

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

ALEX KACIK



TWEETSHARESHAREEMAIL

PRINT



Modern Healthcare Illustration / Getty Images

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.



DELOITTE

Will consumers trust health care organizations after COVID-19?

Over the course of just two months, the COVID-19 pandemic has fractured a number of assumptions (commonly held by hospital, 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

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


Send us a letter

Have an opinion about this story? Click here to submit a Letter to the Editor, and we may publish it in print.


RECOMMENDED FOR YOU



Biden administration supports ACA at Supreme Court, drops Trump-era challenge



Ex-Wisconsin pharmacist pleads guilty to vaccine tampering



Sponsored Content: Could the response to COVID-19 change how the world responds to future outbreaks?

Awards & recognition programs


SIGN UP

Modern Healthcare

0 CommentsModern HealthcareDisqus' Privacy Policy

RecommendTWEETSHARE





Sort by Best



Start the discussion...

LOG IN WITH

OR SIGN UP WITH DISQUS ?



Be the first to comment.

SubscribeAdd Disqus to your siteDo Not Sell My Data

DISQUS

GET FREE NEWSLETTERS

Sign up for free newsletters and alerts to receive breaking news and in-depth coverage of healthcare events and trends, as they happen, right to your inbox.

SIGN UP

SUBSCRIBE TODAY



The weekly magazine, websites, research and databases provide a powerful and all-encompassing industry presence. We help you make informed business decisions and lead your organizations to success.

SUBSCRIBE

CONNECT WITH US



Stay Connected

Join the conversation with Modern Healthcare through our social media pages

Modern Healthcare

CONTACT US

(877) 812-1581

Email us

RESOURCES

Contact Us

Advertise with Us

Ad Choices

Sitemap

EDITORIAL DEPT

Submission Guidelines

Code of Ethics

Awards

About Us

LEGAL

Terms and Conditions

Privacy Policy

Privacy Request



Modern Healthcare

Email and Postal List Rental

Build your database
Target buyers
Grow your brand

LEARN MORE

SPONSORED CONTENT

Reaching across disciplines and harnessing the power of laboratory data for healthcare transformation



As our world progresses through an unprecedented pandemic, the benefits of laboratory medicine have never been more clear.

Read More

Importance of quality and reliable performance in the infusion pump market



Learn about the challenges facing the infusion pump market and advancements driving innovation and quality improvement within the industry.

Download

Protecting the protectors: The PPE every COVID vaccinator needs now



The federal government is distributing 300 million doses of the COVID-19 vaccine to states, with thousands of pharmacists, nurses, technicians and other healthcare professionals hired locally to administer the vaccine.

Read More

How group purchasing organizations helped save our health care supply chain from COVID-19



Looking back on the early days of the pandemic when medical-grade masks were nowhere to be found and demand for ventilators skyrocketed, the critical role of the nation's GPOs cannot be overlooked.

Read More