



## Alerts

### Hospital Ads Insufficient to Overcome Consent Forms in Establishing Apparent Agency

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Health Care Alert

*This alert was featured in Hinshaw's Annual Guide to Illinois Medical Malpractice Decisions: 2020 Edition*

#### Issue

Do hospital advertising campaigns that welcome a physician to the medical staff create the appearance of an employee-employer relationship? And, if so, is a consent form is enough to overcome the appearance of such a relationship?

*Sherri Prutton, Individually and as Mother and Next Friend of Alexis V., a minor, v. Kishwaukee Community Hospital, Northern Illinois Fertility, S.C., et al., Case No. 2020 IL App (2d) 190346*

#### Case Summary

Plaintiff filed a medical negligence lawsuit against an OB/GYN physician and the hospital at which he delivered the baby, alleging a theory of apparent agency. The trial court granted the hospital's motion for summary judgment, holding that the OB/GYN was not an apparent agent of the hospital.

The appellate court upheld summary judgment for the hospital. The court found that, if viewed in isolation, hospital advertisements, some of which specifically mentioned the physician by name and included her photograph, could create a question of material fact as to whether an employer-employee relationship existed between the doctor and hospital. The subject advertisements welcomed the OB/GYN to the hospital staff, mentioned her background, and included the hospital's name and in some cases, its logo. The advertisements did not directly state that the OB/GYN was an independent contractor, but did state that she was a private physician affiliated with Northern Illinois Fertility.

Despite the hospital's advertisements, the court found that the consent forms signed by plaintiff prior to her delivery specifically informed the patient of the OB/GYN's status as an independent contractor. One consent form signed by plaintiff included a section titled "Physician Services," which stated in bold that, "Physicians providing care are independent contractors and are not employees or agents of KCH/VWCH." A second consent form for obstetrical delivery included a subsection that provided, "I understand that physicians who participate in the procedure (for example: surgeon, assistants, anesthesiologist, obstetrician, pathologist, and the like) are independent practitioners and are not employees or agents of Kishwaukee Community Hospital." Plaintiff initialed and signed the consent form, indicating that she had reviewed the subsection pertaining to independent contractors. Although the OB/GYN was not specifically mentioned in the consent forms, the court held that the forms clearly and unambiguously informed plaintiff that the physicians at the hospital were independent contractors.



## Takeaways

When publishing advertisements relating to specific physicians, Hospitals should consider directly calling out each physician's status as an independent contractor or state with specificity the medical group with which he or she is employed. Hospitals should also evaluate whether their consent forms state in bolded language the specific groups of physician providers that are independent contractors and should include a line for the patient to initial acknowledging that he or she has reviewed such language.

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