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Indiana in step with doctor agency cases

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As long held in Illinois, a hospital can be liable for the negligence of an independently contracted doctor, thus not an employee of the hospital, if the doctor acted or "held out" in a manner that would lead a reasonable person to conclude that the alleged tortfeasor was an employee or agent of the hospital, and where the plaintiff "justifiably relied" on such.

The Illinois Supreme Court's decision in *Gilbert v. Sycamore Municipal Hospital*, 156 Ill.2d 511 (1993), rested significantly on the "modern realities" of the "big business" of hospital advertisements and marketing to "persuade those in need of medical services to obtain those services at a specific hospital."

The *Gilbert* court applied the doctrine of apparent agency as the court correctly found that it is "natural for [patients] to assume that [doctors] are employees of a hospital."

On Feb. 27, in *Webster v. CDI Indiana*, the 7th U.S. Circuit Court of Appeals upheld a $15 million verdict in a medical-malpractice case in Indiana, a state whose legislative impediments for plaintiffs in medical-malpractice cases has widely been challenged as unconstitutional and violative of the Seventh Amendment.

In doing so, the court affirmed Indiana's doctrine of apparent agency as delineated in *Sword v. NKC Hospital Inc.*, 714 N.E. 2d 142, 152 (Ind. 1999), which instructs that a medical provider can be found liable if a patient reasonably relied on its "apparent authority" over the wrongdoer.

Specifically, the *Sword* court found that the factual inquiry of apparent agency involves the "totality of the circumstances" as to whether the actions or inactions of the hospital led the patient to believe the doctor was an employee or agent of the hospital.

In 2014, Courtney Webster underwent a CT scan performed at CDI Indiana LLC, an outpatient medical imaging provider. The CT, in turn, was read by a radiologist, an independent contractor of CDI who was employed by Medical Scanning Consultants.

In October 2016, Webster and her husband, Brian, filed suit in federal court on the basis of diversity jurisdiction alleging that the radiologist and CDI failed to identify a mass on the CT scan.

By the time the cancerous mass was diagnosed, Webster's rectal cancer had metastasized to her lungs and liver, which resulted in a dramatic reduction of her prospects for survival.

At trial, in the U.S. District Court for the Southern District of Indiana in Indianapolis, a jury returned a $15 million verdict in favor of the plaintiffs. CDI argued that it could not be liable for the actions of the radiologist as it did not employ him. The district court rejected this argument and applied Indiana's apparent agency holding in *Sword*.

On appeal, the 7th Circuit applied Indiana's doctrine of apparent agency, which, like Illinois' doctrine, contains the element of reliance. The court rejected CDI's independent contractor argument. Accepting the argument that a hospital cannot be liable for an independent contractor's conduct would allow "health-care facilities [to] easily evade liability by using independent contractor professional organizations to employ physicians."

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Here, the court held that "a medical center cannot hold itself out to the public as offering health-care services, and profit from providing those health care services, yet escape liability by creating a complex corporate arrangement of interrelated companies."

Applying *Sword*'s apparent agency analysis, the district court was correct in concluding "given the nature of health-care services today, it is entirely possible for a reasonable, prudent patient to conclude from representations made by a medical center that the doctors and health-care professionals that service patients within the center's facilities are agents or servants of the center."

At trial, Courtney Webster testified that she did not know about the relationship between the radiologist, CDI and MSC. The evidence, instead, demonstrated that she reasonably relied on the belief that the radiologist was an agent or employee of CDI.

Vast differences exist between Illinois and Indiana medical-malpractice laws. Nonetheless, both states fortunately recognize that hospitals cannot on one hand profit by advertising, for example, as having the most U.S. News and World Report ranked doctors, but then later attempt to completely disengage themselves from these doctors when exposure arises.

This disengagement should be an affront to the doctor, whom the hospital has long profited from, and a last-ditch bait-and-switch to the patient who reasonably believed the doctor was an employee of the hospital.