

Virtual Mentor

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When Are Residents Treated as Doctors Under the Law?

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Residents are physicians in transition. As medical school graduates, resident physicians have the basic skills to practice medicine but are not yet at the skill level of specialists [1]. As training progresses, residents “metamorphas[ize] from general physicians to specialists” with graduated, progressive responsibility under the supervision of board-certified physicians [1]. Residents can leave their programs with all the training they need to sit for the qualifying exam and, if they pass, become board certified.

Like any physician, medical residents can find themselves liable for medical malpractice. In a medical malpractice case, the plaintiff-patient must prove to the trier of fact—usually the jury—that the defendant-physician breached the professional standard of care. Expert testimony is often required to establish the prevailing standard of care for a particular specialty or geographic area. While resident liability ultimately depends on several competing factors, a complicating factor is that the standard of care for a medical resident is not well defined. As one court noted, there is a dearth of case law on the correct standard to apply [1]. States vary, for example, in whether they consider residents as interns or physicians and whether the law should treat residents as generalists or specialists. The following cases illustrate the legal debate that has taken place over these distinctions.

Physician versus Student

Rush v. Akron General Hospital. In *Rush v. Akron General Hospital*, for the first time a court created a specific standard of care for a first-year resident to be held to in a medical malpractice case. An emergency room resident was alleged to be negligent for leaving a piece of glass in a patient’s shoulder [2]. The Ohio Court of Appeals reasoned that it would be unreasonable to expect from an intern “that high degree of skill which is impliedly possessed by a physician and surgeon in the general practice of his profession” [2]. The court held that a first-year resident should “possess such skill and use such care and diligence in the handling of emergency cases as capable medical college graduates serving hospitals *as interns ordinarily possess* under similar circumstances and localities, with consideration of the resident’s opportunity for keeping abreast with advances in medical and surgical knowledge and science” [2].

The *Rush* standard has evolved as courts have taken a closer look at resident physicians’ training and skill. In 1982, the court in *Jenkins v. Clark* expressly overruled the *Rush* standard of care, holding that first-year medical residents should

be held to the standard of “reasonably careful physicians or hospital emergency room operators, not of interns” [1, 3]. To establish medical malpractice, the plaintiff must show that the resident physician failed to do (or did) some particular thing(s) that a “physician or surgeon of ordinary skill, care and diligence” would (or would not) have done under like or similar conditions or circumstances [3]. A decade later, the court in *Centman v. Cobb* further modified the *Rush* standard.

Centman v. Cobb. The Indiana Court of Appeals in *Centman v. Cobb* found that first-year residents are practitioners of medicine, required to exercise the same standard of skill as a physician with an unlimited license to practice medicine [4]. *Centman* involved alleged lithium poisoning by two first-year residents. The court focused on the fact that a first-year resident practices under a temporary medical permit while completing the year of practical experience required to obtain an unlimited license to practice medicine. Regardless, the court stated, as a health care practitioner, a first-year resident who assumes treatment and care for patients “impliedly contracts that she has the reasonable and ordinary qualifications of her profession and that she will exercise reasonable skill, diligence, and care in treating the patient” [4]. Residents treat patients and prescribe medicine, holding themselves out as doctors, without representing to patients that they possess less skill or knowledge than that normally possessed by physicians, the court stated [1, 4]. The court concluded that, as practitioners of medicine, residents are bound to possess and exercise the reasonable and ordinary degree of skill, care, and diligence generally possessed, exercised, and accepted by members of their profession who practice in the same or similar localities [4].

In sum, since the early 1980s, courts have tended to treat medical residents, even first-year residents, as true physicians when it comes to the professional standard of care in medical malpractice cases. Courts have also grappled with whether to treat resident physicians as general practitioners or specialists.

Generalist versus Specialist

Pratt v. Stein. In this case, a hospital that employed an orthopedic resident whose negligence resulted in a patient’s deafness and paraparesis argued that the court should hold the resident to the standard of care of an ordinary physician, not a specialist [5]. The Pennsylvania Superior Court, which had not addressed the question before, looked for guidance to a lower court ruling in *Harrigan v. United States* [5]. *Harrigan* had held that a specialist “owes to his patient a higher standard of skill, learning, and care than a general practitioner. He is expected to exercise that degree of skill, learning, and care normally possessed and exercised by the average physician who devotes special study and attention to the diagnosis and treatment of those particular diseases within his specialty” [5].

The Superior Court agreed with what it referred to as *Harrigan’s* “sound conclusion,” saying a resident should be held to the standard of a specialist when the resident is acting within his field of specialty. This rule reflected the fact that residents are already physicians who have chosen to specialize. Therefore, residents

possess a higher degree of knowledge and skill in their chosen specialty than do nonspecialists. The rule also reflected the reality that residents render the vast majority of day-to-day hospital treatment. According to the same court, “it belies logic to assert that a resident authorized to practice his specialty on patients requiring and expecting the services of a specialist should... be judged against the standard used to appraise the reasonableness of a non-specialist’s conduct” [5]. Therefore, the court concluded that it should hold medical residents to the standard of a specialist when the resident was practicing within that specialty.

Jistarri v. Nappi. The court in *Jistarri v. Nappi* tweaked *Pratt’s* and *Harrigan’s* standard of care slightly to focus on a sliding scale standard, holding that an orthopedic resident who negligently applied a cast to a patient’s wrist should be held to a standard of care higher than that of general practitioners but less than that of specialists [6]. The court reasoned that the resident in question had more training than a general practitioner but less than a fully trained orthopedist. Hence, it would be unrealistic to require a resident to meet the same standard of care as a fully trained specialist. Residents may have had only days or weeks of training in a specialized residency program, while specialists will not only have completed their residency but may also have had years of experience in their specialized field. The court concluded that, to require the resident to exercise the same degree of skill and training as the specialist would be requiring the resident to do the impossible. Therefore, the court held that residents should be held to a standard of care higher than that for general practitioners but lower than that for fully trained orthopedic specialists [6].

Gonzalez v. St. John Hospital & Medical Center. A Michigan court recently overruled a case from more than a decade prior, *Bahr v. Harper-Grace Hospitals*, which had held that residents are generalists, not specialists. *Gonzalez v. St. John Hospital & Medical Center* involved a third-year resident practicing as a colorectal surgeon. Challenged about the qualifications of the plaintiff’s medical expert, the plaintiff argued that a physician can be a specialist without being board-certified in the specialty [8]. Since the resident was receiving advanced training in general surgery at the time of the negligence, the plaintiff claimed, the resident should be considered a specialist in that field [8].

The Michigan Court of Appeals looked to historical precedent to answer the question of whether a resident is a generalist or a specialist. In 1989, the court had refused to permit the expert testimony of an internist and a cardiologist against a resident [8]. *Bahr* in 1993, had held that interns and residents are not specialists [8]. More recently, the court noted, the Michigan Supreme Court in *Woodward v. Custer* held that a specialist is “somebody who can potentially become board certified” [8]. Under this definition, any physician—anyone who has graduated from medical school and passed the U.S. Medical Licensing Exam—who can “potentially become board-certified in a branch of medicine or surgery in which he or she practices is defined as a ‘specialist’” for purposes of Michigan law [8]. The court thus read *Woodward* as overruling *Bahr*, and held that residents *can* be specialists. Therefore, those residents who “limit their training to a particular branch of medicine or surgery

and who can potentially become board-certified in that specialty are specialists” for purposes of the standard of care [8].

Courts have attempted to hold resident physicians to an equitable standard of care in medical malpractice cases, mindful of the educational role of residency programs and resident experience while allowing patients who have been harmed a proper route to relief. The standard of care in medical malpractice litigation is an important legal issue that can drastically affect the results of a lawsuit. It seems a fair result to hold residents to a progressively higher standard as their knowledge, experience, and training increases through their respective residency programs.

References

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