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Expansion of Hospital Tort Liability in Washington



The Washington State Supreme Court significantly expanded the scope of potential hospital tort liability for the allegedly negligent actions of nonemployee, independently contracted emergency room service physicians, and potentially for other independently contracted hospital-based providers.

In *Essex v. Grant County Public Hospital District No. 1*, No. 101745-6, 2024 WL 1562873 (Wash. Apr. 11, 2024), the unanimous court opinion held that a Washington hospital has a nondelegable duty to patients seeking care in its emergency department in accordance with state licensing regulations governing their operation and maintenance.^[1] As a result, hospitals may face increased liability for the actions of independent contractors even if the hospital does not directly control the provision of care.

Background

The Essex case involved an estate personal representative's claims for medical negligence and wrongful death arising from the death of a patient at a public hospital in eastern Washington. *Id.* at 5. The patient went to the defendant's emergency room for radiating shoulder pain. *Id.* at 3. The physicians and nurses—who were independent contractors of the hospital—conducted imaging and testing and diagnosed the patient with a gastrointestinal blockage. *Id.* at 4. The doctors treated the blockage, and after her condition worsened, the patient was transferred to another hospital. *Id.* Hours after admission but before transfer, the patient was noted by nursing staff to have bruising on the arm, but that was not reported to the attending physician. *Id.* The doctors at the transferee hospital ran additional tests, discovered that the patient had signs of necrotizing fasciitis and, after an initial surgical intervention, determined the patient to be in a nonsurvivable condition. She died shortly thereafter. *Id.*

The Court's Decision

Nondelegable duty. The court held that because Washington state hospitals have enumerated regulatory obligations to provide emergency services of sufficient availability, staff qualifications, standards of care, and equipment and supplies to provide the "patient access to safe and appropriate care," Washington law creates a nondelegable hospital duty to patients when providing emergency care services such that its liability cannot be avoided by delegating the duty to nonemployed providers. *Id.* at 12. The court pointed to licensing regulations that generally require hospitalwide standards of care, specialty service oversight (including emergency care), and policies and procedures for patient and nursing care. *Id.* at 10-12. The court reasoned that once a hospital undertakes to provide emergency services, it must, among other things, "[d]efine the oversight of staff delivering emergency care services" and "[u]se hospital policies and procedures which define standards of care."^[2] The court held that the regulations impose a nondelegable duty for hospitals that provide emergency care services through independent contractors and that "the ultimate duty—and thus the potential vicarious liability for the failure to meet that duty—remains with the hospital." *Id.* at 12.

Although the decision specifically applies to emergency room providers, the regulations that underpin the court's decision might well be read to apply to other hospital-based physician services (e.g., pathology, radiology, anesthesiology) or nursing services. It is also not clear how this doctrine might be used to extend tort liability beyond the fairly routine imputation of liability for an agent's tortious conduct to the principal under the doctrine of apparent authority.

Corporate negligence. The court held that hospitals also have a duty of care owed directly to the patient, regardless of whether the provider is a hospital employee or independent contractor, and which is separate from its vicarious liability under the nondelegable duty doctrine explained above. *Id.* at 15. While, historically, corporate negligence was thought to be limited to four types of issues identified in Washington's pattern jury instructions (including incompetent staff, granting doctor privileges, furnishing hospital supplies and equipment, and hospital intervention in the event of negligent doctor care), the court "decline[d] to cabin corporate negligence to [those] limited circumstances..."^[3] This ruling is less clear as to when a hospital's oversight policies and procedures are robust enough to avoid claims of corporate negligence.

Implications for Hospital Tort Liability for Independent Contractors

This case raises the stakes regarding the extent to which a hospital's oversight of its emergency care services must ensure care is delivered in a safe and appropriate manner. How a hospital is supposed to do that is less clear. Also, hospitals may well find themselves revisiting their physician- or nursing-contracts' indemnification provisions in order to mitigate the exposure that they now have for errors over which they lack appreciable actual control. Such indemnification requirements might in themselves spawn other conflicts with the requirements of medical malpractice insurance policies. Ultimately, this decision may create significant consequences for hospitals that could require contractual, legislative, or regulatory remediation.

Endnotes

[1] *Essex v. Grant Cnty. Pub. Hosp. Dist. No. 1*, No. 101745-6, 2024 WL 1562873 (Wash. Apr. 11, 2024).

[2] *Id.* (citing WAC 246-320-281 and WAC 256-320-136).

[3] *Essex*, No. 101745-6 at 16 (citing 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 105.02.02 (7th ed.)).

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