The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

HOSPITAL IMMUNITY FROM TORT LIABILITY

Serving as the main hub for the provision of healthcare, hospitals are vital to society. "Although the hospital is the center of curative activities, on occasion acts or omissions of hospital personnel will result in injuries."[1] Medical staff members put forth endless effort to treat patients and lessen their suffering within their confines. Hospitals do face legal obstacles, though, despite their admirable goals. Healthcare facilities are particularly vulnerable to tort liability. Tort liability is the legal term for civil wrongs that result in harm and carry legal consequences. These can involve medical malpractice, carelessness, and other wrongdoing in the setting of hospitals. There has been discussion about the idea of hospital immunity from tort liability as a means of reducing these dangers. Some say that this immunity threatens patient rights and responsibility within the healthcare system, while others maintain that it is essential to the ongoing operation of healthcare facilities.

What is Tort Liability?

Before jumping into this research regarding hospitals' immunity from tort liability its important to fully grasp the concept of tort liability…

Tort liability is the legal term for being accountable for wrongdoings that result in injury to another individual or organization. It basically includes civil wrongs that cause harm, loss, or damage, for which the offending party may face legal repercussions. Established on the tenets of justice, tort liability seeks to give redress and recompense to persons or organizations injured by the conduct or carelessness of others. Contrary to criminal liability, which deals with crimes

[1] M. V. R. (1963). Hospital Tort Liability and Immunity. *Virginia Law Review*, *49*(3), 622–642. https://doi.org/10.2307/1071126

against the state and has penalties like jail time, tort liability mostly deals with disagreements between individuals who are trying to get compensation for injuries they have sustained.

The basis of tort liability is the duty of care owed by people or organizations to others, which calls for them to take reasonable and sensible precautions to prevent injury that is reasonably foreseeable. If someone violates this obligation by being careless, reckless, or malicious, and such carelessness directly results in harm, that person may be held liable for damages. A broad variety of wrongdoings are covered under tort liability, such as carelessness, slander, trespassing, assault, battery, and purposeful infliction of emotional distress. Crucially, tort liability encourages people and organizations to use caution and respect the rights and interests of others by acting as a deterrent against harmful activity in addition to providing compensation.

Furthermore, tort law is flexible and dynamic, changing over time to take into account new developments in technology, societal standards, and court decisions. It functions within a framework of legal precepts that direct courts in establishing culpability and calculating damages, including proximate cause, foreseeability, and the standard of care. Furthermore, a number of defenses, such as assumption of risk, consent, contributory negligence, and statutory immunities, may be used to lessen or eliminate tort liability. Although disputes between people or entities are the main focus of tort liability, it also has connections to contract law, property law, and constitutional law.

Moreover, corporations, governments, and other organizations may also be subject to tort liability, which makes them liable for the deeds of their agents, employees, or representatives in addition to individuals. In conclusion, tort liability is a key idea in civil law that serves to defend the rights and interests of people and things by offering a court remedy for injuries brought on by wrongdoing.

Are Hospitals Immune?

“The extent of culpability is contingent upon the type of care received, including inpatient or outpatient, as well as the terms of the hospitalization agreement. All hospital staff members, including the medical staff coordinator, are held accountable by the hospital institution in the event that a private or health-service patient suffers harm while receiving care there. However, the hospital institution is not responsible for the coordinator's actions if the hospitalization

agreement states that the coordinator of the medical staff will solely be the contracting party with regard to medical care."[2]

Hospitals typically fall into one of three categories: for-profit entities, public institutions operated by government entities, or private nonprofit organizations. Once a hospital's classification is determined, a court must assess whether it benefits from any form of immunity and, if so, whether that immunity covers the specific tort claim in question. If immunity is not present or is not broad enough, the plaintiff's legal theory for seeking recovery against the hospital must be identified. Plaintiffs typically rely on one of two theories:

1. respondeat superior, which holds the hospital vicariously liable for the negligence of its employees, "Some medical men consider that the holding of a hospital authority to be vicariously responsible for a doctor's mistakes will diminish his sense of responsibility and his independence of professional action. And, some have added, the natural tendency of the hospital authority will be to try by rules and regulations to minimize the possibility of error by the doctor. The converse view has also been expressed that, if hospital authorities are not to carry the responsibility for errors made by their junior medical and surgical officers, the morale of these men will suffer and applicants for hospital posts will be hard"[3] or
2. corporate negligence, alleging that the hospital failed in its duty to maintain a safe environment, employ competent staff, or provide safe equipment.

Liability depends on the specific relationship between the hospital, the plaintiff, and the tortfeasor, assuming that the alleged act indeed constitutes negligence.[4]

"Nonproprietary hospitals in New York always have been exempted from tort liability to patients for the professional acts of doctors and nurses. This rule holds true regardless of

[2] Bohle T. (1995). Haftung des Trägers [Legal liability of the hospital]. *Zeitschrift fur arztliche Fortbildung*, *89*(6), 609–612.
[3] Vicarious Liability. (1953). *The British Medical Journal*, *1*(4823), 1338–1339. http://www.jstor.org/stable/20311610

[4] M. V. R. (1963). Hospital Tort Liability and Immunity. *Virginia Law Review*, *49*(3), 622–642. https://doi.org/10.2307/1071126

whether the professional person is a full-time hospital employee or an independent contractor, merely performing an isolated medical act therein. The raison d'etre for this rule is grounded in two concepts. The first is the institution's charitable nature, precluding it from making a profit, though patients may pay it sums for room, board and services.The institution theoretically would be liable to extinction, were it required to satisfy tort claims from money needed for its existence. Further, courts have regarded patients' payments to the hospital as additional gifts to help the hospital carry on the charity; the nonpaying patient is deemed to have waived impliedly any tort claim in accepting the care and treatment of the charity. The second reason is that there is no respondeat superior relationship between the institution and the professionals performing medical services there since the latter are deemed independent contractors. They are liable to patients as individuals, but they cannot impose derivative liability on the institution. As a result of this rule, patients seeking recovery from such institutions have had to make their claim in contract, alleging the hospital violated some agreed-upon an obligation to them and the breach should be 'submitted to the jury as a question of fact." [5]

Arguments For & Against Hospital Immunity

Hospital immunity proponents contend that special difficulties faced by medical facilities warrant exemption from some tort responsibilities. First of all, decision-making in a moment might mean the difference between life and death in high-stakes contexts like hospitals. Despite their best efforts, medical practitioners are subjected to extreme pressure to make quick assessments and decisions, which leaves possibility for error. Being immune from tort responsibility can act as a safety net against the possibility of litigation, enabling medical professionals to concentrate on treating patients without having to worry about facing penalties all the time. "as medicine evolved, so did judicial standards, and as the potential for liability grew, so did the recoveries. Recovery included both compensation for measurable economic losses resulting from death and injury, and non-economic awards, including punitive damages"[6]

[5] Hugh Russ Jr., Torts—Hospital Immunity from Tort Liability, 6 Buff. L. Rev. 227 (1957)

[6] Rosenbaum, S. (2003). Medical Errors, Medical Negligence, and Professional Medical Liability Reform. *Public Health Reports (1974-), 118*(3), 272–274. http://www.jstor.org/stable/4598848

Second, hospitals are intricate establishments with several levels of management. It's not always easy to assign blame when something bad happens. It can be unfair and expensive to hold the entire organization accountable for the deeds of certain healthcare professionals. Hospitals are encouraged to adopt strong quality assurance procedures without worrying about excessive lawsuits since hospital immunity offers a certain level of legal protection. “When the hospital has assumed the duty of rendering services,. it is said, the hospital certainly should not be allowed to evade responsibility by pleading the prohibition of the licensing statute enacted for the protection of the public in the first instance. Although a breach of duty may be found, liability is not absolute since the hospital may avail itself of any of the familiar negligence counter-allegations.”[7]

Furthermore, supporters contend that hospital immunity creates a setting that is favorable to learning and innovation. Healthcare providers are more inclined to take part in quality improvement projects and communicate openly about adverse events when there are less restrictive liability regulations in place. Over time, systemic gains in patient safety and outcomes may result from this transparency.

However, opponents of hospital immunity argue that it compromises openness and responsibility in the medical community. A culture of impunity where hospitals and healthcare providers feel protected from the repercussions of their acts can be fostered by immunity from tort liability. Hospitals have less motivation to give patient safety and high-quality care top priority when there is no possibility of legal consequences. “Although a breach of duty may be found, liability is not absolute since the hospital may avail itself of any of the familiar negligence counter-allegations. However, aside from contentions of tort immunity and matters of pleading and proof, the four reported Virginia decisions which consider a private hospital's liability have had to contend with only two defenses of any

real substance. One, proximate cause, was advanced in Jefferson Hosp., Iv. Van Lear, where the hospital contended that the patient's efforts at self help resulted in the injury he sustained. However, the Court found his act to be a natural and foreseeable result of the hospital employees' failure to respond to his repeated signals for aid. More frequently, the alleged negligence will occur where the patient is passively undergoing medical treatment. Under these

[7] M. V. R. (1963). Hospital Tort Liability and Immunity. *Virginia Law Review*, *49*(3), 622–642. https://doi.org/10.2307/1071126

conditions the hospital's defense is a denial of the employer-employee relationship, but the Court of Appeals has stated, with respect to an intern, that a person "selected, employed, directed, supervised and paid by the hospital" cannot be considered anything other than a hospital employee."[8]

Furthermore, vulnerable communities, who sometimes lack access to legal action, may be disproportionately affected by hospital immunity. Healthcare inequities may be exacerbated by systemic impediments to justice that minority or low-income patients must overcome. Society runs the danger of allowing injustice and inequity to persist throughout the healthcare system by providing immunity to institutions.

Hospital immunity is also criticized for possibly contributing to a lack of confidence between patients and medical staff. The basis of the doctor-patient relationship is undermined when patients believe that hospitals are more interested in safeguarding their own interests than in making sure patients are safe. In the healthcare industry, trust is crucial, and policies that betray it can have a significant impact on patient results and satisfaction.

Possible solutions

It is a difficult task to strike a balance between the requirement to defend patient rights and the necessity to shield hospitals from unwarranted lawsuits. Establishing a limited liability system, in which hospitals are exempt from some forms of tort responsibility but are nonetheless liable for grave misbehavior or carelessness, is one possible remedy. "A negligence rule of liability for failure to take due care (defined as efficient care) can in theory create incentives for optimal care per unit of activity. However, the level of risky activities may still be nonoptimal if patients misperceive average risk (Shavell, 1980), unless the definition of negligence also extends to performing additional "unnecessary" procedures. But in medical malpractice and other professional liability, due care is defined in terms of professional custom, possibly because the courts cannot at reasonable cost acquire the information necessary to define due care according to a cost-benefit standard. By definition, a custom standard of liability cannot correct any systematic nonoptimality in customary care that may be induced by consumer misperceptions. A custom-based standard in imperfectly informed markets could be either too low or too high. Liability could prevent significant deviations from this standard, which may be a proxy for

[8] M. V. R. (1963). Hospital Tort Liability and Immunity. *Virginia Law Review*, *49*(3), 622–642. https://doi.org/10.2307/1071126

consumer expectations, but this would not necessarily result in optimal care."[9] This strategy guarantees that patients have options in the event of severe injury while acknowledging the particular difficulties faced by healthcare facilities.

Strengthening alternative dispute resolution processes, such arbitration and mediation, is another strategy for resolving healthcare-related conflicts outside of the established judicial system. These procedures can maintain the doctor-patient relationship and foster transparency while offering quicker and more affordable solutions.

Improving patient advocacy and education can also provide people the tools they need to stand up for their rights and demand accountability from healthcare professionals. Patients can take a more active part in protecting their own interests within the healthcare system by being more informed of their rights and available channels for assistance.

Doctor-Patient Relationship

Based on the interactions between a doctor and patient, numerous identities exist. Essentially, it's a fiduciary partnership built on trust and good faith on both sides. There is also a legal connection between the two. This addresses the standard of care that physicians are expected to provide, contractual duties, and tortious responsibilities.

The patient-doctor interaction is widely recognized to have three main characteristics from a legal perspective. The first aspect is contractual in nature: a connection is governed by the rules of contract law from the moment it is established. Secondly, prior to administering care and treatment in a consensual partnership, physicians must acquire competent informed permission from their patients. Third, when delivering care to the patient, the physician must adhere to the proper standards of care due to quality assurance issues.

"To avoid tort liability, a physician must possess the skill and knowledge and apply the care of a member of the profession in good standing, and if the doctor claims to be a specialist, of the specialist group concerned."[10]

---

[9] Danzon, P. M. (1991). Liability for Medical Malpractice. *The Journal of Economic Perspectives*, *5*(3), 51–69. http://www.jstor.org/stable/1942796

[10] Herzog, P. E. (1990). The Reform of Medical Liability: Tort Law or Insurance. *The American Journal of Comparative Law*, *38*, 99–114. https://doi.org/10.2307/840535

Medical liability of a physician

"Physicians have traditionally been under a different obligation as well: absent an emergency (as in the case of an unconscious patient in an accident) doctors may not engage in any procedure invasive of the patient's bodily integrity absent the patient's consent. If the patient is unable to give consent because of infancy, mental illness or the like, consent must be obtained from the appropriate parent, guardian, etc., or from the court."[11]

Three categories apply to medical malpractice liability: custom-based standard of care, changes in the standard of care, and expert qualification and evaluation. In terms of their patients, doctors are expected to perform to a custom-based standard of care, which is based on both the average level of skill and care demonstrated by other doctors as well as the standard of care that a reasonable man would provide. distinct medical professionals have distinct standards of care, such as the standards of care for experts or residents.

The parameters defining the standard of care are highly erratic. The court ruled in McCarty v. Mladineo that the instruction that the threshold is that of a "minimally competent physician" was incorrect. The phrase "reasonably prudent, minimally competent" physician took its place instead. Whether a particular medical practice is considered acceptable or not determines this standard of care, and this can vary throughout medical schools.

Both schools of thought may not have been definitively proven correct or incorrect in the medical field. Usually, it important that one of these—rather than both—is the source of the acceptance.

It is quite challenging to adopt such a custom-based standard of care. It addresses the invisible average line that represents a doctor's ability, competence, and skill in close relationship to established procedures. Some people maintain that since every patient is different, there is no set standard of treatment to follow.

A noteworthy legal precedent in this regard is McCourt v. Abernathy. In this instance, Wendy McCourt, the patient, was taken to the hospital due to dyspnea and pain in her chest wall. She revealed that she had hyperextended her left shoulder and sustained an injury from a horse

[11] Herzog, P. E. (1990). The Reform of Medical Liability: Tort Law or Insurance. *The American Journal of Comparative Law, 38*, 99–114. https://doi.org/10.2307/840535

while working with the horses a few days prior. Wendy had a pulled muscle, which Dr. Abernathy repaired, but a few days later, things became worse. Wendy had a pulled chest muscle, which Dr. Clyde treated at the same time as Wendy's finger puncture wound. She was referred to internist Dr. Kovaz after her condition continued to deteriorate for a few days, and he promptly transferred her to the critical care unit.

Another extremely significant case is Locke v. Pachtman. At the hospital affiliated with the University of Michigan, plaintiff Locke had a hysterectomy. Defendant Dr. Pachtman carried out the operation. The needle the defendant was using broke during the procedure as she started to fix the rectocele. After the needle broke, the Defendant notified the Plaintiff and assured her that there would be no harm if the needle remained inside her. But after feeling pain, the Plaintiff went to see another physician, who managed to extract the shattered piece of the needle. On the basis of res ipsa loquitor, the plaintiff sued the defendant, accusing it of negligence.

Variations in the standard of care are highly subjective and vague, and doctors are typically evaluated based on professional consensus and what is actually considered to be the predominant practice. It's important to be careful not to mistake these attributes for the one and only effective technique to treat a patient. Depending on the specialty and practice region, different standards of care apply. An expert in one topic is assumed to have a completely different level of expertise than, say, a general physician. Although it is presumed that the doctor is generally knowledgeable about the disorders, a specialist will be able to distinguish even minute differences in the symptoms.[12]

CONCLUSION

A difficult topic at the crossroads of patient rights, institutional protection, and society interests is hospital immunity from tort liability. Supporters contend that immunity is required to protect healthcare organizations' capacity to operate, while detractors voice issues with justice, accountability, and openness. Striking the correct balance between these conflicting interests

[12] Shaik A., (2015) Doctor-Patient Relationships: The Distinction Between Contractual and Tortious Liability. https://www.lawctopus.com/academike/doctor-patient-relationships-the-distinction-between-contractual-and-tortious-liability/#_edn3

is crucial to guaranteeing that patients receive excellent care and that medical professionals are not unjustly overburdened by litigation. Through investigating possible resolutions and concessions, the community can endeavor to establish a healthcare structure that places emphasis on patient safety, responsibility, and equity for all.