

Virtual Mentor

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HEALTH LAW

Delimiting Hospitalist Liability

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As hospitalist practice becomes more widespread and expands into new areas of inpatient care, liability and scope of practice will receive greater attention. Legal liability arises from the duty that a physician has to a patient—the physician’s obligation to “possess and bring to bear on the patient’s behalf that degree of knowledge, skill, and care that would be exercised by a reasonable and prudent physician under similar circumstances” [1]. The challenge in hospital medicine is that, with the variability of training, experience, and practice composition, the “reasonable and prudent physician” standard becomes elusive.

A hospitalist is a physician whose primary professional focus is the general medical care of hospitalized patients, and hospitalist practice is highly variable, adapting to the needs of an individual hospital or system.

Hospitalists have been used in U.S. hospitals for about 12 years, and, on the heels of this innovation, the question of liability has surfaced. Describing the behavior of a “reasonable and prudent” physician is always a challenge, and one that juries wrestle with. The diversity of practices that hospitalists engage in increases this challenge. Currently, hospital medicine is not a specialty and does not have a certifying board examination, although a new initiative is under way to recognize the unique skills hospitalists possess through the Recognition of Focused Practice in Hospital Medicine by the American Board of Internal Medicine (ABIM)—a development that gives credit to their expertise and contributions [2-4].

The responsibility of a hospitalist for co-managed care of a patient was examined in *Domby v. Moritz* [5]. This case involved Helen Domby, a patient with a cardiac condition who was admitted through the emergency department by a hospitalist, Dr. Moritz. After consultation with a cardiologist, Dr. Gordon, and the emergency department physician, Dr. Zlotnick, Dr. Moritz examined the patient and transferred her to the intensive care unit, with the understanding that the care of her cardiac condition was to be managed by cardiology. Over the course of the night Dr. Gordon was called concerning several clinical issues and gave orders in response. Early in the morning following her admission, Mrs. Domby became unresponsive and died before Dr. Moritz could reach the hospital.

Andre Domby, Helen’s husband, filed a malpractice action against Dr. Moritz, the hospital, and Dr. Gordon. The defense entered expert testimony on behalf of Dr. Moritz which stated that he relied appropriately on cardiology for management of

Mrs. Domy's cardiac condition, and that, since Dr. Moritz did not arrive until after the patient's death, his actions did not cause her death. An expert witness on the Domy legal team testified that Dr. Moritz should have been in direct communication with cardiology and that he failed to ensure that cardiology examined her on the night of her admission. A revised opinion offered by Mr. Domy's expert specifically stated that Dr. Moritz should have recognized the seriousness of the patient's condition, discussed it with Dr. Gordon, and ensured that he took appropriate action.

The court held that the testimony of Mr. Domy's expert witness was inadmissible under the rules of evidence. The expert speculated on the treatment that Dr. Gordon "should" have instituted and said that Dr. Moritz should have overridden Dr. Gordon's if he disagreed with it. In stating this, Mr. Domy was holding a hospitalist co-managing a patient with a specialty service to the standard of care of the specialist. In other words, if Dr. Moritz could not rely on Dr. Gordon's opinion for cardiology care, he—Dr. Moritz—was being forced to act with the expertise of a cardiologist. But the defense argued that the responsibility of hospitalists needs to be more narrowly based on the services they provided in the specific context.

This initial foray into the appropriate scope of responsibility of a hospitalist is reassuring. Dr. Moritz produced evidence that in treating Mrs. Domy he met the applicable standard of care for a hospitalist (supervising and coordinating a patient's medical care while the patient is in the hospital) and that his actions did not cause Mrs. Domy's death. The court sustained Dr. Moritz's objection, ruling in his favor. A hospitalist co-managing a patient is only liable for the aspects of a patient's care for which he or she is directly responsible.

The limitations of the type of services that the hospitalist was providing in *Domy v. Moritz* set the scope of the physician's responsibility. If this becomes the precedent for legal liability for hospitalists, responsibility will mirror the flexibility of the hospitalist practice scope. Hospitalists functioning as consultants should only be liable for care provided in the scope of the consultation. Care provided in skilled-nursing and long-term-care facilities will need to conform to the standard of care of physicians practicing in that setting.

Scope of practice is an important issue in professionalism and medical liability. Physicians, including hospitalists, should strive to tailor the scope of their practice to the level of competence that they actively maintain, and they should seek to meet the competency guidelines outlined by their professional society. By upholding professional responsibility, physicians allow courts to define the level of care a provider is liable for and encourage courts to rely on those standards for determining liability. As hospital medicine evolves, the commitment to high-quality, safe care is the best protection against concerns of legal liability.

Notes and References

1. American College of Legal Medicine. *Legal Medicine*. 6th ed. Philadelphia, PA: Mosby; 2004: 323.
2. Society of Hospital Medicine. SHM's educational mission. 2007. http://dev.hospitalmedicine.org/AM/Template.cfm?Section=Education_CME. Accessed November 7, 2008.
3. American Board of Internal Medicine. Questions and answers about ABIM recognition of focused practice in hospital medicine. 2008. <http://www.abim.org/news/news/hospital-medicine-qa.aspx>. Accessed November 7, 2008.
4. Details about what this Recognition of Focused Practice means are available at the ABIM web site, <http://www.abim.org>.
5. *Domby v Moritz*, D050165 (Cal 2008).

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