

The Abandonment of the Captain of the Ship Doctrine in Light of the Recent Developments in Philippine Surgery in the Context of the Operating Room

Rester John L. Nonato

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The Captain of the Ship Doctrine states that the surgeon's mere presence in the operating room subjects the latter to legal liability for everyone's negligence in that room regardless of whether the surgeon is himself negligent. This Article examines the applicability of this doctrine in relation to recent developments in the medical profession. The Author looks at the doctrine's rationale, origin, and its application in various American and Philippine cases. The Author also provides a thorough study of the case of *Ramos et al. v. Court of Appeals*, which first introduced the doctrine to Philippine jurisprudence.

Through an analysis of both Philippine laws governing a surgeon's actions and the current developments in the medical profession, the Author concludes that the doctrine needs to be abandoned. Specialization is now the norm among doctors. Thus, the existence of the surgeon's control over others in the operating room becomes highly questionable. Requiring the surgeon to learn other highly specialized tasks such as anesthesiology will result to confusion and will not allow the former to concentrate on the work specifically attributable to surgeons. Allowing the doctrine to continue will also result to an injustice. The surgeon should not be held responsible for the negligent acts of other specialists during a procedure which requires the application of the latter's medical expertise.

As for determining liability in cases where the surgeon and the specialist are at fault, the Author argues that the laws and codes such as the Medical Act of 1959, the Revised Penal Code, Civil Code, and the Code of Ethics of the Medical Profession governing *culpa contractual*, *quasi-delict*, *res ipsa loquitur*, agency, *respondeat superior*, and criminal negligence are applicable, but are not enough. Hence, the Author recommends the creation of a law that will justly determine a surgeon's and specialist's liability for negligent acts inside the operating room without the need for applying the Captain of the Ship Doctrine.