

Christie, Pabarue, Mortensen and Young attorney asks: Who was that masked doctor?

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Making certain patients know whom their doctor works for
important in medical malpractice cases.

In today's complex medical world, the relationships between doctors, hospitals and HMOs are becoming increasingly confused for many patients.

While few hospitals or HMOs may be willing to disclose the details of their financial arrangements with physicians to patients, keeping completely silent can subject them to crushing liability in medical malpractice cases, according to Christie Pabarue Mortensen and Young Attorney Peter J. Lynch.

Often patients wrongly assume that a health care provider who treats them in a hospital emergency room or to whom they are assigned by their HMO is actually employed by the hospital or HMO. Instead, in many instances the doctors, nurses, and other health care providers are not employees but independent contractors over whom the hospital or HMO has limited control.

In such instances, a hospital or HMO may be held accountable for the patient's, and sometimes the doctor's, misperceptions where no action was taken by the hospital or HMO to clear the muddy waters.

"The worst case scenario is when a hospital or HMO that should be protected from the professional negligence of someone is not and is held liable," says Lynch, a CPMY shareholder and litigator.

Lynch recently completed an exhaustive study of recent cases in Pennsylvania, Connecticut, Illinois, North Carolina, Florida and other states that clearly exhibit the consequences of being misinformed--or simply unclear--when it comes to determining who represents whom in our nation's emergency rooms and managed care health care facilities.

"The principles governing such relationships are still the same, but now it's more complicated," says Lynch, noting the traditional relationships between doctors, hospitals and insurers is constantly changing.

Lynch offers three guidelines to help prevent organizations being held accountable for the acts of others over whom they have limited control:

- It is essential for all parties to have a clear understanding of all contracts and related documents such as Letters of Understanding. "Doctors practice medicine, they don't practice law. They often are not as sophisticated as perhaps they might be when the question of who is their employer comes up," says Lynch.
- Thought should be given about how particular employment relationships are made clear to those receiving medical services. Signs in the lobby may not be sufficient, warns Lynch.
- Advertise with the above issues in mind. "In a recent Indiana case, the court noted that a Children's Hospital was aggressively marketing its services and took note of that fact in establishing the hospital's liability under an agency context. Clearly, both hospitals and doctors need to be made aware of these changes," says Lynch.

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