

1384 DUTY OF HOSPITAL: GRANTING AND RENEWING STAFF PRIVILEGES (CORPORATE NEGLIGENCE)

A hospital owes a duty to its patients to use reasonable care in granting and renewing staff privileges to permit only competent (physicians) and (surgeons) to use its facilities. This duty requires the hospital to use reasonable care to appoint only qualified physicians and surgeons to its medical staff (and to periodically monitor and review their competency). The failure to use reasonable care is negligence.

In investigating the qualifications of doctors applying for staff privileges, the duty of reasonable care requires that a hospital: (1) require an applicant to complete an application; (2) verify the accuracy of the applicant's statements especially in regard to the applicant's medical education, training, and experience; (3) solicit information from the applicant's peers, including those not referenced in the application, who are knowledgeable about the education, training, experience, health, competence, and ethical character of the applicant; (4) determine if the applicant is currently licensed to practice in this state and if the applicant's licensure or registration has been or is currently being challenged; (5) inquire whether the applicant has been involved in adverse medical malpractice actions and whether the applicant has lost (his) (her) membership in any medical organizations or privileges at any other hospital.

A hospital must evaluate the information gained through its investigation and make a reasonable judgment to approve or deny an application for staff privileges. With respect to its investigation and evaluation, the hospital must gather and evaluate all of the facts and

knowledge that would have been acquired had it exercised reasonable care in investigating its medical staff applicants.

[Hospitals are not insurers of the competency of their medical staff. If the hospital exercised the degree of care, skill, and judgment as required of it, it cannot be found negligent simply because a member of its medical staff acted in a negligent manner.]

COMMENT

This instruction and comment were originally approved in 1988. The instruction and comment were revised in 1998. The comment was updated in 2017.

This instruction is based on the decision of the supreme court in Johnson v. Misericordia Community Hosp., 99 Wis.2d 708, 301 N.W.2d 156 (1981).

Standard of Care. The standard of ordinary care under the circumstances expressed in Osborn v. Montgomery, 203 Wis. 223, 234 N.W. 372 (1931) applies to hospitals. Johnson, supra at 738; Schuster v. St. Vincent Hosp., 45 Wis.2d 135, 172 N.W.2d 421 (1969). The revision to this instruction in 1998 changed the standard of "average hospital" to "reasonable hospital." See Nowatske v. Osterloh, 198 Wis.2d 419, 543 N.W.2d 25 (1996).

Need for Expert Testimony. In establishing the negligence of a hospital, the necessity for expert testimony depends upon the type of negligent acts involved. Expert testimony should be adduced concerning those matters involving special knowledge or skill or experience on subjects which are not within the realm of the ordinary experience of mankind and which requires special learning, study, or experience. Payne v. Milwaukee Sanitarium Found., Inc., 81 Wis.2d 264, 272, 260 N.W.2d 386 (1977). See also Walker v. Sacred Heart Hospital, Appeal No. 2015AP805. Because the procedures ordinarily used by hospitals to evaluate applications for staff privileges are not within the realm of the ordinary experience of mankind, expert testimony is generally required to prove negligence. Johnson, supra at 739. However, not every case will require expert testimony, e.g., where the hospital has made no effort to investigate the applicant.

Bifurcation of Trial. If at the pretrial, the plaintiff indicates that evidence will be presented relating to prior bad acts of medical treatment by the doctor to show the hospital's negligence, then bifurcation of the claims against the doctor and the hospital should be considered to prevent prejudice against the doctor. See Wis. Stat. § 904.03. Under this bifurcated format, the case against the doctor would be presented first. If the doctor is not negligent, then the trial is over unless there are claims against hospital employees (e.g., nurses or residents). The second phase would cover the hospital's negligence, comparison of negligence, and damages. The same jury should hear both phases of the trial.