

State Supreme Court Says Hospital May Be Liable For Independent Contractor; Also Addresses Interpretation of Bylaws



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Tennessee courts recently issued opinions deciding two issues of significance to the health care industry.

In the first, *Boren v. Weeks*, the Tennessee Supreme Court, in a case of first impression, set out the circumstances under which a hospital may be held liable for the acts of an independent contractor who performs services at the hospital.

In the second, *Gekas v. Seton Corp.*, the Court of Appeals decided, in another case of “first impression,” how strictly must a hospital comply with its bylaws.

Boren v. Weeks

Marvin Boren’s wife, Dorothy, made her first visit to River Park Hospital on May 26, 2004. She was treated by Dr. Mark T. Weeks, an employee of Sterling Healthcare, an independent company that provides emergency room physicians and hospitalists to hospitals on an independent contractor basis.

From the initial visit to the last, on June 7, 2004, Mrs. Boren made a total of four visits to the River Park Hospital’s emergency room. At the last visit, she died of “multiple pulmonary emboli (blood blockage) in the left and right arteries.”

At each visit to the hospital, Mrs. Boren’s husband was asked to sign a form consenting to his wife’s treatment. In bold letters, the form stated that the emergency room physicians were independent contractors.

After his wife’s death, Marvin Boren sued both Dr. Weeks, alleging that he “deviated from the recognized standard of acceptable professional practice in the community,” and River Park Hospital, alleging that the hospital was “vicariously” liable because Dr. Weeks “was acting within the scope of his authorized agency with River Park Hospital and with the apparent authority to do so on behalf of River Park.

River Park Hospital, of course insisted that they were not responsible for the acts of Dr. Weeks. The trial Court left the issue open and the question of the hospital’s vicarious liability was presented to the Court of Appeals. That Court agreed with the hospital’s decision.

So, why did our state’s Supreme

Court decide otherwise? It boiled down to whether the patient and her representative received adequate notice and understood the language of the hospital’s consent form which set out the “independent contractor” relationship between River Park and the emergency room physicians.

Mr. Boren insisted that he was relying upon River Park Hospital, that he did not know Dr. Weeks was not an employee of the hospital, and that the hospital’s consent form was neither fully read to him nor fully explained. Of course, he was in a hurry, focused on his wife’s condition, and simply “signed where they told me.”

Substantial testimony, including from some of the hospital’s employees, supported Mr. Boren’s position. It became clear that the hospital’s employees did not, as a matter of practice, read all of the consent form to a patient or patient’s representative, including the part about the independent relationship of emergency room physicians.

Further, quoting directly from Chief Justice Barker’s opinion, “several registration and admission hospital staff members testified that the (consent) form was completed in an electronic format, that patients and their representatives were simply asked if they consented to treatment, and hospital staff did not as a matter of practice explain that the physicians were independent contractors rather than employees or agents.”

The Supreme Court, in its recent opinion, set out the criteria for holding a hospital liable for the acts of independent contractors. The Court said one must (1) prove that the hospital held itself out as providing medical services, and (2) one must have looked to the hospital rather than the independent medical provider to perform those services, and (3) the patient must have accepted those services in the reasonable belief that the services were being rendered by the hospital or its employees.

To avoid liability, the Court said the hospital must provide meaningful notice to a patient receiving treatment at the hospital that the care being given that patient is being provided by an

independent contractor; i. e., not an employee of the hospital.

Mr. Boren’s case now returns to the trial court.

Gekas v. Seton Corp.

In the *Gekas* case, again a case of first impression, the Supreme Court held that only substantial compliance” with a hospital’s bylaws must be shown when a hospital is defending a personnel action which gives rise to a breach of contract claim.

Dr. Gekas had sued the hospital he worked for after the hospital declined to advance him to the status of a full member of the medical staff.

He had joined Baptist Hospital as a provisional staff member. Under the hospital’s bylaws, a provisional staff member had to wait a minimum of two years before being considered for Active Staff status, but one became ineligible for full membership after five years if such status had not been granted.

Apparently, Dr. Gekas had a little trouble getting along with folks and a number of complaints were filed against him. For instance, a nurse claimed that, while working with the doctor on Christmas Eve in 2000, Dr. Gekas called her “slow and stupid”, said she had only “one brain cell”, and, in apparently the ultimate insult, said, “you must be from Blount County.”

Complaints against the doctor continued. Finally, after five years, action was taken to deny Dr. Sekas advancement to Active Staff status.

The hospital’s bylaws provided “failure to advance to Active Staff within five (5) years of initial appointment shall result in termination of Medical Staff membership and privileges and shall entitle the practitioner to the hearing procedures set forth in Article VII of the bylaws.”

Dr. Sekas filed suit in Chancery Court, where he lost, and he then appealed to the Court of Appeals, which made the above ruling. The “substantial compliance” standard clarifies or perhaps alters somewhat a 1991 Tennessee Supreme Court ruling which had held that “hospital’s bylaws have become, as matter of law, integral part of contractual relationship between hospital and members of its medical staff.”