



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 36
Issue 2 *Dickinson Law Review* - Volume 36,
1931-1932

1-1-1932

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Recommended Citation

Nicholas Unkovic, *Nurses and Legal Problems*, 36 DICK. L. REV. 117 (1932).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol36/iss2/10>

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NURSES AND LEGAL PROBLEMS

I. RELATION TO THE STATE AND PUBLIC.

It is only comparatively recently that legislation has been adopted in reference to the profession of nursing. Although practical nursing had its origin in Germany in 1836 and was first brought to public attention by Florence Nightingale during the Crimean War, it has been since 1880 that nursing has had its greatest development, aided primarily by the advances in bacteriology, antiseptic, and asepsis.¹ Today eighteen thousand nurses graduate annually from the various approved training schools throughout America.²

With the growing importance of nursing it is the aim of this paper, in brief, to point out the statutes affecting nursing, particularly in Pennsylvania, as well as the cases dealing with the relation of the nurse to the hospital, to the physician, and to the patient.

Today states generally have statutes creating boards of nurse examiners with which properly accredited nurses may register after passing an examination. Pennsylvania's basic law is the Act of May 1, 1909,³ having as its preamble the following:

"Whereas, The safety of the public is endangered by insufficiently trained and incompetent nurses, in the absence of a law for the registration of those possessing the proper qualifications;"⁴

The purpose of such a statute is to protect the general public against incompetent and unskilled nurses, and it is with this in mind that our courts interpret such acts.⁵ Indirectly such statutes limit the number of prospective nurses, thus preventing over-crowding in the nursing pro-

¹Encyc. Brit. (14th ed.), Vol. 16, pp. 43-45.

²Ibid.

³P. L. 321.

⁴Ibid.

⁵Opinion of Dep. Att'y Gen'l Keller in Re Practicing Nurses, 45 Pa. C. C. 393, 396 (1916).

fession which today possesses approximately two hundred thousand members.

In recognition of the importance of nursing certain statutes have been passed in Pennsylvania. The basic act of 1909⁶ provided for the registration of nurses; the setting up of a Board of Examiners consisting of five members; the giving to the Board the power to give annual examinations and issue certificates of registration; the qualifications for registration being placed at a minimum of two years training, both practical and theoretical, in surgical and medical nursing, coupled with the provision that the nurse must be twenty-one years of age; and making it a penal offense to profess to be a registered nurse or to use the abbreviation R.N. unlawfully. The statute also gave the Board power to revoke unanimously the certificate of any nurse.

There have been several amendments to the basic act, but in the main the provisions stand as above stated.⁷

II. RELATION TO THE HOSPITAL.

In discussing the question of the nurse and her relation to the hospital it is necessary to divide this problem into two parts: First, the nurse and her relation to the public hospital; and, second, the nurse and her relation to the so-called private hospital or sanitarium.

The relation of the nurse to the public hospital is essentially not that of a servant. Mr. Justice Cardozo has defined the relation of the nurse to the public hospital in the following language:

"It is true * * * * of nurses as of physicians, that, in treating and caring for a patient, they are not acting

⁶P. L. 321, *supra*.

⁷Amended June 20, 1919, P. L. 545, so as to have the Board of Examiners consist of three physicians, two of whom are officially connected with public hospitals where nurses' training schools are maintained, and the other two members to be registered nurses of five years experience. This statute also made provisions for the eligibility for Pennsylvania certificates of nurses from other states by application without examination, the regular registration fee being Ten Dollars. Amended also by the Act of June 8, 1923; P. L. 498, and the Act of May 13, 1927, P. L. 988.

as servants of the hospital. The superintendent is a servant of the hospital; the assistant superintendents, the orderlies, and the other members of the administrative staff are servants of the hospital. But nurses are employed to carry out the orders of the physicians, to whose authority they are subject. The hospital undertakes to procure for the patient the services of a nurse. It does not undertake, through the agency of the nurses, to render those services itself. The reported cases make no distinction in that respect between the position of a nurse and that of a physician (*Powers v. Mass. Hospital*, 109 Fed. 194, 44 C. C. A. 122, 65 L. R. A. 372, 1901; *Ward v. St. Vincent's Hospital*, 78 App. Div. 317, 79 N. Y. Supp. 1004, 1903; *Hillyer v. St. Bartholomew's Hospital*, 1909, 2 K. B. 820); and none is justified in principle. If there are duties performed by nurses foreign to their duties in carrying out the physician's orders, and having relation to the administrative conduct of the hospital, the fact is not established by the record, nor was it in the discharge of such duties that the defendant's nurses were then serving. The acts of preparation immediately preceding the operation are necessary to its successful performance, and are really part of the operation itself. They are not different in that respect from the administration of ether. Whatever the nurse does in those preliminary stages, is done not as the servant of the hospital, but in the course of treatment of the patient, as the delegate of the surgeon to whose orders she is subject. The hospital is not chargeable with her knowledge that the operation is improper any more than with the surgeons."⁸

Most hospitals are public hospitals, in that they are charitable organizations organized for no private gain and maintained for the proper care and medical treatment of the sick, and this is true even though such a hospital admits patients for pay to its confines. As such, the hospitals are not liable in damages to their patients, whether charity or pay, for personal injuries caused by the negligence of the nurses or physicians or servants of the hospital.⁹

⁸*Schloendorff v. Hospital*, 211 N. Y. 125, 105 N. E. 92 at 94, 95 (1914).

⁹*Gable v. Sisters of St. Francis*, 227 Pa. 254, 75 Atl. 1087 (1910); *Paterlini v. Hospital Ass'n*, 247 Fed. 639 (3rd Circuit—1918).

A leading case is that of *Gable v. Sisters of St. Francis*,¹⁰ in which case a nurse in a Philadelphia hospital negligently placed two hot water bottles in the bed of a patient but recently operated upon and still under the influence of ether, so that the hot water escaped from one of the bottles and scalded the patient severely. The hospital was sued by the patient, but the court refused to allow recovery in view of the rule of law that public hospitals are not liable to their patients for personal injuries caused by the negligence of nurses.

There are certain purely administrative functions in the doing of which the nurse may be said to be the servant of the public hospital, but usually a nurse is not acting as the servant of the hospital.

On the other hand, taking the cases dealing with nurses in hospitals maintained for purely private profit or sanitariums it is noted that different rules of law are applied. Nurses and doctors in such hospitals and sanitariums have been held to be and are servants of the owner of the institution. Such being the case, then it follows that the owner is responsible for the negligent and careless acts of the nurses and doctors. The absence of a nurse from the room of a delirious patient has been held to amount to negligence on the part of a private hospital.¹¹ The owner of such a hospital has been held liable for the careless use of a hot water bag by a nurse resulting in injuries to a patient.¹² Proprietors of sanitariums have been held responsible for the failure of physicians on their staffs to use due care in operations and care of its patients.¹³ Therefore, it is well settled that the owner of a private hospital or sanitarium, which is operated for profit and is not a duly organized charitable institution, is liable in damages for injuries to patients caused by the negligence of

¹⁰227 Pa. 254, 75 Atl. 1087 (1910).

¹¹*Wetzel v. Hospital*, 96 Neb. 636, 148 N. W. 582 (1914); *Group v. Sanitarium*, 147 Ill. App. 7 (1909).

¹²22 A. L. R. 341 at 349, annotation b. Cf. *Gable v. Sisters of St. Francis*, *supra*.

¹³*Ibid*.

the nurses, staff physicians, or other employees, for a private hospital owes to its patients the duty to use reasonable care for their safety and reasonable skill and diligence in nursing and caring for them.¹⁴

III. RELATION TO THE PHYSICIAN.

It has been observed that a nurse is under the direct control of the physician rather than that of the hospital, except in those few circumstances where she is performing purely administrative duties for the hospital. This rule is true of nurses in public hospitals.¹⁵ Nurses in privately owned hospitals or sanitariums are servants of the owners of such institutions.¹⁶ A nurse has no authority to practice medicine, nor can she undertake the treatment and cure of disease.¹⁷

"There are many things that a nurse may lawfully do in the field of medicine and surgery, when acting under the direction and supervision of a physician or surgeon, which she cannot do legally of her own initiative or independent of a physician's orders or instructions. For example, she may administer drugs of all types, narcotics, and stimulants; give hypodermic injections of morphia, hypodermoclysis, and enemas; take the temperature and pulse of the patient and give prescribed remedies in case of collapse or undue excitement; give baths and massages; place dressings and bandages and apply salves; prepare saline solutions to be injected into the blood vessels under certain conditions and many other duties peculiarly within the ministrations of a nurse in the sick room."¹⁸ Under the orders and directions of a physician a nurse may administer an anesthetic.¹⁹

¹⁴Ibid. II a, and 343 b.

¹⁵Supra, notes 8 & 9.

¹⁶Supra, note 12.

¹⁷Act of May 1, 1909, P. L. 321, sec. 9.

¹⁸Opinion of Dep. Att'y Gen'l Keller in Re Practicing Nurses, 45 Pa. C. C. 393, 395 (1916).

¹⁹Ibid.

Is the relationship of the physician and nurse that of master and servant? It has been so held in a case where a hospital nurse, although not in the regular employ of an operating surgeon, was under his special supervision and control during the operation.²⁰ In this case, *Aderhold v. Bishop*,²¹ the surgeon was held liable, under the doctrine of respondeat superior, for the nurse's negligence.

In the Pennsylvania case of *Davis v. Kerr*,²² a surgeon was held liable for the negligence of a nurse under his supervision and control, but whether this was predicated on the doctrine of respondeat superior is not disclosed by the decision. The liability of a physician for the negligence of a nurse under his control may arise not only by following the master and servant theory, but also by the doctrine called relational duties.²³ Under such a doctrine certain duties arise between a physician and his patient merely because of the relationship itself. Applying this by analogy to the physician-nurse relationship, might not certain duties be said to arise automatically from such a relationship, regardless of whether the master-servant rule is adopted or not?

To call the nurse the servant of the physician disregards the fact that often it is the patient who hires the nurse and who has the right to discharge the nurse. Yet this feature should not be and is not controlling, for as stated above²⁴ it has been held by at least one court that the relation of physician and nurse is that of master and servant.

²⁰*Aderhold v. Bishop*, 94 Okla. 203, 221 Pac. 752 (1923).

²¹*Ibid.* In *Baker v. Chicago, P. & St. L. R. Co.*, 243 Ill. 482, 90 N. E. 1057, 26 L. R. A. (N. S.) 1058, 134 Am. St. Rep. 382 (1910), it is said: "The maxim of respondeat superior is founded on the principle that he who expects to derive advantage from an act which is done by another for him must answer for any injury" which a third person "may sustain from it."

²²239 Pa. 351, 86 Atl. 1007 (1913).

²³*Bowman: Elementary Law*, (1929) pp. 300, 301.

²⁴*Supra*, note 21.

IV. RELATION TO THE PATIENT.

Assuming that the holding that the relation of the physician and nurse is that of master and servant,²⁵ it does not follow that because the doctor or master is personally liable for the negligence of the nurse or servant that the nurse is not also personally liable. The contrary is the law, and it is a general rule that a servant is personally liable for injuries resulting from his negligence.²⁶

The degree of care and skill required of physicians and surgeons is not the highest possible, but only that which is reasonable and ordinary, and in determining the standard of care and skill which the law requires, the state of scientific knowledge at the time must be considered.²⁷ Nurses should be liable to no higher degree of care than physicians or surgeons. The same standard of care would seem to be applicable relative to the duties of a nurse toward the patient, as those of a physician toward the patient.

NICHOLAS UNKOVIC.

NECESSARY TESTAMENTARY PROVISION FOR
AFTER-BORN CHILDREN

Section 21 of the Wills Act as amended,¹ provides as follows "When any person, male or female, shall make a last will and testament, and afterward shall marry, or shall have a child or children, either by birth or by adoption, not provided for in such will, and shall die leaving a surviving spouse and such child or children, or either a surviving spouse or such child or children, although such child or children be born after the death of their father, every such

²⁵Supra, note 21.

²⁶7 Labatt's Master & Servant sec. 2580 et. seq.

²⁷Wohlert v. Seibert, 23 Pa. Super. Ct. 213 (1903); Howard v. Grover, 28 Me. 97, 48 Am. Dec. 478 (1848); 29 Yale L. J. 684, 5; Barnard v. Schell, 85 Pa. Super. Ct. 329 (1924); 48 C. J. 1113.

¹1921, P. L. 937, Sec. 1.