

809.07 MEDICAL NEGLIGENCE - DEFENSE OF LIMITATION BY NOTICE OR
SPECIAL AGREEMENT.

The (*state number*) issue reads:

"Did the defendant limit the scope of *his* employment by notice or special agreement?"

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, that the omission or failure to act complained of by the plaintiff was beyond the scope of the defendant's employment because of notice or special limiting agreement.

A health care provider may, in advance, limit the extent and scope of *his* employment by notice or special agreement. (A health care provider may agree to perform health care services without undertaking or making *himself* responsible for the subsequent care and treatment of the patient.) A health care provider who limits the extent and scope of *his* employment has legal responsibility only for the health care services rendered within the limitations of that employment.¹ However, any health care services *he* does render must be in accordance with the standards of practice exercised by members of the same health care profession with similar training and experience situated in the same or similar communities at the time the health care service is rendered.

Finally, as to this (*state number*) issue on which the defendant has the burden of proof, if you find, by the greater weight of the evidence, that the omission or failure to act complained of by the plaintiff was beyond the scope of the defendant's employment because of notice or special limiting agreement, then it would be your duty to answer this issue "Yes" in favor of the defendant.

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If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.

1. This instruction does not address the issue where the health care provider goes beyond the limited scope of his engagement. See N.C.P.I.-Civil 809.45.