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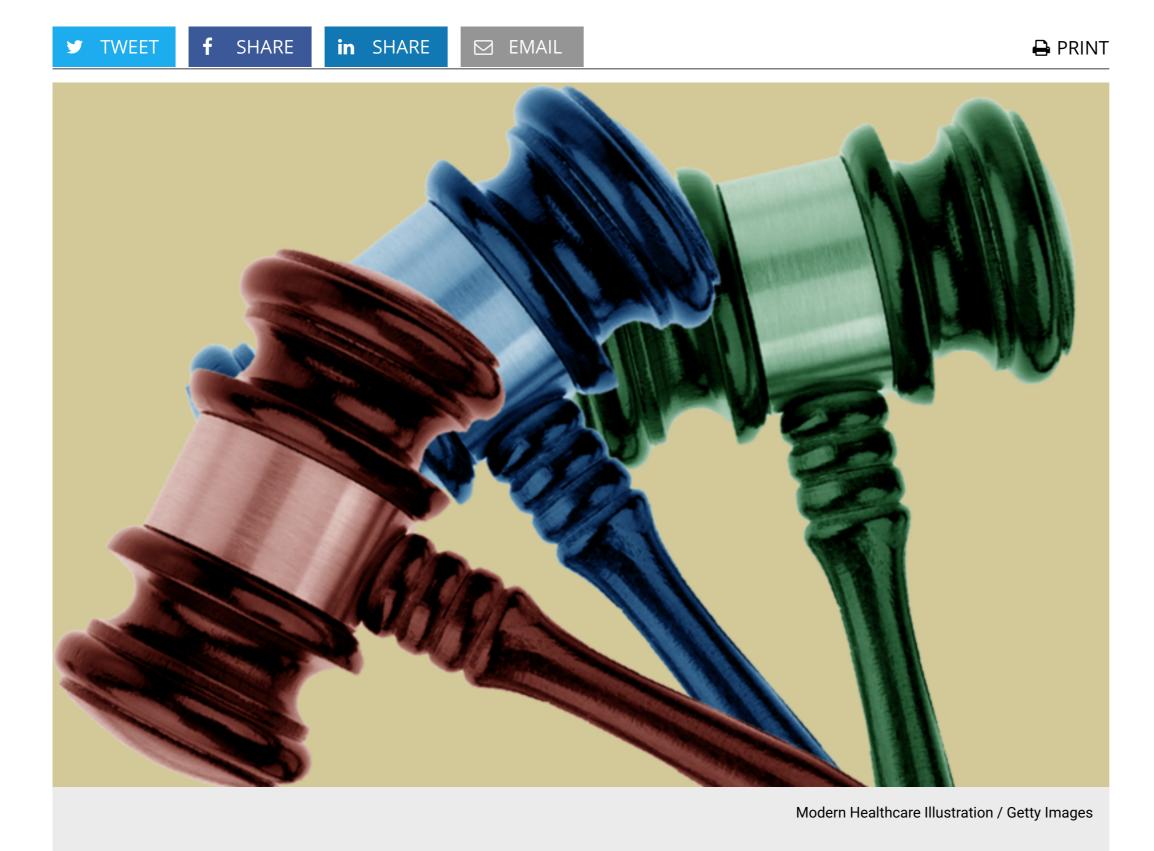
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February 09, 2021 04:10 PM

AdventHealth may be liable for non-employed physician, appellate court rules

ALEX KACIK



AdventHealth may be liable for purportedly suspect treatment advice offered by a non-employed physician, a Florida appellate court found.

The state appeals court on Friday ruled that the consent agreement disavowing a physician-hospital relationship wasn't clear, which could open the door for the Altamonte Springs, Fla.-based health system to be held liable for the care. A Florida trial court previously absolved AdventHealth from responsibility for the patient's post-operative complications because, in part, the doctor was an independent contractor and Advent didn't influence treatment decisions.

The appellate decision also acknowledged that the patient had a limited choice of doctors.



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health system, and health plan executives) about consumers' attitudes and behaviors toward health care. While the US health care system has been moving toward a more consumer-focused experience, progress has been slow. In some cases, regulatory barriers have made it difficult to create a transparent, consumer-friendly, and highly-personalized experience. Health care leaders' deeply-ingrained beliefs about what the health system can and can't do has also held back the pace of change. Read More

pandemic has fractured a number of assumptions (commonly held by hospital,

Still, even if the opinion holds, it likely won't prompt health systems to rework their arrangements with contract physicians, legal experts said. Advent did not have an immediate reply to requests for comment.

Hospitals may consider entering into indemnification agreements with physicians to mitigate their liability, said Christopher Ryan, of counsel at Dickinson Wright.

"I don't think this opinion, or others like it, would require major changes or a restructuring of hospitals' arrangements with non-employed physicians," he said.

Ricky Luebbert suffered an infection after he received an appendectomy at Advent. He allegedly asked the surgeon, Dr. Syed Abdul Malik, for antibiotics after the surgery, but was assured that antibiotics were not necessary, according to the court filings. He then sued the hospital for negligence after acquiring an infection.

The trial court found "uncontroverted record evidence" that Malik was not an employee of Advent. But the appellate court found that a jury should review the case to determine whether an "agency" relationship—or essentially an indirect relationship-existed.

A hospital may still be liable for the negligence of an independent contractor if it "cloaks (the physician) with apparent authority to act on its behalf," according to court filings, which also noted that nearly all of Malik's procedures are done at the Advent hospital, where he has a private office.

"Liability turns on control, and how much control a hospital maintains over any professional is determined by that relationship. Inherently, an employer has more control over an employee than an independent contractor," said Mark Silberman, chair of Benesch's white collar, government investigations and regulatory compliance practice group, who is also a general counsel to the American Association of Nurse Anesthetists. "If therefore the relationship is appropriate and they are truly an independent contractor, it seems inherently inconsistent to then hold the employer liable if they did not exert or possess the type of control that should yield liability."

The physician-hospital consent agreement did not specifically state that Malik was neither an employee nor an agent of Advent, nor did it specify which services were independent of the hospital, the appellate court found. The patient also had few doctors to choose from, which "coupled with other factors previously discussed, is sufficient to create a jury question regarding apparent agency," the opinion reads.

Letter *− to the −* Editor

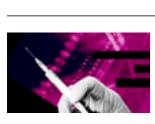
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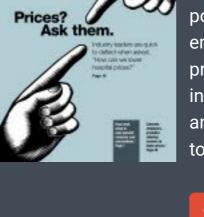
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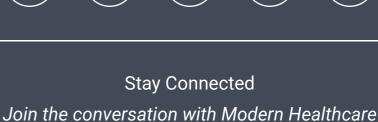
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