Insights

Anesthesiologist's Business Card Given to Patient on Morning of Surgery Probably Won't Absolve Hospital of Liability

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In the recent case of ***Jernagan v Indiana University Health a/k/a Indiana University Health ACO, Inc.*** a hospital clerk provided the patient with an anesthesiologist's business card on the morning of his surgery. The Indiana Court of Appeals held that may not have provided reasonable notice of the physician's independent status. Therefore, the hospital may be liable for any negligence of the anesthesiologist under the doctrine of apparent agency. The Court reversed a lower court's summary judgment in favor of the hospital, reserving the question for a jury.

Since the Indiana Supreme Court's pivotal ruling in *Sword v. NKC Hospitals, Inc.* 714 N.E. 2d 142 (Ind. 1999), hospitals have often grappled with development of a method to provide to patients with meaningful notice of the independent status of various physicians, particularly hospital-based physicians. In *Jernagan,* a registration clerk provided the patient with a business card for the anesthesiologist assigned to his surgery, presumably to notify the patient of the physician's independent employment status. The Indiana Court of Appeals, however, was unwilling to find, as a matter of law, that a business card handed to a patient in registration on the morning of surgery qualifies as meaningful written notice. Instead, the Court believed it presented questions of fact that were more properly reserved for the jury. The Court emphasized that the registration clerk provided no further explanation when she provided the business card to the patient. The Court added that the business card did not clearly illustrate the anesthesiologist's role at the independent practice group but only clearly identified an affiliation with the group. As such, the Court found that the business card did not conclusively inform the patient that the anesthesiologist was not an employee of the hospital.

This ruling further demonstrates the difficulty hospitals face in effectively protecting themselves from apparent agency claims, as the Court suggests that notice should not only be explicit but also provided in advance of hospital care when possible.