

809.65 MEDICAL NEGLIGENCE - HEALTH CARE PROVIDER'S LIABILITY
FOR ACTS OF NON-EMPLOYEE AGENTS - *RESPONDEAT SUPERIOR*.¹

*(Use for claims arising before 1 October 2011. For
claims arising on or after 1 October 2011, use N.C.P.I.-
Civil 809.65A.)*

The *(state number)* issue reads:

"Was *(name nurse, attendant, other person)* the agent of the
defendant at the time the *(describe health care service)* was performed?"

On this issue the burden of proof is on the plaintiff. This means
that the plaintiff must prove, by the greater weight of the evidence, that
(name nurse, attendant, other person) was the defendant's agent at the
time the *(describe health care service)* was performed.

Ordinarily, a health care provider² is not liable for the negligence of
[nurses] [attendants] [*(name other persons)*] who are not *his* employees.

However, where, in the preparation and performance of [a medical
treatment] [an operation] [*(describe other procedure)*] the health care
provider has full control and supervision of the [nurse] [attendant]
[*(name other person)*], such person becomes *his* agent and the health
care provider is liable for any negligence of that agent which proximately
causes the [injury] [damage]. The [nurse] [attendant] [*(name other
person)*] is the agent of the health care provider only if, at the time the
(describe health care service) was performed, the health care provider
possesses the power to control directly and supervise the [nurse]
[attendant] [*(name other person)*] while performing the *(state health
care service)*. The [nurse] [attendant] [*(name other person)*] will be
considered an agent of the health care provider if the health care provider
possesses this power of supervising the manner of acting whether or not
he actually exercises it. (The duties of the health care provider with

respect to such supervision and control over such agents are substantially the same as those respecting the other phases of the treatment of the patient generally; that is, in supervising *his* agents, *he* is bound

[to exercise *his* best judgment in the treatment and care of *his* patient]³

[to use reasonable care and diligence in the application of *his* knowledge and skill to *his* patient's care]⁴ [and]

[to follow the standards of practice among health care providers with similar training and experience situated in the same or similar communities at the time the health care service was rendered].⁵)

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that (*name nurse, attendant, other person*) was the agent of the defendant at the time the (*state health care service*) was performed, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

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 defendant.

1. See *Lewis v. Barnhill*, 267 N.C. 457, 465, 148 S.E.2d 536, 543 (1966); *Davis v. Wilson*, 265 N.C. 139, 145, 143 S.E.2d 107, 111 (1965); *Jackson v. Joyner*, 236 N.C. 259, 261, 72 S.E.2d 589, 591 (1952); *Nash v. Royster*, 189 N.C. 408, 411 127 S.E. 356, 360 (1925).

2. "Health care provider" is defined by N.C. Gen. Stat. § 90-21.11. In particular, it should be noted that the term "health care provider" specifically includes "any other person who is legally responsible for the negligence of a person described by [N.C. Gen. Stat. § 90-21.11]," which includes "nurses" and anyone "rendering assistance to a physician," or "any other person acting at the direction or under the supervision of [any of the foregoing

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persons]" N.C. Gen. Stat. § 90-21.11.

3. *Wall v. Stout*, 310 N.C. 184, 192, 311 S.E.2d 571, 576 (1984).

4. *Id.*

5. N.C. Gen. Stat. § 90-21.12.