***NAMING THE RIGHT PARTIES IN THE MEDICAL NEGLIGENCE ACTION:***

***THE EMERGENCE OF OSTENSIBLE AGENCY***

***By Richard L. Mattox & Derrick H. Wilson***[1]

# I. TRADITIONAL PRINCIPLES (GOD SAVE THE HOSPITAL! )

The traditional view towards hospital liability is that the hospital is not responsible for the actions of physicians who perform procedures within the hospital's walls. The view was based upon several different foundations.

## A. CORPORATE PRACTICE DOCTRINE

The corporate practice doctrine states that a corporation cannot perform professional services; the corporation must act through individuals. The corporate practice doctrine held that a corporation cannot practice medicine and cannot control the actions of physicians for this reason. As the hospital could not control a physician, the courts held that neither could the hospital be held accountable for the physician's actions.

1. STATE ETHICAL RULES. - reinforced the corporate practice doctrine by limiting the ability of professionals to provide services through corporations and limiting the involvement of non-professionals in professional corporations.
2. CORPORATE STATUTES. - many states originally had restrictions on professional service corporations or simply did not recognize professional service corporations.[2]

## B. THE INDEPENDENT CONTRACTOR CONCEPT

The major obstacle to hospital liability for the acts of physicians is the independent contractor relationship between the physician and the hospital. The vast majority of hospitals do not have any sort of employment relationship with staff physicians. The hospital, aside from the credentialling process, has no control over the physician's actions at the hospital. In many cases, there are no written agreements between staff physicians and the hospital administration. The doctrine

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[2] **See, Henn, Corporations, (1986, West Publishing); Sloan v. Metro. Health Council, (1987), Ind. App., 516 N.E.2d 1104.**

of respondeat superior, therefore, is generally inapplicable to the physician- hospital setting.

### C. THE HOSPITAL HOTEL

Many hospitals characterize their facilities as simply hotels which provide an adequate bed and mediocre food for their guests - patients and physicians. The analogy concludes that whatever consenting people do in the privacy of the hospital is not the responsibility of the hospital. The analogy emphasized that patients chose their physicians and should be held responsible for these decisions.

## II. EROSION OF TRADITIONAL DOCTRINE (WHO HIRED YOU ANYWAY?)

### A. THE ISSUE OF PATIENT CHOICE

The courts have routinely dismissed claims where a patient seeks to hold a hospital responsible for the negligence of a patient's personal physician. Problems occur, however, when a hospital refers the patient to a physician. A patient generally has no input in the selection of these physicians and has no independent means to determine the competency of the physician to which the hospital refers the patient. The emergency room is the best example of this situation.

#### 1. EMERGENCY ROOM PHYSICIANS

The main problem with the hospital hotel analogy is that it assumes that both the patient and the physician have an ongoing relationship. This relationship is generally lacking in the emergency room. A patient arrives at the emergency room unconscious or barely conscious and the physician assigned to the emergency room (generally a member of an independent corporation with which the hospital has a contract for the management of the emergency room[3]) treats the patient. Numerous courts have held hospitals accountable for physicians working in the emergency room. See Torrence v. Kusminsky, 408 S.E.2d 684 (W. Va. 1991), (the Court notes that courts from Florida, Ohio, Oklahoma, Oregon, Pennsylvania, Wisconsin, Delaware, Kentucky, Tennessee, Washingon have accepted this concept in some fashion); Paintsville Hospital Co. v. Rose, 683 S.W.2d 255 (Ky. 1985), the Court noted that Maryland, New Jersey, New York, Georgia, Michigan, and Texas courts had also applied this theory to emergency room physicians and that it was unable to find a single reported case where the theory was advanced and rejected by an appellate court.)[4]

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[3] **Many of these independent emergency room physicians are paid a relatively low hourly rate. The low pay has led some to conclude that such services are unable to retain highly competent physicians. A recent "60 Minutes" segment discussed several instances where this theory was proven correct.**

[4] **The court, in dicta, stated that the Kentucky Hospital Association's amicus brief also recognized that "the historical**

2. MEMBERS OF THE EMERGENCY ROOM TEAM, ANESTHESIOLOGISTS.

Numerous physicians assist emergency room physicians, such as radiologists, anesthesiologists, and pathologists. Several courts have held that the same considerations which support the imposition of liability to emergency room physicians also allow a hospital to be responsible for those who assist in the emergency room. See Stratso v. Song, 477 N.E.2d 1176 (Ohio 1984), applying ostensible agency to an anesthesiologist; Mitchell v. Shepherd Memorial Hospital, 797 S.W.2d 144 (Tex. App. 1990), (applying ostensible agency to a radiologist); Kashishian v. Wisconsin School of Medine, 481 N.W.2d 277 (Wis. 1992), (applying ostensible agency to a cardiologist);

B. THE ISSUE OF RELIANCE

The issue of reliance is the second important factor in holding a hospital responsible for non-employee physicians. The plaintiff argues that the hospital, by affirmative act or by inaction, has allowed the patient or the public to believe that the hospital, not an independent contractor, is providing certain services. The courts have recognized two types of reliance.

1. HOSPITAL ADVERTISING (general reliance)

Several courts have focused upon the hospital's representations to the public at large and do not require a patient to prove that he or she specifically relied upon representations made by a hospital. As the Kentucky Supreme Court held in Paintsville Hospital v. Rose, "the cases applying ostensible agency to the emergency room physician situation, do not require an express representation to the patient that the treating physician is an employee of the hospital, nor do they require direct testimony as to reliance. A general representation to the public is implied from the circumstances." 683 S.W.2d at 256. The Paintsville court stated that it would be "unreasonable, to put a duty on a patient to inquire of each person who treats him whether he is an employee of independent contractor of the hospital." Id. at 258, citations omitted.

2. HOSPITAL REPRESENTATIONS (specific reliance)

A few courts have focused upon the hospital's specific representations to the patient and concluded that these representations were sufficient to establish the necessary reliance. In Baptist Memorial Hospital System v. Smith, 822 S.W.2d 67 (Tex. App. 1991), the Court noted that the hospital receptionist told patients coming into the emergency room that the patient could see "our emergency room doctor" if the patient did not have their own physician. In addition, the hospital's advertisements contained references to "Skilled health care professionals" and made specific reference to the hospital's twenty-four hour emergency room "staffed twenty-four hours a day by licensed physicians." The Court held that these facts,

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**view of hospitals as hotels providing rooms, buildings where private medical practitioners treat private patients . . . is no longer viable."**

in conjunction with other factors, were sufficient to hold the hospital accountable. At least one court has held that the plaintiff's failure to prove specific reliance was fatal to the Plaintiff's claim. Lithium v. Ohio State Univ. Hosp., 594 N.E.2d 1077 (Ohio Ct. App. 1991), (plaintiff's failure to prove that the hospital had made representations to the patient and the plaintiff's failure to show reliance negated claim of apparent authority/ostensible agency.)

## C. HOSPITAL RESPONSIBILITY FOR PHYSICIAN PEER REVIEW.

Another important development in the area of hospital liability is physician peer review. Under the Joint Commission on Accreditation of Hospital's guidelines and under many state statutes, a hospital is ultimately responsible for ensuring the quality of patient care. The duty extends from the initial grant of physician privileges to physician reappointment. This duty severely limits the argument that a hospital cannot control a physician's medical practice and, in fact, requires a hospital to monitor any questionable cases of staff physicians. If a hospital consistently ignores a staff physician's negligent acts, the hospital is very susceptible to a claim of negligent credentialling. See, Restatement of Torts (2nd), Sect. 411 (1965); Darling v. Charleston Community Memorial Hosp., 211 N.E.2d 253, 256 (Ill. 1965), (landmark decision recognizing hospital's duty to exercise reasonable care in the selection and supervision of physicians). Negligent credentialling, however, is different from ostensible agency in that a credentialling claim requires evidence of the hospital's negligence in some fashion, while ostensible agency requires only a finding of agency.

## D. CONFLICT OF LAWS ISSUES -

A problem arises when a patient from another state seeks treatment at an Indiana hospital. Many adjoining states, such as Kentucky and Ohio, have much more favorable medical malpractice remedies. Kentucky, for example, does not have damage cap on medical malpractice claims and does not utilize the panel system. In addition, Kentucky clearly recognizes the ostensible agency doctrine. The financial consequences to the hospital can be dramatic. Due to the inherent uncertainty of litigation in another state, the settlement value of the case almost inherently goes up. Many county hospitals maintain relatively modest levels of insurance due to the malpractice caps and the very limited liability of the hospital for physicians practicing at the hospital.

Hospitals, for economic reasons, actively advertise their facilities through billboards, radio, and television. These advertisements are expected to, and reach, a broad geographic area. These advertisements may be sufficient to confer personal jurisdiction over the hospital in the patient's home state. The court may still, however, apply Indiana law to the action and reach the same result as an Indiana court.[5] Some states, however, such as Kentucky have very liberal conflict of laws provisions. In Kentucky, if there are any significant contacts, such as the Plaintiff's

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[5] It is crucial to remember that the forum state always applies its own procedural law, conflict issues are based upon substantive law differences. Procedural law includes the rules of procedure, the rules of evidence, and, potentially, statutes of limitations.

residence and the presence of a few witnesses, the court may well apply Kentucky law.

Plaintiffs should carefully consider the proper litigation forum and not assume that an Indiana court would be the most beneficial. A different court could literally make the difference between winning and losing the case. By the same token, defense attorneys should carefully consider the hospital's potential exposure from actions brought in other jurisdiction.

The flip side of the conflict of law issue concerns actions filed in Indiana which involve malpractice outside the state of Indiana. The Indiana Medical Malpractice Act protects only those health care providers who have qualified under the Act. The qualification procedure generally involves simply filing proof of insurance. Many health care providers are not aware of this requirement, or simply don't consider the possibility of an action across state lines. Again, counsel should carefully consider, in advance, what law should apply and what law will likely apply. As with any action involving citizens from different states or an action which occurred, in whole or part, in another jurisdiction, choice of law issues should not come as a surprise.

## III. THE LEGAL THEORIES (IF IT LOOKS LIKE AN AGENT & ACTS LIKE AN AGENT, IT MUST BE AN AGENT).

### A. OSTENSIBLE AGENCY

The elements of ostensible agency as developed by the courts (e.g. Nicholson v. Memorial Hospital System, 722 S.W.2d 746 (Tex. App. 1986)) are as follows:

1. The Plaintiff must have a reasonable belief in the agent's authority.
2. The belief must be generated by some holding out by the actions or neglect of the principal.
3. The Plaintiff must justifiably rely upon the agent's representations.

### B. APPARENT AUTHORITY

The doctrine of apparent authority is similar, if not identical to, the doctrine of ostensible agency. Originally developed under agency law, this doctrine as applied to medical malpractice requires three elements.

1. The hospital acts in a manner which would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital.
2. If the acts of the physician create the appearance of authority, the plaintiff must also prove that the hospital had knowledge of an acquiesced in them; and

3. The plaintiff acted in reliance upon the conduct of the hospital or the individual alleged to be negligent, consistent with ordinary care and prudence.

See, Kashishian v. Port, 481 N.W.2d 277 (Wis. 1992); see also, Restatement of Agency (2nd), Sect. 267 (1966), ("One who represents that another is his servant or other agent and thereby causes a third person justifiably to rely upon the care or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care or skill of the one appearing to be a servant or other agent as if he were such." ; Restatement of Torts (2nd), Sect. 429 (1966), (One who employs an independent contractor to perform services for another which are accepted in the reasonable belief that the services are being rendered by the employer or by his servants, is subject to liability for physical harm caused by the negligence of the contractor in supplying such services to the same extent as though the employer were supplying them himself or by his servants.)[6]

C. NON-DELEGABLE DUTY -

This theory argues that a hospital is responsible for certain medical functions and that these services may not be delegated to independent contractors. A small number of plaintiffs have used this theory. In Pamperin v.Trinity Memorial Hospital, 423 N.W.2d 848 (Wis. 1988), Wisconsin law required a hospital to provide radiological services. The plaintiff argued that, based upon the statute, the hospital could not reduce its liability by contracting these services out to an independent contractor. The Pamperin Court rejected this argument, holding that the imposition of a duty does not make it a non-delegable duty. C.F., Marek v. Professional Health Services, Inc., 179 N.J. Super. 433, 432 A.2d 538 (1981).

D. ESTOPPEL -

As with apparent authority, the theory of agency by estoppel is very similar to ostensible agency. Under agency by estoppel, there are two determinative issues:

1. Did the patient reasonably believe that the physician was an employee of the hospital?

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[6]. Some Courts, expanding upon agency concepts, have held that a referring physician is responsible for the physician to which the patient is referred. **See,** 1994 WL 85730, *1 (ILL.APP. 4 DIST.)) Physicians who are employed together, who diagnose and treat the case together, without withdrawal by or discharge of either, are both responsible if the treatment is negligent. See 61 Am.Jur.2d Physicians, Surgeons, and Other Healers § 292 (1981).

2. Did the hospital actively cause the patient's belief or fail to notify the patient that his belief was mistaken.

The Ohio Supreme Court recently adopted this theory in Clark v. Southview Hospital & Family Health Center, 628 N.E.2d 46, noting that "a hospital may be held liable under doctrine of agency by estoppel for negligence of independent medical practitioners operating in hospital when: (1) it holds itself out to public as provider of medical services, and (2) in absence of notice or knowledge to contrary, patient looks to hospital, as opposed to individual practitioner, to provide competent medical care."

E. CORPORATE NEGLIGENCE -

Strictly speaking, the concepts of Corporate Negligence are separate from Ostensible Agency. The former requires proof of some independent negligence on the part of the hospital, while the latter requires only a quasi-agency relationship. Generally speaking, a hospital has certain duties towards hospital patients, such as:

1. Duty to Maintain Hospital Premises
2. Duty to Formulate Reasonable Policies, Procedures, & Rules.
3. Duty to Exercise Reasonable Care in the Selection and Review of Medical Staff.

See, Health Law Practice, (1993), Sect. 9.04

F. HMO LIABILITY

As HMOs are relatively new entities, there are few cases addressing an HMO's liability for the acts of physicians retained by the HMO. Several courts have held that an HMO can be liable under ostensible agency. Boyd v. Albert Einstein Medical Ctr., 547 A.2d 1229 (Pa. Super. Ct. 1988); Decker v. Saini, (Mich. Cir. Ct. 1991, unreported), 1991 WL 277590. In addition, other court has held a HMO liable to a patient under a third party beneficiary theory. Stelmach v. Physician's Multi-Specialty Group, 1989 Mo. App. Lexis 852, (Mo. Ct. App. 1989).

Other courts have rejected such theories. See, Chase v. Independent Practice Assocation, 31 Mass. App. Ct. 661, 583 N.E.2D 251, ((1) IPA which contracted with HMO to arrange for health services for HMO members was not vicariously liable for alleged negligence of physician who provided services to HMO member, and (2) IPA which contracted with HMO to arrange for health services for HMO members was not liable for alleged negligence of physician under apparent agency theory.), 743 S.W.2D 373); Williams v. Good Health Plus. Inc., 743 S.W.2D 373), (the court held that (1) health maintenance organization could not be held liable for alleged negligence because it was incapable of practicing medicine, and physicians associated with it were independent contractors, and (2) plaintiffs were not entitled to claim, in absence of a response to defendant's motion for summary judgment or any other evidence in the

record, that organization might be liable on theory of holding-out or ostensible agency, where such theories were not raised below.)

## IV. THE STATUS OF OSTENSIBLE AGENCY IN INDIANA (LOOKS LIKE A HOTEL TO ME?)

### A. NO APPELLATE CASES DIRECTLY ADDRESSING IN INDIANA

At the present case, there are no reported cases which address the doctrine of ostensible agency. Given the broad acceptance of the doctrine however, the adoption of this theory is very likely given the proper factual setting. In addition, several trial courts have allowed cases to proceed under this theory.

### B. MOST RECENT REPORTED CASES REINFORCE TRADITIONAL DOCTRINE.

The recent case of Weaver v .Robinson, 627 N.E.2d 442 (Ind. App. 1993), illustrates the current status of Indiana law. In Weaver, the Plaintiff sued several physicians and the hospital where the physicians performed the surgery. The Court noted that a hospital cannot legally practice medicine and that physcians furnished by the hospital to its patients remain independent cotnractors. Id. at 447. The Court makes a cryptic reference to imposing liability upon a hospital if the "usual requisites of agency . . . exist." Id., citing, Sloan v. Metropolitan Health Council, (1987), Ind. App., 516 N.E.2d 1104, 1109. Sloan is an interesting case because the defendant was on HMO which employed several physicians. The defendant argued that the HMO, as an entity, could not practice medicine and therefore could not be held accountable for its employees. The Court rejected this contention because the HMO's supervisor was a physician and because Indiana public policy allows physicians to practice as corporations. The Sloan decision is not truly an ostensible agency case; Sloan is a respondent superior case.

### C. INDIANA DOES NOT RECOGNIZE THE TORT OF NEGLIGENT HIRING OF INDEPENDENT CONTRACTORS.

Several cases which hold a hospital responsible for a physician's care, refer to cases where an individual is responsible for negligently selecting an independent contractor. Indiana recently addressed this tort theory and rejected it in the construction context.

## V. THE HOSPITAL'S RESPONSE (HE'S NOT OUR DOCTOR!)

### A. DISCLAIMERS

One popular method of negating the impact of ostensible agency or similar theories is the use of a written disclaimer on a patient's admission papers. This disclaimer states that physicians who practice in the hospital are not hospital employees and that the hospital is not responsible for their actions. The intended effect of the disclaimer is to

negate reliance and the effect of inadvertent remarks about a physician's relationship to the hospital. The legal effect of such disclaimers is unclear. One recent Kentucky decision, Floyd v. Humana of Virginia, 787 S.W.2d 267 (Ky. App. 1990), suggests that disclaimers can be effective. In Floyd, the Court noted that the Plaintiff admitted that she had read and signed the admission forms which stated that the physicians treating her were independent contractors. This finding, according to the Court, was sufficient to negate any reasonable inference of agency. Id. at 270. On the other hand, the majority opinion in Clark v. Southview Hospital & Family Health Center, 628 N.E.2d 46, suggested that a sign in an emergency room would be insufficient to negate the hospital's liability. The dissen

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> " As to the second prong of the newly announced test [for agency by estoppel], what constitutes "notice or knowledge to the contrary?" The majority has indicated that a sign in the emergency room is not sufficient. Will DISCLAIMERS in the hospital's brochures and advertisements be sufficient? Will a hospital be able to insulate itself by promoting, for instance, "the excellent care provided by its independent staff physicians?"

In an unreported decision, a panel of arbitrators held a hospital responsible for a physician's conduct even though the patient had signed an admission form which included an express disclaimer for the actions of the treating physicians. Berry v. Youngstown Osteopathic Hospital, 1991 WL 169107 (Ohio App.). Many of the questions pertaining to disclaimer have yet to be answered satisfactorily.

1. CONSCIOUS VS. UNCONSCIOUS PATIENT -
   Although a relative can provide the necessary consent for a procedure, most courts may well find that the relative's knowledge of the physician's non-employee status is not imputed to the patient. At the same time, in some jurisdictions it may be difficult for an unconscious patient to be able to establish the necessary reliance.

2. DISCLAIMERS SIGNED AFTER SURGERY -
   Such disclaimer are subject to attack based upon contract principles preventing unilateral modification of contract and also fail to negate any prior inferences of agency.

3. FEDERAL DUMPING LAWS -
   At first blush, a hospital might find it convenient to require patients to complete a disclaimer or refuse to admit patients. This solution is suspect for legal as well as moral and ethical reasons. The federal EMERGENCY MEDICAL TREATMENT AND ACTIVE LABOR ACT, 42 U.S.C. Sect. 1395 requires hospitals to treat patients who have emergency medical conditions and precludes a hospital from transferring the patient to another facility if the patient has not stabilized, absent a medical reason for doing so.. The act, which was designed to prevent patient dumping by hospitals for economic reasons, has been the basis of private actions by patients who were improperly transferred. See, Delaney v. Cade, 986 F.2d 387 (10th Cir. 1993).
4. MINOR OR INCOMPETENT PATIENTS -

Once again, it is unclear whether a parent or guardian's knowledge of the disclaimer will be imputed to the patient if the patient can establish reasonable reliance and the parent or guardian did not specifically raise this issue with the incompetent

5. DURESS OR SUFFICIENCY OF CONSENT -
A patient may well claim that he was not specifically informed about the disclaimer and that his emotional state negates the validity of the disclaimer.

B. CAREFUL ADVERTISING - (WE DO NOT PRACTICE MEDICINE).
An important way for hospitals to avoid liability is by carefully considering how a hospital advertises its services. A hospital should avoid references which imply that the hospital will provide physician services. In addition, hospitals should preclude physicians from using hospital letterhead and the like. Hospitals should explain that physicians are independent from the hospital. One local Louisville hospital actively advertises that it provides its maternity ward patients with complete access to a twenty-four hour anesthesiology service. The hospital actually didn't provide anything. The hospital contracted out all of its maternity services, but made a marketing decision to sell these services to the public as being provided by the hospital. This is where the marketing department and the legal department need to get together. The hospital may have to choose between a reduced market share or lower liability exposure in certain circumstances. The hospital's risk management group should dictate the proper limits of advertising.

C. BETTER EMPLOYEE TRAINING -
All hospital employees should be well trained in dealing with patient questions and should avoid any references which imply an agency relationship between a physician and the hospital.

D. INDEMNIFICATION FROM NEGLIGENT DOCTOR -
Some hospitals may be able to seek indemnification from a negligent doctor because the theory of liability is almost identical to respondeat superior. Hospitals should seeks assurance from all staff physicians and independent practice groups that (1) they are qualified under the Malpractice Act and (2) they will indemnify the hospital in the event the hospital is held accountable for their actions. If the hospital is guilty of other misconduct, such as negligent credentialling, however, indemnification may be unavailable.

## VI. CONCLUSION -

Ostensible Agency and similar theories will, in all likelihood be recognized in Indiana in the very near future. The doctrine has clear roots in well recognized agency principles. The important question is what defensive measures taken by a hospital will be upheld by the courts.

## VII. BIBLIOGRAPHY

A. ARTICLES

1. Health Care Law Practice, Patient Care Liability, Sect. 9.03 (1993) (excellent general discussion of this area).

2. 51 A.L.R.4th 235, Liability of Hospital or Sanitarium for Negligence of Physician or Surgeon.

3. 72 A.L.R.2d 396, Hospital's Liability for Patients Brought to the Emergency Room.

B. CASES

1. Steinberg (John, Jane), Estate of Steinberg (Shannan) v. Dunseth (Ward, Dr.), Petra (Jana, Dr.), Passavant Area Hospital, Drennan (James, Dr.) --- N.E.2d ----, 1994 WL 85730 (Ill.App. 4 Dist., Mar 18, 1994) (NO. 4-93-0569)

2. Clark v. Southview Hosp. & Family Health Ctr., 68 Ohio St.3d 435, 628 N.E.2d 46, 62 USLW 2616 (Ohio, Mar 16, 1994) (NO. 92-2194, 7956)

3. Gunn v. St. Elizabeth Medical Center, 1993 WL 503239 (Ohio App. 2 Dist., Montgomery County, Dec 16, 1993) (NO. 13886)

4. Grutzius v. Franciscan Sisters Health Care, 251 Ill.App.3d 897, 623 N.E.2d 853, 191 Ill.Dec. 263 (Ill.App. 3 Dist., Nov 05, 1993) (NO. 3-92-0711)

5. Dumas v. Muenster Hosp. Dist., 859 S.W.2d 648 (Tex.App.-Fort Worth, Aug 17, 1993) (NO. 2-92-189-CV)

6. Walls v. Hazleton State General Hosp., 157 Pa.Cmwlth. 170, 629 A.2d 232 (Pa.Cmwlth., Jul 15, 1993) (NO. 2514 C.D. 1992)

7. Farwick v. Sisters of Mercy of Clermont County, Ohio, Inc., 1993 WL 172332 (Ohio App. 12 Dist., Clermont County, May 24, 1993) (NO. CA92-08-085)

8. Soltis v. State, 188 A.D.2d 201, 594 N.Y.S.2d 433 (N.Y.A.D. 3 Dept., Mar 04, 1993) (NO. 66138)

9. Hensley v. Caietti, 13 Cal.App.4th 1165, 16 Cal.Rptr.2d 837 (Cal.App. 3 Dist., Feb 26, 1993) (NO. C013229)

10. Van Antwerp v. Amherst Hosp., 1993 WL 27641 (Ohio App. 8 Dist., Cuyahoga County, Feb 04, 1993) (NO. 61680)

11. Pennington v. Brock, 841 S.W.2d 127 (Tex.App.-Hous. (14 Dist.), Nov 12, 1992) (NO. A14-92-00127-CV)

12. Holmes v. University Health Service, Inc., 205 Ga.App. 602, 423 S.E.2d 281 (Ga.App., Sep 09, 1992) (NO. A92A0786, A92A0787)

13. Clark v. Southview Hosp. and Family Health Center, 1992 WL 211939 (Ohio App. 2 Dist., Montgomery County, Sep 04, 1992) (NO. 12845, 13060)

14. White v. Methodist Hosp. South, 844 S.W.2d 642 (Tenn.App., Aug 17, 1992) (NO. 02A01-9110-CV-00233)

15. Raglin v. HMO Illinois, Inc., 230 Ill.App.3d 642, 595 N.E.2d 153, 172 Ill.Dec. 90 (Ill.App. 1 Dist., Jun 05, 1992) (NO. 1-91-2775)

16. Kashishian v. Port, 167 Wis.2d 24, 481 N.W.2d 277 (Wis., Mar 18, 1992) (NO. 89-2039)

17. Kelly v. St. Luke's Hosp. of Kansas City, 826 S.W.2d 391 (Mo.App., Mar 17, 1992) (NO. WD44374)

18. McClellan v. Health Maintenance Organization of Pennsylvania, 413 Pa.Super. 128, 604 A.2d 1053 (Pa.Super., Mar 10, 1992) (NO. 3020 PHILA. 1990)

19. Robinson v. Portage Radiological Associates, Inc., 1992 WL 40222 (Ohio App. 11 Dist., Portage County, Feb 07, 1992) (NO. 91-P-2323) (Ohio App. 8 Dist., Cuyahoga County, Dec 26, 1991) (NO. 59645)

21. Chase v. Independent Practice Ass'n, Inc., 31 Mass.App.Ct. 661, 583 N.E.2d 251 (Mass.App.Ct., Dec 17, 1991) (NO. 89-P-49)

22. Chapa v. St. Mary's Hosp. of Saginaw, 192 Mich.App. 29, 480 N.W.2d 590 (Mich.App., Nov 18, 1991) (NO. 121841)

23. Justice v. City of Columbus, 1991 WL 244996 (Ohio App. 10 Dist., Franklin County, Nov 14, 1991) (NO. 91AP-675)

24. Ledesma v. Texas Children's Hosp., 1991 WL 188678, No Publication (Tex.App.-Hous. (14 Dist.), Sep 26, 1991) (NO. A14-90-00547-CV)

25. Decker v. Saini, 1991 WL 277590, 14 Employee Benefits Cas. 1556 (Mich.Cir.Ct., Sep 17, 1991) (NO. 88-361768 NH)

C. RESTATEMENTS

1. Restatement of Torts (2nd), Sect. 429
2. Restatement of Agency (2nd), Sect. 267.