IN THE SUPREME COURT OF FLORIDA

CASE NO. 72,322

JOHN INSINGA, as personal Representative
of the Estate of MILDRED INSINGA, Deceased

Appellant,

vs.

MICHELLE LaBELLA et al., and HUMANA, INC.,
d/b/a BISCAYNE MEDICAL CENTER,

Appellee.

FILED
SID J. WHITE
JUN 6 1988
CLERK, SUPREME COURT
Deputy Clerk

ON DISCRETIONARY REVIEW OF A CERTIFIED QUESTION
FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

**AMICUS CURAIE BRIEF ON BEHALF OF
THE FLORIDA HOSPITAL ASSOCIATION**

FLORIDA HOSPITAL ASSOCIATION
208 South Monroe Street
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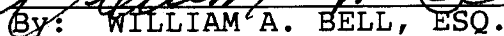
Tallahassee, Florida 32302



By: WILLIAM A. BELL, ESQ.

TABLE OF CONTENTS

		Page
	TABLE OF CONTENTS	i
	TABLE OF CITATIONS	ii
I.	STATEMENT OF JURISDICTION	1
II.	STATEMENT OF THE CASE AND FACTS	1
III.	ISSUE PRESENTED ON CERTIFIED QUESTION	1
IV.	SUMMARY OF THE ARGUMENT	2
V.	ARGUMENT	4
VI.	CONCLUSION	9
VII.	CERTIFICATE OF SERVICE	10

TABLE OF CITATIONS

Page

Carter v. Spockman,
335 So.2d 802, 805 (Fla. 1976)
cert. denied, 429 U.S. 1041 (1977).................. 7

Pedroza v. Bryant,
101 Wash.2d 226, 667 P.2d 166 (1984)............... 7

Pinellas v. Cedars of Lebanon Hospital Corp.,
403 So.2d 365 (Fla. 1981)........................... 7

*Public Health Trust of Dade County v. Valcin,
507 So.2d 596 (Fla. 1987)........................... 4

*Reed v. Good Samaritan Hospital Association, Inc.,
453 So.2d 229 (Fla 4th DCA 1984)................... 6

*Snead v. LeJeune Road Hospital, Inc.,
196 So.2d 179 (Fla. 3d DCA 1907)................... 5

Other Authorities

17 St. Mary's Law Journal, 552 (1985),
Medical Malpractice-Ostensible Agency and
Corporate Negligence................................ 7, 8

I. STATEMENT OF JURISDICTION

The Florida Hospital Association files this Amicus Curiae Brief pursuant to Florida Rule of Appellate Procedure 9.370.

II. STATEMENT OF THE CASE AND FACTS

The Florida Hospital Association adopts the statement of case and facts as stated by appellee Humana, Inc. d/b/a Biscayne Medical Center (hereinafter "Humana"). Mildred Insinga and Michelle LaBella a/k/a Morton Canton will hereinafter be respectively referred to as "Insinga" and "LaBella".

III. ISSUE PRESENTED ON CERTIFIED QUESTION

WHETHER FLORIDA LAW RECOGNIZES THE CORPORATE NEGLIGENCE DOCTRINE AND WHETHER IT WOULD APPLY UNDER THE FACTS OF THIS CASE.

IV. SUMMARY OF THE ARGUMENT

The Florida Hospital Association fully adopts the position of Humana that the District Court correctly directed a verdict in its favor on the grounds that there was no duty owed to Insinga. Florida case law is clear that hospitals cannot be held directly liable for the negligent actions of private physicians with hospital staff privileges. Insinga attempts to circumvent this proposition of law by arguing a duty imposed by the corporate negligence doctrine. The doctrine expands hospital liability by extending it to encompass the negligent acts of independent medical staff physicians based on the duty to use reasonable care in the selection and retention of such physicians and the duty to adequately supervise such physicians. Since Florida has rejected the corporate negligence theory in substance, if not in name, there existed neither right nor obligation on the part of the lower court to apply this legal principle. Alternatively, if this Court were to decide that Florida has not approached this issue, this Court should reject the adoption of the corporate negligence doctrine under the facts sub judice.

The corporate negligence doctrine where adopted has generally been accepted in factual situations where the hospital provided the patient with one of its medical staff physicians. In the instant case, Insinga established her relationship with LaBella long before being admitted into Humana and having without apparent concern or knowledge of LaBella's private physician staff privileges at the hospital. To extend the corporate negli-

gence theory to hospitals for the benefit of patients who initially created a doctor/patient relationship through the physicians private office practice would impose a duty and resulting legal responsibility upon hospitals for the private practice of each such independent physician. As a result, a hospital could initially be a proper party to every suit brought against a private physician who happens to also have staff privileges at any hospital. Any adoption and resulting application of the corporate negligent doctrine on the facts of this case would impose hospital liability to patients for the negligent acts of physicians with whom the hospital has had no involvement in the selection of the physician by the patient. Such an adoption of the corporate negligence doctrine would cause the broadest interpretation of said principle in any jurisdiction within the country to this date and will further amplify the medical malpractice crisis from which this state and its hospitals presently suffer. Florida has never adopted the corporate negligence doctrine and under the facts sub judice should not adopt this doctrine at this time. Accordingly, the trial court's decision should be affirmed and the certified question should be answered in the negative.

V. ARGUMENT

FLORIDA LAW DOES NOT RECOGNIZE THE CORPORATE NEGLIGENCE DOCTRINE AND SHOULD NOT ADOPT SAID DOCTRINE UNDER THE FACTS OF THIS CASE.

The Florida Hospital Association adopts the position of appellee Humana and expands upon appellee's Supreme Court and Eleventh Circuit Briefs to argue that Florida law has rejected the corporate negligence doctrine and should not adopt said doctrine under the facts of this case.

The United States District Court for the Southern District of Florida correctly recognized a cause of action does not exist in Florida against Humana for negligence committed by an independently retained physician on the sole basis that the hospital should have never granted the physician staff privileges, when the patient had privately sought treatment from that physician prior to any contact with Humana. (R. 2-36) Florida does not recognize a duty on the part of hospitals to patients of one of its independent medical staff physicians merely because the physician admitted the patient into the hospital. This Court most recently in Public Health Trust of Dade County v. Valcin, 507 So.2d 596 (Fla. 1987), affirmed the refusal to impose direct liability on a hospital for the acts of an independent physician, solely on the fact that the hospital granted staff privileges to

that physician.[1] The court states,

> "We note, too, that in practice no such unfairly imposed "direct liability" will be ordinarily found; if the doctor is found to be an independent contractor, the hospital may not be found liable for any negligence on his part, and in fact will not properly be a party in the case." Id., at 601.

Likewise, Florida has never adopted a principle imposing a duty on a hospital owed to a patient for the credentialling of one of its independent medical staff members. Snead v. LeJeune Road Hospital, Inc., 196 So.2d 179 (Fla. 3d DCA 1967). In Snead, the Second District noted that a cause of action does not exist in Florida for "negligence in permitting [a] physician to use the facilities of the hospital". Id. Accordingly, the Snead decision recognized Florida's express rejection of the corporate negligence doctrine in substance, if not in name.

A hospital should not be held liable to a patient for negligent acts committed by the patient's private physician merely

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1 In the instant case, Insinga contracted with LaBella for care and treatment over seven months before ever being admitted to Humana. (R. -1-1-MP 29) LaBella was obviously not acting in the capacity of an independent contractor of Humana or any other Hospital in which he had staff privileges at the time he contracted to care for Insinga. Humana was not involved in any manner with either Insinga's health care or the selection of LaBella as her private physician. (R.-3-145-149) Furthermore, the decedent never looked to the hospital for recommending, assigning or confirming the medical capabilities of LaBella. (R.-3-A5-149; 1-1-MP 29) The only evidence Appellant offers to support knowledge of LaBella's staff privileges at Humana is a self-serving affidavit of Mr. Insinga filed at the time of rehearing. (R.-3-37)

because there is a question of whether said physician was qualified for medical staff privileges at the hospital. To extend hospital liability to this extreme effectively places vicariously liability upon the hospital for the negligent acts of all independent physicians that have medical staff privileges.[2] Without going further, this Court should answer the certified question in the negative in light of the present law of this state. However, if this Court finds it necessary to consider the adoption of the corporate negligence doctrine, it should be soundly rejected under the facts sub judice.

Insinga has emphasized that hospital liability has been expanded in other jurisdictions for the negligent acts of medical staff physicians on the premise that a hospital's failure to properly credential an applicant for staff privileges would present a forseeable risk of harm to the hospital's patients. However, contrary to Insinga's assertions, the majority of those jurisdictions which have adopted corporate liability have not imposed this liability when, as in the case at bar, the patient seeks the care and treatment of a physician independently of that physician's relationship to the defendant hospital.[3] Under the

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2 Under Florida law a hospital is not vicariously liable for the negligent acts of those physicians with staff privileges. Reed v. Good Samaritan Hospital Association, 453 So.2d 229 (Fla. 4th DCA 1984).

3 The record before this Court has established that on or about May 27, 1980, Mildred Insinga retained LaBella as her physician for care and treatment and continued this private doctor/patient relationship with frequent office contact, until her death in Humana's Biscayne Hospital on February 6,

(Continued Next Page)

facts of this case, adoption of the corporate negligence would cause the broadest expansion of the doctrine in any jurisdiction to date and for beyond reason and recognized principles of legal causation.

Any adoption of the corporate negligence doctrine on the facts of this case would impose hospital liability to patients for negligent acts of physicians with whom the hospital has had neither involvement in nor responsibility for the selection process of the physician for the patient's care. Such increased exposure would result in increased malpractice claims and increased costs of hospital medical care. See, e.g., Pinellas v. Cedars of Lebanon Hospital Corp., 403 So.2d 365 (Fla. 1981); Carter v. Spockman, 335 So.2d 802, 805 (Fla. 1976), cert. denied, 429 U.S. 1041 (1977) (malpractice problem has reached crisis levels in Florida due to high cost of malpractice insurance resulting from skyrocketing numbers of lawsuits being filed). The overall effect of the corporate negligence doctrine would be to at least initially cause a hospital to be a party in each case brought against an independent medical staff physician where the plaintiff unilaterally alleges for self serving purposes his reliance on that physician's medical staff privileges at a particular hospital or hospitals in coming to a decision to seek the care of that physician. Physicians, once realizing that the

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1981. (R.-1-1-MP 29); See, Appellee's Eleventh Circuit Brief, pp. 38-39, discussing the corporate negligence doctrine as adopted in other jurisdictions.

deep pocket of the hospital is involved, will have less of an incentive to be insured adequately or at all. Correspondingly, the chance of indemnity by the hospital for the negligence of medical staff physicians would significantly decrease. See, Medical Malpractice-Ostensible Agency and Corporate Negligence, 17 St. Mary's Law Journal, 552, 571 (1985). The doctrine would effectively impose an unatainable duty and responsibility upon the hospitals to supervise each and every one of its medical staff members office practice. See, Pedroza v. Bryant, 101 Wash.2d 226, 667 P.2d 166 (1984). Such a broad doctrine of liability should not be adopted by the State of Florida in light of the unparalleled expansion of hospital liability it would cause and the ever increasing medical malpractice crisis this state is presently undergoing.

In addition, there are further compelling policy reasons concerning a hospital's credentialling procedure itself which makes the doctrine undesirable. The credentialling procedure itself is a difficult procedure from which hospitals look to the state and federal regulatory agencies to ensure the qualifications of physicians. Most hospital administrators are lay persons with no medical training at all and must rely on the medical staff to make judgments about the capabilities and qualifications of fellow staff members. As a result, hospitals in attempting to deny or revoke staff privileges of those physicians which it feels may cause them potential future liability will

create due process disputes with resulting increased litigation burdens. See, Medical Malpractice-Ostensible Agency and Corporate Negligence, supra, 552, 571 (1985).

In light of the foregoing reasons, if this Court were to consider whether or not the State of Florida should adopt the doctrine, it should answer such inquiry in the negative.

Insinga attempts to persuade this Court by five additional arguments that a duty was owed by Humana to Mrs. Insinga apart from the corporate negligence doctrine. Although the Florida Hospital Association vigorously supports the position of Humana that said arguments do not create a duty owed to Insinga by Humana, the same will not be discussed herein since those issues go beyond the scope of the question certified to the Supreme Court of Florida by the United States Court of Appeals for the Eleventh Circuit.

VI. CONCLUSION

The Florida Hospital Association respectfully submits that the certified question be answered in the negative.

Respectfully submitted,

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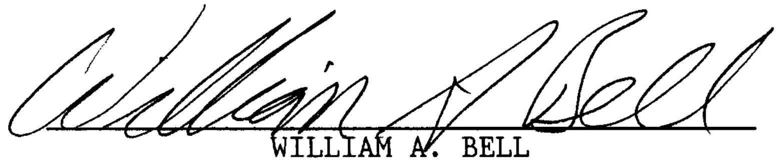
VI. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 6 day of June, 1988 to: HENRY BURNETT, ESQ., Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A., 25 West Flagler Street, Suite 501, Miami, Florida 33130; JOEL D. EATON, ESQ., Podhurst, Orseck, Parks, Josefsberg, Eaton, Meadow & Olin, P.A., 25 West Flagler Street, Suite 800, Miami, Florida 33130; and to Freidin & Hirsch, P.A., 44 West Flagler Street, Suite 2500, Miami, Florida 33130.



WILLIAM A. BELL