

When is a Home Care Agency liable for Personal Injury or Medical Malpractice?

This is a question that you may have asked yourself if you've ever looked at a case involving a Home Care agency. In this article, I will address several initial questions and issues to consider when screening a potential lawsuit.

As the owner of a home care agency in New York State, compliance with state rules and regulations as it pertains to patient safety, is an everyday concern. Agencies offering personal care or "hands on" services are licensed or certified through and regulated by their State Department of Health. All certified aides working for a home care agency require successful completion, including competency evaluations, of a state approved training program along with a state administered background check. Aides are also required to be compliant with annual in servicing hours, usually provided by the home care agency, to keep certification current and valid. An agency can employ two types of aides through the Department of Health, each with its own scope of tasks that outlines permissible versus non-permissible skills.



Consider the following when reviewing a home care case;

- **Is the Home Care Agency in good standing per State Department of Health?**
-All actively Licensed and Certified Home Care Agencies will be registered on the State Department of Health website.
- **Was the Plan of Care completed, appropriate and followed accordingly?**
-A Plan of Care is created based upon MD orders, by a registered nurse for use by the aides. Copies of the care plan should be placed in the patient's chart and at the patient's house for review with assigned aides. The care

plan is reviewed by a licensed nurse with an aide initially and when a change has been made to the plan of care. The Plan of Care covers diagnoses, types and frequency of services, equipment required, functional limitations, medications and treatments along with safety measures to protect against injury, to name a few. The Plan of Care should be reviewed frequently as required by changes in patient condition and State regulation. Following a hospital discharge, some States require the Home Care agency RN visit the patient within 24hrs or prior to the next home care visit to ensure accuracy and safety of the care plan. The patient's MD should be notified and authorize all changes within 30 days.

- **Has the Aide received annual state mandated in servicing hours?**
 - The Home Care Agency is responsible to offer, track and document in service hours for each aide per State regulations. The agency also offers on going safety training including but not limited to; basic environmental and medical equipment or devices safety. Documentation supporting this training is included in the employee's chart.
- **Was the aide appropriately screened during the hiring phase?**
 - the agency is responsible to verify eligibility for employment on the State website, obtain a copy of the aide's original certificate, immunization records and recent annual medical. A recent work reference and verification of compliance with regulations is also required.
- **Was the aide appropriately supervised?**
 - An aide's first shift with a patient requires that a licensed nurse do a face to face introduction at which point, the care plan is reviewed with the aide.
 - Anytime there is a change to the Plan of Care, the licensed nurse is responsible to review this with each assigned aide assigned.
 - Quarterly, a licensed nurse must conduct an in person supervisory visit with the aide and document in the aide and patient chart.

Please consider these things the next time a home care case comes across your desk. If you require more help on your home care case, please feel free to give me a call.

Michele Webber, RN, CLNC
Webber Legal Nurse Consulting
www.webberLNC.com
315-857-7608