

5.50 APPARENT AUTHORITY CHARGE (Approved 6/10)

In this case, plaintiff(s) contend(s) that the defendant *hospital* is liable for the *physician's* negligence under a theory of “apparent authority.” Apparent authority arises where a hospital, through its actions, holds out a particular physician as its agent and/or employee in a manner that leads a patient to reasonably believe that the doctor is rendering treatment on behalf of the hospital.¹ Thus, liability is determined based on the hospital's actions rather than merely the existence of a contractual relationship.

Where a hospital provides a doctor for its patient and the totality of the circumstances created by the hospital's actions and inactions leads the patient to reasonably believe that this doctor is rendering care on behalf of the hospital, the hospital has held out that doctor as its agent.² A hospital can do this without actively misrepresenting the doctor's agency or even without affirmatively misleading the patient.³ In accepting the doctor's care under circumstances where a reasonable patient would believe that the doctor was rendering treatment on behalf of the hospital, the plaintiff's reasonable belief may be presumed unless evidence is presented to rebut this presumption.⁴

¹ *Basil v. Wolf*, 193 N.J. 38, 67 (2007) (quoting and approving *Arthur v. St. Peters Hosp.*, 169 N.J. Super. 575, 581 (Law Div. 1970)).

² *Estate of Cordero v. Christ Hospital*, 403 N.J. Super. 306, 310-11 (App. Div. 2008).

³ See *Arthur*, *supra* at 577-78 (only evidence of action by hospital in “holding out” the doctors to the patients was that the hospital provided doctors to treat an emergency).

⁴ *Id.*

In examining the totality of the circumstances in coming to your determination as to the reasonableness of the *plaintiff's* beliefs, you should measure *his/her* belief from the perspective of a patient of ordinary prudence and understanding of the hospital's procedures.⁵ Additionally, your determination should take into account relevant evidence that rebuts the presumption as to the *plaintiff's* reasonable belief that the doctor was providing care on behalf of the hospital.⁶

Thus, the following are among the relevant circumstances that you should consider in their totality when determining whether the hospital's actions or inactions led the *plaintiff* to reasonably believe that the doctor was acting on the hospital's behalf:

- whether the hospital supplied the doctor;
- the nature of the medical care and whether the specialty, like anesthesiology, radiology or emergency care, is typically provided in a hospital and is an integral part of the medical treatment received in a hospital;
- whether the *plaintiff* had any notice of the doctor's independence from the hospital or disclaimers of responsibility;
- whether the *plaintiff* had an opportunity to reject the care or select a different doctor;
- whether the *plaintiff* had contact with the doctor prior to the incident at issue; and
- whether the *plaintiff* had any special knowledge about the doctor's contractual arrangement with the hospital.⁷

⁵ *Estate of Cordero, supra*, 403 N.J. Super. at 317.

⁶ *Estate of Cordero, supra*, 403 N.J. Super. at 318.

⁷ *Id.* at 318-319.