

HEALTH LAW

Update

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Illinois Case Holds Hospital Liable for Independent Contractor Anesthesiologist

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On June 22, 2006, the Illinois Supreme Court ruled that a hospital was vicariously liable for the actions of an independent contractor anesthesiologist under the doctrine of apparent agency because the patient reasonably relied on the hospital to provide necessary support services and was not made aware of the independent contractor status of the anesthesiologist performing the negligent act.¹ The court's ruling suggests that a finding of apparent agency may be more likely in the context of traditional hospital-based specialties, such as radiology, pathology, and anesthesiology, than in other specialties.

The *Rush* case involved Dr. James York, a retired orthopedic surgeon, who underwent three knee surgeries at Rush-Presbyterian-St. Luke's Medical Center ("Rush-Presbyterian") at his son's suggestion. During the third surgery, the attending anesthesiologist pierced York's spinal column when administering anesthetic, causing injuries to Dr. York's nerves. Dr. York never fully recovered from these injuries and sued Rush-Presbyterian.

The *Rush* court began its examination of the lower courts' rulings, which were adverse to Rush, by reviewing prior Illinois case law applying the doctrine of apparent agency in the context of a medical malpractice action. The court noted that under such case law, a plaintiff must prove the following three elements to hold a hospital vicariously liable:

- The hospital, or its agent, must have acted in a manner that would lead a reasonable person to conclude that the individual alleged to be negligent was an employee or agent of the hospital;
- Where the acts of the agent create the appearance of authority, the plaintiff must show that the hospital had knowledge of and acquiesced in the acts; and

¹ *York v. Rush-Presbyterian-St. Luke's Med. Ctr.*, Docket No. 99507 (Ill. 2006).

- The plaintiff must have acted in reasonable reliance upon the conduct of the hospital or its agent.

The *Rush* decision primarily centered on the third element set forth above. Concerning this element, the *Rush* court stated that if the plaintiff relies upon the hospital, rather than a specific physician, to provide medical care, the third element is satisfied. The court further commented:

Upon admission to a hospital, a patient seeks care from the hospital itself, except for that portion of medical treatment provided by physicians specifically selected by the patient. If a patient has not selected a specific physician to provide certain treatment, it follows that the patient relies upon the hospital to provide complete care – including support services such as radiology, pathology and anesthesiology – through the hospital’s staff.

Although the *Rush* decision primarily centered on the third element, the court also discussed the first element set forth above. The court stated that the first element is satisfied when the hospital holds itself out as the provider of care without informing the patient that the care is provided by independent contractors. The *Rush* court further commented that a plaintiff would generally be precluded from making an argument under the apparent agency doctrine if the patient knew, or should have known, of the independent status of the medical professionals with whom the plaintiff might be expected to come into contact.

In deciding that the factual circumstances of Dr. York’s case met the apparent agency claim elements, the court noted that Dr. York selected Rush–Presbyterian on the basis of its reputation as providing quality medical care and that Dr. York’s selection occurred prior to seeking out a particular orthopedic surgeon at the institution. The court next noted that Rush-Presbyterian failed to put Dr. York on notice that the attending anesthesiologist was an independent contractor, and not an employee, of the hospital. The court mentioned (a) that the anesthesiologist’s scrubs and lab coat were covered with the hospital’s insignia, (b) that the treatment consent form used by Rush-Presbyterian did not state that plaintiff would be treated by independent contractor physicians, and (c) that the attending anesthesiologist never informed Dr. York that he was an independent contractor, as opposed to an employee, of the hospital. The *Rush* court made this finding despite Dr. York’s status as a former surgeon who was self-employed when he practiced as an orthopedic surgeon. Finally, the *Rush* court noted that Dr. York relied on Rush-Presbyterian to select an anesthesiologist to provide anesthesiologist services during the surgery, as opposed to selecting the anesthesiologist himself.

While the *Rush* decision is only applicable to Illinois hospitals, to the extent that courts in other states adopt *Rush*’s reasoning, the decision could potentially broaden the scope of liability for hospitals located outside of Illinois. Please feel free to call any of the attorneys in our Healthcare Practice Area, if you have any questions regarding this decision or other matters.

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