

Plaintiff's Motion for Summary Judgment on the Issue of Agency Against Advocate Health Care Network

Respectfully submitted, [Mark R. McKenna](#), One of the Attorneys for Plaintiff.

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NOW COMES Plaintiff, JOANN WILLIAMS, individually, and as Mother and next friend of ROBERT MORALES, JR., a minor, by and through her attorneys, Hurley, McKenna & Mertz, and moves this Honorable Court to grant summary judgment on the issue of agency:

Facts

At issue in whether defendant Dreyer Medical Group, Ltd., and its employee, defendant Dr. Judson Jones, were agents of defendant Advocate Health Care Network. Dreyer Clinic, Inc. is a subsidiary of Advocate Health Care Network. Dreyer Medical Clinic is the trade name for the physicians of Dreyer Medical Group, Ltd.

Dreyer Clinic, Inc. has an agreement to provide all non-physician services to the physicians of Dreyer Medical Group, Ltd., to enable the operation of Dreyer Medical Clinic. Whenever a physician of the Dreyer Medical Group, Ltd., such as defendant Dr. Jones, provides a medical service, Advocate Health Care Network receives a percentage of the net profit. Dr. Jones and the physicians of Dreyer Medical Group, Ltd., represent Advocate Health Care Network in dealings with the general public. Dr. Jones and the Group physicians are listed on the Advocate Health Care website as "Advocate" physicians. The Dreyer Medical Clinic and Advocate brand name are intertwined in advertisements and signage at the Dreyere Medical Clinic facilities.

Dr. Jones and the physicians of Dreyer Medical Group, Ltd., transact business for the benefit of Dreyer Clinic, Inc., and Advocate Health Care Network. Each service provided by Dr. Jones and his fellow physicians in the Group results in payment of fees to Dreyer Clinic, Inc., and profit to Advocate Health Care Network.

Advocate Health Care Network employees control operations of Dreyer Medical Group, Ltd., doing business as Dreyer Medical Clinic. Dr. Charles Derus, an employee of Advocate, is the Medical Director of Dreyer Medical Group, Ltd. Dr. Derus' duties as Medical Director of Dreyer Medical Clinic include: physician recruiting and employment reviews of Group physicians, supervising patient safety, quality assurance and utilization management for the physician group.

An "Enterprise Operating Committee" exists to approve any major actions by Dreyer Medical Group, Ltd., such as the execution or termination of third-party contracts by the Dreyer Medical Group, Ltd. The Committee must also approve all professional fees and capitation rates charged by the Group. The Committee has six members. Three of the Committee members are employees of Advocate---including Lee Sacks, MD, the Advocate Health Care Network Medical Director.

Advocate Health Care Network supplies capital when Dreyer Medical Group, Ltd. and Dreyer Medical Clinic needs to expand. Whenever defendant Dr. Jones delivers a child, a portion of the fees collected for that delivery will go to Advocate Health Care Network.

Argument

B. Agency

i. Dr. Judson Jones is an Agent of Advocate Health Care Network

Illinois Pattern Instruction 50.05 defines an “agent” under Illinois law. The instruction states: An agent is a person who, by agreement with another called the principal, represents the principal in dealings with third persons or transacts business, manages some affair or does some service for the principal, with or without compensation. The agreement may be oral or written, express or implied.

[If you find that one person has the right to control the actions of another at a given time, you may find that the relation of principal and agent exists, even though the right to control may not have been exercised.]

There is no precise formula for determining whether an individual is an agent of a principal or an independent contractor. *Theofanis v. Sarrafi*, [339 Ill.App.3d 460, 479-480 \(1st Dist. 2003\)](#). The facts of each case, including the question of hiring, the right to discharge, the manner and direction of the servant, the right to terminate the relationship, and the character of the supervision of the work done, all bear on the determination. *Id.*

ii. The Circumstances of this Case Demonstrate that Dr. Judson Jones was an Agent of Advocate Health care network and Dreyer Clinic, Inc.

Liability may be imposed on a principal for the actions of independent contractors where an agency relationship is established under either the doctrine of apparent authority or the doctrine of implied authority. *Petrovich v. Share Health Plan of Illinois, Inc.*, [188 Ill.2d 17, 31 \(1999\)](#) (citing *Gilbert v. Sycamore Municipal Hospital*, [156 Ill.2d 511, 524 \(1993\)](#) and *HPI Health Care Services, Inc. v. Mt. Vernon Hospital Inc.*, [131 Ill.2d 145, 163 \(1989\)](#)). Implied agency is an actual agency relationship, established through circumstantial evidence. *Buckholtz v. MacNeal Hospital*, [337 Ill.App.3d 163, 172 \(1st Dist. 2003\)](#). “The cardinal consideration for determining the existence of implied authority is whether the alleged agent retains the right to control the manner of doing the work.” *Petrovich v. Share Health Plan of Illinois, Inc.*, [188 Ill.2d 17, 42 \(1999\)](#).

Importantly, the principal does not need to actually exercise control. Rather, the proper inquiry is whether the principal had the right to control the alleged agent, regardless of whether or not that right was exercised. *Petrovich*, [188 Ill.2d at 48](#). For example, in *Petrovich*, the Court found that an HMO’s method of compensation that financially punished physicians for ordering certain medical tests raised the reasonable inference that the HMO had some right to exert control over its member doctors. *Id.* at 47-48. The Court also found that the HMO’s quality assurance program and referral system demonstrated the right to control. *Id.* at 48-50.

In this case, Dr. Jones and the Group physicians represent Advocate in dealing with the public. By the advertisements and listings on the Advocate and Dreyer Medical Clinic, the evidence is clear that in dealing with the public, Dr. Jones and his fellow Group physicians are “Advocate” physicians.

Dr. Jones and his fellow group physicians also transact business and provide service for Advocate Health Care Network. Simply, Advocate profits off of every service provided by Dr. Jones and his colleagues. By definition, under Illinois law, Dr. Jones and Dreyer Medical Group, Ltd., are agents of Advocate Health Care Network.

A. Standard for Granting Summary Judgment

Under the Illinois Code of Civil Procedure, either party may bring a motion for partial summary judgment “as to one or more of the major issues in the case.” [735 ILCS 5/2-1005\(d\)](#) (West 2005). The purpose of summary judgment under 2-1005 is for trial courts to dispose of issues or cases where no genuine dispute of material fact exists. *Adler Business Machines, Inc. v. Babbey Office Machines, Inc.*, [24 Ill.App.3d 38 \(1st Dist. 1974\)](#). Summary judgment helps avoid the delays of trial, the expense of unnecessary trials, and the congestion of trial calendars. *Weather-Gard Industries, Inc. v. Fairfield Savings & Loan Association*, [110 Ill.App.2d 13, 17-18 \(1st Dist. 1969\)](#). Summary judgment should be granted when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there are no genuine issues to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Wilder Binding Co. v. Oak Park Trust & Savings Bank*, [135 Ill.2d 121 \(1990\)](#). Though normally the existence or non-existence of an agency relationship is a question of fact, a court may decide this issue as a matter of law if only one conclusion may be drawn from the undisputed facts. *Churkey v. Rustia*, [329 Ill.App.3d 239, 242-43 \(2d Dist. 2002\)](#).

Here, because the pleadings, depositions and admissions on file demonstrate that Dr. Judson Jones is either an agent of Advocate Health Care Network, this Court may properly grant summary judgment in favor of the Plaintiff on this issue.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order finding that Dr. Judson Jones and Dreyer Medical Group, Ltd., was an agent of Advocate Health Care Network.

Respectfully submitted,

<<signature>>

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