Hospital Liability

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I. INTRODUCTION

A. Factual Background

Recently, a resident physician from a hospital in Metro Manila found himself embroiled in a malpractice mess.[1] He operated on a one year-old child, a

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charity patient, for repair of a cleft palate. The resident was under the supervision of a consultant who left when the surgery was almost finished. It was then when the resident noticed that the endotracheal tube, securing the patient's airway, was no longer in place. The child died as a result and a case was filed against the resident with the National Bureau of Investigation (NBI). On the one hand, the resident physician believes that the anesthesiologist was at fault because the latter did not use proper equipment to monitor the oxygen levels of the patient, but neither resident nor anesthesiologist could determine when the extubation occurred. The hospital, on the other hand, informed the resident that he was on his own.

The case reported above is just one of many cases where a patient may have been a victim of an erring physician.[2] In the Philippines, however, no legislation on medical negligence has successfully been enacted.

What remains constant throughout medical history is that physicians have the duty to heal. The Hippocratic Oath provides that physicians will prescribe regimens for the good of their patients according to their ability and judgment, and never do harm to anyone.[3] Nevertheless, in

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the Supreme Court's National Essay Writing Contest for Law Students in 2005. The Author's previous works published in the *Journal* include *Physician and Hospital Liability in Cases of Medical Negligence: A Comment on Professional Services, Inc. v. Agana*, 52 ATENEO L.J. 219 (2007). She also co-authored *Filiation and Legitimacy*, 52 ATENEO L.J. 356 (2007) and *The Legal Concept of Terrorism under International Law and Its Application to Philippine Municipal Law*, 51 ATENEO L.J. 4 (2007).

This Article is an abridged version of the Author's *Juris Doctor* Thesis, which won the Dean's Award for Best Thesis of Class 2009 (Gold Medal) of the Ateneo de Manila University School of Law. Several chapters have been omitted to comply with publication requirements. A copy of the complete Thesis is on file with the Professional Schools Library, Ateneo de Manila University. The Author is currently an Associate in Estelito Mendoza & Associates Law Office.

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1. The name of the resident physician and the institution where he is presently affiliated will not be disclosed because the case is on-going and the physician refuses to be identified. The side of the anaesthesiologist or the hospital, in this case, was not obtained.
2. *See* Victims of Medical Malpractice (Philippines), *available at* http://victimsmedmalpractice.blogspot.com/2008/01/korina-sanchez-advocacy.html (last accessed Nov. 7, 2010).
3. L.R. FARNELL, GREEK HERO CULTS AND IDEAS OF IMMORTALITY 269 (1921). The Hippocratic Oath is an oath traditionally taken by physicians pertaining to the ethical practice of medicine. It has been translated from Greek and has undergone changes through the years. One of the most important guideline embodied in the oath is that the physician must do no harm. *Id.*

circumstances where the doctor or the hospitals become negligent, and injury results, the natural consequence is that they shall be liable for damages.

Modern laws impose on physicians administrative, civil, and criminal liability for negligence. In the 20th century, many jurisdictions also recognize the liability of hospitals for injuries suffered by patients being treated within its walls. In the Philippines, the void in medical malpractice legislation has been addressed by the courts, applying the law on torts for civil liability and utilizing Common Law decisions to introduce doctrine and expand the condition under which physicians and hospitals may be made liable.

At least eight bills[4] have been filed in Congress attempting to legislate principles governing medical malpractice, with focus on imposing greater penalties or masquerading as a declaration of patient's rights. The need for malpractice laws became a public clamor in 2002 when it became the advocacy of media personalities like Korina Sanchez.[5] The very first Bill was

4. *See generally* An Act to Reduce Medical Mistakes and Medication-Related Errors, S.B. No. 547, 14th Cong., 1st Sess. (July 2, 2007); An Act Upholding the Right of Patients to the Redress of Their Treatment-Related Grievances by Mandating the Creation of Grievance Boards in All Public and Private Hospitals to be Supervised by the Department of Health, and for Other Purposes, S.B. No. 2072, 13th Cong., 2d Sess. (Aug. 2, 2005); An Act to Protect Patients Against Medical Malpractice, Punishing the Malpractice of Any Medical Practitioner and Requiring Them to Secure Malpractice Insurance and for Other Purposes, S.B. No. 1720, 13th Cong., 1st Sess. (Aug. 11, 2004); An Act Establishing a Medical and Healthcare Liability Law, Providing Penalties Therefor and for Other Purposes, H.B. No. 226, 13th Cong., 1st Sess. (July 1, 2004); An Act Declaring the Rights and Obligations of Patients and Establishing a Grievance Mechanism for Violations Thereof and for Other Purposes, H.B. No. 261. 13th Cong., 1st Sess. (July 1, 2004); An Act Declaring the Rights of Patients and Prescribing Penalties for Violations Thereof, S.B. No. 588, 13th Cong., 1st Sess. (June 30, 2004); An Act Declaring the Rights and Obligations of Patients and Establishing a Grievance Mechanism for Violations Thereof and for Other Purposes, S.B. No. 3, 13th Cong., 1st Sess. (June 30, 2004); & H.B. No. 4955, 12th Cong., 1st Sess. (July 29, 2002).

5. Conrado de Quiros, Medical Malpractice in the Philippines (There's the Rub: Cures), PHIL. DAILY INQ., June 1, 2005, *available at* http://upmasa-online.org/newjournalContent.php?article_id=308&l=12 (last accessed Nov. 7, 2010). On the alleged witch hunt being waged against doctors by some people in media and Congress —

> Chief of them Korina Sanchez, who seems to have made it her life's work to make doctors pay for the sins of the world, and Serge Osmena, who has decided to lead the torch-carrying mob laying siege at Frankenstein's castle. Sanchez has renewed her attacks against doctors in her radio and TV shows, while Osmena has authored Senate Bill 1720 criminalizing 'medical malpractice' and forcing doctors to get 'mandatory malpractice insurance.'

the "Medical Malpractice Act of 2002."[6] Said bill imposed a staggering ₱500,000.00 to ₱1,000,000.00 as fines and punishment by *prisión mayor*.[7] It is no surprise that the medical community lobbied against this malpractice legislation, which included a massive protest in the Cuneta Astrodome attended by members of the Alliance of Health Professional Organizations (AHPO), Philippine Medical Association (PMA) and other health organizations.[8]

The controversial "Anti-Malpractice Act of 2004,"[9] introduced by then Senator Osmeña, mandated that physicians obtain malpractice insurance or face suspension of professional license for non-compliance.[10] At the very least, the bill crystallized the fear that malpractice legislation would increase health care cost.

The main thrust of proposed legislations is apparently to address the problem of physician negligence. None of these bills provide for the responsibility of hospitals over health personnel and those who practice medicine within its walls. It must be noted that it was not until *Ramos v. Court of Appeals*[11] that the Supreme Court had the opportunity to make a determination of hospital liability for acts of negligent physicians. That the proposed laws fail to consider the extent and basis by which hospitals may be made liable only shows that hospital negligence is a novel issue — one that has arisen only in the last few years. Part of the difficulty is the fact that there are complex relationships existing within a hospital, like that between hospitals and physicians or that between hospitals and patients.

In order to provide a framework by which the issue of medical negligence could be addressed, this Article shall examine existing laws that establish liability for acts or omissions constituting negligence. Quasi-delicts have long been enshrined in the Civil Code as independent sources of obligations.[12] On the one hand, physicians are liable upon showing of the elements of quasi-delict in the context of medical negligence.[13] Hospitals, on

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Id.

6. H.B. No. 4955.

7. *Id.* § 7.

8. Paul Bisnar, History of Medical Malpractice in the Philippines (Part I), *available at* http://doktorko.com/blogs.php?mod=article&a=142 (last accessed Nov. 7, 2010).

9. S.B. No. 1720.

10. *Id.* § 10.

11. Ramos v. Court of Appeals, 321 SCRA 584, 588-89 (1999).

12. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, arts. 1175 & 2176 (1950).

13. *See* Garcia-Rueda v. Pascasio, 278 SCRA 769, 778 (1997), where the Court stated "[the] four elements involved in medical negligence cases: duty, breach,

the other hand, have been declared liable by the Court under Article 2176 of the Civil Code in *Professional Services, Inc. [PSI] v. Agana*.[14] The direct liability of the hospital in this case was not discussed in relation to the connection of cause and effect between the fault or negligence of the hospital and the damages inflicted on the patient. The Decision created ripples among private hospitals in the Philippines which claimed that said ruling is not based on sound principles of law and could possibly lead to the closure of many hospitals.[15] Insofar as hospitals are concerned, the theory of liability is still in its infancy.

The liability of physicians and hospitals for damages rests on principles other than quasi-delict. In most cases, the finding of negligence is premised on Common Law doctrines. Liability of physicians has been discussed under the Captain of [the] Ship Doctrine.[16] Hospitals have been made liable based on *respondeat superior*,[17] agency by estoppel,[18] and the Doctrine of Corporate Negligence.[19] Reliance on these doctrines necessitates that the conditions of liability be determined with a historical perspective and an analysis of how the theories of liability are applied under Philippine jurisdiction.

The legal conditions should also be contextualized by the social, political, and economic realities crippling the nation. In this country, the government spends ₱0.33 per day for the health of every Filipino.[20] The Philippine Hospitals Association reported that in 1998, 600 hospitals have

injury and proximate causation;" Cruz v. Court of Appeals, 282 SCRA 188 (1997), where the Court observed that, in this jurisdiction, such claims are most often brought as a civil action for damages under Article 2176 of the Civil Code, and in some instances, as a criminal case under Article 365 of the Revised Penal Code, with which the civil action for damages is impliedly instituted; & *Ramos*, 321 SCRA 584 at 623, where the Respondents were held solidarity liable or damages under Article 2176 of the Civil Code.

14. Professional Services, Inc. v. Agana, 513 SCRA 478 (2007) [hereinafter *Professional Services, Inc. 2007*].

15. Leila Salaverria, Private hospitals list repercussions of SC ruling, PHIL. DAILY INQ., Apr. 6, 2008, *available at* http://newsinfo.inquirer.net/breakingnews/metro/view/20080406128778/Private-hospitals-list-repercussions-of-SC-ruling (last accessed Nov. 7, 2010).

16. *Ramos*, 321 SCRA 584; *Professional Services, Inc. 2007*, 513 SCRA 478; & Cantre v. Go, 522 SCRA 547, 556-57 (2007).

17. *Ramos*, 321 SCRA 584; *Professional Services, Inc. 2007*, 513 SCRA 478.

18. *Professional Services, Inc. 2007*, 513 SCRA 478; Nogales v. Capitol Medical Center, 511 SCRA 204 (2006).

19. *Professional Services, Inc. 2007*, 513 SCRA 478.

20. Aubrey Makilan, Gov't Neglecting Health — Health NGO, Bulatlat (2006), *available at* http://www.bulatlat.com/news/6-49/6-49-health1.htm (last accessed Nov. 7, 2010).

closed down.[21] Healthcare professionals search for greener pastures overseas while barangays have no doctors. These are bitter truths that must be swallowed even as malpractice legislation is thrust upon the medical community to threaten its existence under a banner of quality care for all.

Should we abandon any attempt at malpractice legislation? Establishing liability for medical negligence does not mean that the health care system will *ipso facto* collapse. Just as the law is meant to protect the poor and underprivileged, it may also be a means to protect both physicians and hospitals. A person who causes damage to another should be obliged to pay for the damage done. A system that imposes liability should, however, be cautioned against imposing damages when there is no moral culpability. The fine line between strict liability torts which would condition liability upon mere occurrence of injury and that of torts based on fault should be preserved. Doctors and hospitals are not guarantors of health.

> Whether or not a physician has committed an 'inexcusable lack of precaution' in the treatment of his patient is to be determined according to the standard of care observed by other members of the profession in good standing under similar circumstances bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science.[22]

The standard of care expected of hospitals should be based on like principles. In the end, the goal is to improve quality health care for all.

B. The Problem of Medical Negligence

There is no law directly addressing the issue of medical negligence despite the increase in cases of this nature. The Supreme Court has made hospitals liable under the doctrines of *respondeat superior*, agency by estoppel, and corporate negligence. Are these court pronouncements proper? In the first place, are hospitals liable for medical negligence? If hospitals are liable, what should be the basis of its liability?

The primary objective of this Article is to adopt a framework by which hospitals may be made liable for medical negligence. The conditions of liability will be determined based on relevant legal provisions, doctrines, and principles. The Article also includes a review of medical jurisprudence, its development, and rationale. The suggested framework establishing hospital liability shall be illustrated by way of a proposed law.

The issue of assigning liability to hospitals cannot be resolved until the related issue of the nature of the relationship between hospitals and doctors is settled. It must be determined whether different principles of law apply to

21. Salaverria, *supra* note 15.

22. *Cruz*, 282 SCRA at 200.

physicians and hospitals to warrant a deviation from the much limited concept of vicarious liability ordained in the Civil Code. Whether courts can impose non-delegable duties on hospitals is also a matter requiring resolution. In sum, the realms of medical negligence and hospital liability remain poorly chartered territories. Without restrictions and limits, liability of both physicians and hospitals may become imposable regardless of fault. This is a much greater danger than the alleged threat of malpractice legislation. If the trend continues and more cases of medical negligence begin requiring resolution, the need for establishing uniform guidelines in establishing liability of hospitals is a necessity.

This Article analyzes theories and conditions of liability in cases of medical negligence. The discussion covers existing provisions of law, foreign jurisprudence, a survey of cases decided on medical negligence, and physician and hospital liability. The framework is established to make a determination of hospital liability in cases where a patient suffers an injury while being diagnosed or treated by a physician within the hospital. Several sections of the Article explores the Doctrine of Corporate Negligence — a novel concept recently recognized by the Supreme Court. The Article concludes with a proposed law which illustrates the conditions of hospital liability to be developed. The proposed law includes sections relating to physician liability, but the sections have been included only to create a more complete bill.

II. THE CONCEPT OF NEGLIGENCE

A. Negligence as Central Idea of Torts

In Oliver Wendell Holmes' classic *The Common Law*,[23] he proposed that the foundation of torts is negligence and liability ought only to be based upon personal fault.[24] A court that determines the question of existence of negligence is concerned with what the defendant did or did not do.[25]

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23. Oliver Wendell Holmes, The Common Law (Lecture III, Torts. Trespass and Negligence) (1881), *available at* http://biotech.law.lsu.edu/Books/Holmes/claw05.htm (last accessed Nov. 7, 2010).

24. *Id.* The second theory, directly opposed to the first, is that of strict liability or that a "man acts at his peril." Holmes explained —

> According to [Austin], the characteristic feature of law, properly so called, is a sanction or detriment threatened and imposed by the sovereign for disobedience to the sovereign's commands. As the greater part of the law only makes a man civilly answerable for breaking it, Austin is compelled to regard the liability to an action as a sanction, or, in other words, as a penalty for disobedience. It follows from this, according to the prevailing views of penal law, that such liability ought only to be based upon personal fault[.]

Actionable negligence may be *culpa contractual*, *culpa aquiliana*, and criminal (based on contract, quasi-delict, or delict).[26] Undeniably, Tort Law is intertwined with Criminal, Contract, and Property law. In Roman Law-influenced countries, the legal development of torts law branched out from criminal law, because it was only after the *delicts* were identified that other harmful conduct became recognized as quasi-delicts.[27] Nevertheless, in Torts, intent takes a backseat to fault and negligence. In the Philippines, Criminal Negligence is penalized under Article 365 of the Revised Penal Code.[28]

As regards *culpa contractual* and *culpa aquiliana*,[29] the Supreme Court had occasion to distinguish —

> The fundamental distinction between obligations of this character and those which arise from contract, rests upon the fact that in cases of non-contractual obligation it is the wrongful or negligent act or omission itself which creates the *vinculum juris*, whereas in contractual relations the vinculum exists independently of the breach of the voluntary duty assumed by the parties when entering into the contractual relation.[30]

Negligence, as elucidated by Holmes, is the central idea in torts.[31] In a 2004 comparison of national liability systems[32] for remedying damage, personal injuries resulting from the rendition of services, mainly intended for physical persons in their private capacity, is based on the fault principle. This means that a provider becomes liable only in case of negligence. It is the common understanding of the examined legal systems that providers with respect to the services at stake do not guarantee results but have to provide

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Id.

25. TIMOTEO B. AQUINO, TORTS AND DAMAGES 31 (2005). The Author said that based on the Supreme Court decision in Picart v. Smith, 37 Phil. 809 (1918), it is clear that negligence is conduct.

26. *Id.* at 23.

27. WILLIAM L. BURDICK, THE PRINCIPLES OF ROMAN LAW 509 (1938).

28. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, art. 365 (1932).

29. AQUINO, *supra* note 25, at 24. Quasi-delict was called *culpa aquiliana* in Spanish law because it can be traced from the Roman law source of obligation called Lex Aquilia. *Id.*

30. Cangco v. Manila Railroad Co., 38 Phil. 768, 775 (1918).

31. Holmes, *supra* note 23.

32. Ulrich Magnus & Hans W. Micklitz, *Comparative Analysis of National Liability Systems for Remedying Damage*, A Study Commissioned by the European Commission 6 (April 2004). The Study is limited to France, Germany, Italy, Spain, Sweden, UK, and the United States. *Id.*

the services in a careful and professional manner.[33] In consequence, the provider can be held liable only when s/he has neglected the duty of care which had to be reasonably observed in the circumstances.[34]

The rule in the Philippines has always been that what constitutes ordinary care vary with the circumstances of the case; that negligence is want of care required by the circumstances.[35] As ordained in the Civil Code —

> Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply.
>
> If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.[36]

B. Standard of Due Diligence

"The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law."[37] Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences.[38] Existence of negligence is not determined by reference to the personal judgment of the actor in the situation before him.[39] "*Reasonable foresight of harm, followed by the ignoring of the suggestion born of this provision, is always necessary before negligence can be held to exist.*"[40] The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by his standard.[41]

C. Negligence as an Independent Source of Obligation

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33. *Id.*

34. *Id.*

35. AQUINO, *supra* note 25, at 45.

36. CIVIL CODE, art. 1173.

37. *Picart*, 37 Phil. at 813; Philippine National Construction Corporation v. Court of Appeals, 467 SCRA 569, 580 (2005).

38. *Picart*, 37 Phil. at 813.

39. *Id.*

40. *Id.* (emphasis supplied); *see also* Urbano v. Intermediate Appellate Court, 157 SCRA 1 (1988).

41. *Picart*, 37 Phil. at 813.

In the Civil Code, obligations arise from law, contracts, quasi-contracts, or quasi-delicts.[42] The term quasi-delict was retained in the Civil Code in order to designate negligence as a separate source of obligation, distinct from criminal responsibility or obligations arising from contract. In the leading case of *Rakes v. Atlantic, Gulf and Pacific Co.*,[43] Manresa was quoted to the effect that *culpa* or negligence or *culpa aquiliana* is an independent source of obligation between two persons not so formerly bound by any juridical tie.[44]

In effect, in order to regulate the conduct of persons in the course of their everyday existence or in their relationships with one other, the law creates an obligation to exercise due care, and at the very least, ordinary diligence, even when there is no pre-existing contract. The Philippine Civil Code embodies this concept, as adopted from the Spanish Civil Code, which traces its roots from Roman Law.

III. QUASI-DELICT UNDER THE PHILIPPINE CIVIL CODE

A. General Rule: Liability for Own Acts of Negligence

Legal controversies often involve the search for redress for a violated right and compensation for damages.[45] In determining whether a person has a duty to observe the rights of others, a person has obligations based on law, contract, quasi-contract, or quasi-delict.[46] In the general scheme of the Philippine legal system, intentional and malicious acts, with certain exceptions, are governed by the Revised Penal Code while negligent acts or omissions are covered by Article 2176 of the Civil Code.[47]

In general, a person is liable only for his or her own acts or omissions constituting negligence.[48] This obligation is called a quasi-delict. The provision primarily governs a relationship where there is no pre-existing contract, although in earlier cases the Supreme Court had occasion to rule that the act that breaches a contract may be the tortuous act itself.[49]

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42. CIVIL CODE, art. 1157.

43. Rakes v. Atlantic, Gulf and Pacific Co., 7 Phil. 359 (1907).

44. *Id.* at 365. *See also* Batangas Laguna Tayabas Bus Company, Inc. v. Court of Appeals, 64 SCRA 427 (1975).

45. 1997 RULES OF CIVIL PROCEDURE, rule 2, § 2. It defines a cause of action as "the act or omission by which a party violates a right of another." *Id.*

46. CIVIL CODE, art. 1157.

47. *Id.* art. 2176.

48. Light Rail Transit Authority v. Navidad, 397 SCRA 75, 83 (2003).

49. Singson v. Bank of the Philippine Islands, 23 SCRA 1117, 1120 (1968) (citing Air France v. Carracoso, 18 SCRA 155, 168 (1966)).

There are three basic elements in quasi-delict: (1) damages suffered by the plaintiff (harm); (2) fault or negligence of the defendant (wrong); and (3) the connection of cause and effect between the fault or negligence of the defendant and the damages inflicted on the plaintiff.[50] Thus, negligence cannot create a right of action unless it can be shown that the fault or negligence is the proximate cause of the damage sustained by the plaintiff.[51]

Proximate cause is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[52] The doctrine is a device for imputing liability to a person where there is no relation between him and another party.[53]

B. Exceptions: Strict Liability and Imputed Liability

1. Strict Liability Torts

The general concepts discussed in the preceding sections admit of exceptions. A person may be made liable independent of fault, negligence, or intent under the concept of strict liability. The concept of liability without fault is applied to acts which, though lawful, are so fraught with possibility of harm to others that the law treats them as allowable only on the terms of insuring the public against injury.[54] The activities regulated are useful and necessary but the no fault liability is imposed because they create abnormally dangerous risks to society. The liability is being imposed from an economic perspective, where strict liability is found to be the best way to allocate risks and minimize loss.[55]

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50. Smith Bell Dodwell Shipping Agency Corporation v. Borja, 383 SCRA 341, 349 (2002); FGU Insurance Corporation v. Court of Appeals, 287 SCRA 718, 720-21 (1998); Philippine Bank of Commerce v. Court of Appeals, 269 SCRA 695, 702-03 (1997); Vergara v. Court of Appeals, 154 SCRA 564, 566 (1987); & Taylor v. Manila Electric Railroad and Light Co., 16 Phil. 8, 15 (1910).

51. American Express International, Inc. v. Cordero, 473 SCRA 42, 48 (2005); *Cruz*, 282 SCRA 188.

52. Vda. de Bataclan, et al. v. Medina, 102 Phil. 181, 186 (1957); Pilipinas Bank v. Court of Appeals, 234 SCRA 435, 439 (1994); Sabena Belgian World Airlines v. Court of Appeals, 255 SCRA 38, 44-45 (1996); Bank of the Philippine Islands v. Court of Appeals, 326 SCRA 641, 657 (2000); Ilusorio v. Court of Appeals, 393 SCRA 89, 97 (2002); & Solidbank Corporation v. Arrieta, 451 SCRA 711, 719 (2005).

53. Calalas v. Court of Appeals, 302 SCRA 356, 362 (2000).

54. JOAN S. LARGO, LAWS AND JURISPRUDENCE ON TORTS AND DAMAGES 94 (2007).

55. AQUINO, *supra* note 25, at 18.

2. Imputed Liability

Likewise, the general rule that a person is responsible only for his own acts of negligence admits of circumstances where one may be made liable for the acts of others. Under Common Law, the tort system has developed several theories to facilitate compensation for injuries caused by another.

Negligence will compensate for behavior that falls below a standard of reasonable care. Corporate negligence will hold an organization liable for the negligent conduct of a provider when the organization was negligent in hiring or supervising the provider. *Respondeat superior* will hold an employer liable for the negligent acts of an employee provider even though the employer itself has not acted negligently. Ostensible agency will hold an organization liable for the negligent act of a provider who, even though not an employee, has been held out as an agent of the organization.[56]

Under the Civil Code of the Philippines, the obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for the acts of persons for whom one is responsible under vicarious liability in Article 2180.[57]

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56. Vernellia R. Randal, Traditional Theories of Liability, *available at* http://academic.udayton.edu/health/02organ/manage01e.htm (last accessed Nov. 7, 2010).

57. *See* CIVIL CODE, art. 2180. It provides —

> Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
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> The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.
>
> Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.
>
> The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

IV. MEDICAL NEGLIGENCE IN THE PHILIPPINES

Expositions on the law of torts and damages include a discussion of medical malpractice.[58] Like other tort cases, the backbone of the suit is negligence. In fact, in the absence of specific legislation to address medical negligence, the provisions of the Civil Code on quasi-delict and vicarious liability under Article 2180 have been applied. The Supreme Court likewise borrows heavily from doctrines developed in the United States (U.S.), reasoning that medical malpractice litigation there is more developed.[59]

In recent years, cases of medical negligence have been increasing. In early 2008, Filipinos were scandalized when a video of a delicate operation was posted on the Internet.[60] The video showed a man, with a canned body spray inserted in his rectum, being operated on. The operating room was crowded and unmistakable laughter is heard in the video, especially after the canister was extracted. One of the persons exclaimed, "Baby out!" The man claimed that his right to confidentiality was violated when the said video was taken without his written consent, and subsequently broadcasted over the Internet.[61] While the operation was successful, it is evident that there is a breach of a standard of care, and a violation of the patient's rights.

While other cases involving patients and doctors or hospitals are not as controversial as the so-called "Cebu Scandal," it cannot be denied that there is an increased number of cases involving medical malpractice, or more appropriately, medical negligence.[62] While very few cases involving medical

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> Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Id.

58. LARGO, *supra* note 54, at 110-23 AQUINO, *supra* note 25, at 177-97.

59. Marguerite S. Pascual, Filling the Void: A Study of Medical Malpractice with Proposed Amendments to Existing Laws 3, 25 (2003) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

60. Carine M. Asutilla, Video scandal grips Cebu Hospital, CEBU DAILY NEWS, *available at* http://globalnation.inquirer.net/cebudailynews/news/view/20080415-130504/Video-scandal-grips-Cebu-hospital (last accessed Nov. 7, 2010).

61. *Id.*

62. *See* Victims of Medical Malpractice (Philippines), *available at* http://victimsmedmalpractice.blogspot.com/ 2008/ 01/ korina –sanchez - advocacy.html (last accessed Nov. 7, 2010).

negligence have reached the Supreme Court,[63] the increase has not gone unnoticed.

In 2006, the deaths of seven newborns in a hospital due to a bacterial infection have been covered extensively by media. Initially, (former) Health Secretary Francisco Duque III declared that there had been "some degree of negligence" on the part of the hospital in caring for its patients, although a five-person team that investigated the matter said that the newborns got the infection from their mothers and not from the hospital.[64] In 2007, a husband filed a complaint at the NBI against four doctors for the death of his common-law wife and unborn child in a Makati City government hospital.[65] More recently, the NBI charged a doctor of a prominent hospital for an alleged botched operation because a patient apparently died as a result of incomplete removal of a ruptured appendix.[66]

The increase in cases of this nature has been attributed to the gradual disappearance of the family physician and the disservices made by mass communication media.[67] The commercialization of medical practice and the increasing complexity of medical procedures have likewise contributed.[68]

Over the past few years, at least eight bills with different authors have been filed in the Senate and Lower House seeking to legislate and criminally penalize medical malpractice, but not one of these bills has become law.[69] One of the reasons may be that the passing of these laws has been vigorously

63. *See* Alba v. Acuna and Frial, 53 Phil. 380, 388 (1929); *See, e.g.*, Carillo v. People, 229 SCRA 386 (1994); Batiquin v. Court of Appeals, 258 SCRA 334 (1996); *Garcia-Rueda*, 278 SCRA 769; *Cruz*, 282 SCRA 188; *Ramos*, 321 SCRA 584; Reyes v. Sisters of Mercy Hospital, 341 SCRA 760 (2000); Ramos v. Court of Appeals, 380 SCRA 467 (2002); Ang v. Grageda, 490 SCRA 424 (2006); *Professional Services, Inc. 2007*, 513 SCRA 478; Cantre v. Go, 522 SCRA 547 (2007); & Professional Services, Inc. v. Court of Appeals, 544 SCRA 170 (2008) [hereinafter *Professional Services, Inc. 2008*].

64. Edson C. Tandoc, Mothers to sue hospital for babies' deaths, PHIL. DAILY INQ., Oct. 24, 2006, *available at* http://newsinfo.inquirer.net/breakingnews/metroregions/view_article.php?article_id=28464 (last accessed Nov. 7, 2010).

65. Tina Santos and DJ Yap, 4 Makati City hospital doctors accused of negligence, PHIL DAILY INQ., June 16, 2007, *available at* http://newsinfo.inquirer.net/inquirerheadlines/metro/view_article.php?article_id=71592 (last accessed Nov. 7, 2010).

66. Tina G. Santos, *Doc charged for alleged botched operation*, PHIL DAILY INQ., Dec. 29, 2007, at A17-18.

67. PEDRO P. SOLIS, MEDICAL JURISPRUDENCE 168-71 (1998).

68. *Id.*

69. *See* S.B. No. 547, S.B. No. 2072, S.B. No. 1720, H.B. No. 226, H.B. No. 261, S.B. No. 588, S.B. No. 3, & H.B. No. 4955.

opposed by the medical sector.[70] The PMA expressed concern about the deteriorating and tarnished image of physicians as a result of the exaggerated media coverage of malpractice and the painting of physicians as parties responsible for the high costs of health care.[71] In the 2005 Medical Summit of the PMA, it was reported that there is a declining interest among young Filipinos to enter medicine as a career with at least three medical schools closing down due to lack of enrollees.[72] All these interrelated problems affecting the medical profession are perceived to lead to further deterioration in the already dismal quality of health services for our people and the potential collapse of the health system.[73] Nevertheless, there have been civil groups whose main advocacy is to pressure Congress to legislate medical malpractice laws.[74]

A. Physician Negligence

1. Applicable Laws

A survey of Philippine laws readily shows that even in the absence of a medical malpractice law, physicians may be and are actually liable for medical negligence facing administrative, civil, or criminal sanctions. The rights and obligations of physicians and the law that governs the relationship between doctors and patients are embodied in the Medical Act of 1959.[75] The law provides for the standardization and regulation of medical education, the examination for registration of physicians, and the supervision, control, and

70. Committee on Legislation and Advocacy, Position Paper of the Philippine College of Physicians on the Medical Malpractice Act and Patients' Rights Bills (Submitted to the Philippine Medical Association on Jan. 27, 2005), *available at* http://www.pcp.org.ph/contents/SenateBills/Position-Malpractice%20Bills.htm (last accessed Nov. 7, 2010).

71. Official Web Site of the Philippine Medical Association. 2005 Medical Summit, *available at* http://www.pma.com.ph/2006_09MedicalSummit.asp (last accessed Nov. 7, 2010).

72. *Id.*

73. *Id.*

74. One example is the People's Health Watch (PHW). The PHW is a non-governmental organization for victims and families of victims of Medical Malpractice. Ms. Korina Sanchez is the spokesperson of the group and has spent so much of her personal time persuading lawmakers to give her NGO's advocacy a chance.

75. The Medical Act of 1959 [Medical Act], Republic Act No. 2382, as Amended (1959); An Act to Amend Certain Sections of Republic Act No. 2382, Otherwise Known as "The Medical Act of 1959," Republic Act No. 4224 (1965). Republic Act No. 4224 amended Sections 3-7, 9-16, & 18-21 of the Medical Act of 1959.

the careful regulation of the practice of medicine in the Philippines.[76] Gross negligence, ignorance, or incompetence resulting in injury or death to the patient shall be sufficient ground to suspend or revoke the certificate of registration of any physician.[77]

The Medical Act, however, does not impose any civil or criminal penalty for acts constituting gross negligence, ignorance, or incompetence.[78] These acts are instead covered by Article 365 of the Revised Penal Code.[79] In case of acts or omissions constituting negligence, the physician may be held criminally liable.[80] In *Ang v. Grageda*,[81] for example, the physician was charged with reckless imprudence resulting to homicide after his patient died during a liposuction surgery.[82] The same act or omission may be the basis for award of damages under the Civil Code which makes every person who negligently causes damage to another liable to indemnify the latter for the same.[83]

The focus of the succeeding discussion will be the civil aspect of medical negligence. In deciding these cases, the courts anchor the ratio on Article 2176 of the Civil Code while relying heavily on jurisprudence from Common Law countries. In its simplest terms, the type of lawsuit which has been called medical malpractice or, more appropriately, medical negligence, is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm.[84]

2. Elements of Medical Negligence

The Supreme Court has laid down four elements involved in cases of medical negligence — duty, breach, injury, and proximate causation.[85] The injury and proximate causation establish the damage to another and its causal

76. Medical Act, § 1.

77. *Id.* § 24 (5).

78. *See* Medical Act, §§ 8, 10, & 28. The Medical Act imposes the penalty of imprisonment, fine, or both for any person found guilty of illegal practice of medicine. This refers to the act of engaging in the practice of medicine (defined in Section 10) without complying with the prerequisites provided by the same act (as provided in Section 8). There is no penalty for gross negligence, ignorance or incompetence other than administrative liability. *Id.*

79. REVISED PENAL CODE, art. 365.

80. *Id.*

81. *Ang*, 490 SCRA 424.

82. *Id.* at 428. *See also Cruz*, 282 SCRA at 194.

83. CIVIL CODE, arts. 19-21 & 2176.

84. *Garcia-Rueda*, 278 SCRA at 778.

85. *Id.*; *Sisters of Mercy Hospital*, 341 SCRA 760.

relation with the culpable act or negligence. A malpractice action against a physician is generally based on tort, and his negligence, as a ground for injury, must be proven.[86] The physician must either have failed to perform something which a reasonably prudent health physician would have done, or that he or she did something which should not have been done based on the same standard. The act or omission must have caused injury to a patient.

The unique feature of the medical malpractice system is that in contrast to other situations where the basis of assessing negligence is what a man of ordinary prudence would do in the same or similar situation, medical negligence relies on professional standards. Expert testimony is required to determine whether a particular healthcare provider deviated from a standard of care. By way of exception, courts sometimes utilize the doctrine of *res ipsa loquitur* to assign liability in cases where the circumstances warrant an inference of negligence even in the absence of specific proof.[87]

In *Batiquin v. Court of Appeals*,[88] the Court held that a physician was liable for leaving a piece of rubber inside a patient's uterus during a caesarean section, which subsequently caused adverse effects on the patient.[89] Upon alleged removal of the rubber by a second operation and by a different doctor, the patient got better. Recourse to *res ipsa loquitur* was also made to hold the surgeon liable in *Ramos*, where a patient became comatose following intubation.[90]

The doctrine of *res ipsa loquitur* warrants a presumption or inference of negligence on the part of the person having charge of the instrumentality

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86. SOLIS, *supra* note 67, at 214.

87. *Res ipsa loquitur* is Latin for "the thing or the transaction speaks for itself" and is a recognition that, as a matter of common knowledge and experience, the very nature of some occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury. *Id.* at 600.

88. *Batuquin*, 258 SCRA 334.

89. *Id.* at 346.

90. *Ramos*, 321 SCRA at 602. The Court, in discussing the doctrine of *res ipsa loquitur*, said —

> [C]ourts of other jurisdictions have applied the doctrine in the following situations: leaving of a foreign object in the body of the patient after an operation, injuries sustained on a healthy part of the body which was not under, or in the area, of treatment, removal of the wrong part of the body when another part was intended, knocking out a tooth while a patient's jaw was under anaesthetic[s] for the removal of his tonsils, and loss of an eye while the patient plaintiff was under the influence of anaesthetic[s], during or following an operation for appendicitis, among others.

Id.

causing damage. For the doctrine of *res ipsa loquitur* to apply to a given situation, the following conditions must concur:

(1) the accident was of a kind which does not ordinarily occur unless someone is negligent; and

(2) the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence.[91]

This latter pronouncement has been used to raise the presumption of negligence in cases of medical negligence. While the doctrine is based on pronouncements in the U.S., the main utilization of *res ipsa loquitur* is founded on it being a procedural rule,[92] providing a means of establishing a fact based on palpable truths ultimately based on an understanding of the natural and ordinary course of events. It does not *per se* create or constitute an independent or separate ground of liability.[93]

3. Vicarious Liability of Physicians

In *Cantre v. Go*,[94] the liability of a surgeon as "Captain of the Ship" was based on exclusive control.[95] It can thus be surmised that the doctrine, as applied by Philippine Courts, is not a rule of strict liability. Where a patient received injuries, either due to the droplight or blood pressure, the Supreme Court held the surgeon liable because both instruments were deemed within her exclusive control as the physician in charge. Furthermore, as senior consultant, the assistants in charge of the use of droplight and the taking of the blood pressure were considered under her exclusive control. The Court is of the view that a great number of activities fall under the exclusive control of surgeons, the effect being is that a surgeon is liable for every imaginable act inside the operating room.

The truth is that many activities go on in the hospital involving patient care that take place outside the operating room and which surgeons have no control. In the operating room, specialist physicians perform different tasks and thus have differing responsibilities. The Captain of the Ship doctrine has been applied where the lead surgeon is made liable for acts of the anesthesiologist or nurses.[96] If the assumption that the surgeon was in control

91. Cebu Shipyard and Engineering Works, Inc. v. William Lines Inc., 306 SCRA 762 (1999).

92. *Layugan*, 167 SCRA at 363 (citing 65A C.J.S. § 525 (Westlaw, 2010)). The doctrine is not a rule of substantive law but merely a mode of proof or a mere procedural convenience.

93. *Professional Services, Inc. 2007*, 513 SCRA 478; *Ramos*, 321 SCRA 584.

94. *Cantre*, 522 SCRA 547.

95. *Id.* at 556-57.

96. *Id.* at 556.

was ever true, it became less and less true because of the increasing complexity of operating rooms, the trend towards specialization, and the emergence of skilled nurses, factors which may put undue responsibility on surgeons who need to concentrate on their own jobs.[97]

In foreign jurisdictions, the trend has been to limit the application of the Captain of the Ship Doctrine.[98] It is viewed as not in accord with modern practice and many U.S. courts have refused to adopt it.[99] The decreasing popularity of the doctrine has also been explained by the fact that liability for damage suit has now shifted from surgeon to hospital.[100]

In the Philippines, however, courts continue to recognize and apply the Captain of the Ship doctrine in cases of medical negligence.[101] In *Ramos*, the surgeon argued that he should not be made liable under the Doctrine —

> Dr. Hosaka argues that the trend in [U.S.] jurisprudence has been to reject said doctrine in light of the developments in medical practice. He points out that anesthesiology and surgery are two distinct and specialized fields in medicine and as a surgeon, he is not deemed to have control over the acts of Dr. Gutierrez. As anesthesiologist, Dr. Gutierrez is a specialist in her field and has acquired skills and knowledge in the course of her training which Dr. Hosaka, as a surgeon, does not possess. He states further that current

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97. SOLIS, *supra* note 67, at 238. The decreasing popularity of the Captain of the Ship Doctrine was attributed to the following reasons:

> (1) Increasing complexity and sophistication of the operating room facilities requiring technical knowledge beyond the scope of knowledge of the surgeon thereby making supervision impossible;
> (2) Importance of encouraging the surgeon to concentrate on his own job; and
> (3) Liability for damage suit has shifted from surgeon to hospital.

Id.

98. *See generally*, Baird v. Sickler, 433 NE2d 593 (Ohio 1982) (U.S.); May v. Broun, 492 P2d 776, 780-81 (Ore 1972) (U.S.); Parker v. Vanderbilt University 767 SW2d 412, 415 (Tenn Ct App 1988) (U.S.); Sparger v. Worley Hospital 547 SW2d 582, 585 (Tex 1977) (U.S.); & New Jersey in Sesselman v. Muhlenberg Hospital, 306 A2d 474, 476 (NJ Super Ct App Div 1973) (U.S.).

99. Tappe v. Iowa Methodist Medical, 477 NW2d 396, 402-03 (Iowa 1991) (U.S.).

100. SOLIS, *supra* note 67, at 238.

101. *See, e.g.*, *Ramos*, 321 SCRA 584; Ramos v. Court of Appeals, 380 SCRA 467 (2002) [hereinafter *Ramos II*] & *Professional Services, Inc. 2007*, 513 SCRA 478; & *Cantre*, 522 SCRA at 556-57.

See also Rester John L. Nonato, The Abandonment of the Captain of the Ship Doctrine in Light of the Recent Developments in Philippine Surgery in the Context of the Operating Room (2006) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

> American jurisprudence on the matter recognizes that the trend towards specialization in medicine has created situations where surgeons do not always have the right to control all personnel within the operating room, especially a fellow specialist.[102]

The Court, in rejecting the surgeon's contention, held —

> That there is a trend in American jurisprudence to do away with the Captain-of-the-Ship doctrine does not mean that this Court will *ipso facto* follow said trend. Due regard for the peculiar factual circumstances obtaining in this case justify the application of the Captain-of-the-Ship doctrine. From the facts on record it can be logically inferred that Dr. Hosaka exercised a certain degree of, at the very least, supervision over the procedure then being performed on Erlinda.[103]

The vicarious liability of doctors for another's act should rest on moral culpability. This would only exist upon showing that they exercised control over the acts of the person who commits the act or omission constituting negligence. Furthermore, it must be shown that they were negligent in preventing damage. In this way, the doctor would be made liable for his own negligence. The liability becomes consistent with fundamental principles of quasi-delict and imputed liability as established by law.

4. Summary of Physician Liability

A physician shall be liable for medical negligence upon establishing the elements of duty, breach of duty, injury, and proximate causation.

The fault or negligence of the physician is based upon proof of deviation from standard of care, determined according to the standards observed by other members of the profession in good standing under similar circumstances, bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science. This standard may be based on testimony of experts, clinical practice guidelines, the Code of Medical Ethics, the Medical Act, or any applicable law. In the absence of proof of deviation from an acceptable standard of care, the doctrine of *res ipsa loquitur*, under certain conditions, may apply to function as proof of negligence.

Likewise, the connection of cause and effect between the fault or negligence of the physician and the damages suffered by the patient must be established. In other words, the negligence of the physician must be the proximate cause of the patient's injury.

A physician should not be made liable for acts of others unless it can be established that the physician had the authority and was in a position to

102. *Ramos II*, 380 SCRA 467.

103. *Id.*

control the acts of the person directly chargeable with negligence. The physician will likewise not be liable if he proves that he exercised ordinary diligence to prevent harm.

B. Hospital Negligence

Until recently, only physicians were made liable for negligent acts or omissions causing injury to patients. It was not until *Ramos*, decided in 1999, when a hospital was impleaded as defendant in a medical negligence case.[104] In a limited number of cases, the Court has made hospitals liable on the basis of Article 2180 in relation to Article 2176 of the Civil Code, premised on vicarious liability for negligent acts of physicians.[105] The Court has also applied the Doctrine of Apparent Authority, and more recently, the Doctrine of Corporate Negligence to establish hospital liability.[106]

In the Philippines, hospitals may be run by the government or owned by private individuals, associations, corporations, religious organizations, firms, companies, or joint stock associations.[107] On the one hand, there are 596 Private Hospitals in the Philippines with 105 located in the National Capital Region (NCR).[108] On the other hand, there are 359 Licensed Government Hospitals.[109] Of the third level or tertiary private hospitals, 32 of the 85 are located in the NCR.[110] Government hospitals in this jurisdiction are still

104. *Id.*

105. *See Nogales*, 511 SCRA 204; *Professional Services, Inc. 2007*, 513 SCRA 478.

106. *See Professional Services, Inc. 2007*, 513 SCRA 478.

107. RUBEN CARAGAY & REMIGIO MERCADO, *The Hospital System, in* A PRIMER ON HOSPITAL ADMINISTRATION 9 (Remigio Mercado ed., 1998). Medical City is owned by the duly organized Professional Services, Inc. which was sued in the case of *Professional Services, Inc. 2007*, 513 SCRA 478; The St. Luke's Medical Center is operated by the St. Luke's Medical Center, Inc., a non profit, non-stock corporation being run by a board of trustees. St. Luke's has been involved in several cases involving labor disputes and has been sued accordingly (*See, e.g.*, St. Luke's Medical Center Employee's Association-AFW v. National Labor Relations Commission, 517 SCRA 677 (2007); St. Luke's Medical Center, Inc. v. Torres, 223 SCRA 779 (1993)).

108. Department of Health, Distribution of Licensed Private Hospitals and Other Health Facilities by Service Capability/Authorized Beds by Center For Health Development, Year 2005, in Database (2005), *available at* http://www2.doh.gov.ph/bhfs/hosp/pvthosprovcit_05.pdf (last accessed Nov. 7, 2010) [hereinafter Private Hospitals Distribution].

109. Department of Health, Distribution of Licensed Government Hospitals and Other Health Facilities by Service Capability/Authorized Beds, by Center For Health Development, Year 2005, in Database (2005), *available at* http://www2.doh.gov.ph/bhfs/hosp/provcitgovthosp2005.pdf (last accessed Nov. 7, 2010).

110. Private Hospitals Distribution, *supra* note 108.

immune from suit but there is no law providing for immunity for private hospitals.

The basis of immunity is the recognition that government charity hospitals are performing a governmental function.[111] Because of this function, said hospitals would fall within the ambit of the rule that the state cannot be sued without its consent.[112] The test of whether an enterprise is charitable is whether it exists to carry out a purpose recognized in law as charitable, or whether it is maintained for gain, profit, or private advantage.[113] Governmental functions are those that concern the health, safety, and the advancement of the public good or welfare as affecting the public generally.[114]

The rule in the Philippines then is that a hospital is immune from suit only if it is considered a government charitable hospital, performing a governmental function.[115] Negligent acts of employees may be exempt from liability only if the employee is acting in behalf of the municipality and is performing a governmental function. The basis of this immunity is not the doctrine of charitable immunity developed in Common Law jurisdictions but the fundamental grant of immunity enshrined in the Constitution where a State cannot be sued without its consent.[116] Thus, even hospitals organized as non-stock, non-profit hospitals[117] will not be exempted from liability or

111. Department of Health v. National Labor Relations Commission, 251 SCRA 700, 706 (1995).

112. PHIL. CONST. art. XVI, § 3. *See also* Nat. Airports Corp. v. Teodoro Sr. and Phil. Airlines Inc., 91 Phil. 203, 206-07 (1952); Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171, 175-76 (1989); & Republic v. Feliciano, 148 SCRA 424, 430 (1987).

113. 2 CEZAR S. SANGCO, TORTS AND DAMAGES 451 (1994) (citing Clemente v. Foreign Mission Sisters, 38 O.G. 1594 (Court of Appeals)).

114. Republic v. City of Davao, 388 SCRA 691 (2002).

115. SOLIS, *supra* note 67, at 313-15. In the Philippines, practically all national government hospitals are established to perform governmental functions and therefore cannot be sued for damages except when the government consents. *Id.*

116. PHIL CONST. art. XVI, § 3. The provision, which states that the State may not be sued without its consent, reflects nothing less than a recognition of the sovereign character of the State and an express affirmation of the unwritten rule effectively insulating it from the jurisdiction of courts. It is based on the very essence of sovereignty. *Id.*

117. The University of Sto. Tomas Hospital is a non-profit, non-stock organization where only 20-30% of income goes directly to the operations of the hospital. *See, e.g.*, University of Sto. Tomas Hospital, *available at* http://www.ust hospital.com.ph/aboutusth/companyprofile.php (last accessed Nov. 7, 2010).

suit.[118] The basis of hospital liability will be discussed in the succeeding sections.

C. Theories of Hospital Liability

Pedro Solis, renowned author for his treatise on medical jurisprudence, advances the notion that the liabilities of a hospital may be classified as corporate liabilities or vicarious liabilities.[119] He said that corporate liabilities are those arising from the failure of hospitals to furnish accommodations and facilities necessary to carry out its purpose or to follow the established standard of conduct to which it should conform[120] while vicarious liabilities refer to the liability of hospitals for the acts of its employees.[121]

The core provision in the Civil Code for negligence is Article 2176. The application of the said article to cases of medical negligence led the courts to identify the elements necessary to establish liability: duty, breach, injury, and proximate causation.[122] In *Garcia-Rueda v. Pascasio*,[123] the Court said that in order to successfully pursue a medical negligence claim, a patient must prove that a health care provider committed an act or omission constituting negligence.[124] It would appear that a hospital, as a health care provider, may be made directly liable for negligence, as long as the elements are proven. Under our laws, a health care provider refers to:

> (1) a health care institution, which is duly licensed and accredited and devoted primarily to the maintenance and operation of facilities for health promotion, prevention, diagnosis, treatment, and care of individuals suffering from illness, disease, injury, disability or

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St. Luke's Medical Center, *available at* http://www.stluke.com.ph/index.php?page=article&pageID=4&parentID=1 (last accessed Nov. 7, 2010) (St. Luke's Medical Center is also a non-profit, non-stock hospital.); San Juan De Dios Medical Hospital, *available at* http://www.sanjuandedios.org/healthministry.htm (last accessed Nov. 7, 2010). Likewise, San Juan De Dios Hospital is operated as a non-stock, non-profit institution.

118. SOLIS, *supra* note 67, at 316-17. In the Philippines, there is no specific rule granting charitable hospitals, in general, immunity from suit. Solis says that — "The trend of modern decisions is to depart from the absolute immunity of private charitable hospital from damage ... Recent decisions tends to confer no immunity to charitable institutions based on the theory that a hospital for charity must first be just before it can become charitable." *Id.*

119. *Id.* at 321-24. In discussing corporate liability of hospitals, Solis referred to decisions of the courts in the United States.

120. *Id.*

121. *Id.* at 324-29.

122. *Garcia-Rueda*, 278 SCRA at 778; *Sisters of Mercy Hospital*, 341 SCRA 760.

123. *Garcia-Rueda*, 278 SCRA 769.

124. *Id.* at 778.

> deformity, or in need of obstetrical or other medical and nursing care. It shall also be construed as any institution, building, or place where there are installed beds, cribs, or bassinets for twenty-four hour use or longer by patients in the treatment of diseases, injuries, deformities, or abnormal physical and mental states, maternity cases or sanitarial care; or infirmaries, nurseries, dispensaries, and such other similar names by which they may be designated; or
>
> (2) a health care professional, who is any doctor of medicine, nurse, midwife, dentist, or other health care professional or practitioner duly licensed to practice in the Philippines and accredited by the Corporation; or
>
> (3) a health maintenance organization, which is an entity that provides, offers, or arranges for coverage of designated health services needed by plan members for a fixed prepaid premium; or
>
> (4) a community-based health care organization, which is an association of indigenous members of the community organized for the purpose of improving the health status of that community through preventive, promotive and curative health services.[125]

In order to apply the conditions of liability under Article 2176 to hospitals as health care providers, a claim may be successfully pursued if the hospital acts or fails to act based on what a reasonable prudent health care provider would have done, and that such failure or action caused injury.[126] While the liability of physicians may be established by reference to standards of care, generally founded expert testimony of a specialized physician,[127] the rules of proof required to establish the standard for hospitals have not yet been developed. In fact, the Court, in considering the liability of hospitals, has yet to explain it in the context of the elements of medical negligence. It would then appear that the liability of hospitals, as established by the Court, is not premised on the same principles as that of physician negligence.

One of the difficulties in establishing hospital liability in cases involving an injury to a patient is that no law directly provides for the liabilities of hospitals in cases of medical negligence. In the first place, a hospital, while considered a healthcare provider, is not practicing medicine. The relationship between hospital and patient is not as clearly defined as the doctor-patient relationship; the Medical Act of 1959 enumerates the obligations of a physician to a patient.[128] The responsibilities of a hospital to

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125. An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose [National Health Insurance Act], Republic Act No. 7875, as Amended, art. II, § 4 (o) (1995).

126. *Professional Services, Inc. 2007*, 513 SCRA at 491-92.

127. REVISED RULES ON EVIDENCE, rule 130, § 49.

128. *See generally* Medical Act.

a patient are not codified into specific provisions although the Department of Health (DOH) administrative order providing for the licensing requirements recognize, under general terms, that hospitals have duties to mind the safety of their patients.[129]

In order to establish hospital liability premised on solid doctrine, the essential principle remains to be that a hospital may be considered negligent if it has a duty, and if it has breached that duty and that breach causes an injury to a patient. Proof of negligence remains a crucial condition.

While there is no hindrance to making a hospital liable based on the doctrine of *res ipsa loquitur*, it would be difficult, considering that the doctrine requires that the thing that caused the injury is under the exclusive control of the person sought to be held liable. Furthermore, the injury must be of the nature of damage that would not otherwise have occurred in the absence of negligence. The determination of the presence or absence of negligence for hospital acts is difficult because hospital duties are not readily identified, and would most likely not fall into the realm of common knowledge.

In the elements of medical negligence (duty, breach of duty, damage and causation), before breach of duty can be determined, the duties must first be identified. The duties of hospitals may be administrative or civil.

Under the Philippine legal system, hospitals shall not operate or be opened to the public unless they have been registered and have obtained a license for their operation.[130] In order to obtain a license, the DOH requires that even prior to building the hospital, the applicant must first secure a license to construct.[131] At the planning stage and during the design of the hospital, the DOH considers primarily the environment where the hospital will be built, the occupancy and safety.[132] For instance, a hospital must be accessible, with adequate light and ventilation, and must be safe for patients,

129. Department of Health, Amending Administrative Order No. 70-A, Series of 2002 Re: Revised Rules and Regulations Governing the Registration, Licensure and Operation of Hospitals and Other Health Facilities in the Philippines, Administrative Order No. 147 [DOH A.O. No. 147], Series of 2004, § 9 (Apr. 28, 2004). For example, the physical plant of a hospital must be clean and safe. *Id.*

Department of Health, Guidelines in the Planning and Design of a Hospital and other Health Facilities (2004), *available at* http://doh.gov.ph/BHFS/planning_and_design.pdf (last accessed Nov. 7, 2010) [hereinafter Guidelines in Hospital Planning and Design]. The hospital design should take into consideration the environment, safety and even the privacy of patients. *Id.*

130. R.A. No. 4226, § 1.

131. DOH Administrative Order No. 147, § 10.

132. Guidelines in Hospital Planning and Design, *supra* note 129.

personnel and the public.[133] To have a license to construct, the water supply, waste disposal, and sanitation of the hospital will be considered.[134] Equally important would be the location of operating rooms, emergency services, and others.[135] In order to have a license to operate, the DOH considers the service capability of the hospital, the personnel, the equipment and instruments, and the physical plant.[136]

Several special laws have also been passed providing for specific responsibilities of hospitals. All hospitals are required to render immediate emergency medical assistance and to provide facilities and medicine within its capabilities to patients in emergency cases who are in danger of dying or suffering serious physical injuries.[137] In the case of private hospitals, aside from the imposition of penalties upon the person or persons guilty of the violations, the license of the hospital to operate may be suspended or revoked.[138] It shall be unlawful for any hospital or medical clinic in the country to detain or to otherwise cause, directly or indirectly, the detention of patients who have fully or partially recovered or have been adequately attended to or who may have died, for reasons of non-payment in part or in full of hospital bills or medical expenses.[139]

The violation of these laws, if the proximate cause of an injury, would raise the presumption of negligence on the part of the hospital. They shall also be liable administratively and stands the chance of having the license to operate cancelled. There should be no question then with regard to the liability of the hospital when it can be shown that the act or omission being complained is subject of an existing regulation or statute.

In addition to direct liability under Article 2176, one of the bases for assigning liability is the "deep pockets" theory. In Common Law jurisdictions, one of the underlying reasons why courts have made hospitals liable for patient's injury is because the courts are reluctant to deprive

133. *Id.*

134. *Id.*

135. *Id.*

136. DOH A.O. No. 147, § 9.

137. An Act Requiring Government and Private Hospitals and Clinics to Extend Medical Assistance in Emergency Cases, Republic Act No. 6615, § 1 (1972).

138. *Id.* § 3.

139. An Act Prohibiting the Detention of Patients in Hospitals and Medical Clinics on Grounds of Nonpayment of Hospital Bills or Medical Expenses Republic Act No. 9439, § 1 (2007). The penalty is imposed on the officer or employee of the hospital or medical clinic responsible for releasing patients, who violates the provisions of the Act. *Id.*

persons any recourse for claims of medical negligence.[140] In the past, when most hospitals were immune under Doctrine of Charitable Immunity, and patients receive injury while being treated in a hospital, the patients could only sue the hospital employees.[141] Negligent hospital employees seldom had enough funds to pay judgments and the courts' solution was to place liability on a "deep pocket," the surgeon.[142] This has led to the reliance on the Borrowed Servant Doctrine and Captain of the Ship Doctrine to allow a patient to recover damages when the hospital cannot be made liable.[143]

In more developed countries, the presence of insurance fills the gap between hospitals remaining economically viable while compensating victims of malpractice.[144] Hospitals carry insurance and the financing of healthcare is more institutionalized and less dependent on charity. Thus, Courts look more critically at attempts to hold surgeons, rather than hospitals, liable. The question becomes, "Was the negligence something the surgeon actually had the power to avoid? Or, were the courts just trying to find someone to blame other than the hospital?"[145]

The perception of patients today show that hospitals are perceived to be "value for money" commercial institutions leading patients to resort to any "market remedies" to get redress.[146] Likewise, even in the Philippines, the Court is of the opinion that because hospitals are economically benefited, it is only fitting that they share the liability in cases of medical negligence. The Court said —

> The high costs of today's medical and health care should at least exact on the hospital greater, if not broader, legal responsibility for the conduct of treatment and surgery within its facility by its accredited physician or surgeon, regardless of whether he is independent or employed.[147]

A legal responsibility may be exacted from hospitals as justified by the "deep pocket" theory.

The conditions of liability in torts justify imposing a duty of repair on those who satisfy them only if (a) the duties so imposed are the ones best

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140. Gene A. Blumenreich, The Doctrine of Corporate Liability, *available at* http://www.aana.com/Resources.aspx?id=4559 (last accessed Nov. 7, 2010).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. KQ Yeo, Medical Responsibility in a Hospital Practice, *available at* http://www.sma.org.sg/smj/4102/articles/4102me3.pdf (last accessed Nov. 7, 2010).

147. *Professional Services, Inc. 2007*, 513 SCRA at 503 (citations omitted).

suited to help tort law meet its goals, and (b) the goals are themselves justified.[148] The goals of tort law as discussed are corrective justice, deterrence and as a means to compensate persons injured. In this context, placing the burden on a "deep pocket" supports the goal of compensating the injured party. Likewise, by making hospitals liable, it is hoped that medical negligence may be deterred. Nevertheless, it must not be forgotten that under the Civil Code of the Philippines, which governs contractual relations and torts and damages, the fact that the hospital has a deeper pocket does not impose strict liability nor does it raise a presumption of negligence. In order to be liable, negligence must be proven.

Vicarious liability has long been recognized as a basis of liability for employers, in general, for negligent acts of their employees.[149] The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.[150] In order to avoid being vicariously liable, an employer is expected to exercise ordinary diligence in the selection and supervision of employees.[151] This has been made applicable to hospitals as they became proprietary institutions, relying less on charity work of nuns and employing a complete staff.

In recent years, the liability of hospitals continues to expand. The courts have developed a new theory — Doctrine of Corporate Liability — which seeks to impose liability on hospitals for the negligence of surgeons and other physicians who are not strictly employees,[152] in addition to liabilities as an institution. This is a Common Law doctrine introduced in *Darling v. Charleston Community Memorial Hospital*,[153] where a hospital was held liable as a corporate entity for failing to adequately protect a patient from harm by others.[154] The term corporate liability was meant to encompass only those theories of liability predicated upon a more general obligation of hospitals to insure the quality of care within the institution.[155] Thus, it excludes vicarious

148. Theories of Tort Law, *available at* http://civillawnetwork.wordpress.com/2008/02/12/theories-of-tort-law/ (last accessed Nov. 7, 2010).

149. *Professional Services, Inc. 2007*, 513 SCRA at 496 (citing Howard Levin, *Hospital Vicarious Liability for Negligence by Independent Contractor Physicians: A New Rule for New Times*, U. ILL. L. REV. 1291 (2005)).

150. CIVIL CODE, art. 1173.

151. *Professional Services, Inc. 2007*, 513 SCRA at 504-05 (citing Welsh v. Bulger, Pa. 504, 698 A. 2d 581(1997) (U.S.)).

152. Blumenreich, *supra* note 140.

153. Darling v. Charleston Community Memorial Hospital, 211 N.E.2d 253, 33 Ill.2d 326, 1965.IL.0000646 (1965) (U.S.).

154. *Id.*; *see also* Pedroza v. Bryant, 677 P.2d 166, 168 (Wash. 1984) (U.S.).

155. Gafner v. Down East Community Hospital, 735 A. 2d 969 (Me. 1999) (U.S.).

liability.[156] Under the Doctrine of Corporate Negligence, the hospital has certain non-delegable duties, the non-performance of which becomes basis for a cause of action.[157]

The theories of liability that have been applied to make hospitals accountable have been discussed briefly. These theories have been applied in the Philippines or in other countries. A hospital may be directly liable based on quasi-delict or the theory of corporate negligence. Hospitals may also be made liable based on the Doctrine of Vicarious Liability.

D. Liability of Hospitals under Philippine Jurisprudence

The Supreme Court has had the opportunity to apply the principles of hospital liability. Under Philippine jurisprudence, the liability of hospitals is generally based on three principles: vicarious liability for acts of an employee, the Doctrine of Apparent Authority or agency by estoppel, and more recently, the Doctrine of Corporate Negligence. These cases will be discussed in the succeeding sections.

1. *Ramos v. Court of Appeals*

Erlinda Ramos was a robust woman experiencing some discomfort due to presence of a stone in her gall bladder.[158] She was scheduled for an operation with the surgeon assuring her that he will be choosing a good anesthesiologist.[159] On the day of the operation, the surgeon came in three hours late.[160] It also appeared that the anesthesiologist had difficulty intubating the patient that the latter's nailbeds were observed to become bluish during the process.[161] The operation did not push through and Erlinda Ramos ended up in comatose.[162] While the defense claimed that what happened was a reaction to anesthesia, the Court said there was negligence based on the doctrine of *res ipsa loquitur*.[163]

The Court initially rendered a decision holding the hospital liable for the injury of the patient. Although the negligent act was held to be the acts of the surgeon, the hospital was solidarily liable for said acts "based on a

156. Phillips v. Eastern Me. Med. Ctr., 565 A.2d 306, 307 (Me. 1989) (U.S.); Forbes v. Osteopathic Hosp., 552 A.2d 16, 17 (Me. 1988) (U.S.).

157. Thompson v. Nason Hosp., 591 A.2D 703, 707 (Pa. 1991) (U.S.).

158. *Ramos*, 321 SCRA at 589.

159. *Id.* at 590.

160. *Id.* at 591.

161. *Id.* at 592.

162. *Id.*

163. *Ramos*, 321 SCRA at 603.

responsibility under a relationship of *patria potestas.*"[164] The hospital, as employer, was vicariously liable for acts of physicians, as employees. The Court pronounced that "*for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians.*"[165]

The hospital, thereafter, filed a motion for reconsideration.[166] The subsequent case was decided in 2002.[167] There, the Supreme Court reversed its earlier ruling and held that there was no employer-employee relationship between the hospital and its medical consultants.[168] Since the basis of liability was quasi-delict, the absence of an employer-employee relationship meant that the hospital cannot be made liable as employer.[169]

The Court later explained that It did not reverse the pronouncement stating that, for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians.[170] The reconsideration only referred to the fact that the hospital did not exercise control over the particular physician involved in the said Case.[171]

2. *Nogales v. Capitol Medical Center*

The patient in *Nogales* was having a dangerous and complicated pregnancy, having gone into labor with seizures and uncontrolled vaginal bleeding.[172] Upon delivery of her child, the patient remained unstable and the head of the Department of Obstetrics of the hospital was called in.[173] Despite the efforts of the department head, the patient eventually died due to bleeding.[174]

The Court ruled that the consultant was an independent contractor not under the control and supervision of the hospital.[175] The Court said that, "*in*

164. *Id.* at 622 (citing JOSE VITUG, COMPENDIUM OF CIVIL LAW AND JURISPRUDENCE 822 (1993)).

165. *Id.* at 621 (emphasis supplied).

166. *See Ramos II*, 380 SCRA 467.

167. *Id.*

168. *Id.* at 500.

169. *Id.*

170. *Professional Services, Inc. 2008*, 544 SCRA at 178-79.

171. *Id.* (referring to *Ramos*).

172. *Nogales*, 511 SCRA at 210.

173. *Id.* at 211.

174. *Id.*

175. *Id.* at 221-22.

general, a hospital is not liable for the negligence of an independent contractor-physician."[176] Even if the physician was considered an independent contractor, however, the hospital did not escape liability based on the Doctrine of Apparent Authority. Under this Doctrine, a hospital can be held vicariously liable for the negligent acts of a physician providing care at the hospital, regardless of whether the physician is an independent contractor, unless the patient knows, or should have known, that the physician is an independent contractor.[177] Essentially, a hospital is not automatically exempted from liability notwithstanding that the negligent doctor is not its employee. The hospital was adjudged liable in this case based on the doctrine of apparent agency.

3. *Professional Services, Inc. [PSI] v. Agana*

One of the recent Court decisions involving medical negligence is *PSI.* A patient was diagnosed with cancer of the large intestines and underwent an operation performed by Dr. Miguel Ampil in the Medical City Hospital.[178] During the operation, Dr. Ampil found that the malignancy had spread to the patient's left ovary.[179] Upon getting the consent of the patient's husband, Dr. Ampil called on another doctor, Dr. Juan Fuentes, to perform a hysterectomy on the patient.[180] After the hysterectomy, Dr. Ampil completed the operation.[181]

Prior to closure of the incision, Dr. Ampil was advised by the attending nurses that two sponges were missing.[182] This fact was announced and noted in the record of operation.[183] The search for the missing sponges, however, yielded no result, and the surgeon opted to continue with closure of surgical site.[184] After several days, the patient complained of pain in her anal region; the two surgeons, however, reassured her that the pain was the natural

176. *Id.* at 222 (emphasis supplied).

177. Gilbert v. Sycamore Municipal Hospital, 156 Ill.2d 511, 622 N.E.2d 788 (1993) (U.S.).

178. *Professional Services, Inc. 2007*, 513 SCRA at 483-84.

179. *Id.* at 484.

180. A hysterectomy is the operation to remove the uterus and is usually performed by a physician specializing in Obstetrics and Gynecology.

181. *Professional Services, Inc. 2007*, 513 SCRA at 484.

182. Sponge as used in the operation refers to a sterile gauze used during the procedure to control bleeding and other purposes.

183. *Professional Services, Inc. 2007*, 513 SCRA at 484.

184. *Id.* at 484-85. In the corresponding Record of Operation dated April 11, 1984, the attending nurses entered these remarks: "sponge count lacking 2" and "announced to surgeon searched [sic] done but to no avail continue for closure." *Id.*

consequence of the operation.[185] The pain continued, however, and a few months later, the patient's daughter found a piece of gauze protruding from the patient's vagina.[186] Dr. Ampil went to the patient's house to remove the gauze and assured the patient that the pain would soon vanish.[187] Instead, the pain intensified prompting the patient to seek treatment at another hospital where a second gauze was found in her vagina.[188] At this time, the gauze had already caused an infection that necessitated another surgical operation.[189]

These facts led the patient to file a complaint for damages.[190] The case was brought against the Professional Services, Inc. (PSI), owner of the Medical City Hospital, Dr. Ampil, and Dr. Fuentes.[191] The Court ruled that Dr. Ampil and the PSI, Inc. were solidarily liable to the patient while the case against Dr. Fuentes was dismissed.[192]

The Court awarded damages to the family of the deceased patient for the negligent acts of Dr. Ampil in leaving two pieces of gauze inside the body of the patient.[193] Dr. Ampil was liable because the Court considered him as the negligent party.[194] The injury was attributed to the act of ordering the closure of the incision, notwithstanding that two pieces of gauze remained unaccounted for.[195] The Court rejected the application of the doctrine of *res ipsa loquitur* to hold Dr. Fuentes liable on the ground that the control and management of the thing which caused the injury was not in his hands, but in the hands of Dr. Ampil who was considered the lead surgeon.[196] Dr. Fuentes was absolved of liability also upon application of the Captain of the Ship Doctrine.[197]

In this Case, where negligence is attributed to two defendants, it was found that the omission that failed to meet the established standards in the medical profession and that resulted in an injury was the negligence of Dr. Ampil. Even the Court was of the opinion that, in times of emergency,

185. *Id.* at 485.

186. *Id.*

187. *Id.*

188. *Professional Services, Inc. 2007*, 513 SCRA at 485.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.* at 507, 493-94.

193. *Id.* at 508.

194. *Professional Services, Inc. 2007*, 513 SCRA at 491-93.

195. *Id.* at 492.

196. *Id.* at 494.

197. *Id.* at 494-95.

when a surgeon has to act quickly, and to avoid further complications, the operative site may be closed despite missing sponges.[198] The fact is, even if sponges were left in the operative site, this does not automatically mean that the person who left it was negligent.[199] The proximate cause can be determined by looking at the factual circumstances in the instant case. If Dr. Ampil was not negligent in his duties, he would have acted upon the knowledge that two sponges were missing as reported by the nurses.[200] Even if it were necessary to proceed with closure of the operative site, Dr. Ampil should have informed the patient of the fact that the sponges were missing and that subsequent search yielded no result.[201] And finally, he should have conducted reasonable examinations to determine the cause of the pain that the patient was feeling after the operation.[202] If he were a physician of ordinary prudence, he would have reasonably, at the very least, considered whether the pain felt by the patient was related to the missing sponges.[203] Dr. Ampil, on these occasions, had the reasonable opportunity to avert the injury but he failed to do so. Having notice of the undue risk, he failed to exercise the necessary diligence required of him under the circumstances. His omission, therefore, was properly held to be the negligent act that resulted to the injury.

The owner of the hospital was held to be solidarily liable with Dr. Ampil.[204] The surgeon was considered an employee of the hospital and under the doctrine of *respondeat superior*, the employer is liable for negligent acts of the employee.[205] The hospital was adjudged liable on the basis of the doctrine of apparent authority and corporate responsibility.[206]

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198. *Id.* at 491.

199. *Id.*

200. *Professional Services, Inc. 2007*, 513 SCRA at 491.

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* at 507.

205. *Id.* at 504-07.

Editors' Note: In 2010, the Supreme Court denied a second motion for reconsideration filed by Professional Services, Inc. and reaffirmed its two prior rulings. *See generally* Professional Services, Inc. v. Court of Appeals, 611 SCRA 282 (2010) [hereinafter *Professional Services, Inc. 2010*].

In Its 2010 Resolution, the Court held that PSI's liability is not based on *respondeat superior*, but on the principles of ostensible agency and corporate negligence. *See Professional Services, Inc. 2010*, 611 SCRA at 291-92.

206. *Professional Services, Inc. 2007*, 513 SCRA at 500.

In the motion for reconsideration of this case, the Court reiterated its decision holding that the hospital is jointly and severally liable with the physician for the following reasons:

> *First,* there is an employer-employee relationship between Medical City and Dr. Ampil. The Court relied on *Ramos v. Court of Appeals*, holding that for the purpose of apportioning responsibility in medical negligence cases, an employer-employee relationship *in effect exists* between hospitals and their attending and visiting physicians; *second,* PSI's act of publicly displaying in the lobby of the Medical City the names and specializations of its accredited physicians, including Dr. Ampil, estopped it from denying the existence of an employer-employee relationship between them under the *doctrine of ostensible agency or agency by estoppel;* and *third,* PSI's failure to supervise Dr. Ampil and its resident physicians and nurses and to take an active step in order to remedy their negligence rendered it directly liable under the *doctrine of corporate negligence*.[207]

It would seem that when hospitals were primarily charitable institutions, physicians were liable for injury to patients because they were believed to be the economic beneficiaries of the hospital.[208] The Court held that as a consequence, one important legal change is an increase in hospital liability for medical malpractice.[209]

Being able to pay does not mean that liability should automatically attach. It would seem that hospitals are being made liable under the deep pockets theory. Hospitals have been made liable under jurisprudence but the basis of their liability is not clearly settled nor adequately justified.

V. HOSPITAL NEGLIGENCE AS CAUSE OF ACTION

In all the cases brought before the Supreme Court, the main issue is still whether a hospital can be made liable for the negligent acts of the physicians. It is in this regard that the Court applied the doctrines of vicarious liability, apparent authority, and corporate negligence. These doctrines are premised on the special context by which hospitals are to be considered: hospitals as employers, hospitals as principals, and hospitals as corporate bodies. The Supreme Court, in adopting these doctrines, primarily relied on common law decisions. The system of torts in the Philippines is not equivalent to the systems in foreign jurisdictions. Likewise, there is no definite ruling with regard to the relationship of hospitals and doctors, hospitals and patients. Simply put, the established theories of tort liability do not squarely apply to hospitals. Special rules are required because the nature of the liability, obligations, and relationships are neither simple nor clear cut.

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207. *Professional Services, Inc. 2008*, 544 SCRA at 176 (emphasis supplied).

208. *Professional Services, Inc. 2007*, 513 SCRA at 495.

209. *Id.* at 496.

In sum, the Court has made hospitals liable based on their vicarious liability and direct liability. Many jurisdictions now allow claims for hospital vicarious liability under the theories of *respondeat superior* and apparent authority (ostensible authority or agency by estoppel).[210] Vicarious liability, under the Civil Code, is anchored on Article 2180 in relation to Article 2176.[211] However, Article 2180 requires as *sine qua non* the existence of an employer-employee relationship.[212] In instances when Courts fail to establish an employer-employee relationship, they rely on proving the existence of an apparent agency.[213]

When a patient goes to a hospital, three distinct legal relationships are established:

(1) between the doctor and the patient;

(2) between the hospital and the patient; and

(3) between the doctor and the hospital.[214]

The relationship between the patient and the physician has been described as a contractual relation based on mutual trust and confidence in one another.[215] The physician may be civilly liable for breach of contract if the physician agrees to effect a specific cure or obtain a specific result but fails to do so.[216] In an action for breach of contract, the negligence of the doctor is not an issue.[217] However, agreements with specific or particular terms rarely characterize the relationship between physicians and patients. Patients are usually made to understand that the desired result of medical intervention is not always guaranteed. This contractual relationship between the physician and patient does not preclude the award of damages based on quasi-delict or breach of a legal duty.[218]

The relationship between the hospital and patient may likewise be considered a contractual relation, where the hospital agrees to provide

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210. *See generally* HOWARD LEVIN, HOSPITAL VICARIOUS LIABILITY FOR NEGLIGENCE BY INDEPENDENT CONTRACTOR PHYSICIANS: A NEW RULE FOR NEW TIMES (2005).

211. CIVIL CODE, arts. 2180 & 2176.

212. *Id.* art. 2180.

213. *Nogales*, 511 SCRA at 223.

214. Yeo, *supra* note 146.

215. SOLIS, *supra* note 67, at 68.

216. *Id.* at 213.

217. *See* Dingle v. Belin, 358 Md. 354, 749 A. 2d 157 (2000) (U.S.).

218. *Air France*, 18 SCRA at 169. The Court awarded damages based on quasi-delict even if there is a pre-existing contractual relationship between the parties. *Id.*

facilities and services for consideration.[219] One of the sources of controversy is the extent of this implied contract. Solis says that a hospital is an institution whose concern is to serve the patients, the doctors, and the public.[220]

It must be recognized that hospitals cannot practice medicine because the hospital cannot be subjected to government examinations to determine whether it is qualified to diagnose, treat, or employ any form of treatment.[221] Likewise, if hospitals were allowed to practice medicine, then the physician employed by the hospital will merely receive orders from the corporation or its officers who are not licensed to practice medicine. [222] Thus, the implied contract between the hospital and patient cannot include the treatment of the latter, or those duties which properly pertain to the practice of medicine.

The scope of the undertaking of the hospital may be derived from the Hospital Code of Ethics which provides for the objectives of hospitals:

> (1.2) *To provide* the best possible *facilities* for the care of the sick and injured at all times;
>
> (1.3) To constantly upgrade and improve methods for the care, the cure, amelioration and prevention of disease; and
>
> (1.4) To *promote the practice of medicine by Physicians* within the institution consistent with the acceptable quality of patient care.[223]

From the aforementioned objectives, it is apparent that hospitals *provide facilities*, upgrades methods for care, cure and prevention and disease, and *promotes the practice of medicine by physicians*. The hospital does not by itself practice medicine.[224] While the Court has said that the functions of hospitals have changed,[225] the expanded function cannot be deemed to include the

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219. *See* R. ELDAR & REMIGIO MERCADO, *Uniform Hospital Definitions, in* A PRIMER ON HOSPITAL ADMINISTRATION 37-38 (Remigio Mercado ed., 1998). In the field of hospital administration, they classify patients who are not covered in a contract or agreement with an outside agency or third party payor (such as a Health Maintenance Organization) as being a Non-contractual In-Patient. *Id.*

220. SOLIS, *supra* note 67, at 305.

221. *Id.* at 308.

222. *Id.*

223. Philippine Hospitals Association, Hospital Code of Ethics 1.2-1.4 (2008), *available at* http://pha.ph/coe.htm (last accessed Nov. 7, 2010) (emphasis supplied). The Philippine Hospital Association, National Association of Hospitals, entered its 59th year in 2008. Its membership stands at almost 1,900 hospitals nationwide.

224. *See* Medical Act, §§ 8 & 10. The hospital cannot practice medicine. *Id.*

225. *Professional Services, Inc. 2007*, 513 SCRA at 498-99. The Court said that —

> No longer were a hospital's functions limited to furnishing room, food, facilities for treatment and operation, and attendants for its patients … Rather, they regularly employ, on a salaried basis, a large staff of

practice of medicine which means the diagnosis, treatment, and management of diseases, including surgical operations patients or prescription of drugs.[226]

Differing views show that the relationship between doctors and hospitals is complex, depending on circumstances that may fall into the realm of technical or specialized knowledge. Thus, determining the nature of this relationship is one of the inherent difficulties in establishing hospital liability.

A. Vicarious Liability of Hospitals

1. Vicarious Liability of Employers for Negligent Acts of Employees

While it is difficult to determine the relationship between doctors and hospitals, the same is at the crucible of establishing liability based on *respondeat superior* or the vicarious liability provided in Article 2180. Under said Article, the employer or the owners and managers of an establishment may be made liable for acts of employees and damages caused by their employees:

> Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> ...
>
> The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> ...
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.[227]

The vicarious liability imposed under this Article is based on the employer's own negligence, because it failed to exercise the diligence of a good father of a family in selecting and supervising its employees.[228] An employer is vicariously liable for the negligence of an employee acting

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> physicians, interns, nurses, administrative and manual workers. They charge patients for medical care and treatment, even collecting for such services through legal action, if necessary.

Id.

226. SOLIS, *supra* note 67, at 38-39.

227. CIVIL CODE, art. 2180.

228. Valenzuela v. Court of Appeals, 253 SCRA 303, 324 (1996).

within the scope of his or her employment, even though the principal or employer has not committed a wrong.[229] Under Article 2180, the responsibility of the employer would cease if it can be shown that the employer exercised diligence in order to prevent the damage.

It is well-developed in Philippine jurisprudence that the employer-employee relationship is established based on the primary test of hiring, firing, payment of wages, and control;[230] the most essential of which is the element of control.[231]

In *Ramos*, the Court said that there is difficulty in apportioning responsibility for negligence because of the unique practice (among private hospitals) of filling up specialist staff with attending and visiting "consultants," who are allegedly not hospital employees.[232] Then, the Court quickly proceeded to say that the difficulty is more apparent than real.[233] The Court declared that private hospitals hire, fire, and exercise real control over their attending and visiting consultant staff.[234]

While "consultants" are not paid regular salaries, the Court asserts that the control test is determining.[235] In establishing the control of the hospital over surgeon, the Court, in a footnote to the case report, explained —

> The hospital's control over respondent physicians is all the more significant when one considers the fact that it controls everything which occurs in an operating room, through its nursing supervisors and charge nurses. No operations can be undertaken without the hospital's direct or indirect consent.[236]

In *Ramos*, the Court unequivocally declared that the employer-employee relationship *in effect* exists between hospitals and doctors for purposes of apportioning responsibility in medical negligence cases.[237] The same

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229. *Id.*

230. LVN Pictures, Inc. v. Philippine Musicians Guild, 1 SCRA 132 (1961); Mafinco Trading Corporation v. Ople, 70 SCRA 139 (1976); Rosario Brothers, Inc. v. Ople, 131 SCRA 72 (1984); & Brotherhood Labor Unity Movement of the Philippines v. Zamora, 147 SCRA 49 (1987).

231. *See* CIVIL CODE, art. 2180.

232. *Ramos*, 321 SCRA at 620. The Court explained that the term "consultant" is loosely used by hospitals to distinguish their attending and visiting physicians from the residents, who are also physicians. In most hospitals abroad, the term visiting or attending physician, not consultant, is used. *Id.*

233. *Id.*

234. *Id.* at 620-21.

235. *Id.* at 621.

236. *Id.*

237. *Id.* at 620 (emphasis supplied).

declaration was reiterated in *PSI* when the Court affirmed, without going into the four-fold test, that the respondent-physicians were employees of the hospital. The Court justified that —

> In our shores, the nature of the relationship between the hospital and the physicians is rendered inconsequential in view of our categorical pronouncement in *Ramos v. Court of Appeals* that for purposes of apportioning responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians.[238]

The categorical declaration in *PSI* did not make any reference to the motion for reconsideration of *Ramos* in 2002. The Court subsequently ruled in *Ramos* that the hospital was *not liable* for negligent acts of the consultant that caused injury to patient.[239] The said ruling apparently reversed the earlier pronouncements. The perceived reversal in the *Ramos* case was brought up in the reconsideration of *PSI*, decided in 2008.[240] The Court denied that it reversed its ruling —

> Actually, contrary to PSI's contention, the Court did not reverse its ruling in *Ramos*. What it clarified was that the De Los Santos Medical Clinic did not exercise control over its consultant, hence, there is no employer-employee relationship between them. Thus, despite the granting of the said hospital's motion for reconsideration, the doctrine in *Ramos* stays, i.e., for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship exists between hospitals and their consultants.[241]

In the first place, the Court in *Ramos*, while affirming the existence of an employer-employee relationship between hospitals and doctors, did not discuss the manner by which the former exercised control over the latter. This was admitted in *Nogales* where the ruling provided that —

> While the Court in *Ramos did not expound on the control test*, such test essentially determines whether an employment relationship exists between a physician and a hospital based on the exercise of control over the physician as to details. Specifically, the employer (or the hospital) must have the right to control both the means and the details of the process by which the employee (or the physician) is to accomplish his task.[242]

The ruling in *Ramos* did not discuss the "control test" extensively but it sought to prove the existence of an employer-employee relationship. The determination, reproduced in the preceding paragraphs, had been cited and

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238. *Professional Services, Inc. 2007*, 513 SCRA at 499.

239. *Ramos II*, 380 SCRA at 500.

240. *Professional Services, Inc. 2008*, 544 SCRA at 178.

241. *Id.* at 178-79.

242. *Nogales*, 511 SCRA at 221 (emphasis supplied).

quoted in *Nogales*[243] and *PSI*.[244] Significantly, however, these facts used by the Supreme Court to establish an employer-employee relationship in *Ramos* have been rejected in the 2002 Motion for Reconsideration.[245]

It would appear that the existence of Credentials or Ethics Committee was used by the Court to say that the hiring or firing was no longer under the control of the hospital.[246] The admission of a physician to membership in the hospital's medical staff as active or visiting consultant is first decided upon by the Credentials Committee which then recommends to the Medical Director or Hospital Administrator the acceptance or rejection of the applicant physician, and said director or administrator validates the committee's recommendation.[247] Similarly, in cases where a disciplinary action is lodged against a consultant, the same is initiated by the department with which the consultant concerned belongs and filed with the Ethics Committee consisting of the department specialty heads.[248] In effect, the Court was denying the existence of an employee-employer relationship by claiming that the hospital, through hospital administrator or medical director, was not directly responsible for hiring or firing but that it was instead the

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243. *Id.* at 219-21.

244. *Professional Services, Inc. 2007*, 513 SCRA at 499-500.

Editors' Note: In its 2010 resolution, the Supreme Court declared that, as "it appears to have escaped the Court's attention," there was indeed no employer-employee relationship between PSI and Dr. Ampil. As found by the lower courts, Dr. Ampil was merely a consultant in the capacity of an independent contractor. As to control, the Court explained —

> Control as a determinative factor in testing the employer-employee relationship between doctor and hospital under which the hospital could be held vicariously liable to a patient in medical negligence cases is a requisite fact to be established by preponderance of evidence. Here, there was insufficient evidence that PSI exercised the power of control or wielded such power over the means and the details of the specific process by which Dr. Ampil applied his skills in the treatment of Natividad. Consequently, PSI cannot be held vicariously liable for the negligence of Dr. Ampil under the principle of *respondeat superior*.

See Professional Services, Inc. 2010, 611 SCRA 292-94.

245. *Ramos II*, 380 SCRA at 500-01. For example, the practice of requiring physicians applying as consultants in a hospital may be considered hiring although when evaluated by a Credentials Committee instead of directly by the hospital administrator, it is to be considered accreditation. *Id.*

246. *Id.* at 500.

247. *Id.*

248. *Id.*

particular committees. The members of these committees were specialty heads and the Court considered them as distinct from administration.[249]

Corollary to this, the Court seems to imply that negligence of hospitals should be based on failures related to its facilities and staff. The Court took the opportunity to differentiate the contract between the consultant and his patient from that between respondent hospital and patient.[250] In the end, *the hospital was absolved from liability because of the absence* of evidence that the injury suffered by petitioner was due to a failure on the part of the hospital to provide for hospital facilities and staff necessary for her treatment.[251]

In *Nogales*, the Court said that the respondent physician was an independent contractor.[252] The discussion focused mainly on the "control test" to determine the existence of an employer-employee relationship.[253] The Court also affirmed the explanation developed by jurisprudence with regard to the control test when it held that the employer (or the hospital) must have the right to control both the means and the details of the process by which the employee (or the physician) is to accomplish his task.[254]

Hospitals are generally not held liable for doctors' negligent acts. The doctrine in *Schloendorff v. Society of New York Hospital*[255] applied in the U.S. went as far as considering a physician, even if employed by a hospital, as an independent contractor because of the skill he exercises and the lack of control exerted over his work.[256] Under the *Schloendorff* doctrine, hospitals are exempt from the application of the *respondeat superior* principle for fault or negligence committed by physicians in the discharge of their profession.[257]

In *PSI*, the Court said that the view that a hospital cannot be held liable for the fault or negligence of a physician or surgeon in the treatment or operation of patients, is grounded on the *traditional* notion that the very

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249. *Id.*

250. *Id.* at 500-01.

251. *Id.* at 501.

252. *Nogales*, 511 SCRA at 222.

253. *Id.* at 219-21.

254. *Id.*

255. Schloendorff v. Society of New York Hospital, 211 N.Y. 125 (N.Y. 1914) (U.S.).

256. *Id.* at 129.

257. *Id.* at 128-29. The Court in *Schloendorff* opined that a hospital does not act through physicians but merely procures them to act on their own initiative and responsibility. *Id.* at 130. For subsequent application of the doctrine, *see, e.g.*, Hendrickson v. Hodkin, 250 App. Div 649, 294 N.Y.S. 98, 276 N.Y. 252, 11 N.E.2d 899 (1937) (U.S.) & Necolayff v. Genesee Hosp., 270 App. Div. 648, 61 N.Y.S. 2d 832, 296 N.Y. 936, 73 N.E.2d 117 (1946) (U.S.).

nature of the physician's calling preclude him from being classed as an employee of a hospital, whenever he acts in a professional capacity.[258] Under this view, professionals are considered personally liable for the fault or negligence they commit in the discharge of their duties, therefore their employer cannot be held liable for such fault or negligence.[259] Nevertheless, the Court said that patients accept services on the reasonable belief that such were being rendered by the hospital or its employees, agents, or servants.[260]

The legal relationship between hospitals and physicians is an increasingly complex one. Physicians must meet certain hospital-mandated criteria to obtain hospital "privileges" — which usually include the right to admit and treat patients in the hospital. However, a typical patient is unlikely to know if a given physician is an employee of the hospital, a contractor, or a private practitioner with privileges to practice at the hospital.[261] The same sentiment was made in *PSI*.[262]

The suggestion that a hospital should be made liable for acts of independent contractors is inconsistent with the clear provision of Article 2180. Unless doctors are considered employees of hospitals, either by special provision of law, or upon meeting the requirements of the "four-fold test," the assignment of liability based on Article 2180 in relation to Article 2176 is not proper. It must be reiterated that the liability under Article 2180 is premised on the hospital's own act of negligence as an employer, in failing to select and supervise employees. In the absence of an employee-employer relationship, the liability of hospitals must be conditioned on some other principle of law.

The Court, in its most recent ruling, reaffirms and so holds that for purposes of apportioning responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians.[263] This is inconsistent with Article 2180 or, at the very least, confusing. How would it be possible to follow the rule that

258. *Professional Services, Inc. 2007*, 513 SCRA at 497 (citing Arkansas M.R. Co. v. Pearson, 98 Ark. 442, 153 SW 595 (1911) (U.S.); Runyan v. Goodrum, 147 Ark. 281, 228 SW 397, 13 ALR 1403 (1921) (U.S.); Rosane v. Senger, 112 Colo. 363, 149 P. 2d 372 (1944) (U.S.) (superseded by statute on other grounds); & Moon v. Mercy Hosp., 150 Col. 430, 373 P. 2d 944 (1962) (U.S.)).

259. *Id.* at 498 (citing Kitto v. Gilbert, 39 Colo App 374, 570 P. 2d 544 (1977) (U.S.)).

260. *Id.* at 502.

261. Ronald L. Scott, Hospital Liability for Negligence of Independent Contractor Physicians, *available at* http://www.law.uh.edu/healthlaw/perspectives/Tort/980604Hospital.html (last accessed Nov. 7, 2010).

262. *Professional Services, Inc. 2007*, 513 SCRA at 503 (citations omitted).

263. *Professional Services, Inc. 2008*, 544 SCRA at 176.

"an employer-employee relationship in effect exists between hospitals and their consultants"[264] to the effect that as a rule the "nature of the relationship" becomes "inconsequential"[265] while at the same time declaring that if the hospital did not exercise control over the consultant, no employer-employee relationship exists?[266]

Notably, it was only in *Nogales* where the Court discussed with specificity the "control test" as applied to hospitals and doctors. In this case, the Court said that there is no control because: (1) the hospital does not control the doctor with regard to treatment and management of patient; (2) the hospital takes no part in the making of a diagnosis by physician; (3) the patient was under the exclusive care of the doctor prior to admission in the hospital; and (4) the hospital merely accommodated the patient because the condition of the latter is deemed to be an emergency.[267]

The absence of control was established on the ground that the hospital did not intervene in the doctor's treatment, management, and care of the patient, which essentially pertains to the physician's practice of medicine.[268] Under this view, most physicians would not be considered employees. The doctors working in the hospital may be classified as residents — they may be under training program or working as in-house staff of a hospital, visiting Consultants, or attending Consultants.[269]

Once a physician graduates, completes internship, and passes the Medical Board Examination, he has the option to start practicing general medicine, where he is considered a general physician, or he may apply to a Residency Program[270] to specialize in a particular field such as Internal Medicine,

264. *Id. See also Professional Services, Inc. 2007*, 513 SCRA 478 & *Ramos*, 321 SCRA 584.

265. *Professional Services, Inc. 2007*, 513 SCRA 478 & *Ramos*, 321 SCRA 584.

266. *Professional Services, Inc. 2008*, 544 SCRA at 176. *See also Ramos II*, 380 SCRA 467 & *Nogales*, 511 SCRA 204 (2006).

267. *Nogales*, 511 SCRA at 221.

268. *Id.*

269. Felix v. Buenaseda, 240 SCRA 139, 149 (1995). In Footnotes 16-19 of the decision, the Court explains the nature of the residency program and how upon its completion, the physicians will be considered specialists.

270. Licensed physicians may opt to take additional training in a particular specialization under a Residency Program. The physician would apply to a residency program and the Department would determine whether to accept him or not. These programs are considered a continuation of their medical education. For every department in a teaching hospital with a resident program, there is a training officer who would be in charge of implementing the training policies of the Department. After a specified period, the resident would graduate and depending on the specialization, take examinations to qualify them as specialists in the field, and would be considered fellows or diplomats.

Surgery, Obstetrics and Gynecology, Pediatrics, and others. The resident doctor-in-training is to complete the residency for a specified number years, and would afterwards often be made to take another examination or the Specialty Boards. Upon passing the Specialty Boards, the physicians would be considered a fellow or diplomate of the particular specialization. In *University of the East Ramon Magsaysay Memorial Hospital Medical Center Resident Doctor's Union (UERMMC-R.D.U.) v. Laguesma*,[271] the Court held that while residents may be considered as employees using the four-fold test, the relationship between the teaching/training hospital and the resident doctor is not one of an employer-employee relationship because the focus of the program is not employment but training.[272] This ruling was affirmed in *Felix v. Buenaseda*[273] where the Court said that residency connotes training and temporary status.[274]

Physicians who do not enter a residency program may opt to apply directly to hospitals; they are also called residents[275] or house staff although there is no training component involved. These residents are usually the ones who go on duty, usually in the emergency rooms, who become the first responders when a patient is brought to the hospital. These patients are subsequently decked to consultants of the hospitals. Depending on the contract and the factual circumstances, these physicians may be considered as employees of the hospital. In general, once the patients are decked to a consultant, the latter becomes responsible for the management of the patient.

The issues brought before the Court usually involve Active or Visiting Consultants. The Court in *Felix* explained. Active Consultants, who usually own stocks in a private hospital, enjoy more privileges than Visiting Consultants.[276] Visiting Consultants, who do not own any stocks in the

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271. University of the East Ramon Magsaysay Memorial Hospital Medical Center Resident Doctor's Union (UERMMC-R.D.U.) v. Laguesma, et al., Nov. 24, 1993 (unreported decision); *see also* Anthea Magpantay, The Relationship between Hospitals and Doctors in the Philippine Setting: Re-Examined (2007) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

272. *UERMMC-R.D.U.*, Nov. 24, 1993.

273. *Felix*, 240 SCRA 139.

274. *Id.* at 151.

275. Physicians who pass the licensure examination apply to various hospitals where for a specified period, they will go on duty, often assigned to emergency rooms. They may be paid on a monthly basis, or on a per duty basis. Doctors often refer to this as "moon-lighting" if meant to be a temporary work. In *Ospital ng* Muntinlupa, for example, licensed physicians are engaged to work for a specified period and are paid on a monthly basis, with additional payment given for additional duties like assisting in operations of Consultants.

276. *Felix*, 240 SCRA at 150.

hospital, are granted the privilege of holding clinics, admitting patients and use of hospital facilities.[277] In order to maintain the privilege, they are often required to meet a minimum number of admissions.[278]

The relationships of these doctors to hospitals vary. The fact is, the control exercised by hospitals over physicians, particularly surgeons, is limited. The most conclusive evidence of an employer-employee relationship is the right to control not only the end to be achieved but also the means and methods by which the same is to be accomplished.[279] For example, the surgeon, when operating, is not under the control of the hospital with regard to the method, technique, and judgments made during the actual surgery.

It has been reported that some hospitals have started to intervene in the treatment being provided by doctors.[280] The Care Medical Center (CMC),[281] is reported to have implemented a "stop order policy" where the hospital may terminate the administration of antibiotics deemed to have been administered too long, even without consent of the physician. This policy, however, is not commonly encountered in many hospitals in Metro Manila.[282] According to Dr. Edwin Dimatatac, member of the Infection

277. *Id.*

278. *Id.*

279. *See* Philippine Global Communications, Inc. v. De Vera, 459 SCRA 260 (2005); Rhone-Poulenc Agrochemicals Philippines, Inc. v. NLRC, 217 SCRA 249, 255 (1993); Investment Planning Corp. of the Phil. v. Social Security System, 21 SCRA 924, 928-29 (1967); Social Security System v. Court of Appeals, 39 SCRA 629 (1969); Tiu v. NLRC, 254 SCRA 1, 8 (1996); & Religious of the Virgin Mary v. NLRC, 375 Phil. 75 (1999).

280. Magpantay, *supra* note 271. The Author interviewed a consultant in a private hospital.

281. *Id.*

282. This is based on an interview conducted with eight different physicians, who have worked in the following hospitals: Far Eastern University Hospital, Medical Clinic of Manila, Manila Doctor's Hospital, Philippine General Hospital, *Ospital ng* Muntinlupa, Asian Hospital Medical Center, Alabang Medical Center, Alabang Medical Clinic, Emilio Aguinaldo Hospital, and Korean Friendship Hospital.

Interview with Dr. Christopher E. Calaquian, Hospital Administrator of *Ospital ng* Muntinlupa, accredited by Far Eastern University Hospital, Korean Friendship Hospital-Cavite, and Manila Doctor's Hospital, in Makati City (Apr. 10, 2008). Interview with Dr. Derek Resurreccion, surgery fellow in the Philippine General Hospital, in Manila City (June 7, 2008). Dr. Resurreccion is a surgeon who specializes in Upper Gastrointestinal Surgery. Interview with Dr. Edwin L. Dimatatac, Infectious Disease Specialist and member of Infection Control in Asian Hospital Medical Center, practicing in Asian Hospital, Alabang Medical Clinic and *Ospital ng* Muntinlupa, in Muntinlupa City (May

Control Committee in Asian Hospital Medical Center and Infectious Disease specialist, the "stop order policy" may be encountered in tertiary hospitals. According to him, it is usually intended to make the attending physician review the medicine he or she has prescribed, and the final discretion whether to continue the administration of the drugs still depends on the attending physician.[283]

In actual practice, hospitals rarely control the manner by which physicians diagnose, treat, and manage their patients. In many hospitals, the physicians are, however, imposed certain responsibilities. In teaching hospitals, these activities would include bedside rounds with students and residents, small group discussions, and other conferences. Hospitals without a training program require consultants to attend conferences, handle a charity case, or require a minimum number of admissions.[284]

The assignment of certain duties to a physician will not be sufficient to establish an employer-employee relationship because the requirement is not merely to control the end result but the means by which it is achieved.[285] Likewise, the requirement may be deemed to be the consideration for the privilege of using the hospital's facilities. In the first place, the rules and regulations relate more to the functions of a hospital rather than the practice of medicine. These duties do not involve direct patient care but are in the

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11, 2008). Interview with Dr. Keith Vitan, Resident in Manila Medical Center, in Manila City (Nov. 22, 2007). Group Interview with Dr. Pamela Patdu, Dr. Tess Dumagay, Dr. Grace Fermalino, resident physicians in the Philippine General Hospital, in Manila City (May 16, 2008).

One of the interviewees, Dr. Edwin Dimatatac, explained that the discretion as to the management of patients, including the medicines to prescribe and the manner by which they are administered are left to the discretion of the attending physician. The other doctors had similar responses.

283. The "stop order policy" is usually done in situations where the antibiotics had been given for a period of three to seven days, or when a patient undergoes an operation. Physicians are apprised of the Policy by a memo. The doctors interviewed do not feel that the hospital is controlling their choice of treatment for their patient. The said Policy operates more as a reminder for physicians to assess present medications of a patient. According to Dr. Dimatatac, this is because antibiotics are expected to take effect after three days and thus reassessment would be proper at this time. Likewise, post-operative patients may require different medications and the "stop order policy" is a means to ensure that nurses who give the drugs will not simply carry out the pre-operative orders or administer pre-operative drugs. Interview with Dr. Dimatatac, *supra* note 282.

284. *See, e.g.*, the by-laws of Asian Hospital Medical Center providing for responsibilities of accredited physicians.

285. *See Nogales*, 511 SCRA at 221 (citing Diggs v. Novant Health Inc., 628 S.E. 2d 851 (2006) (U.S.)).

nature of training, continuing medical education, and other incidental activities.

In *Coca Cola Bottlers (Phils.), Inc. v. Climaco*,[286] the issue of whether a physician was an employee of the company was discussed. The Court of Appeals initially ruled on the existence of an employer-employee relationship by rejecting the contention of the company that they exercised no control over the physician for the reason that the latter was not directed as to the procedure and manner of performing his assigned tasks that the physician was not told how to immunize, inject, treat or diagnose the employees of the company.[287] The Court of Appeals said that the control test should be interpreted strictly because it would result in an absurd and ridiculous situation wherein an entity can be said to exercise control over another's activities only in instances where the latter is directed by the former on each and every stage of performance of the particular activity.[288] For the Court, the fact that the physician was given specific objectives, and its activities were laid out including the specific time for performing them was fixed, then there was control.[289]

This reasoning was rejected by the Supreme Court. The company lacked the power of control over the performance of the physician precisely because the company does not tell the physician how to conduct his physical examination, how to immunize, or how to diagnose and treat his patients.[290] Neither does being on call at anytime of the day and night make the physician an employee.[291]

While *Coca-Cola Bottlers* is one between a physician and a company, instead of a physician and a hospital, it would seem that the Court recognizes that there is no control exercised over a physician over the conduct of diagnosis or physical examination.[292] The Court in fact rejected the Court of Appeals ruling to the effect that the control test should not be applied strictly.[293] It would appear that the Court, while affirming the "control test" as a means to establish an employer-employee relationship, it establishes a different standard in cases where the test is to be applied to the relationship of hospitals and doctors.

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286. Coca-Cola Bottlers (Phils.), Inc. v. Climaco, 514 SCRA 164 (2007).

287. *Id.* at 171.

288. *Id.* at 173.

289. *Id.*

290. *Id.* at 177.

291. *Id.*

292. *Coca-Cola Bottlers (Phils.), Inc.*, 514 SCRA at 177.

293. *Id.* at 177-79.

Vicarious liability under Article 2180 is not founded on negligence in performance of hospital functions, but the liability for acts of physicians who practice medicine. The discussion has so far shown that there is no employer-employee relationship between hospitals and consultants if the assessment of the control test is to be based on the control exercised by the hospitals over the manner that the doctors practice their profession. Unless the facts show otherwise, there is no employer-employee existing between hospitals and doctors. Whether for purposes of apportioning responsibility for medical negligence or otherwise, the relationship cannot be created by legal fiction.

Nevertheless, even if the establishment of an employer-employee relationship is made based on facts, the employer hospital may be able to avoid liability if it can show that it exercised the diligence of a good father of a family in the accreditation and supervision of the latter.[294]

B. Apparent Agency

Apparent Authority, or what is sometimes referred to as the "holding out" theory, or Doctrine of Ostensible Agency, has its origin in the law of agency.[295] The Principle is derived from the principle of estoppel embodied in the Civil Code.[296] Thus, the relationship that arises is denominated as an "agency by estoppel."[297] Through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[298] While estoppel has been adopted to a variety of circumstances, it is to be noted that under the Civil Code, it was used to refer to situations involving dealings involving contracts or property.[299] In the decisions of the Supreme Court involving the Doctrine of Apparent Authority, the issue commonly involved an ostensible agent entering into contracts with third persons, where even in the absence of actual authority, the principal is considered bound by acts of the agent.[300]

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294. *Professional Services, Inc. 2007*, 513 SCRA at 507.

295. *See, e.g.*, Baker v. Werner, 654 P2d 263 (1982) (U.S.) & Adamski v. Tacoma General Hospital, 20 Wash App. 98 (1978) (U.S.).

296. CIVIL CODE, tit. IV.

297. *Professional Services, Inc. 2007*, 513 SCRA at 500-01.

298. CIVIL CODE, art. 1431.

299. *Id.* arts. 1434-1438. Under these Articles, the relationships or circumstances involve that of an apparent seller and buyer, that between lessee or lessor, contracts between third persons concerning immovable property where one misleads as to ownership, acts of one to vest another with apparent ownership or personal property. *Id.*

300. Hydro Resources Contractors Corporation v. National Irrigation Administration, 441 SCRA 614 (2004) & Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc., 436 SCRA 235 (2004).

Except in cases of medical negligence,[301] the Court has had no occasion to use the doctrine to hold a principal liable for tortuous acts of an ostensible agent.

It is familiar doctrine that if a corporation knowingly permits one of its officers, or any other agent, to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; and thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.[302] The above ruling contemplates a situation where a principal clothes an agent with a power that goes beyond the agent's actual authority. On this matter, the Civil Code provides that "[e]ven when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers."[303]

Thus, the usual application of the Doctrine of Apparent Authority, supported by the Civil Code, is in situations where there is a previous agency relationship, and the main issue is whether a particular act is within the scope of powers granted to the agent. It has not been applied in situations where a principal is being made liable because it has represented that a certain person is its employee.

There are cases, however, where a person may be deemed an agent of a principal based on the latter's act of clothing the former with apparent authority.[304] Under these circumstances, the principal cannot be permitted to deny the authority of such person to act as his or her agent, to the prejudice of innocent third parties dealing with such person in good faith and in the honest belief that he is what he appears to be.[305] A party cannot be allowed to go back on his own acts and representations to the prejudice of the other party who, in good faith, relied upon them.[306] Based on the "holding out" theory, the liability is imposed not as the result of the existence of a contractual relationship, but rather because of the actions of a principal or an

301. *See Nogales*, 511 SCRA 208.

302. Francisco v. Government Service Insurance System, 7 SCRA 577, 583 (1963); Maharlika Publishing Corporation v. Tagle, 142 SCRA 553, 566 (1986); & People's Aircargo and Warehousing Co., Inc. v. Court of Appeals, 297 SCRA 170, 182 (1998).

303. CIVIL CODE, art. 1911.

304. *See Yao Ka Sin Trading*, 209 SCRA at 783; Macke, et al. v. Camps, 7 Phil. 553 (1907); & Philippine National Bank v. Court of Appeals, 94 SCRA 357 (1979).

305. *Id.*

306. Philippine National Bank v. Intermediate Appellate Court, et al., 189 SCRA 680 (1990).

employer in somehow misleading the public into believing that the relationship or the authority exists.[307]

The applicability of Apparent Authority in the field of hospital liability was upheld under Common Law jurisdiction in *Irving v. Doctor Hospital of Lake Worth, Inc.*[308] where it was held that "there does not appear to be any rational basis for excluding the concept of apparent authority from the field of hospital liability."[309] The Court in *Nogales* cited various cases in the U.S., and proceeded to immediately apply the Doctrine of Apparent Authority to resolve the issues in the case before it. The Court declared that the doctrine is an exception to the general principle that a hospital may not be made liable for the acts of independent contractors.[310] Other than by reference to Common Law jurisprudence, the Court no longer delved into the rationale of why the Doctrine should be similarly extended to cover hospital liability under Philippine Jurisdiction.

Under the Law of Agency, there are certain acts that cannot be done through an agent. Purely personal acts that are required by law, public policy, or agreement cannot be delegated.[311] Likewise, an attempt to delegate to another authority to do an act which, if done by the principal would be illegal, is void.[312] Thus, if a hospital is owned by a person other than one qualified to practice medicine, the hospital cannot engage in the treatment, diagnosis, and management of a patient through a physician. Nonetheless, the liability being discussed in this Section should not be premised on actual agency, whether express or implied. The situation contemplated is one wherein the hospital clothes the doctor with the "apparent authority" to act in behalf of the said hospital, thus becoming its ostensible agent.

The Doctrine of Apparent Authority is said to be a specie of the doctrine of estoppel.[313] Estoppel rests on this rule: whether a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he

307. Irving v. Doctors Hospital of Lake Worth, Inc., 415 So. 2d 55 (1982) (U.S.) & Arthur v. St. Peters Hospital, 169 N.J. 575 (1979) (U.S.).

308. *Irving*, 415 So. 2d 55 (1982).

309. *Professional Services, Inc. 2007*, 513 SCRA at 501 (2007) (citing *Irving*, 415 So. 2d 55).

310. *Nogales*, 511 SCRA at 222.

311. Anderson v. Grand River Dam Authority, 446 P.2d 814 (1968) (U.S.) (citing 2 Am. Jur. 2d *Administrative Law* § 222).

312. Metropolitan Bank and Trust Co., Inc. v. National Wages and Productivity Commission, 514 SCRA 346, 365 (2007) (citing Executive Secretary v. Southwing Heavy Industries, Inc., 482 SCRA 673, 699 (2006)).

313. *Nogales*, 511 SCRA at 223.

cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.[314] Thus, if a hospital manifests that physicians are its agents or employees, the hospital can no longer deny the relationship to evade obligations as a result of the manifestation.

The Doctrine of Apparent Authority, based on the principle of estoppel, involves two factors to determine the liability of a hospital for acts of an independent-contractor physician: hospital's manifestations and patient's reliance.[315] The first factor focuses on the hospital's manifestations and is sometimes described as an inquiry whether the hospital acted in a manner which would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital.[316] The second factor, patient's reliance, is sometimes characterized as an inquiry on whether the plaintiff acted in reliance upon the conduct of the hospital or its *agent*, consistent with ordinary care and prudence.[317]

In *Nogales*, the following were considered hospital manifestations indicative that the physician is acting on its behalf:

(1) Physicians are granted staff privileges;
(2) Physicians are extended the hospital's medical staff and facilities by admitting and accommodating the physician's patient;
(3) Physicians are allowed to refer to specialty department heads, and collaboration with other employed specialists;
(4) Use of hospital letterhead in consent forms that patient signs; and
(5) Patients [are] not informed that the doctors managing their condition are independent contractors.[318]

In *PSI*, the sole proof considered was the fact that hospitals display the names of physicians with their specializations in the public directory at the lobby of the hospital.[319]

Under these rulings, the fact that physicians' names were displayed in the lobby was said to mean that the hospital holds itself out to the general public

314. *Id.* at 208; De Castro v. Ginete, et al., 137 Phil. 453 (1969) (citing REVISED RULES ON EVIDENCE, rule 131, § 3 (a)). *See also* King v. Mitchell, 31 A.D.3rd 958, 819 N.Y.S.2d 169 (2006) (U.S.) & CIVIL CODE, art. 1431. "Through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." *Id.*

315. *Id.* at 223 (citing Diggs v. Novant Health, Inc., 628 S.E.2d 851 (2006) (U.S.) & Hylton v. Koontz, 138 N.C.App. 629 (2000) (U.S.)).

316. *Id.*

317. *Id.*

318. *Id.*

319. *Professional Services, Inc. 2007*, 513 SCRA at 502.

that it offers quality medical service through the listed physicians.[320] The Court said that by accrediting and publicly advertising the qualifications of the physicians, the hospital created the impression that they were its agents, authorized to perform medical or surgical services for its patients.[321]

The Court held that the hospital would be liable whether or not the surgeon was an employee or an independent contractor —

> It must be stressed that under the doctrine of apparent authority, the question in every case is whether the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.[322]

Under these rulings, the act of accreditation, which cannot establish an employer-employee relationship, would be considered a hospital manifestation if accompanied by public advertisement. Most hospitals would have a directory of accredited physicians in their lobby or in their websites. The purpose is to aid patients choose a doctor or to determine whether the services of a doctor of a particular specialization may be availed of.

For the second factor, patient reliance, it would appear that the testimony of the relative or patient would be sufficient proof. Thus, in *Nogales*, the testimony that services of a physician was sought and accepted because of his or her connection with a reputable hospital, and evidence to the effect that patients specifically sought to be treated in a particular hospital based on its reputation, were considered patient reliance.[323]

In *PSI*, the testimony to the effect that the doctor believed to be a staff member of the hospital and the patient's impression of hospital reputation were likewise considered sufficient.[324] Likewise, the Court in said Case affirmed that patients should not be burdened with defense of absence of employer-employee relationship, that patients accepted the services on the

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320. *Id.*

321. *Id.*

322. *Professional Services, Inc. 2008*, 544 SCRA at 181.

323. *Id.* In *Nogales*, the patient's husband testified that they looked to CMC to provide the best medical care and support services, that fearing complications during her delivery, they believed that problems would be better addressed and treated in a modern and big hospital such as CMC. Likewise, the Court said that the signing of a consent form allowing a different physician to perform an operation is an indication of the confidence reposed on hospital staff. *Id.*

324. *Professional Services, Inc. 2008*, 544 SCRA at 181. The Court cited the testimony of the husband — "I have known him to be a staff member of The Medical City which is a prominent and known hospital." *Id.*

reasonable belief that such were being rendered by the hospital or its employees, agents, or servants.[325]

Would the circumstances raised by the Court be sufficient to lead a reasonable person to conclude that the doctor is an employee or agent of the hospital? In determining the factors that affect demand for hospital services, a study showed that patient choice of hospital was affected primarily by the physicians affiliated with the hospital.[326] When doctors started to change their base of operations from one hospital to another, the occupancy of the old hospital went down significantly.[327] In that Report, it was said that even proximity to residence could not compete with the role that doctors play in attracting patients to a particular hospital.[328] Proximity of hospital is mainly considered usually during emergency cases only.[329]

Nevertheless, the testimony of a patient regarding the reason he or she consults a doctor is a question of fact and depends on the state of mind of the patient at the time the choice of doctor or hospital is made. It is a matter that cannot be definitely established. Thus, the testimony of a patient, claiming that he believes a particular physician to be an employee of a hospital, and that such fact led the patient to seek treatment from the doctor, would suffice as proof of patient reliance under Philippine jurisdiction.

Based on the preceding discussions, the liability of hospitals based on the Doctrine of Apparent Authority is hinged on the principle of estoppel:

(1) The representation by a hospital that a doctor is its employee shall be conclusive upon the hospital;

(2) The hospital cannot deny the representation as against a patient relying on this representation; and

(3) If the doctor acts negligently, the hospital can no longer deny or disprove that said doctor is its employee.

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325. *Id.* at 503.

326. Fred S. Avestruz, A Study of Philippine Hospital Management and Administrative Systems, PIDS Project No. DOH/91-92/05 (Discussion Paper Series No. 95-16, June 1995) II-20 (Oct. 30, 1994) (citing Carlos P. Crisostomo, A Critical Analysis of Supply and Demand for Health Services of Selected Private Hospitals in Metropolitan Manila (1976) (Unpublished MBA Thesis, Ateneo de Manila University)).

327. *Id.* (citing Alfredo Bengzon, The Management Aspects of Hospitals: An Inquiry into the Organizational, Financial, and Operational Characteristics of Selected Private Hospitals (1972) (Unpublished Masters Thesis, Ateneo de Manila University)).

328. *Id.* (citing Crisostomo, *supra* note 326).

329. *Id.* (citing Thelma Clemente, *The Role of Philippine Hospital Association in Medical Manpower Planning*, Hospital Journal, 3-7 (Jan.-Mar. 1986)).

The hospital's representation, as applied by the Court, need not be express or general as implied representations would suffice. Since most hospitals display the names of doctors publicly in their lobbies, then doctors in these hospitals would be deemed ostensible agents. Subsequently, the hospital will be liable if these doctors act negligently. The only defense would be if the doctors specifically and expressly declare that the doctors are independent contractors.

If hospitals in the Philippines started posting signs that the physicians treating patients within its walls are acting on their own responsibility, would this then imply that hospitals will no longer be made liable under the doctrine of apparent authority? In the U.S., a feature common to many emergency rooms is a prominent sign proclaiming that physicians practicing in the ER are independent contractors and are not hospital employees.[330] This practice actually goes to the second factor considered, that is, patient reliance. Arguably, where a patient is aware that a hospital's emergency room is staffed with independent contractor physicians, the patient is therefore looking to such physicians (rather than the hospital) for medical care, and the hospital is insulated from malpractice committed by such physicians.[331]

Agency by estoppel is not a direct claim against a hospital, but an indirect claim for vicarious liability of an independent contractor with whom the hospital contracted for professional services.[332] In the Philippines, the application of the doctrine of agency by estoppel is usually applied to situations where an ostensible agent enters into contracts or transactions in behalf of principal. The principle of estoppel was used to preclude petitioners from denying the validity of the transactions entered into by Teresita Lipat with Pacific Bank, who, in good faith, relied on the authority of the former as manager to act on behalf of petitioner. The Doctrine was invoked to give effect to a contract.[333] In *Yao Ka Sin Trading v. Court of Appeals*,[334] the Court again utilized the doctrine of apparent authority to protect innocent third persons dealing in good faith with ostensible agents.[335]

The application of the Doctrine to cases of medical negligence is not generally accepted in Civil Law jurisdictions. While the Doctrine of

330. Scott, *supra* note 261.

331. *Id.*

332. Comer v. Risko, 106 Ohio St.3d, 2005-Ohio-4559 (U.S.). Furthermore, if the independent contractor is not and cannot be liable because of the expiration of the statute of limitations, no potential liability exists to flow through to the secondary party, i.e., the hospital, under an agency theory. *Id.*

333. *See Lipat*, 402 SCRA 339 & *Rural Bank of Milaor*, 325 SCRA 99.

334. *Yao Ka Sin Trading*, 209 SCRA 763.

335. *Id.* at 783-84.

Ostensible Agency has been used in Common Law jurisdictions, in the State of Louisiana, with a civil code,[336] the same is not applied. The predominant theory used in Louisiana to assert vicarious liability against hospitals is actual agency, as demonstrated by control, rather than apparent agency.[337] The relevant factors Louisiana courts use in determining whether an agency relationship exists between a hospital and its independent contractor are:

(1) whether the hospital controlled and supervised the professional medical judgment of its alleged agent;

(2) whether the hospital provided and maintained the equipment used by its alleged agent;

(3) whether the hospital billed and collected payments for the alleged agent;

(4) whether the hospital provided its alleged agent with malpractice and workers' compensation insurance; and

(5) what did the contract between the hospital and its alleged agent provided.[338]

There is no agency relationship between the doctor and the hospital, whether express or implied. This is because the hospital cannot practice medicine. The hospital being prohibited by law from the practice of medicine for failure to comply with requirements cannot be allowed practice of a profession by agency. Likewise, the agency agreement will be between the doctor and the hospital. In accrediting a physician, or allowing a physician to use its facilities in exchange of certain responsibilities which do not relate to the practice medicine, no agency is created. The contract between the physician and the patient is distinct from that entered by the latter with the hospital.

Under the framework of apparent authority, the injury of the patient relying on the representation is not actually the injury as a result of the medical negligence but the fact that the patient would be precluded from making a claim against the hospital. Its application outside of medical negligence cases aims to protect innocent third persons from transactions entered in behalf of an apparent principal even in the absence of an agency relationship. The circumstances in cases of medical negligence are different because injury to third persons is not caused by the misrepresentation of the ostensible agent because the doctor in treating patients makes no

336. LA. CIV. CODE ANN., art. 3021.

337. *See* Royer v. St. Paul Fire & Marine Insurance Co., 502 So. 2d 232 (La. Ct. App.), *cert. denied*, 503 So. 2d 496 (La. 1987) (U.S.).

338. Royer v. St. Paul Fire & Marine Insurance Co., 502 So. 2d 232 (La. Ct. App.), *cert. denied*, 503 So. 2d 496 (La. 1987) (U.S.).

misrepresentation as to his qualifications or expertise. The alleged misrepresentation is in the nature of the relationship between the doctor and the hospital and such misrepresentation affects only the remedies that may be made available to a patient in case of injury.

One can then question whether the principle of estoppel, based on equity, is proper. The injury of the patient is not actually based on the misrepresentation that there is an employer-employee relationship between the doctor and hospital. On the one hand, whether or not the physician is an employee or independent contractor will not affect the treatment and management of the patient because the hospital does not control and cannot intervene in the doctor's practice of medicine except only to the extent that it performs its duties as a hospital. On the other hand, if the hospital has represented a doctor as its employee, then it invites the confidence of the patient to seek treatment from the doctor, the hospital makes a representation to the patient. If the doctor injures the patient, then the patient would be able to claim from the hospital, limited by the nature of the obligation of the hospital based on the position that the hospital induced the patient to occupy.

What then is the nature of the representations made by the hospital? The only defense would be if the doctors specifically and expressly declare that the doctors are independent contractors. If the representation is based on holding the doctors as its employees, the hospital is expected to have properly selected the latter and at the same time, that it would supervise the doctor. The extent of the selection and supervision expected of the hospital would be based on ordinary standards, what other hospitals in good standing and under same circumstances would do.

In both cases of vicarious liability, the responsibility of the hospital is premised on what may be legitimately put under his control. In order to establish vicarious liability based on Article 2180 on the part of a hospital for the acts of negligent physicians, the doctor must be an employee of the hospital. The relationship is determined based on actual exercise of control or the reasonable opportunity to do so. It cannot be created by legal fiction. If the doctor is an independent contractor, the hospital may still be held liable if the negligent act can be traced to negligence of the hospital with regard to selecting or supervising the independent contractor practicing within the hospital, or with regard to those which relate to functions of the hospital. The existence of an apparent authority is not, by itself, justification of the existence of negligence on the part of the hospital.

C. Direct Liability of Hospitals

The fact is, it is difficult to sufficiently prove that a physician is an employee of a hospital or the fact that a patient relied on the hospital's misrepresentations with regard to the nature of the hospital-doctor

relationship. The extent of control of hospitals over physicians is likewise difficult to ascertain. In order to address the unique problem of establishing vicarious liability in the context of medical negligence, and the parameters of hospital liability, the Doctrine of Corporate Negligence or Corporate Liability was recognized. Under the Doctrine of Corporate Liability, the hospital can be found liable even if the surgeon was an independent contractor.[339] This Doctrine, adopted from Common Law jurisdictions, was introduced in the Philippines in the case of *PSI*, where the Court said that —

> Recent years have seen the doctrine of corporate negligence as the judicial answer to the problem of allocating [a] hospital's liability for the negligent acts of health practitioners, absent facts to support the application of *respondeat superior* or apparent authority. Its formulation proceeds from the judiciary's acknowledgment that in these modern times, the duty of providing quality medical service is no longer the sole prerogative and responsibility of the physician. The modern hospitals have changed structure.[340]

Corporate negligence imposes on the hospital a non-delegable duty owed directly to the patient, regardless of the details of the doctor-hospital relationship.[341] In some places, it has been declared that a non-delegable duty is an exception to the general rule that an employer is not liable for the negligence of independent contractors, making hospitals vicariously liable as a matter of law for an independent contractor's negligence.[342]

The Doctrine of Corporate Negligence is recognized as stemming from a decision of the Supreme Court of Illinois in the 1965 case of *Darling v. Charleston.*[343] The declaration in this case was to the effect that a hospital's corporate negligence extends to permitting a physician known to be incompetent to practice at the hospital.[344] The Doctrine of Corporate Negligence is differentiated from the Doctrine of Ostensible Agency as a new form of liability, separate and apart from those based on theories of agency and ostensible agency, and one which holds the hospital accountable

339. Graham v. Barolat, 2004 WL 2668579 (E.D. Pa., 2004) (U.S.).

340. *Professional Services, Inc. 2007*, 513 SCRA at 504.

341. *Pedroza*, 677 P.2d at 168-71.

342. Scott, *supra* note 261.

343. Darling v. Charleston Community Memorial Hosp., 211 N.E.2d 253, 258 (Ill. 1965) (U.S.).

344. *Id. See also* Hospital Authority v. Joiner, 229 Ga. 140,189 S.E. 2d 412 (1972) (U.S.).

for its role of coordinating the medical care provided to its patients by the numerous types of medical providers housed within its walls.[345]

Corporate negligence provides for a form of direct liability that subjects a hospital to civil liability for its own failures to adopt appropriate policies and procedures to protect patients.[346] It cannot be denied that the hospitals of today have assumed the role of a comprehensive health center with the responsibility of arranging and coordinating the total healthcare of its patients. In the last hundred years, the primary organizational structure for the delivery of health care has been the hospital. A hospital's legal duty to patients was based on the view that a hospital was analogous to an innkeeper in providing facilities for physicians to practice medicine.[347] The corporate negligence theory replaced that traditional view with the principle that a hospital owes the patient a separate and independent duty to protect her from harm.[348] In *PSI*, the Court explained further that hospitals now tend to organize a highly professional medical staff whose competence and performance need to be monitored by the hospitals commensurate with their inherent responsibility to provide quality medical care.[349]

Subsequently, the application of the Doctrine of Corporate Negligence consistently recognized and established the four general duties of hospitals:

(1) A duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;

(2) A duty to select and retain only competent physicians;

(3) A duty to oversee all persons who practice medicine within its walls as to patient care; and

(4) A duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.[350]

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345. Lee J. Dunn, Jr., *Hospital Corporate Liability: The Trend Continues*, J.L. MED. & ETHICS 8 (5): 16–17 (1980) & Mitchell J. Nathanson, *Hospital Corporate Negligence: Enforcing the Hospital's Role of Administrator*, 28 TORT & INS. L.J. 575, 575-95 (1993).

346. *Professional Services, Inc. 2007*, 513 SCRA at 504-05.

347. *See generally* McDonald v. Massachusetts Gen. Hosp., 120 Mass. 432, 436 (1876) (U.S.) (frequently cited case regarding origin of hospital immunity in United States) & Randal, *supra* note 56.

348. Randal, *supra* note 56.

349. *Professional Services, Inc. 2007*, 513 SCRA at 506 (citing Purcell v. Zimbelman, 18 Ariz. App. 75, 500 P2d 335 (1972) (U.S.)).

350. *Thompson*, 591 A.2d at 707. The Thompson Court was careful to qualify the rule by noting that, "for a hospital to be charged with negligence, it is necessary to show that the Hospital had actual or constructive knowledge of the defect or procedures which created the harm. Furthermore, the Hospital's negligence

The Doctrine of Corporate Negligence in effect expands hospital liability. In *PSI*, the liability of the hospital for the negligence of the surgeons was claimed to be because the hospital did not perform the necessary supervision nor exercise diligent efforts in the supervision of the said surgeons, resident doctors, medical interns, and nursing staff assisting in the operation.[351] The trial court held that PSI is directly liable for such breach of duty based on the Doctrine of Corporate Negligence or Corporate Responsibility.[352] It was held that a hospital, following the Doctrine of Corporate Responsibility, has the duty to see that it meets the standards of responsibilities for the care of patients.[353] A patient who enters a hospital does so with the reasonable expectation that it will attempt to cure him.[354] It would seem that if a hospital provides a comprehensive medical service to the public, it will have the duty to exercise reasonable care to protect from harm all patients admitted into its facility for medical treatment.[355]

In addition to the duties provided in *Thompson v. Nason Hosp.*,[356] the Court also held that a hospital has the duty to make a reasonable effort to monitor and oversee the treatment prescribed and administered by the physicians practicing in its premises.[357] Thus, "for a hospital to be charged with negligence, it is necessary to show that the Hospital had actual or constructive knowledge of the defect or procedures which created the harm."[358] Furthermore, the hospital's negligence was a substantial factor in causing injury.[359]

In *PSI*, the Court said that there is actual or constructive knowledge on the part of the hospital.[360] The surgeons operated with the assistance of the hospital's staff, composed of resident doctors, nurses, and interns.[361] As such, it is reasonable to conclude that PSI, as the operator of the hospital, had actual or constructive knowledge of the procedures carried out, particularly

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must have been a substantial factor in bringing about the harm to the injured party." *Id.* at 708.

351. *Professional Services, Inc. 2007*, 513 SCRA at 503.

352. *Id.* at 505.

353. *Id.*

354. *Id.* Bost v. Riley. 262 S.E. 2d 391, *cert. denied*, 300 NC 194, 269 S.E. 2d 621 (1980) (U.S.).

355. *Professional Services, Inc. 2007*, 513 SCRA 478.

356. Thompson v. Nason Hosp., 591 A.2d 703 (Pa. 1991) (U.S.).

357. *Id.* at 708-09.

358. *Id.* at 708.

359. *Id.*

360. *Professional Services, Inc. 2007*, 513 SCRA at 506.

361. *Id.*

the report of the attending nurses that the two pieces of gauze were missing.[362] In *Fridena v. Evans*,[363] it was held that a corporation is *bound* by the knowledge acquired by or notice given to its agents or officers within the scope of their authority and in reference to a matter to which their authority extends.[364] This means that the knowledge of any of the staff of Medical City Hospital constitutes knowledge of PSI.[365] Now, the failure of PSI, despite the attending nurses' report, to investigate and inform Natividad regarding the missing gauzes amounts to callous negligence.[366]

On reconsideration, the Court affirmed its earlier decision.[367] On the premise that the duty of providing quality medical service is no longer the "sole prerogative and responsibility of the physician,"[368] the Court said that hospitals have the inherent responsibility to provide quality medical care, which includes the proper supervision of the members of its medical staff, and the duty to make a reasonable effort to monitor and oversee the treatment prescribed and administered by the physicians practicing in its premises.[369] PSI had been remiss in its duty when it did not conduct an immediate investigation on the reported missing gauzes to the great prejudice and agony of its patient. [370] The Court said that there is merit in the trial court's finding that the failure of PSI to conduct an investigation "established PSI's part in the dark conspiracy of silence and concealment about the gauzes."[371] For these reasons, PSI was held directly liable for its own negligence under Article 2176.[372]

The liability under the aforecited provisions is direct and primary.[373] In Common Law jurisdictions, a finding of corporate negligence typically requires a demonstration that the hospital deviated from the standard of care, had actual or constructive notice of the defects or procedures that caused the harm, and the conduct was a substantial factor in bringing about the harm.[374]

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362. *Id.*

363. *Fridena*, 127 Ariz. 516, 622 P. 2d 463.

364. *Id.*

365. *Professional Services, Inc. 2007*, 513 SCRA at 506.

366. *Id.*

367. *Professional Services, Inc. 2008*, 544 SCRA at 184.

368. *Id.* at 182.

369. *Id.*

370. *Id.*

371. *Id.* at 184.

372. *Id.*

373. *See* CIVIL CODE, art. 2176.

374. Rauch v. Mike-Mayer, 783 A.2d 815, 827 (Pa. Super. 2001) (U.S.).

Under Philippine jurisdiction, if corporate negligence is to be considered a variance of quasi-delict, then the following elements must be established —

(1) Culpable act or negligence;

(2) Damage to another; and

(3) Causal relation between the culpable act or negligence and the damage to another.[375]

The culpable act or negligence to be attributed would correspond to the Common Law requirement that a hospital deviated from the standard of care.[376] In Common Law jurisdictions, the deviation from a standard would not be sufficient; the hospital must also be shown to have actual or constructive notice of the procedure that caused the injury.[377]

Under Article 2176, two things must be proven: that the hospital did not exercise reasonable care and caution required of prudent hospitals; and second, that this failure is the cause of injury to the patient.[378]

The test to determine negligence is to ascertain whether the hospital in doing the alleged negligent act used that reasonable care and caution which an ordinarily prudent person would have used in the same situation.[379] If the hospital did not, then it is guilty of negligence. Negligent conduct is "when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently probable to warrant his foregoing the conduct or guarding against its consequences."[380]

In establishing what is expected of ordinary persons, the law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that standard.[381] The conduct expected of the prudent man in a given situation is

> determined in light of human experience and in view of the facts involved in a particular case. Reasonable men govern their conduct by the circumstances before them or known to them. They can be expected to take care only when there is something before them to suggest or warn them of danger. Reasonable foresight of harm, followed by the ignoring of

375. *See generally Nogales*, 511 SCRA 204; *Professional Services, Inc. 2007*, 513 SCRA 478; *Professional Services, Inc. 2008*, 544 SCRA 170; *Professional Services, Inc.*, 611 SCRA 282; & *Yao Ka Sin Trading*, 209 SCRA 763.

376. *See Rauch*, 783 A.2d 815.

377. *Id.*

378. *See* CIVIL CODE, art. 2176.

379. *Picart*, 37 Phil. at 813.

380. *Id.*

381. *Id.*

> the suggestion born of this provision, is always necessary before negligence can be held to exist.[382]

How do you determine what is expected of a hospital in the given situation?

In *Ramos*, it would seem that the duties of a hospital pertain to the provision of hospital facilities and staff. In order to justify its ruling that the hospital was not to be liable for the negligent acts of the physician, the Court had occasion to explain: "[f]urther, no evidence was adduced to show that the injury suffered by petitioner Erlinda was due to a failure on the part of respondent DLSMC to provide for hospital facilities and staff necessary for her treatment."[383]

Five years after the ruling in *Ramos*, the Court in *PSI* declared that because hospitals are complex health-care providers, they have the duty to *protect from harm* all patients coming into their facilities for treatment.[384] In protecting a patient from harm, the hospital's duties are no longer limited to providing staff and facilities. The Court justifies that the duty of the hospital to protect patients from harm proceeds from the view that hospitals are no longer viewed as the mere physical facilities in which doctors do their work, but are rather viewed as comprehensive healthcare centers that "provide and monitor all aspects of health care."[385] Thus, a health care organization can be held liable not only for its own negligence causing harm to a patient, but also as a corporate entity when it fails to adequately protect a patient from harm by others. Under the ruling in *PSI*, the corporate duties of hospitals are embodied in the Doctrine of Corporate Negligence.

If a patient was not intubated properly, and as a result of which becomes comatose, the hospital may be made liable if it can be shown that failure to do one of its duties led to the faulty intubation, and subsequently the injury. On this aspect, it would be difficult to establish the causal relation between the negligent intubation by a specialist physician and any of the four duties enumerated under the Doctrine of Corporate Negligence, to wit:

(1) A duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;

(2) A duty to select and retain only competent physicians;

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382. *Id.* at 813.

383. *Ramos II*, 380 SCRA at 501.

384. *Professional Services, Inc. 2007*, 513 SCRA at 505.

385. *See* David H. Rutchik, *The Emerging Trend of Corporate Liability: Courts' Uneven Treatment of Hospital Standards Leaves Hospitals Uncertain and Exposed*, 47 VAND. L. REV. 535, 538 (1994).

(3) A duty to oversee all persons who practice medicine within its walls as to patient care; and

(4) A duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.[386]

Under the example, if the faulty intubation was because the anesthesia machine owned by the hospital malfunctioned, then there might be a causal relation between the patient's injury and the hospital's breach of duty. Likewise, if the anesthesiologist did not complete specialty training and yet was retained by the hospital, the liability for faulty intubation may be attributed to the hospital for its failure to select and retain only competent physicians. In other words, in order to meet the conditions laid down by Article 2176, it would not be sufficient to merely identify duties of a hospital, but the injury and proximate causation must likewise be established.

The second duty refers to negligent credentialing and the third duty refers to negligent supervision. Most courts that have recognized the cause of action referred to as corporate liability have grounded the claim upon the responsibility of the facility to assure that physicians practicing in the facility are properly credentialed and licensed.[387] Negligent credentialing has been considered as an extension of previous decisions that hospitals have a duty to exercise ordinary care and attention for the safety of their patients.[388]

Some courts view the tort of negligent credentialing as the natural extension of the tort of negligent hiring.[389] This means that an employer must exercise reasonable care in the selection of a competent independent contractor.[390] Courts that have allowed claims for negligent credentialing, however, have, either implicitly or explicitly, held that such claims are unrelated to the concept of derivative or vicarious liability.[391]

Even if the Doctrine has not been uniformly recognized in the U.S., the same corporate duties identified in *Thompson v. Nason Hospital*,[392] were

386. *Professional Services, Inc. 2007*, 513 SCRA at 504.

387. *See, e.g.*, Elam v. College Park Hosp., 183 Cal. Rptr. 156, 165 (Cal. Ct. App. 1982) (U.S.); Kitto v. Gilbert, 570 P.2d 544, 550 (Colo. Ct. App. 1977) (U.S.); & Insinga v. LaBella, 543 So.2d 209, 211 (Fla. 1989) (U.S.).

388. *See, e.g.*, Strubhart v. Perry Mem'l Hosp. Trust Auth., 903 P.2d 263, 276 (Okla. 1995) (U.S.); *Garland*, 156 S.W.3d at 545-46; & *Elam*, 183 Cal. Rptr. at 161.

389. *See, e.g.*, Rodrigues v. Miriam Hosp., 623 A.2d 456, 463 (R.I. 1993) (U.S.) & Domingo v. Doe, 985 F. Supp. 1241, 1245 (D. Haw. 1997) (U.S.).

390. *See, e.g.*, *Corleto*, 350 A.2d at 537; *Albain*, 553 N.E.2d at 1045.; & Restatement (Second) of Torts § 411.

391. *See, e.g.*, *Corleto*, 350 A.2d at 537; Browning v. Burt, 613 N.E.2d 993, 1003 (Ohio 1993) (U.S.); *Albain*, 553 N.E.2d at 1046; & *Pedroza*, 677 P.2d at 168-71.

392. *Thompson*, 591 A.2d 703.

imposed by the Philippine Supreme Court in the case of *PSI*. The Court held that Nason Hospital owed a duty to patients to ensure the patients' safety and well-being while at the hospital, and that other jurisdictions had held hospitals liable for patient care including Arizona, North Carolina, New York, New Jersey, Ohio, and Washington."[393] In *PSI*, the Court established corporate negligence by ruling that a surgeon was negligent and the hospital had constructive knowledge of the negligence but failed to act on it. There was discussion as to whether or not the negligence of the hospital in the performance of a duty was the proximate cause of the patient's injury.

The special circumstances in *PSI* allow a finding of negligence on the part of the hospital. The negligence was not premised entirely on the non-delegable duties of corporate negligence but was actually established. In other cases with different sets of facts, the Doctrine of Corporate Negligence cannot be applied as a blanket basis of liability. The ruling made in *PSI* should not be considered precedent to the effect that any or almost all injuries in a hospital may be actionable by simply claiming breach of "non-delegable duties." In all cases, negligence must be proven.

In adopting the Doctrine of Corporate Negligence from foreign jurisdictions, the Court justified by emphasizing the changes in hospital roles and functions and declaring that such change exacted a greater responsibility from hospitals. The fact that courts have recognized that hospitals have "deep pockets" is not justification for imposing liability. Likewise, the Doctrine was applied in order to hold hospitals liable even when the nature of their relationship with doctors cannot be ascertained.

Direct liability under Philippine jurisdiction requires proof of negligence and not the mere occurrence of injury. In the absence of recognized duties, there can be no negligence for doing or failing to do an act. The inexistent duty cannot be breached. If duties are to be imposed on hospitals, the said duties must be consistent with positive law, or based on acceptable and inherent standards of care, the latter based either on international standards or administrative regulations.

VI. THE DOCTRINE OF CORPORATE NEGLIGENCE

A. Analysis of Corporate Negligence

Should we adopt a cause of action against hospitals and other medical facilities referred to as "corporate liability"? In the case of *PSI*, this doctrine was formally made applicable to Philippine cases.

The Theory of Corporate Negligence has also sparked a great deal of commentary. One article urged the adoption of the corporate liability theory in Maine on the ground that hospitals should be accountable as health care

393. Blumenreich, *supra* note 140.

providers.[394] Proponents of the theory present a number of justifications in its support. Most prominent is the concept that modern hospitals provide all aspects of health care that there is increased public reliance and expectation that hospitals undertake to treat and cure them rather than be under an independent contractor.[395]

Other reasons used to justify adoption of the theory are:

(1) Increased public reliance on sophisticated, profit-generating hospitals;[396]

(2) Belief that a hospital is in the best position to monitor and control its staff physicians;[397] and

(3) Generated by the judicial desire to place liability on the party most able to pay.[398]

It would seem then that the Doctrine of Corporate Negligence has its genesis on an economic policy. Proceeding from this, the hospital is being run as a business and is the party with the deeper pocket and thus, it should be made liable. The comprehensive services provided by hospitals impose upon them a greater liability because it creates an expectation on the part of patients to rely on hospitals to treat and cure them rather than to be under the care and management of particular employees.

On the above arguments, critics argue that courts which have adopted this principle have ignored basic procedural and organizational realities of hospital and medical practice which make the imposition of corporate liability unsound.[399]

The Doctrine of Corporate Negligence reflects a deep pocket theory of liability, placing financial burdens upon hospitals for the actions of persons who are not even its own employees. At least one critic considers this

394. *See* C. Elisabeth Belmont, *Hospital Accountability in Health Care Delivery*, 35 ME. L. REV. 77 (1983).

395. Rutchik, *supra* note 385, at 538. *See also Professional Services, Inc. 2007*, 513 SCRA at 498-99 (citing Fuld J., in Bing v. Thunig, (1957) 2 N.Y.2d 656, 143 N.E.2d 3, 8 (U.S.)).

396. *See, e.g.*, *Strubhart*, 903 P.2d 263, 275; *Thompson*, 591 A.2d at 706-07; *Pedroza*, 677 P.2d at 169; *Darling*, 211 N.E.2d at 257.; & Rutchik, *supra* note 385, at 539.

397. *See, e.g.*, Gregory T. Perkes, Casenote, *Medical Malpractice — Ostensible Agency and Corporate Negligence*, 17 ST. MARY'S L.J. 551, 573 (1986) (explicating Brownsville Med. Ctr. v. Gracia, 704 S.W.2d 68 (Tex. App. 1985) (U.S.)) & Rutchik, *supra* note 385, at 539.

398. Rutchik, *supra* note 385, at 549.

399. JB Cohoon, *Piercing the doctrine of corporate hospital liability*, SPEC. LAW DIG. HEALTH CARE (Aug. 1981).

approach as a *misguided economic policy* making on the part of the courts.[400] Declaring the cause of action to represent a "deep pocket" approach, Justice Flaherty observed that in adopting this new theory of liability, the Court was making a monumental and ill-advised change in the law.[401] He further argued that at a time when hospital costs are spiraling upwards to a staggering degree, the application of the Doctrine will serve only to boost the health care costs that already too heavily burden the public.[402] In *Baptist Memorial Hospital v. Sampson*,[403] the Texas Supreme Court rejected the Court of Appeals decision that would have imposed a non-delegable duty on a hospital "solely because it opens its doors for business."[404]

The criticisms raised by Justice Flaherty deserve attention. Should a hospital be made liable simply because it could pay? Do courts have a right to impose duties not provided by law?

Under Philippine jurisdiction, there is no law that adopts capacity to pay as basis of an action for damages. The deep pockets theory by itself is not adequate justification to sustain a case of medical negligence against a hospital. The foundation of the law on torts and damages rests on the principle that the person who causes injury to another shall be the one obliged to pay damages. Liability attaches to the party responsible for the negligent act that caused injury.

The Doctrine of Corporate Negligence is not hinged on an economic policy alone. In essence, the Doctrine imposes duties on hospitals, the non-performance of which will be sufficient ground to hold a hospital liable. The four general areas of responsibility identified in *Thompson* and affirmed by the Philippine Supreme Court in *PSI* have been considered non-delegable duties. The recognition of duties of this nature has been criticized. If the court deems these as duties of hospitals, does it have the right to impose them without any statutory support? The imposition of non-delegable duties on a hospital is a matter of great importance.

One of the evident problems is that the Doctrine imposes a duty on hospitals when no such duty is provided by law. It must be noted that the formulation of the theory of liability based on corporate negligence has only been recognized by a few jurisdictions in the U.S..[405] In *Gajner v. Down East*

400. *See, e.g.*, *Thompson*, 591 A.2d at 709 (Flaherty, J., Dissenting) (emphasis supplied).

401. *Id.*

402. *Id.*

403. Baptist Memorial Hospital v. Sampson, 946 S.W.2d 945 (Tex. 1998) (U.S.).

404. *Id.* at 949.

405. *See, e.g.*, Denton Reg'l Med. Ctr. v. LaCroix, 947 S.W.2d 941, 950 (Tex. App. 1997) (U.S.); *Thompson*, 591 A.2d at 707; & *Darling*, 211 N.E.2d at 258.

Community Hosp.,[406] the Court refused to impose non-delegable duties without statutory basis. It said —

> [T]he Legislature has considered the relationship between hospitals and physicians and has placed very specific duties upon hospitals. Among those duties is the obligation to assure that '[p]rovider privileges extended or subsequently renewed to any physician are in accordance with those recommended by the medical staff as being consistent with that physician's training, experience and professional competence.'[407] To date, however, the Legislature has not chosen to place upon hospitals a specific duty to regulate the medical decisions of the physicians practicing within the facility.[408]

In Singapore, it has been acknowledged that hospitals do have non-delegable duties and are therefore liable for corporate negligence. These duties are, however, provided by law. Thus, a hospital may be made liable for negligent credentialing, because under the law in Singapore, hospitals must ensure that a doctor it grants privileges to is competent and that he will work within the scope of clinical privileges granted.[409]

The Court cannot impose duties without a study of the effects of such a change in the law. Creating a duty on the part of hospitals to control the actions of those physicians who have traditionally been considered independent contractors may shift the nature of the medical care provided by those physicians. Placing an external control upon the medical judgments and actions of physicians should not be undertaken without a thorough and thoughtful analysis. If extensive regulation of private hospitals is to be undertaken, additional duty should be addressed by Congress since the decision is a matter of public policy.

In 1988, the Court discussed the liabilities imposed under Article 2180 of the Civil Code, particularly with regard to the responsibility of certain teachers for damages caused by their students.[410] The Court recognized that the provision no longer reflects the changes in academic institutions of modern times.[411] The Court explained —

> These questions, though, may be asked: If the teacher of the academic school is to be held answerable for the torts committed by his students, why is it the head of the school only who is held liable where the injury is caused in a school of arts and trades? And in the case of the academic or

406. Gafner v. Down East Community Hosp., 735 A.2d 969 (Me., 1999) (U.S.).

407. ME. REV. ANNO. STA. § 2503 (2).

408. *Gafner*, 735 A.2d at 978. *See* 24 ME. REV. ANNO. STA. § 2503 (2).

409. Private Hospitals and Medical Clinics Act, §§ 24 (1-2) & 29 (1); *see also*, Yeo, *supra* note 146.

410. Amadora v. Court of Appeals, 160 SCRA 315 (1988).

411. *Id.* at 325.

> non-technical school, why not apply the rule also to the head thereof instead of imposing the liability only on the teacher?
>
> The reason for the disparity can be traced to the fact that historically the head of the school of arts and trades exercised a closer tutelage over his pupils than the head of the academic school.
>
> . . .
>
> It is conceded that the distinction no longer obtains at present in view of the expansion of the schools of arts and trades, the consequent increase in their enrollment, and the corresponding diminution of the direct and personal contract of their heads with the students. Article 2180, however, remains unchanged. In its present state, the provision must be interpreted by the Court according to its clear and original mandate until the legislature, taking into account the changes in the situation subject to be regulated, sees fit to enact the necessary amendment.[412]

Contrary to the ruling in the above-cited case, the Court in *PSI* likewise recognized that modern hospitals are different from their historical counterparts.[413] Instead of addressing the issue to the wisdom of Congress, the Court chose to recognize non-delegable duties of hospitals as adopted in some Common Law jurisdictions.

After all, the Common Law doctrines are not immediately applicable in the Philippines. Nevertheless, the Court is not prohibited from adopting Common Law doctrines. If doctrine from foreign shores is consistent with the principles adhered to in the Philippines, or if they are generally accepted principles of International Law, then the adoption of the doctrine would be proper.

One important question then is the determination of the inherent duties of hospitals. These duties are claimed to arise out of the fact that modern hospitals have become complex healthcare facilities that provide a comprehensive array of services. This is premised on the assumption that the patients look at hospitals as their healthcare provider more than the doctors practicing medicine within its walls. This view has been the testimony of plaintiffs in *Nogales*[414] and *PSI*.[415] As proof of patient reliance to establish the Doctrine of Apparent Authority, the testimony of plaintiffs may reasonably be accepted, in the absence of any contrary evidence. Nevertheless, as basis of corporate negligence, that view must be shown to be of general acceptance.

It is admitted that hospitals have inherent responsibilities. Nevertheless, hospitals cannot be expected to guaranty the health of patients by the mere

412. *Id.*

413. *Professional Services, Inc. 2007*, 513 SCRA at 495-96.

414. *Nogales*, 511 SCRA at 209.

415. *Professional Services, Inc. 2007*, 513 SCRA at 483.

fact that they provide a wide array of services. In declaring that hospitals have duties over the four areas identified by the *Thompson* decision, the Court created general duties but failed to make any qualifications. In effect, the Doctrine of Corporate Negligence, as applied, imposes liability on hospitals, in effect, for all acts of negligence of physicians. The Court in *PSI* said that hospitals should exercise "reasonable care to protect from harm all patients admitted into its facility for medical treatment."[416] Under this Doctrine, for example, the duty of the hospitals is to provide non-negligent physician care. Nevertheless, physicians, not hospitals, have a duty to practice medicine non-negligently, so a hospital cannot delegate a duty it never had. Thus, the question raised by some critics is whether or not these duties belong to the hospital in the first place.

If the Doctrine of Corporate Negligence becomes basis of hospital liability, the hospital will be made liable for acts of its physicians, whether they are independent contractors or not. The long-standing tradition and general rule in most jurisdictions, however, is that hospitals are not liable for acts of independent contractor physicians. This liability is not premised on international law nor is it consistent with the Philippine Civil Code.

Under the present law, hospitals may be made liable for acts of physicians only if the latter is the hospital's employee. The traditional test of control as decisive of the existence of an employer-employee relationship would show that physicians exercise a great amount of discretion in the manner and method by which they diagnose, treat and manage their patients. Hospitals cannot be expected to intervene in every doctor-patient relationship within its premises. The hospitals' functions are primarily administrative and direct liability can be imposed only if the negligent act consists of a failure in administrative functions. If the hospital is deemed to have the duty to intervene in the practice of medicine, that duty would be contrary to law since the practice of medicine is a profession subject to particular rules and regulations.

The Doctrine of Corporate Negligence imposes non-delegable duties to hospitals. Under the Doctrine of Corporate Negligence, hospitals have a duty to select and retain only competent physicians (negligent credentialing), as well as oversee all persons who practice medicine within its walls (negligent supervision).[417] A physician's negligence does not automatically mean that the hospital is liable. Rather, a plaintiff must demonstrate that but for the hospital's failure to exercise due care in granting staff privileges, the plaintiff would not have been injured. In proving that a hospital breached its duty in accepting a physician, the *plaintiff must show that staff privileges would*

416. *Id.* at 505.

417. *Thompson*, 591 A.2d at 708.

have been denied if the hospital had used reasonable care in evaluating the physician.[418]

The *Thompson* Court, in recognizing corporate negligence, was criticized for adopting a general duty on the part of hospitals to oversee all persons who practice medicine within its walls as to patient care, without providing guidance as to the extent to which hospitals must now monitor staff physicians, nor did it articulate the standard of care to which hospitals must adhere.[419] In adopting the Common Law decision in *Thompson*, the Court was likewise amiss in providing guidelines. When the Philippine Supreme Court declared that hospitals have the "duty to make a reasonable effort to monitor and oversee the treatment prescribed and administered by the physicians practicing in its premises" it made hospitals virtual guarantors of patient's health.

A primary justification for the Corporate Negligence Doctrine is the hospital's custody of the patient.[420] The hospital would then be in a position to supervise its staff or formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients. Under the Doctrine, the patient must establish organizational negligence as well as physician negligence and causal relation between physician's negligence and injury to patient. In order to establish the liability of the hospital, the patient faces the difficulty of proving two concurrent negligent acts. The focus, therefore, becomes the negligent conduct of the physician and not the utilization review process or financial risk shifting.[421]

The Decision of the Court in adopting the Doctrine of Corporate Negligence has the effect of making hospitals primary insurers for any negligence occurring in the hospital, whether by an agent or non-agent. Direct liability under Doctrine of Corporate Negligence makes hospitals guarantors of health and thus imposing strict liability on the part of hospitals when none is so provided by law. Liability is not presumed but must be proven.

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418. Ferguson v. Gonyaw, 236 N.W.2d 543, 550 (Mich. Ct. App. 1975) (U.S.) (emphasis supplied).

419. Judith M. Kinney, Casenote, *Tort Law — Expansion of Hospital Liability Under the Doctrine of "Corporate Negligence,"* 65 TEMP. L. REV. 787, 797 (1992); *see* Mark E. Milsop, *Comment, Corporate Negligence: Defining the Duty Owed by Hospitals to Patients*, 30 DUQ. L. REV. 639, 643 (1992).

420. Randal, *supra* note 56, at 1. *See* Reed E. Hall, *Hospital Committee Proceedings and Reports: Their Legal Status*, 1 AM. J.L. & MED. 245, 252 (1975) (describing the premise of corporate negligence as being that the hospital, by virtue of its custody of the patient, owes a duty to exercise care in the construction, maintenance, and operation of the hospital).

421. Randal, *supra* note 56, at 1.

The criticisms of the Doctrine of Corporate Negligence rest on sound principles. A mistake on the part of a physician which causes injury does not equate to a breach of hospital obligations. Otherwise, every injury that occurs within the hospital premises would appear to impose automatic liability on the hospital. The fact that a physician commits an act of negligence does not translate to a hospital's negligence in credentialing said physician. If the Court deemed it wise to adopt these Common Law principles, it should have done so with caution. The complexity of hospital operations and administrative functions cannot be subsumed under general pronouncements of hospital duties.

B. Inherent Duties of Hospitals

The Court adopted the four areas of general hospital responsibility laid down in *Thompson*.[422] While it is recognized that hospitals do have inherent duties, the Author suggests that the adoption of these duties would be proper only if based on quasi-delict under Article 2176. In order to do this, the duties of a hospital should be recognized. Pronouncement of general duties would not suffice because the liability of a hospital is not based on liability without fault or strict liability torts. This is particularly important considering that the duties are laid down by the Judiciary without reference to any statutory duty or other recognized obligations of hospitals in the Philippines.

The succeeding discussion will analyze each of the four areas of general responsibility, in conjunction with Philippine laws and administrative regulations, and the qualifications for these duties laid down under Common Law jurisdictions.

At the onset, direct liability of a hospital should either be based on law or premised on quasi-delict. Taking into consideration the explanation accepted in foreign jurisdictions,[423] in relation to Article 2176, the following are the elements —

(1) *Culpable act or negligence*: there must be a showing of organizational negligence or that the hospital deviated from a standard of care.

(2) *Injury to patient*: If the liability is being premised upon an act or omission of a physician, the following must be established —

(a) Physician negligence; and

422. *Thompson*, 591 A.2d at 707.

423. Rauch v. Mike-Mayer, 783 A.2d 815, 827 (Pa. Super. 2001) (U.S.). A finding of corporate negligence typically requires a demonstration —

(1) that the hospital deviated from the standard of care;

(2) had actual or constructive notice of the defects or procedures that caused the harm; and

(3) the conduct was a substantial factor in bringing about the harm.

(b) Causal relation between physician's negligence and injury to patient.

(3) Proximate causation —

(a) The hospital must have actual or constructive notice of the defects or procedures that caused the harm; and

(b) The conduct was the substantial factor in bringing about the harm.

Some of the criticisms against the Doctrine of Corporate Negligence rests on the ground that it imposes duties without qualifications. Before establishing hospital liability, based on the Doctrine, the principles laid therein will be discussed in context of law and standards of hospital administration.

1. A duty to use reasonable care in the maintenance of safe and adequate facilities and equipment

The duty of a hospital to use reasonable care in the maintenance of safe and adequate facilities and equipment begins with the need to obtain a license prior to operation. In order to obtain a license, the hospital must comply with the requirements of the DOH. Without a license, a hospital becomes liable for penalty for violation of clear provisions of law. Even before a hospital is built, the hospital owner must obtain a license to construct.[424] The DOH provides guidelines[425] for the design and planning of hospitals. The building safety, environment,[426] floor plan,[427] and design[428] are considered prior to approval. The hospital building must be safe, and its location must be accessible to the public.

Hospitals in the Philippines are classified as primary, secondary, or tertiary based on number of beds and service capability.[429] A tertiary hospital, for example, requires the maintenance of an Intensive Care Unit and own pathology laboratory. Whether a hospital is primary or secondary depends on the number of beds. In obtaining a license to operate,[430] the DOH will look at whether the hospital has the tools to perform the required services.[431]

424. DOH Administrative Order No. 147, §10.

425. Guidelines in Hospital Planning and Design, *supra* note 129.

426. *Id.*

427. *Id.*

428. *Id.*

429. Interview with Dr. Calaquian, *supra* note 282.

430. DOH Administrative Order No. 147, § 9.

431. *Id.*

The duty to provide facilities is embodied in Republic Act (R.A.) No. 6615, where it is provided that "[a]ll hospitals are required to render immediate emergency medical assistance and *to provide facilities and medicine within its capabilities* to patients in emergency cases who are in danger of dying or suffering serious physical injuries."[432]

While the above law qualifies the requirement for patients in emergency situations, the Philippine Hospitals Association likewise recognizes, without qualification, that hospitals should aim to provide the best possible facilities for the care of the sick and injured at all times.[433] The hospital must also constantly upgrade and improve methods for the care, cure, amelioration, and prevention of disease.[434]

There is perhaps no hindrance to recognizing that a hospital has the duty to use reasonable care in the maintenance of safe and adequate facilities and equipment in the care of the sick and injured. This duty does not extend to facilities and services that are non-essential or those that reduction or removal will not be detrimental to patient.[435]

Based on the foregoing, it is suggested that a hospital may be made liable for unsafe or inadequate facilities and equipment subject to the conditions that —

(1) The facilities and equipment are one that a hospital, in good standing under similar circumstances, would be expected to provide, or the hospital, with actual or constructive knowledge of defect failed to act to prevent damage;

(2) The hospital failed to provide safe and adequate facilities and equipment; and

(3) The failure is the substantial factor in bringing about the harm to the injured party.

The above duty is in consonance with Philippine laws and recognized standards of care, taking into account the jurisprudential guideline laid down in the U.S.[436]

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432. R.A. No. 6615, § 1 (emphasis supplied).

433. Philippine Hospitals Association, *supra* note 226.

434. *Id.*

435. Manila Doctors Hospital v. So Un Chua, 497 SCRA 230, 240 (2006). The hospital is not required to provide services that are not essential. *Id.*

436. *Thompson*, 591 A.2d at 708 & *Rauch*, 783 A.2d 815, 827. For a hospital to be charged with negligence, it is necessary to show that the Hospital had actual or constructive knowledge of the defect or procedures which created the harm. Furthermore, the Hospital's negligence must have been a substantial factor in bringing about the harm to the injured party. *Id.*

2. A duty to select and retain only competent physicians

The license to operate[437] may be obtained upon showing that the hospital will be staffed with qualified and trained health and health related professionals or non-professionals.[438] It does not include a guaranty against negligence. It merely requires that before a hospital is allowed to operate, there are physicians that would be available to treat and manage patients. That they are qualified only means that they possess the necessary education, the license to practice medicine, and the training to practice a particular profession. In the Philippines, to a limited extent, hospitals have a duty to select and retain competent physicians.

Most cases in the Philippines involve physician negligence. If applied without qualifications, the Doctrine of Corporate Negligence, on the ground of negligent credentialing, would make a hospital liable for all acts of negligence of a physician. After all, if a physician is negligent, this would imply that the doctor was not competent. It follows that the hospital failed to retain only competent physicians. If made to operate under this logic, *liability is created even where there may have been no fault or negligence*. The hospital would be made strictly liable for all negligent acts of physicians, in the same way that possessors of animals become liable for the damage which these may cause. Strict liability torts,[439] being an exception rather than the rule, cannot be made to operate by mere judicial declaration.

In Common Law jurisdictions, a physician's negligence does not automatically mean that the hospital is liable. The fact that a patient was negligently operated on does not by itself satisfy the stricter requirement.[440] Rather, a plaintiff must demonstrate that *but for* the hospital's failure to exercise due care in granting staff privileges, the plaintiff would not have been injured. In order to hold a hospital liable for failure to perform this duty, it would be necessary to establish that —

(1) The physician was unfit or incompetent; and

(2) The firm should have known of the physician's incompetence.[441]

In sum, a hospital would be liable for negligent credentialing if —

(1) The hospital was negligent in accrediting a physician—

437. DOH Administrative Order No. 147, § 9.

438. *Id.*

439. CIVIL CODE, arts. 2183, 2187, & 2193.

440. *Edmonds*, 629 S.W.2d 28, 29-30.

441. *Id.*

(a) It must be proven that staff privileges would have been denied if the hospital had used reasonable care in evaluating the physician;[442] or

(b) The firm should have known of the physician's incompetence.[443]

(2) The physician was unfit or incompetent; and

(3) There is a causal relation between the patient's injury and the physician's incompetence.

3. A duty to oversee all persons who practice medicine within its walls as to patient care

The Hospital Code of Ethics provides that a hospital should "*promote the practice of medicine by Physicians* within the institution consistent with the acceptable quality of patient care."[444] In relation to this, hospitals in the Philippines, especially the larger institutions,[445] have applied for a "Joint Commission International Accreditation" (JCIA). The JCIA offers the international community a standards-based, objective process for evaluating healthcare organizations.[446] An organization's commitment to quality health care is evaluated based on key elements like Access to Care and Continuity of Care, Care of Patients, Quality Management and Improvement, Prevention and Control of Infection, Staff Qualifications, and Education.[447] For example, Dr. Calaquian said that one of the requirements for accreditation is that physicians practicing in the hospital be diplomates or specialty board certified.[448] Accreditation made by international, non-governmental bodies may be useful in proving that a hospital has tried to comply with accepted standards of care.

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442. *Ferguson*, 236 N.W.2d 543, 550.

443. *Edmonds*, 629 S.W.2d 28, 29-30.

444. Philippine Hospitals Association, *supra* note 226 (emphasis supplied).

445. Interview with Dr. Calaquian, *supra* note 282.

446. Joint Commission Resources, *available at* http://www.jcrinc.com/ (last accessed Nov. 7, 2010); St. Luke's Medical Center, What is JCI?, *available at* http://www.stluke.com.ph/home.php/p/What_is_JCI (last accessed Nov. 7, 2010).

447. Joint Commission Resources, *available at* http://www.jcrinc.com/ (last accessed Nov. 7, 2010) & Gurdeep S. Dhatt and Ahlam Al Sheiban, Joint Commission International Accreditation: a Laboratory Perspective, Accreditation and Quality Assurance, Journal for Quality, Comparability and Reliability in Chemical Measurement, 13 (3) 161-64 (March 2008).

448. Interview with Dr. Calaquian, *supra* note 282.

Under this duty, it should likewise not be sufficient that a hospital be made liable for a single negligent act of a physician that it has accredited. In the U.S., a plaintiff must establish a pattern of misconduct by the physician and a hospital is accountable for such a physician's performance only if it was, or should have been, aware of a specific problem.[449]

The hospital may show that it adequately supervises its hospital staff if it shows that it monitors and reviews medical services provided within its facilities.[450] Hospital staff members must ensure the quality of patient care by reporting abnormalities in the treatment of patients if any staff member believes that a health professional is failing to act within the proper standard of care, she is obligated to advise hospital authorities accordingly.[451]

Thus, the liability of a hospital under this duty may be established by:

(1) Hospital promotes the practice of medicine by Physicians within the institution consistent with the acceptable quality of patient care:

   (a) Evidence that a hospital failed to monitor or review medical services provided by its physicians and other health personnel; and

   (b) Hospital knows or should have known that a physician or personnel has a pattern of misconduct.

(2) Hospital knows or should have known the existence of a specific problem; and

(3) A patient is injured because of the negligence of the physician or personnel, or because of the latter's failure to adopt means consistent with standards of profession.

4. A duty to formulate, adopt, and enforce adequate rules and policies to ensure quality care for the patients

The hospital has a general duty to maintain safe and adequate facilities, as well as to hire or accredit competent and qualified physicians, as may be implied from administrative regulations issued by the DOH for the licensing of hospitals. The hospital is an institution which represents itself as capable of providing quality care for patients. Hospitals rules and regulations can easily

449. Clark C. Havighurst, *Making Health Plans Accountable For the Quality of Care*, 31 GA. L. REV. 587, 604, n. 58 (1997).

450. *Thompson*, 591 A.2d 703, 708.

451. James G. Hodge, Jr., Legal and Regulatory Issues Concerning Volunteer Health Professionals in Emergencies, at Georgetown & Johns Hopkins Universities 2, *available at* http://www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Case%20Study%202.pdf (last accessed Nov. 7, 2010).

be gleaned from its articles of incorporation or by-laws.[452] Hospitals also circulate instructions and memos to the staff and accredited physicians.

The rules and policies become the means by which hospitals implement statutory duties. For example, under Republic Act No. 9439, it shall be unlawful for any hospital or medical clinic in the country to detain or to otherwise cause, directly or indirectly, the detention of patients who have fully or partially recovered or have been adequately attended to or who may have died, for reasons of non-payment in part or in full of hospital bills or medical expenses.[453] This statutory duty necessarily refers to hospital policy with regard to discharge of patients.

The hospitals adopt rules and policies. The problem is in determining whether these rules ensure quality patient care and under what conditions will breach of this duty constitute negligence on the part of the hospital. One of the means by which to determine whether a hospital has adopted rules consistent with the goal of providing quality care is by comparing these rules with those of other hospitals in good standing, similarly situated. At present, hospitals in the Philippines are applying for accreditation from International Organization for Standardization (ISO).[454] ISO accreditation would be given if hospitals have in place a system for each service it provides, from admission to discharge of patients, including out-patient services and administrative functions that comply with ISO standards.[455] The systems in place must provide a method for monitoring and evaluating the particular process involved, and problem solving in case difficulties are encountered.[456]

Without qualifications, the duty of promulgating rules and polices might assign the role of a guarantor of health to hospitals in the sense that rules and policies it adopts should *ensure* quality care. The happening of an injury, however, should not be equated with absence of quality of care. Again, liability of hospitals should be rooted from its own negligence.

A hospital may be made responsible for this duty if—

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452. *See, e.g.*, Asian Hospital by-laws.

453. R.A. No. 9439, § 1 (2007).

454. *See* Roberto M. Cabardo, Cebu City Medical Center prepares for ISO accreditation, PIA Press Release, Apr. 4, 2005, *available at* http://www.pia.gov.ph/?m=12&sec=reader&rp=1&fi=p050401.htm&no=3&date=4/1/2005 (last accessed Nov. 7, 2010).

455. International Organization for Standardization, *available at* http://www.iso.org/iso/about/how_iso_develops_standards.htm (last accessed Nov. 7, 2010).

456. Interview with Dr. Calaquian, *supra* note 282. Dr. Calaquian is the head of the management quality service of the Department of Otorhinolaryngology in PGH, with the primary responsibility of making the Department comply with ISO standards. *Id.*

(1) The hospital fails to formulate, adopt and enforce adequate rules and policies —

(a) The rules should be one that is ordinarily adopted by other hospitals in good standing and similarly situated; and

(b) The rules should be geared towards ensuring quality care for the patients.

(2) The patient is injured as a result of negligence on the part of the hospital staff or accredited physicians; and

(3) The failure is the substantial factor in bringing about the harm to the injured party.

C. Special Rules for Hospital Liability

The preceding sections have established that hospitals of today are no longer equivalent to their historical counterparts. In *Manila Doctors Hospital v. Chua*, the Court declared that the operation of private pay hospitals and medical clinics is impressed with public interest and imbued with a heavy social responsibility.[457] Nonetheless, the Court recognizes that the hospital is also a business and has a right to institute all measures of efficiency commensurate to the ends for which it is designed, especially to ensure its economic viability and survival.[458]

If new rules of liability will be adopted, due consideration of the dual role of hospitals should be made. The role of being a healthcare provider is impressed with social responsibility. The operation and maintenance of a hospital, however, is not without cost. Any policy making would require a balancing of interests. In a third world country like the Philippines, the issues run much deeper than a choice between profits and social responsibility. If the running of hospitals as a business is to be disregarded, it might threaten their very existence. With an unstable and weak healthcare delivery system, any change would have to consider the totality of circumstances.

The right to health is enshrined in the Constitution which declares that the State "shall protect and promote the right to health of the people and instill health consciousness among them."[459] To this end, any undertaking to provide health is vested with public interest. Healthcare providers should always exercise due diligence when dealing and providing services to patients. If a healthcare provider, whether a physician or hospital, becomes negligent, and through such negligence causes injury to a patient, then the healthcare provider should be liable for the damage done.

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457. *Manila Doctors*, 497 SCRA at 240.

458. *Id.*

459. PHIL. CONST. art. II, § 15.

The situation is, however, precarious. In holding physicians and hospitals liable, the aim would not simply be reparative or a means to provide compensation for the injured. At the same time, the goal is corrective justice and providing a deterrent to ensure that negligent acts would be decreased, if not eliminated. The end goal would be to improve the quality of care, in general, so as to benefit the Filipinos. It is to be noted that the medical community vehemently rejects any proposal to enact a law on malpractice. The contention is that creating a law would ordain a culture of malpractice litigation in the Philippines, which would only increase health care cost, and thus ultimately be more detrimental to patients. On the question of liability, there is no argument that those who are negligent should be liable. Nevertheless, in adopting any principle, whether by law or otherwise, that imposes liability on physicians or hospitals, the greater effect on health care should be considered.

In the U.S., there is a recognition that something must be done about the current malpractice "mess."[460] The health problems in the Philippines are much more serious. The system suffers because of the mass exodus of doctors leaving the country, mostly as nurses. Since 2001, an estimated 5,000 doctors have left the Philippines as nurses. In 2003-2004, more than 2,700 physicians took the Philippine Board of Nursing Licensure Examination. When surveyed, these health professionals have cited their poor working conditions locally in contrast to the attractive salaries and compensation package offered abroad, aside from the unstable socio-political situation in the country, as the primary reason for making the career shift. This exodus, termed medical-nursing diaspora is a phenomenon unique to the Philippines.[461]

We also do not have an established insurance system.[462] Unless there is an increase in health financing, health care costs will continue to be threatened by any medical malpractice legislation. Creating a duty on the part of hospitals to control the actions of those physicians who have traditionally been considered independent contractors may shift the nature of the medical care provided by those physicians. Recognition of hospital duties that impose broad and general pronouncements of responsibility is plagued by danger. While the Court can properly make a decision based on the factual circumstances of each case before it, without legal support on what are to be recognized as hospital duties, any such determination will be open to criticism. There is no question that hospitals have inherent duties. The problem, however, is whether the determination could properly be left to the Court.

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460. James S. Todd, *Reform of the Health Care System and Professional Liability*, 329 NEW ENG. J. MED. 1733, 1733-35 (1993).

461. Official Web Site of the Philippine Medical Association, *supra* note 71.

462. *Id.*

The problem has been recognized in Singapore.[463] Without a law making an absolute determination of hospital duties, it is suggested that hospitals would not be prevented from escaping liability by delegating that duty to another, and thus defeating the goal of increasing the responsibility of hospitals. As an example, while private hospitals have a duty to provide an Emergency Unit in Singapore, some hospitals have subcontracted out Emergency Room services to physician groups. Nevertheless, through the enactment of "The Private Hospital and Medical Clinics Act" the provision of an Emergency Unit becomes a statutory non-delegable duty and the hospitals will remain liable as an emergency service. Furthermore, the regulations set out under the Act charges the Audit Unit of the Ministry of Health with its supervision.

It is suggested that greater responsibilities should be demanded of hospitals. Unless the Court is prepared to provide guidelines, it should reconsider its decision to impose duties on hospitals that are not provided by law. The Doctrine of Corporate Negligence, for example, as applied in this jurisdiction ignores basic procedural and organizational realities of hospital and medical practice. The liability system as developed in Philippine jurisprudence creates unnecessary burdens which will affect the process by which medical decisions are made and will ultimately reflect on cost of healthcare, safety of patients and welfare of the public. In the context of the flailing Philippine Health Care system, hospitals and physicians should not be unduly burdened with liability even without fault.

As a matter of policy, the hospitals play a central role in the health care delivery system. The service they provide to the general population is vested with public interest. If hospitals are held liable for the negligent acts of physicians, and if particular duties of hospitals with regard to credentialing and supervision of physicians working within their walls, the final effect would be to improve the quality of health care. A blanket theory of liability is, however, not the solution. Being an issue of great importance, the determination of duties and liabilities should be based on sound principles of law and premised on actual negligence. The fundamental principle of quasi-delict as ordained in the Civil Code is premised on negligence. In those exceptional circumstances, where liability is to be imposed on a person for the acts of another, the liability should still be premised on an act or omission constituting negligence on the part of the person sought to be held liable. In particular, the unique healthcare delivery system and complex relationships between hospitals, doctors and patients require a different set of rules.

463. Yeo, *supra* note 146.

VII. MEDICAL NEGLIGENCE: PROPOSED LAW

A. Rationale

The Constitution declares that among the rights that must be recognized, respected and protected is the right to health.[464] Under the World Health Organization, health was affirmed as a fundamental human right and the goal of "Health for All" was proposed and formally put forth in the 1978 WHO-UNICEF Alma-Ata Declaration.[465] The main thrust of the Provisions on health in the Constitution is to address the inequity in the health delivery system. Thus, the fundamental law mandates that the State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost.[466]

Thirty years after the Alma-Ata Declaration, the health care system in the Philippines remains to be problematic. The PMA lists, among the problems, the mass exodus of doctors leaving the country, mostly as nurses, the declining interest among young Filipinos to enter medicine as a career and even the continuing threat of malpractice legislation.[467]

It can no longer be denied that the Filipinos have become more aware of their rights and have began to go to the courts to seek redress for their injuries. In the absence of medical malpractice legislation, the Courts have addressed the problem by looking at what laws may be made applicable, and more often by looking at how foreign jurisdictions have resolved the problem. It is suggested that the absence of laws specifically addressing the problem has blurred the lines between policies that may be consistent with the current Philippine legal system and those that fall into the realm of grey areas, the application of which could lead to unjust results.

There have been many bills in Congress addressing medical malpractice but none have been passed into law. These bills pertain to three major areas:

(1) Penalty for Medical Negligence;[468]

(2) Rights and Obligations of Patients;[469] and

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464. PHIL. CONST. art. II, § 15.

465. Declaration of Alma-Ata, International Conference on Primary Health Care, Alma-Ata, USSR, Sep. 6-12, 1978, *available at* http://www.who.int/hpr/NPH/docs/declaration_almaata.pdf (last accessed Nov. 7, 2010).

466. PHIL. CONST. art. XIII, § 11.

467. Official Web Site of the Philippine Medical Association, *supra* note 71.

468. *See, e.g.*, H.B. No. 226 (providing that persons who commit medical malpractice shall suffer imprisonment or fine from a minimum of ₱100,000.00 to ₱250,000.00) & H.B. No. 4955, § 7.

(3) Grievance Machinery for Cases of Medical Negligence.[470]

The earlier bills focused on penalizing physicians for medical negligence by providing for very harsh penalties. In bills declaring the rights and obligations of patients, the DOH, in consultation with other members of the medical sector, is delegated the authority to make the implementing rules. The critics point out that the rights are couched in general terms yet subjects a doctor to liability for mere violation.[471] The discretion of determining what is a violation is left to implementing officers and could be violative of due process.[472]

The other bills focus on providing a non-adversarial way of dealing with cases of medical negligence prior to the filing of cases in court, usually through administrative bodies. The bills provide for the creation of a grievance board authorized to grant relief upon finding of negligence.

These bills have been heavily criticized by the medical community, particularly the PMA.[473] The bills are rejected because they are believed to erode the fiduciary trust between physicians and patients. Likewise, it is believed that existing laws are adequate to impose liability on negligent physicians, whether administrative, civil or criminal. These bills are also criticized because it is believed that it would lead to the practice of defensive medicine and increase physician expenditure for premiums of medical malpractice insurance, and, thus, ultimately, increase health care spending for patients. The stand of medical practitioners is that the State should focus on improving the health care delivery system such as improving primary health care services, increase the budget for health or address the problem of "brain drain" of health professionals instead on laws on medical malpractice.

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469. *See, e.g.*, S.B. No. 588; S.B. No. 3; & H.B. No. 261.

470. *See, e.g.*, S.B. No. 2072; S.B. No. 3; & H.B. No. 261.

471. Senate of the Philippines, Report on the Public Hearing of the Committee on Health and Demography Joint with the Committees on Social Justice and Finance on Patient's Rights and Medical Malpractice (Sep. 28, 2004) [hereinafter Senate Report].

472. *Id.*

473. *See* Marita Reyes, A Consolidated Position Paper of the University of the Philippines Manila on the Proposed Medical Malpractice Bill (Submitted to the Senate and the House Committee on Health) (2004) & Philippine Medical Association Position Paper on An Act Declaring the right of Patients and Prescribing Penalties for Violations Thereof (SBN 588) Bill introduced by Sen. Manuel B. Villar and An Act Declaring the Right and Obligations of Patients and Establishing Grievance Mechanism for Violation thereof and for other Purposes and (SBN 3) Bill introduced by Sen. Juan M. Flavier (Sep. 28, 2004).

It is to be noted that these Bills focus primarily on physician negligence and fail to address the issue of hospital liability. The development of legal principles applicable to hospitals is largely derived from court decisions. Under jurisprudence, hospitals have been made liable under a variety of theories that are imposed without qualifications and assigned responsibility in the nature of strict liability torts.

In order to address the void in medical negligence legislation and to clearly establish conditions for liability, particularly on the issue of hospital negligence, a framework is herein proposed as a law.

B. Proposed Provisions

FOURTEENTH CONGRESS OF THE REPUBLIC)

OF THE PHILIPPINES)

_____ Regular Session)

_____

_____ No. 2072

Introduced by _____

EXPLANATORY NOTE

The last few years have been witness to an increase in cases involving medical negligence. The Professional Regulatory Commission (PRC) says over a hundred have been reported to them as early as 1993.[474] The Center for People's Health Watch, a Cebu-based non-governmental organization has documented 53 cases of medical malpractice from 1992 to 1996 in Visayas alone.[475]

Health has long been recognized as a fundamental right and the provision of health services is vested with public interest. In view of the duty of the State to uphold the dignity of every individual and to promote and respect the right to health of the Filipinos, the threat of medical negligence and its effect to the healthcare delivery system should be addressed.

Legislation addressing medical negligence should not only focus on providing a basis for liability in case of erring healthcare providers but the means by which a framework for liability is implemented should take into

474. S.B. No. 588, explan. n.

475. *Id.*

consideration the impact that it would have on the health care system. While health care providers should be made liable for medical negligence, they should not be burdened with laws and principles that impose liability without fault. The ultimate goal is not simply to allow patients to be compensated for their injuries but to ultimately improve the quality of health care in the country. The void in medical negligence litigation should be filled. Thus, the passage of this bill is urgently sought.

Why Enact a Law?

Government should focus on improving health care, focus and prioritize societal rights over individual rights of patients, strengthen the insurance system and improve primary health care.[476] Nevertheless, the increasing cases of medical negligence cannot be ignored.[477] The Constitution commits itself to upholding the dignity of every individual and not just the general welfare. It is fallacious to argue that because there are greater and bigger concerns, or problems that require fundamental changes, we would be justified in ignoring the grievances of the few. The few, in this case, would be the alleged victims of medical negligence who clamor for stronger laws and greater penalties. It is argued that the health care crisis should not be a choice between the rights of the few and the rights of the poor. Enacting a law that addresses the problem of medical negligence does not preclude the promulgation of other laws that allocate a greater budget to health nor one that strengthens barangay health centers.

The critics may argue that the rights of victims of medical negligence are not ignored because under the current Philippine legal system, they are provided with remedies under the law.[478] Nevertheless, without a medical negligence law, the judiciary is left with no choice but to interpret these existing laws, often utilizing decisions in common-law jurisdictions. It is argued that physicians are put at a great disadvantage because they may be assigned liabilities that are not consistent with existing legal principles or medical realities. Neither is there a law from which can be derived the obligation of hospitals for acts of erring physicians. On this point, hospitals are being made liable under theories that may be attributed to judicial activism to the effect that the conditions to hold them liable become more liberal than if it were borne out of statutory duties.

The cases of medical negligence are increasing, with or without malpractice legislation. Whether the promulgation of a medical negligence law will further increase cases of this nature or whether these laws will erode the relationship of trust between doctors and patients become less important when we consider that these cases do exist, and, that even without a law, the

476. Senate Report, *supra* note 471.

477. S.B. No. 588, explan. n.

478. Senate Report, *supra* note 471.

judiciary has found ways to award damages to alleged victims.[479] Now is the time to address the void in malpractice legislation because without existing laws, both healthcare providers and patients will not be protected.

FOURTEENTH CONGRESS OF THE REPUBLIC)

OF THE PHILIPPINES)

_____ Regular Session)

_____

___ No. _____

INTRODUCED BY _____

AN ACT ESTABLISHING THE CIVIL LIABILITY OF PHYSICIANS AND HOSPITALS FOR MEDICAL NEGLIGENCE

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title — This Act shall be known as "Liability Law for Medical Negligence."

SEC. 2. Declaration of Policy — It shall be the policy of the State to protect and promote the right to health of the people and instill health consciousness among them. It shall likewise be the policy of the State for Congress to give the highest priority to the enactment of measures that protect and enhance the right of all people to human dignity. Towards this end, the State shall ensure, provide and protect the rights of patients to decent, humane and quality health care, and a reasonable mechanism for resolving problems and complaints in connection with their treatment is established.

The declaration of policy has been adopted from several bills now pending in Congress.[480] As an embodiment of the main thrust and purpose of the law, the governing policy should be based on fundamental principles. Thus, this declaration is consistent with the following provisions of Article II of the Constitution —

> Section 11. The State values the dignity of every human person and guarantees full respect for human rights.
>
> ...

479. The Court has decided cases based on "*res ipsa loquitur*," "Captain of the Ship Doctrine," "*respondeat superior*," "Doctrine of Apparent Authority" or "Agency by Estoppel," and "Doctrine of Corporate Negligence."

480. S.B. No. 3, § 2 & S.B. No. 2072, § 2.

Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them. [481]

SEC. 3. Definition of Terms. — As used in this Act, the following terms are defined as follows:

(1) Health Care — measures taken by a health care provider or that are taken in a health care institution in order to determine a patient's state of health or to restore or maintain it.

(2) Patient — a person who avails of health and medical care services or is otherwise the subject of such services.

(3) Informed Consent — the voluntary agreement of a person to undergo or be subjected to a procedure based on his understanding of the relevant consequence of receiving a particular treatment, as clearly explained by the health care provider. Such permission may be written, conveyed verbally, or expressed indirectly through an overt act.

(4) Right to Self-Determination — refers to the autonomy of patients, which includes the right to refuse diagnostic and treatment procedures, and to express the grievances about the care and services received.

(5) Medical Negligence — refers to a deviation from a standard that has a causal relation to the injury incurred by patient in the course of diagnostic or treatment procedures while under the care of a health care provider.

(6) Physician — person licensed to practice medicine under existing laws.

(7) Standard of Care — refers to the conduct of a qualified and competent professional to be determined according to the standard of care observed by other members of the profession in good standing under similar circumstances bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science.

(8) Medical Necessity — a service or procedure which is appropriate and consistent with diagnosis and which, using accepted standards of medical practice, could not be omitted without adversely affecting the patient's condition.

(9) Health Care Professional — refers to any doctor, dentist, nurse, pharmacist or paramedical and other supporting personnel including medical and dental technicians and technologists, nursing aids and

481. PHIL. CONST. art. II, §§ 11 & 15.

therapists who are trained in health care and/or duly licensed to practice in the Philippines.

(10) Hospital — means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from illness, disease, injury or deformity or in need of obstetrical or other medical and nursing care. The term "hospital" shall also be construed as any institution, building or place where there are installed beds or cribs or bassinets for twenty-four-hour use or longer by patients in the treatment of diseases, diseased-condition, injuries, deformities or abnormal physical and mental states, maternity cases, and sanitorial or sanitarial care infirmities, nurseries, dispensaries, and such other means by which they may be designated.[482]

(11) Health Care Provider — any health care professional or health care institution.[483]

(12) Emergency — an unforeseen combination of circumstances which calls for immediate action to preserve the life of a person.

These terms have been adopted from existing laws, several bills[484] pending in Congress, as well as the World Health Organization's (WHO) "Declaration on the Promotion of Patients' Rights in Europe."[485]

SEC. 4. Rights and Duties of Patients. — Patients have the right to health and medical care of good quality. In the course of such care, the patient's human dignity, convictions and integrity shall be respected. The patient shall have a right to be informed of the details of his management and shall be subjected to treatment only if with his or her consent, unless necessary under the circumstances. The patient's individual needs and culture, right to self-determination and privacy, shall likewise be respected.

The patient shall likewise have the following obligations and responsibilities:[486]

(1) Patients shall cooperate in the management of their care by providing, to the best of their knowledge, accurate and complete information about all matters pertaining to his or her health and to

482. R.A. No. 4226, § 2 (a).

483. National Health Insurance Act, art. II, § 4 (o).

484. *See, e.g.*, S.B. No. 588.

485. World Health Organization, A Declaration on the Promotion of Patients' Rights in Europe (Amsterdam, Mar. 28-30, 1994), *available at* www.who.int/genomics/public/eu_declaration1994.pdf (last accessed Nov. 7, 2010).

486. S.B. No. 3, § 6 & H.B. No. 261, § 6.

report unexpected health changes.

(2) Patients shall accept all the consequences of their own informed consent. If he/she refuses treatment or does not follow the instructions or advice of the health care provider or practitioner, he/she must accept the consequences of his/her decision and thus relieve the health care provider or practitioner of any liability.

(3) Patients shall ensure that financial obligations of his/her health care are fulfilled as promptly as possible, otherwise, he/she shall make appropriate arrangements to settle unpaid bills in the hospital and/or professional fees of the health care provider through post-dated checks or promissory notes or any similar medium.

The rights of patients herein provided are based on the rights of patients developed by the WHO, which is essentially the same as the rights adopted by Senator Manuel V. Villar, Senator Juan M. Flavier and Congressman Rodriguez D. Dadivas.[487] The difference is that, in the bills filed in Congress, the rights of patients have become generalized sources of obligation, a violation of which subjects healthcare providers to liability, without consideration of whether the violation was a result of accident, fault, or negligence. While the Author is not opposed to a declaration of patient's rights, it is suggested that such rights, if to be enforced as binding obligations and duties, should contain adequate guidelines and protective mechanisms which will guarantee that results of implementation will not be unjust.

The determination of patient's rights and the conditions under which they may be sources of liability is beyond the scope of this Article. As herein included, the rights of patients are understood to be general principles which should serve as guidelines in the treatment of patients. They are understood to include all the civil rights that a person has under the Constitution and under generally accepted principles of international law.

The obligations of patients have been included in order to provide a contextualization of the liability system being proposed. These obligations have been derived from pending bills, with modification. The obligation to provide accurate information is intended to foster a partnership between the healthcare provider and the patients with regard to the management of the health of the latter. This is also meant to aid the goal of achieving quality health care. In actual practice, physicians rely on patient history, as well as responses to treatment, to guide their decisions in the management of the patient. With cooperation from the patient and provision of accurate information, quality care will be better assured.

The second obligation is a recognition of the Doctrine of Assumption of Risk. The right to self-determination has a corresponding obligation. If a

487. S.B. No. 2072, § 4; S.B. No. 3, § 4; & H.B. No. 261, § 4.

patient decides for or against a treatment and the results are not favorable to him or her, the healthcare provider shall not be made liable for such consequence.[488]

As explained by the Supreme Court, the plaintiff must know that risk is present and must understand its nature. With this knowledge, plaintiff then assumes the risk freely and voluntarily. The third obligation refers to the duty of the patient to comply with his financial obligations, under conditions that would not be oppressive to him or her, while at the same time ensuring the viability of healthcare providers.

> SEC. 5. Rights and Duties of Physicians. — A doctor must always maintain the highest standards of professional conduct and practice his profession uninfluenced by motives of profit. Physicians shall enjoy the rights and privileges granted to him by law but shall have the corresponding obligation to obey and respect the rules and regulations pertaining to the practice of Medicine. They shall also have duty to abide by the Code of Ethics as approved by the Philippine Medical Association.

The Section is not meant to add new duties or obligations. It has been contended by critics of malpractice legislation that adequate laws, rules, and regulations already govern the practice of Medicine. The Author agrees with this criticism. The Section merely reiterates these rights and duties as provided in the Medical Act of 1959, as amended, the Civil Code and the Revised Penal Code in so far as they may be applicable, the obligation to provide emergency medical assistance as included in special laws, and the Code of Medical Ethics as approved by the PMA.

> SEC. 6. Rights and Duties of Hospitals. — The privilege of operating as a hospital shall have the corresponding duty to comply with existing laws governing the licensing and operation of hospitals, other obligations provided in special laws, and the Code of Hospital Ethics as approved by the Philippine Hospitals Association.
>
> In addition, the following shall be deemed inherent duties of hospitals:
>
> (1) A duty to formulate, adopt, and enforce adequate rules and policies to ensure quality care for the patients;
>
> (2) A duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;
>
> (3) A duty to select and retain only competent physicians; and
>
> (4) A duty to oversee all persons who practice medicine within its walls as to patient care.

488. CIVIL CODE, art. 1174.

The Section is a recognition that many laws have been enacted imposing on hospitals specific duties. For example, no hospital can operate without a license. All hospitals are required to render immediate emergency medical assistance to patients in emergency cases.[489] The Illegal Detention Act prohibits a hospital from detaining patients who have fully or partially recovered, for reasons of non-payment of hospital bills or medical expenses.[490]

In addition to these statutory duties, the corporate responsibilities laid down by the Court in *PSI* are recognized as non-delegable duties. The Author argues that these duties, by themselves, are insufficient to establish liability on the part of hospitals. Rather they are considered guiding principles and the criteria by which to assess whether a hospital is observing the standard of care required of it from the nature of its obligations.

> SEC. 7. Liability of Patients. — The patients shall not be subject to liability for non-performance of duties as provided in Section 4 of this Act. Such fact, however, shall be considered in determining the liability of physicians and hospitals and the extent thereof. The healthcare provider shall not be exempted from liability by reason that the patient is negligent unless such negligence if the proximate cause of injury.

This Section is not meant to impose civil liability on patients. In seeking treatment, the patients are merely understood to have reciprocal obligations. Depending on circumstances, the failure of the patient to comply with his or her corresponding duties, could be used as basis to mitigate or even exempt from liability a physician or a hospital.

> SEC. 8. Liability of Physicians. — A physician, who by act or omission causes damage to a patient, there being fault or negligence, is obliged to pay for the damage done.
>
> The physician shall be liable for acts or omissions of another, for whom he is responsible, provided that:
>
> (1) The physician had the authority to control the acts of such other person, or had the reasonable opportunity to do so; and
>
> (2) The act or omission causing the injury constitutes negligence.
>
> The responsibility for the negligence of another shall cease when physicians prove that they observed ordinary diligence to prevent the damage, or otherwise selected and supervised those persons for whom they

489. R.A. No. 6615, § 1.

490. R.A. No. 9439, § 1. The penalty is imposed on the officer or employee of the hospital or medical clinic responsible for releasing patients, who violates the provisions of the Act. *Id.*

are responsible with due care.

This Section shall apply to other health care professionals, subject to the standards of care of their profession.

This Section establishes the liability of physicians. The Author suggests that physician liability should be based on quasi-delict. The corresponding elements of quasi-delict in cases of medical negligence are duty, breach of duty, injury and proximate causation.

In cases where a physician is being made liable for the acts of a nurse or another physician, the physician will be liable only if he exercised control over the acts or omissions of the said negligent person. This is consistent with the principle of vicarious liability as ordained in the Civil Code, in contrast to the Doctrine of *Respondeat Superior* under Common Law.

Further, this is a recognition of changes in medicine and healthcare delivery, particularly the trend towards specializations of physicians, and the complex operating rooms and hospitals providing extensive services. A physician cannot be made accountable for acts of another for which he did not or could not have controlled.

SEC. 9. Liability of Hospitals. — A hospital may be directly or vicariously liable.

(1) Direct Liability. The hospital shall be liable for violations of statutory duties in special laws, to the extent of their penalties therein, and in so far as they may be applicable. The hospital shall also be liable for failure to perform duties provided in section 6, provided that:

   (a) There is non-performance of duty on the part of the hospital to be determined in accordance to what other hospitals, in good standing and similarly situated, would have done, under the same or similar circumstances.

   (b) The patient is injured as a result of an act or omission constituting negligence on the part of the hospital staff or the physician practicing medicine within the hospital.

   (c) The failure to perform the said duties is a substantial factor in bringing about the harm to the injured party, or one that would have prevented the injury had the said duty been regularly and diligently performed.

(2) Vicarious Liability. The hospital is liable not only for its own acts or omissions, but also for the following:

   (a) Acts or omissions of persons for whom the hospital is responsible under an employee-employer relationship, including but not limited to the hospital staff, physicians, and other personnel.

(b) Acts or omissions of persons not included in the preceding paragraph, for which the hospital possesses the authority to control, or had the reasonable opportunity to do so, or that of a person for whom the hospital could substitute its own judgment, in its discretion and control.

(c) Acts or omissions of any other person whom the hospitals represents and manifests to be its employees or agents.

The responsibility treated of in this Section shall cease when the hospital proves that it observed all the diligence of a good father of a family:

(1) In the selection, supervision, or credentialing of the above mentioned persons; and

(2) In the prevention of damage.

This Section provides the conditions under which hospitals may be made liable. The Author suggests that hospital liability should be premised on Article 2176 of the Civil Code. The Doctrine of Corporate Negligence may be adopted but it should be qualified by the principles of liability embodied in the Civil Code, particularly in so far as the liability under Philippine Jurisprudence is generally based on the existence of fault. The hospitals may be made liable for acts of negligent physicians, whether they are employees or not, provided that it can be shown that the hospital either represented that they are its employees or that the hospital actually exercises control over their acts or omissions. The liability for acts of another should still be premised on the hospital's own negligence and thus, the hospital may use as its defense due diligence in the selection, and supervision of employees.

The Doctrine of Corporate Negligence has been discussed in the context of quasi-delict under the Civil Code in the preceding sections. These duties were qualified in order to be consistent with the established principles of negligence in this jurisdiction.

SEC. 10. Award of Damages. — The award of damages shall be limited to actual compensatory damage. Other damages may be awarded only upon showing of fraud, evident bad faith, and other like circumstances.

The law is intended to establish civil liability of health care providers. In the award of damages, the bills introduced in Congress usually provide for an award based only on actual damages for injuries sustained. It excludes an award of damages for "pain and suffering." While the law does not prohibit an award of nominal or moral damages, the intent is to limit the award of these types of damages. Without a limit on the possible damages to be awarded, the health care providers are subject to greater liability. This would

increase spending for malpractice insurance, which they will eventually pass on to patients, thus increasing the cost of health care.

> SEC. 11. Rules and Regulations. — The Secretary of Health, in consultation with the Philippine Medical Association, the Philippine Hospital Association, and concerned private agencies, non-governmental organizations and people's organizations shall promulgate within one hundred eighty (180) days from the effectivity of this Act such rules and regulations as may be necessary for its implementation.[491]
>
> SEC. 12. Separability Clause. — If any part, section or provision of this act is held invalid or unconstitutional, other provisions not affected thereby shall remain in force and effect.[492]
>
> SEC. 13. Repealing Clause. — All acts, executive orders, rules and regulations, or parts thereof that are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.[493]
>
> SEC. 14. Effectivity. — This Act shall take effect after fifteen (15) days following its publication in at least two (2) major newspapers of national circulation.[494]
>
> Approved.

These last provisions have been lifted from pending bills in Congress. The implementing rules and regulations of this law would be properly formulated by the DOH in consultation with the medical sector. As an administrative agency with specialized knowledge and understanding of the health care delivery system in the Philippines, the DOH can explain and implement the provisions of this law in order to ensure that the ultimate goal of improving the quality of care achieved.

VIII. CONCLUSION

In *PSI* the Court held that hospitals are liable for acts of its physicians. One of the bases of liability is the fact that physicians are, *in effect*, employees of hospitals. The employer-employee relationship exists because the hospitals significantly exercise control over their physicians. In this Case, the Court did not explain how the acts of the negligent physicians were controlled, whether such control was exercised over the end to be achieved and the

491. S.B. No. 588.

492. H.B. No. 226.

493. S.B. No. 588.

494. *Id.*

manner of accomplishing it. This ruling should be abandoned. The relationship between physicians and doctors cannot be presumed. In *Coca-Cola Bottlers (Phils.), Inc.*, there was no employer-employee relationship between company and physician because the company lacked the power of control to tell the physician how to conduct his physical examination, how to immunize, or how to diagnose and treat his patients. Even when practicing in a hospital, a physician retains discretion as to the manner he diagnoses and treats his patients. In order to avoid inconsistency in doctrine, the "control test" should be applied in the way that it has been recognized in this jurisdiction, even when the parties involved are hospital and physician.

Another basis of hospital liability in *PSI* is the doctrine of agency by estoppel. The doctrine of apparent authority has been applied in Philippine jurisdictions in cases where an agent exceeds the authority given him by the principal. Likewise, the doctrine binds the principal for contracts entered into by the ostensible agent. The doctor is not an agent of the hospital. Likewise, the contract between hospital and doctor is independent of the contract between physicians and patients. To this effect, the Court has ruled that the contract between patient and physician has for its object the rendition of medical services while that between the patient and hospital concerns the provision by the hospital of facilities and services by its staff such as nurses and laboratory personnel necessary for the proper treatment of the patient. Under this doctrine, the hospital makes the representation that it will render medical services to the patient, not simply provide facilities and health staff. While the hospital cannot practice medicine and has no power to delegate such practice to an agent, if it can be sufficiently shown that the hospital made such representation, it cannot deny liability for negligent acts of the ostensible agent. The only defense would be if the hospitals specifically and expressly declare that the doctors are independent contractors. How do we determine whether the hospital represents that the physicians are its agents or whether they merely represent them as its employees? If the representation is based on holding the doctors as its employees, then the defense of due diligence in selection and supervision should apply.

The only problem is the determination of the implied misrepresentation of the hospital. Being premised on estoppel, the application is founded on equity. The Court has declared that estoppel cannot be sustained by mere argument or doubtful inference but must be clearly proved in all its essential elements by clear, convincing, and satisfactory evidence. Furthermore, no party should be precluded from making out his case according to its truth unless by force of some positive principle of law. Consequently, estoppel must be applied strictly and should not be enforced unless substantiated in every particular.[495] In Civil Law jurisdictions like the State of Louisiana, the

495. *Id.*

liability of a hospital is based on actual agency, and the Doctrine of Apparent Authority is not recognized.

The liability of hospitals under this doctrine, being premised on equity, fails to sufficiently establish a duty. As basis of hospital liability, it is burdened with vagueness. In the U.S., hospitals have tried to escape liability by the mere posting of signs to the effect that physicians are acting on their own discretion.

Finally, the Court in *PSI*, adopted the Doctrine of Corporate Negligence. The said Doctrine potentially imposes responsibility in the nature of strict liability torts. It would appear that the Court imposes non-delegable duties when no such duty is provided by law. The four areas of responsibility recognized by the Court are:

(1) A duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;

(2) A duty to select and retain only competent physicians;

(3) A duty to oversee all persons who practice medicine within its walls as to patient care; and

(4) A duty to formulate, adopt, and enforce adequate rules and policies to ensure quality care for the patients.[496]

In order to hold a hospital liable under said Doctrine, it is important that the hospital by its conduct actually committed an act or omission constituting negligence. As general propositions of duty, the Doctrine of Corporate Negligence, applied in only few jurisdictions in the U.S., would lead to unjust results. In the Philippines, the general rule is that there can be no liability without fault.

In order to apply the Doctrine of Corporate Negligence, the liability should be founded on negligence. The following conditions are proposed to hold a hospital directly liable for violation of an inherent duty. Direct liability of a hospital should either be based on law or premised on quasi-delict. Taking into consideration the development of the doctrine in foreign jurisdictions, in relation to Article 2176 of the New Civil Code, the following are the elements:

(1) Culpable act or negligence: There must be a showing of organizational negligence or that the hospital deviated from a standard of care.

(2) Injury to patient: If the liability is being premised upon an act or omission of physician, the following must be established:

    (a) Physician negligence; and

496. *Thompson*, 591 A.2d 703, 707.

(b) Causal relation between physician's negligence and injury to patient.

(3) Proximate causation:

(a) The hospital must have actual or constructive notice of the defects or procedures that caused the harm; and

(b) The conduct was the substantial factor in bringing about the harm.

It is suggested that a hospital may be liable for violation of the *duty to use reasonable care in the maintenance of safe and adequate facilities and equipment* under the following conditions:

(1) The facilities and equipment are one that a hospital, similarly situated, would be expected to provide, or the hospital, with actual or constructive knowledge of the defect failed to act to prevent damage;

(2) The hospital failed to provide safe and adequate facilities and equipment; and

(3) The failure is the substantial factor in bringing about the harm to the injured party.

The *duty to select and retain only competent physicians* refers to negligent credentialing. In sum, a hospital would be liable for negligent credentialing if:

(1) The hospital was negligent in accrediting a physician:

(a) It must be proven that staff privileges would have been denied if the hospital had used reasonable care in evaluating the physician;[497] or

(b) The firm should have known of the physician's incompetence.[498]

(2) The physician was unfit or incompetent; and

(3) There is a causal relation between the patient's injury and the physician's incompetence.

The liability of a hospital under the duty to oversee all persons who practice medicine within its walls as to patient care may be established under these conditions:

(1) *Hospital promotes the practice of medicine by physicians* within the institution consistent with the acceptable quality of patient care;

497. *Ferguson*, 236 N.W.2d 543, 550.
498. *Edmonds*, 629 S.W.2d 28, 29-30.

(2) Evidence that a hospital failed to monitor or review medical services provided by its physicians and other health personnel:

(a) Hospital knows or should have known that a physician or personnel has a pattern of misconduct; or

(b) Hospital knows or should have known the existence of a specific problem.

(3) A patient is injured because of the negligence of the physician or personnel or because of the latter's failure to adopt means consistent with the standards of profession.

The duty of a hospital to formulate, adopt, and enforce adequate rules and policies to ensure quality care for the patients is violated if:

(1) The hospital fails to formulate, adopt, and enforce adequate rules and policies:

(a) The rules should be ordinarily adopted by other hospitals similarly situated; and

(b) The rules should be geared towards ensuring quality care for patients.

(2) The patient is injured as a result of negligence on the part of hospital staff or accredited physicians; and

(3) The failure is the substantial factor in bringing about the harm to the injured party.

Hospitals are being run like businesses. It has been argued that they profit as a result of the services provided by physicians, and in case of their negligence, it has been argued that they should bear the loss. Furthermore, the Court has also held that the high costs of today's medical and health care exacts on the hospitals a greater, if not broader, legal responsibility for the conduct of treatment and surgery within its facility by its accredited physician or surgeon, regardless of whether he is independent or employed.[499] On this argument, hospitals beg to differ, claiming that making hospitals civilly liable for the negligence of consultants would be disastrous to the already overstrained financial situations of hospitals in the country.[500] Hospitals are already burdened with doctors and nurses leaving for abroad that the deluge of lawsuits that may come about because of broader liability would force many hospitals to close down.[501] Hospitals also claim that this will cause an upheaval in the entire hospital industry and medical profession that will ultimately result in higher costs of health care — to the detriment of

499. *Professional Services, Inc. 2007*, 513 SCRA 478.

500. Salaverria, *supra* note 15.

501. *Id.*

all concerned, including those requiring medical treatment in the Philippines.[502]

There is no question that the health care system in the Philippines is not perfect. The medical sector will refuse any attempt to broaden its liability. Nevertheless, hospitals should exercise their duties in accordance with acceptable standards of care. They do not simply provide facilities; they provide services vested with public interest and the responsibility demanded of them should be greater. While the deep pockets theory, by itself, would not justify a cause of action against hospitals, the proposal in this Article suggests that hospitals can be made liable as long as the liability is premised on their own negligence. The requirement that they fulfill certain inherent duties with ordinary diligence is in accord with the nature of their function and consistent with legal principles in this jurisdiction. They will not be liable without fault. It is hoped that the requirement that they observe due diligence in the running of the hospital will ultimately improve health care and be, in the long run, beneficial for all.

IX. RECOMMENDATIONS

The points discussed in this Article were primarily concerned with the theories and conditions of hospital liability, in particular, the liability for the negligence of physicians practicing medicine within a hospital. The discussion was made in relation to *PSI*. In the course of the study, the Author notes the absence of a comprehensive law to cover medical negligence in the Philippines. The medical sector vigorously lobbies against a Malpractice Law. Nevertheless, it is suggested that with the continuing trend medical negligence cases, the lack of a law would be more detrimental. Many bills propose a *Magna Carta* of patient's rights. This deserves attention because the focus on the rights of patients may become more acceptable in lieu of a malpractice law.

Likewise, a proposal establishing a grievance machinery for resolving cases of medical negligence is also recommended. This aims to provide an alternative to civil litigation, which could be costly and time-consuming. The current trend, even in more developed nations, is mediation. Many countries provide for mediation or arbitration procedures, through claims panels or the like, to encourage the parties to settle their conflict out of court.[503] In Bolivia, for example, to address the problem of medical negligence, two instruments will be implemented: a Medical Audit System

502. *Id.*

503. Magnus & Micklitz, *supra* note 32, at 32-33. The Study is limited to France, Germany, Italy, Spain, Sweden, UK, and the U.S.

and a Medical Institute for Conciliation and Arbitration (IMCA).[504] The State intends to grant the Institute powers of "conflict resolution," which the Ombudsman interprets as a chance to settle extra-judicially and prevent the case from going to trial or being reported to the police.[505]

Future legislation involving cases of medical negligence should include a mechanism for non-adversarial settlement of controversies, which will be more acceptable to physicians who fear that malpractice legislation will increase litigation, and drive up the cost of healthcare. Suffice to say, the absence of a law will not stop cases of medical negligence, which appear to be on the rise. A Healthcare Liability Law may increase the cases brought against physicians and hospitals, but the conditions for liability, under a good law, would at least be clearly established, to the end that both patients and the medical community may be protected.

504. Bernarda Claure, Health-Bolivia: Tackling Medical Negligence, Inter Press Service News Agency, *available at* http://ipsnews.net/news.asp?idnews=36473 (last accessed Nov. 7, 2010).

505. *Id.*