

Successful Defense Against Allegation of Apparent Agency on Behalf of Hospital in Medical Malpractice Trial

Carmel Cosgrave, chair of the Health Care Practice Group, successfully defended MacNeal Hospital in a medical malpractice case that ultimately resulted in a verdict against other co-defendants, and is reported as the third largest medical malpractice verdict in Cook County.

A jury awarded Carlos Lopez \$15.55 million for the wrongful death of his wife during childbirth at MacNeal Hospital in 2008. This verdict was reported as the third largest medical malpractice verdict in Cook County history. Two physicians and a separate hospital that treated Mrs. Lopez were found liable. Only MacNeal Hospital, based on the strength of SmithAmundsen's team's defense, was found not liable.

The facts of this case involved a rare medical condition called placenta percreta, which involved growth of the placenta into and through the uterine wall. The plaintiff alleged that multiple physicians and hospitals that treated Mrs. Lopez over the course of her pregnancy failed to identify the placenta percreta on ultrasound and failed to properly treat the condition at the time of the delivery. The plaintiff alleged that Mrs. Lopez died as a result of hemorrhaging from complications with the placenta percreta.

MacNeal Hospital was sued on an apparent agency theory for the conduct of the physician who performed the Cesarean section and delivery. Under the theory of apparent agency, the plaintiff sought to hold MacNeal Hospital liable for the physician's negligence, even though the hospital did not employ the physician. An allegation of apparent agency is notoriously difficult for a hospital to defend against, because much of the theory rests on showing a patient's subjective understanding of a physician's employment status and the patient's reliance on that physician for treatment. Similar to many apparent agency cases before this one, MacNeal was forced to rely on circumstantial evidence in defending its case, since Mrs. Lopez died prior to the lawsuit.

The facts in the case showed that the physician had treated Mrs. Lopez at her own private office for approximately 7 years before the physician ever treated Mrs. Lopez at MacNeal Hospital. During the trial, our team focused on this fact to argue that Mrs. Lopez relied on her physician and not MacNeal Hospital when it came to seeking treatment for her pregnancy. Notably, this case is one of only a handful of cases tried in Cook County where the hospital was successful in

PROFESSIONALS

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defeating the claim of apparent agency, while the alleged agent-physician was found to be liable.

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