



Negligence Law Section

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“Michigan Supreme Court Clarifies Ostensible Agency Standard in *Markel v. William Beaumont Hospital*”

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On July 9, 2025, the Michigan Supreme Court issued an important decision in *Markel v. William Beaumont Hospital* (Docket No. 166702), reversing the Court of Appeals and remanding for further proceedings. The case addressed a recurring question in medical malpractice litigation — when a hospital may be held liable for the acts of a physician under the theory of ostensible agency. In reaffirming *Grewe v. Mount Clemens General Hospital*, 404 Mich 240 (1978), the Court held that “ostensible agency” and “agency by estoppel” are interchangeable terms in Michigan medical malpractice law. It clarified that reliance can be established when a patient presents to the hospital for treatment, is cared for by a physician with whom they have no prior relationship, and the hospital does nothing to dispel the reasonable belief that the physician is its agent. The Court rejected the notion that an express representation by the hospital is required, and it found that a contractual arrangement between the plaintiff’s primary care physician and the hospital was irrelevant because the plaintiff was unaware of it at the time she sought care.

The plaintiff in *Markel* presented to Beaumont’s emergency department and was treated by Dr. Lonappan, who was employed by Hospital Consultants, a separate entity. The Court of Appeals had concluded that the plaintiff could not prevail without proving she relied on a representation that Dr. Lonappan was Beaumont’s agent. The court also suggested that ostensible agency and agency by estoppel were distinct doctrines. The Supreme Court disagreed, finding that under *Grewe*, reliance may be inferred from the circumstances of a patient’s presentation to the hospital. Justice Zahra dissented, cautioning that the majority’s approach effectively presumes reliance whenever a patient arrives at a hospital and is assigned a physician, particularly in the emergency setting.

The State Bar of Michigan Negligence Law Section filed an amicus curiae brief in the case, urging the Court to clarify the Grewe standard and address longstanding inconsistencies in lower court decisions. The Section emphasized the need for a clear and predictable rule that could be applied by hospitals, physicians, patients, and attorneys on both sides of the bar. It noted that ostensible agency questions arise in nearly every hospital care scenario, and that over time, Court of Appeals decisions had trended toward requiring an affirmative representation. The brief also raised questions about whether ostensible agency and agency by estoppel should be treated as the same in medical malpractice cases and identified common factual situations, from unconscious ER patients to specialists brought in by a patient's chosen surgeon, that have produced divergent rulings.

The Court's decision in Markel provides clear guidance for trial and appellate courts and resolves a source of recurring uncertainty in malpractice litigation. By reaffirming that a patient's reasonable belief of agency where a hospital provides a physician to the patient is sufficient to create ostensible agency, the Court has established a standard that should promote greater consistency and predictability in future cases.

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