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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

Once again, the question of the vicarious liability of a hospital for injuries suffered by a patient has been addressed and the hospital emerged unscathed.

The facts- complications arose after surgery and patient was placed on a ventilator and extra-corporeal membrane system. Unfortunately, the tubing was disconnected during transport resulting in blood loss coupled with brain injury. The treating physicians were sued together with the hospital where the surgery had been performed- the latter under the theory of vicarious liability which was mentioned earlier. Obviously, plaintiff's lawyers were targeting as many pockets as could be reached.

The decision of the Appellate Court constitutes a primer on the question of vicarious liability. The hospital produced proof that the treating physician was not an employee of the hospital but rather had a practice totally independent of the hospital. The physician could not be considered to be an agent of the hospital as the latter did not control the work or the schedule of the physician.

Addressing the proposition that patient could have believed there was an apparent agency in lieu of a defined agency the court dismissed this notion as plaintiff had testified that the surgeon had been selected by the patient as he had wanted the procedure performed robotically and the surgeon was the only local physician who did the surgery in this fashion.

Still casting about for a nexus to the hospital plaintiff's lawyer targeted the anesthesiologist but this attempt failed as the treating surgeon had advised patient that he, the physician, would be selecting the members of his team.

With no employer-employee relationship and with no justifiable rationale that the treating physician could be defined as an agent of the hospital any attempt at justifying a basis for vicarious liability failed. Suit moved forward without the hospital being a defendant. It is not enough, under the circumstances described, for a hospital to be exposed to liability simply because it was the location wherein an incident took place.

Respectfully submitted,

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