Virginia Medical Malpractice Alert (March 11, 2004): Hospital Could Not Be Held Liable For Alleged Negligence of Independent Contractor

With the use of physician and nurse independent contractors at hospitals and other institutional healthcare providers, those hospitals and other providers sometimes face claims by medical malpractice plaintiffs arising out of the alleged negligence of the independent contractors. In Sanchez v. Medicorp Health System, At Law No. 03-221 (Circuit Court of the City of Fredericksburg March 11, 2004), Judge William H. Ledbetter, Jr. held that a hospital could not be held vicariously liable for the alleged malpractice of an independent contractor-physician.

In Sanchez, Mr. Leasly Sanchez, a truck driver, was injured on October 16, 2001 while traveling through the Fredericksburg area. Mr. Sanchez was treated at the emergency room of Mary Washington Hospital by Dr. Christopher Huesgen, an employee of Fredericksburg Emergency Medical Associates ("FEMA"). Mr. Sanchez alleged to have been injured as a result of negligent treatment by Dr. Huesgen, and sued Dr. Huesgen, FEMA, and Medicorp, the corporate entity that operates Mary Washington Hospital. Medicorp demurred to Mr. Sanchez's allegation that Dr. Huesgen and other unnamed medical personnel were "apparent agents, ostensible agents, and/or agents by estoppel of Medicorp."

Judge Ledbetter began his analysis by recognizing that a principal can be held liable for the alleged negligence of that principal's employee through the doctrine of respondeat superior. However, under Virginia law, a principal cannot be held liable for the alleged negligence of an independent contractor. Judge Ledbetter held that whether an independent contract is an "apparent or ostensible agent" of that independent contractor's principal does not alter the rule foreclosing liability of a principal for the alleged negligence of an independent contractor. Thus, in Sanchez, even if Mr. Sanchez could in good faith allege that Medicorp "held out" Dr. Huesgen as its agent, such an allegation would not be sufficient to hold Medicorp liable for the alleged negligence of Dr. Huesgen.

Judge Ledbetter's opinion appears to be in conflict with a 1984 decision of a federal district court in Virginia. See Walker v. Winchester Memorial Hospital, 585 F. Supp. 1328, 1330-32 (W.D. Va. 1984) (Michael, J.) (holding that a patient could hold a hospital liable for the alleged negligence of an independent contractor – an emergency room physician – under the doctrine of apparent authority).

Finally, although Virginia courts have recognized the "non-delegable duty" exception to the rule that a principal cannot be held liable for the alleged negligence of an independent contractor, Judge Ledbetter concluded that the "non-delegable duty" was not applicable. But see Simmons v. Tuomey Regional Medical Center, 330 S.C. 115, 119-23, 498 S.E.2d 408, 410-12 (S.C. Ct. App. 1998) (holding that a hospital could be held liable for the alleged negligence of emergency room personnel who were independent contractors, because a hospital has a non-delegable duty to provide competent treatment to emergency room patients).