply to medical malpractice actions – I.C. 34-5-2-1(b)