The Friedman’s two week vacation abrupt end, one week in - after their rental cottage. Security military outpost on its roof.

The Friedman’s refused to that they were unable to live in the Golan Heights came to an the IDF insisted that they vacate conditions warranted a pay the leaser for the week inside.

What’s the Law?

Please email us with your comments, questions, and answers at weekly@projectfellow.org

LAST WEEK’S CASE # 268 P.A. MALPRACTICE! VICARIOUS LIABILITY?

Lisa’s last visit to Amfield County Medical Center unfortunately turned out to be disastrous. While presumably a generally healthy woman, Lisa came down with a cold and an earache on Monday Sept 3rd. After a few days of unrelenting suffering, compounded with neck pain and dizziness, Lisa’s friend Minna drove her to Amfield County Medical Center to have her condition checked out.

They were finally seen by a man, whom they man was not a medical doctor, but a Physician group which was contracted by with a diagnosis of a sore throat and ear due medication and a treatment plan.

Two days later, the situation worsened disoriented and soon lost consciousness. Minna her to the emergency room. Lisa was Medical Center in Valdosta, Ga.

A spinal tap showed that Lisa was suffering from bacterial meningitis. She slipped into a coma and Minna was told that Lisa might not survive. However, a week later, Lisa came out of the coma.

Unfortunately, as a result of the untimely diagnosis of bacterial meningitis, Lisa suffered near blindness, balance and ambulating deficiencies, as well as severe damage to her inner ear. As a result, Lisa, who was declared totally disabled by the Social Security Administration, must use a walker to ambulate.

- According to Torah law, is a doctor liable for sicknesses which could have been averted with proper and timely diagnosis?
- According to Torah law, who is liable for a Physician’s Assistant’s malpractice - the PA, the physician who employed her, or the medical facility which contracted with the physician?
What’s the Law?

The Answer:
1) See Detailed Explanation 2) Barring contractual agreements, the physician and medical facility are absolved unless they appointed an employee with reason to assume that he/she would harm their patients.

Detailed Explanation

Vicarious Liability invokes the following Halachos.

1. While the Medical profession is not an exact science, and is fraught with risks, the Torah gives specific permission for a doctor to take suitable action and administer due care [Shemos 21: 19, Bava Kama 85a].

2. Moreover, it is mitzvah for a doctor to administer care to the best of his/her ability [ibid.].

3. However, only a competent professional of the is permitted to do so.

   In times of yore, Beit Din issued medical licenses. Nowadays, governments do.

4. An unlicensed practitioner who administers care and harms a patient, even inadvertently, can be sued for malpractice.

5. A licensed practitioner who intentionally harmed a patient can be sued.

6. A licensed practitioner who inadvertently harmed a patient due to his/her inattention will have to take it up with the Heavenly Court.

7. A licensed practitioner who inadvertently caused the patient to pass away deserves to go to exile.

8. A licensed practitioner who administered appropriate care, but nevertheless was unsuccessful and inadvertently harmed the patient or caused him to pass away is not liable for damages [Aruch Hashulchan 336:1,2].

9. A licensed practitioner who did not actively harm a patient, but instead, failed to notice warning signs, albeit due to know irresponsibility on his/her part, and as a result failed to diagnose an illness in a timely fashion, cannot be sued and need not take his/her account up with Heaven [Shevet HaLevy 7:271].

10. Barring contractual agreements, unless an employer had reason to assume that his/her employee is likely to harm patients, he/she is not liable for the damages his/her employee affects. In Talmudic terms we refer to this tenet as ain shliech ledvar aviara [Kiddushin 42-43, Choshen Mishpat 388: 15 Rema].

Application:

Barring contractual agreements, according to Torah Law, an adult an employer has no vicarious liability for the damages affected by his/her employer except if there was reason to assume that that the employee would cause harm or damage. Instead, the employee, (the PA) would be liable.