Photo by Robert Levins

Martin Weniz represented Maria Del Carmen Mejia in her suit against Community Hospital of San Bernardino and others after a radiologist failed to diagnose her broken neck.

Prognosis Looks Grim for Cash-Strapped Hospitals

Ruling May Trigger Many Malpractice Suits

By Joan Osterwalder

An appeals court ruling that holds hospitals liable for doctors' mistakes has rattled corporate health care attorneys. Many believe the financially strapped hospitals will be hit with more medical malpractice lawsuits.

Plaintiffs' litigators, however, say corporate lawyers are just crying wolf. The ruling simply reinforces existing law, they say.

The 4th District Court of Appeal held on July 12 that a hospital can be liable, on the grounds of ostensible agency, to a patient harmed by a doctor merely because that doctor is on the medical staff. The ruling overturned a lower court's finding that the hospital was not liable. *Mejia v. Community Hospital of San Bernardino*, SVC47082 (Cal. App. 4th Dist. July 12, 2002).

"I think the ruling is wrong, and it is bad policy," says hospital litigator Barry Landsberg of Manatt, Phelps & Phillips. "The *Mejia* case invites a whole new raft of lawsuits against hospitals."

Don G. Grant of Thompson & Colegate, who represented the hospital during trial and in the appeal says the case is being appealed to the California Supreme Court. Robert A. Olson of Greines, Martin, Stein & Richland is his co-counsel on the second appeal.

"The opinion is a significant deviation from the existing law," Grant says.

Physicians are independent contractors at almost all hospitals in California. But in the *Mejia* case, the plaintiff didn't know that the doctor was not a hospital employee. Maria Del Carmen Mejia sued Community Hospital of San Bernardino and others after a radiologist failed to diagnose her broken neck when she went to the emergency room. The 30-year-old Rialto resident is now a quadriplegic, Martin Weniz, her lawyer, says.

In 2000, at the close of the plaintiff's evidence, San Bernardino County Superior Court Judge Bob N. Krug granted a nonsuit in favor of the hospital, finding there was insufficient factual evidence to hold the hospital liable, Weniz says.

The jury found the radiologist and his group negligent and awarded Mejia $27 million in damages over herlifetime. Those defendants settled confidentially with Mejia, Weniz says.

The jury also found the emergency room doctor and his medical group not negligent.

Hospital attorney Lowell C. Brown of Foley & Lardner says the appellate court ruling is "uncharted territory" but says it will make hospitals a larger target in lawsuits.

"It makes the hospitals the true deep pockets," he says.

A coalition that includes the California Medical Association and the California Healthcare Association voted in August to support Community Hospital of San Bernardino in its appeal by filing an amicus brief.

"This is the first time that a hospital was held responsible for the negligence of a physician," says Lois Richardson, vice president and legal counsel for the California Healthcare Association. "It's going to be appealed as much possible."

If the ruling stands, hospitals will incur higher costs, which eventually will be passed on to patients, Richardson says.

Ironically, the appeal almost didn't happen. Mejia's attorney says he only appealed the hospital ruling because the defendant refused to waive $10,000 in costs.

"I don't think this ruling changes existing law one iota," Weniz says.

Medical malpractice plaintiffs' attorney Steven G. Mehta of Mehta & Mann says the concept of ostensible agency is very well known. The *Mejia* case just reinforced and clarified a national trend in California, he says.

"I think this is not this doom and gloom that they're saying [it is]," Mehta says. "They're afraid that lawyers will come out and argue ostensible agency more."

Mehta and Weniz say *Mejia* is based on a 1942 case, *Stanhope v. L.A. Coll. Of Chiropractic*, 54 Cal.App.2d 141 (1942), in which ostensible agency was first applied to a hospital in California. In that case, ostensible agency was inferred from the mere fact that the plaintiff sought treatment at a hospital without being informed that the doctors were independent contractors.