

# Reducing Risk

*A Publication on HealthCare Risk Management from Princeton Insurance*

## Risk Alert – “Apparent Authority”

### ESTATE OF CORDERO v. CHRIST HOSPITAL

Appellate Division, A-1289-07T1, approved for publication October 29, 2008.

Link to full text of decision: <http://www.judiciary.state.nj.us/opinions/a1289-07.pdf>

**Issue:** Was the hospital vicariously liable for Dr. Z’s negligence, because she was its apparent agent, under a theory of “apparent authority”? To avoid liability, what actions can a hospital take to make a patient aware that a particular physician is not an agent of the hospital?

### Facts

On Sept. 14, 2003, R. Cordero, a 51 year old insulin-dependent diabetic, sought care at the Christ Hospital ED for vomiting. She was diagnosed with renal failure, admitted, and underwent surgery on Sept. 22, to implant a catheter that would facilitate ongoing dialysis. Dr. Z was the anesthesiologist on-call that day, and was assigned to provide anesthesia services during Cordero’s procedure.

Dr. Z was a member of defendant Hudson Anesthesia Group, whose members provided anesthesia services at Christ Hospital under a contract. Dr. Z introduced herself to Cordero just before surgery, but had no interaction with Cordero’s family. During the surgery, after the catheter was implanted without incident, the patient’s blood pressure and heart rate dropped; Dr. Z was unable to stabilize the patient, necessitating calling a “Code.” The Code Team resuscitated Cordero, but she suffered brain damage and never regained consciousness. She died 3\_ years later.

### Analysis

Plaintiffs (estate and husband of patient R. Cordero), appealed from the trial court’s order granting summary judgment in favor of the hospital. Plaintiffs asserted that the evidence was adequate to permit a jury to find that the Hospital was liable for Dr. Z’s negligence under a theory of “apparent authority,” which applies when a “hospital, by its actions, has held out a particular physician as its agent and/or employee and ... a patient has accepted treatment from that physician in the reasonable belief that it is being rendered in behalf of the hospital.” (See Basil v. Wolf, 193 N.J. 38, 67 (2007), approving Arthur v. St. Peters Hosp., 169 N.J. Super. 575, 581 (Law. Div.1979)).

The Appellate court in Cordero, reversing the trial court’s dismissal of plaintiffs’ claim, held that “when a hospital provides a doctor for a patient, and when the totality of the circumstances created by the hospital's action and inaction would lead a patient to reasonably believe that the doctor's care is rendered on behalf of the hospital, then the hospital has held out that doctor as its agent.” Furthermore, “when a patient accepts a doctor's care under such circumstances, the patient's acceptance in the reasonable belief that the doctor is rendering treatment on behalf of the hospital may be presumed, unless rebutted.”

The court identified several circumstances to consider in evaluating whether the hospital's conduct would lead a similarly situated patient to believe that a particular doctor was or was not acting with authority in behalf of the hospital.

- Whether the hospital supplied the doctor;
- Nature of medical care and whether the specialty, like anesthesia, radiology or emergency care, is typically provided in, and an integral part of medical treatment received in a hospital;
- Any notice of the doctor's independence from the hospital or disclaimers of responsibility;
- Patient's opportunity to reject the care or select a different doctor;
- Patient's contact with the doctor prior to the incident at issue;
- Patient's special knowledge about the doctor's contractual arrangement with the hospital;

The court assessed the adequacy of the hospital's indications of authority, under the standards it had set forth. Based on all the evidence, the court concluded that the hospital had created a "misimpression" of agency and then did nothing to correct it. (e.g., The hospital did not issue a disclaimer of responsibility for Dr. Z's actions, did not require Dr. Z to issue a disclaimer of agency, offered no evidence that the patient had had an opportunity to reject Dr. Z and choose another doctor, no evidence that the patient had special knowledge about the hospital's relationship with Dr. Z.) Consequently, plaintiffs were entitled to a rebuttable presumption that Cordero accepted Dr. Z's care in a reasonable belief that Dr. Z's care was provided in behalf of the Hospital.

### **Risk Reduction Strategies:**

In light of the Court's ruling in Cordero, we would encourage hospitals to consider implementing the following actions:

- Insert a disclaimer of responsibility (for care/services to be provided by certain physicians or groups), in ED consent forms, hospital admission agreements, etc. However, such disclaimers need to be conspicuous and written in language that the patient can understand, or they will probably not be effective.
- Signage may be useful, when located in patient and public areas in the facility. For example, they may be placed in waiting areas, the ED, Radiology and other areas. Signs need to state that certain physicians are not employees, but rather provide their services as independent contractors. (Appropriate to status of physicians in each facility).
- Signage can be reinforced by having the physicians wear identification badges, indicating the practice/group with which they are associated.
- We would also recommend giving a copy of the notice, as stated in the signs, to all patients (or family members/guardians as appropriate) and, if possible, have the patient sign that he/she has received it.
- Hospitals should take care that their web sites accurately reflect the status of and relationship with the physicians providing care within the organization.