

Vicarious Liability:

The Implications For Companies Providing Medical Care/Treatment or Services

Insurance for your reputation





People feel safe in your care. Shouldn't you have the same protection if something goes wrong?

Many healthcare professionals benefit from the protection of individual indemnity arrangements such as those provided by Medical Defence Organisations.

However, those that run private healthcare facilities need to be fully conversant with the potential risks that they face which fall outside of those protections and the NHS Indemnity. The increase in private facilities, whether providing services to the NHS or other direct patient contact, is only likely to continue with ongoing Healthcare Reforms meaning that more businesses are at risk from actions from claimants against a backdrop of a general increase in litigation. The corporate entity or company which provides the services can potentially carry a Vicarious Liability for the negligent actions of those working on its behalf, including healthcare professionals either with or without their own individual cover. In such circumstances the company is deemed to be the Employer which can be held liable for those actions, provided they took place whilst working on behalf of that company. There are some key fundamental principles relating to Vicarious Liability.

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- Vicarious Liability generally involves the imposition of liability on Employers for the acts of their employees.
- The imposition of Vicarious Liability does not necessarily depend upon the Employer being at fault.
- Vicarious Liability does not create a 'cause of action'; rather, it allows an existing cause of action to be relied on against the Employer.
- Where an Employer lends staff to another Employer, in most cases the liability remains with their Permanent Employer unless they can establish otherwise ie with explicit contract terms.
- Where the permanent and temporary Employers exercise the right to control over an Employee, the courts may impose Vicarious Liability on them both for any acts of the Employee.

Crucially for those engaging self-employed Medical Professionals there are also other circumstances where a business can be held vicariously liable for the actions of someone who is not their employee.

For example:-

- A Partnership. If the Partnership's liability is 'Joint and Several' and there is no insurance in place for the partnership, then individual partners can be personally liable for the acts of a colleague.
- Self employed sub-contractors engaged under a contract for services – eg. A Doctor or other Self-Employed Medical Professional. If the Company exercises a degree of control over the way in which their service is provided, it may still be held vicariously liable for their acts. For example, situations where it is alleged that the company failed in its duty of care in selecting, supervising and controlling those working on its behalf.

All of the above illustrates that it is imperative that a Company providing medical services reviews the extent to which they may be liable and seeks to arrange appropriate corporate cover to supplement the indemnity protection in place for certain Medical Professionals.