Commission's deliberations, "The representative quality of a government is determined by the voting base ... And therefore, as many as possible should be allowed to choose their representatives ..."[76]

VI. CONCLUSION

Over the years, the alarm over the exodus of many Filipinos to work abroad has been heightened. Nurses, teachers, other professionals, and non-professionals leave with the intention of giving their families the comforts in life which they can only dream of in the Philippines given the limited opportunities available. Most of them aspire to give back to those they left behind, including the country they have always known as home. Even if the future looks brighter on the other parts of the globe, there are Filipinos who dream of being able to bring hope to their motherland. In doing so, giving them the right to participate in nation building and good governance only seems to be a fair trade.

Commission on Elections may promulgate to protect the secrecy of the ballot.").

76. II RECORD OF THE 1986 CONSTITUTIONAL COMMISSION 16.

Physician and Hospital Liability in Cases of Medical Negligence: A Comment on *Professional Services, Inc. v. Agana*

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I. INTRODUCTION

The first physician recorded in history is Imhotep, who was worshipped as a god in Ancient Egypt.[1] Doctors throughout history have held the lives of patients in their hands and they have traditionally been held by society in high esteem. The practice of medicine has, however, evolved through the centuries. From tribal doctors to family physicians who make house calls, doctors have gained more knowledge and have become more specialized. Medical science has attained great heights. Hospitals have become business establishments and less like their historical counterparts.

What remains constant 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 will never do harm to anyone.[2] The last decade is, however, witness to the increase in

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1. Peggy Saari, *Medicine And Disease*, HISTORY FACT FINDER (2006), http://history.enotes.com/history-fact-finder/medicine-disease/who-was-first-doctor-history (last accessed July 20, 2007).
2. 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

the number of cases involving medical malpractice, or more appropriately, medical negligence. The increase in these cases has been attributed to the gradual disappearance of the family physician, disservices made by mass communication media, commercialization of medical practice, and increasing complexity of medical procedures.[3] Despite the increase, however, very few cases involving medical negligence have reached the Supreme Court.[4]

Over the past few years, at least eight bills 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 a law.[5] The passing of

undergone changes through the years. One of the most important guideline embodied in the oath is that the physician must do no harm.

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

4. *See, e.g.*, Cantre v. Spouses Go, G.R. No. 160889, April 27, 2007; Ang v. Grageda, 490 SCRA 424 (2006); Ramos v. Court of Appeals, 321 SCRA 585 (1999); Garcia-Rueda v. Pascasio, 278 SCRA 769 (1997); Cruz v. Court of Appeals, 282 SCRA 188 (1997).

5. *See, e.g.*, An Act Punishing the Malpractice of any Medical Practitioner in the Philippines and for Other Purposes, House Bill No. 4955, 12th Cong. (2002); Ben R. Rosario, *Stiff penalty vs. medical malpractices sought*, THE MANILA BULLETIN ONLINE, Jan. 10, 2005, http://www.mb.com.ph/issues/2005/01/10/MTNN20050110260 60.html (last accessed July 20, 2007). Biazon and Dadivas are authors of House Bill Nos. 226 and 261, respectively, which push for stiff penalties against medical malpractice and establish the rights and obligations of patients.

See also, Rene Q. Bas, *Special Report: Medical Malpractice (No penalties for doctors and hospitals)*, SUNDAY TIMES EDITOR, July 9, 2006, *available at* http://www.manilatimes.net/national/2006/july/09/yehey/top_stories/20060709top1.html (last accessed July 20, 2007). The article states:

> Gathering dust in the Senate is Sen. Juan Flavier's S.B. 3. He authored and filed that bill earlier than Rep. Rodriguez Dadivas' HB 261. The last time the Senate Committee on Health and Demography, chaired by Sen. Pia Cayetano, had a hearing to discuss the various bills about patient's rights and medical malpractice was on September 28, 2004. Without a Senate counterpart bill, the House's Dadivas Bill would not become a Republic act.

See also, Senate of the Philippines, Patient's Rights and Medical Malpractice: 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 on September 28, 2004, 10:30 A.M., Sen. Tañada Room, Senate of the Philippines, *at* http://www.senate.gov.ph/13th_congress/spot_reports/Health%20Sept%2028.pdf (last accessed July 20, 2007). Some of the bills proposed in the Senate:

these laws has been vigorously opposed in the Philippines by the medical sector.[6] There have been civil groups, however, whose main advocacy is to pressure Congress to legislate medical malpractice laws.[7]

Even without such a law, there are statutes that are applicable to cases of medical negligence. Negligence and imprudence are covered by article 365 of the Revised Penal Code.[8] The rights and obligations of physicians and the

1. Senate Bill No. 3, An Act Declaring the Rights and Obligations of Patients and Establishing a Grievance Mechanism for Violations Thereof and for Other Purposes. authored by Senator Flavier;
2. Senate Bill No. 337, An Act Prohibiting the Detention of Patients in Hospitals and Medical Clinics on Grounds of Non-Payment of Hospital Bills or Medical Expenses, authored by Senator Osmena;
3. Senate Bill No. 607, An Act Prohibiting the Detention of Live or Dead Patients in Hospitals and Medical Clinics on Grounds of Non-payment of Hospital Bills or Medical Expenses, authored by Senator Villar, Jr.;
4. Senate Bill No. 121, An Act to Reduce Medical Mistakes and Medication-Related Errors, authored by Senator Ejercito Estrada;
5. Senate Bill No. 588, An Act Declaring the Rights of Patients and Prescribing Penalties for Violations Thereof, authored by Senator Villar, Jr.; and
6. Senator Bill No. 1720, 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, authored by Senator Osmeña III.

6. 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 July 20, 2007). The Committee views with alarm Senate Bill No. 2203 and those bills introduced by Senators Villar and Osmeña. The objection is based on the fact that the bills practically require physicians to guarantee the accuracy of diagnosis and treatment. The view is that medicine is both a science and an art.

7. 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. *See*, Rene Q. Bas, *No penalties for doctors and hospitals*, THE SUNDAY TIMES, July 9, 2006, http://www.manilatimes.net/national/2006/july/09/yehey/top_stories/20060709top1.html (last accessed July 20, 2007).

8. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, arts. 174, 259, 365 (1930).

> Art. 365. *Imprudence and negligence.* — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period; if it

law that governs the relationship between doctors and patients is the Medical Act of 1959.[9] Physicians are held liable under general Civil Code provisions[10] and may also be held administratively liable.[11] The case of *Professional Services, Inc. v. Agana*[12] is a recent Court decision establishing the liability of physicians and hospitals in cases of medical negligence. It emphasizes the importance of hospitals and their need to adhere to the strictest standards required by the duty to preserve and protect health. The case revisits the doctrines of Borrowed Servant and Captain of Ship and also applies the doctrine of Corporate Responsibility and Agency by *Estoppel* to establish hospital liability.

II. FACTS OF THE CASE

A patient was diagnosed with cancer of the large intestines and underwent an operation, performed by Dr. Ampil, in the Medical City Hospital. During the operation, Dr. Ampil found that the malignancy had spread to the patient's left ovary. Upon getting the consent of the patient's husband, Dr. Ampil called on Dr. Fuentes to perform a hysterectomy on the patient.[13] After the hysterectomy, Dr. Ampil completed the operation:

> Prior to closure of the incision, Dr. Ampil was advised by the attending nurses that two sponges[14] were missing. This fact was announced and noted in the record of operation. The search for the missing sponges, however, yielded no result and the surgeon opted to continue with closure of surgical site.[15] After several days, patient complained of pain in her anal region. The two surgeons, however, reassured her that the pain was the natural consequence of the operation. The patient was advised to consult with a cancer specialist to examine cancerous nodes which were not removed during the operation. The patient went to the United States to seek further treatment and was diagnosed to be cancer-free. The pain continued, however, and a few months later, the patient's daughter found a piece of gauze protruding from the patient's vagina. Dr. Ampil went to the patient's house to remove the gauze and assured the patient that the pain would soon vanish. Instead, the pain intensified prompting the patient to seek treatment at the Polymedic General Hospital where another gauze was found in the patient's vagina. At this time, the gauze had already caused an infection that necessitated another surgical operation.

These facts led the patient to file a complaint for damages. The case was brought against the Professional Services, Inc. (PSI), owner of the Medical City Hospital, Dr. Ampil, and Dr. Fuentes, for negligence in leaving two pieces of gauze inside the patient's body and malpractice for concealing the acts of negligence. The Court ruled that Dr. Ampil and PSI are solidarily liable to the patient. The case against Dr. Fuentes was dismissed.

III. LAWS AND JURISPRUDENCE

Society bestows on the physician a grave duty that must be performed with utmost care. The Court observed that:

> The Hippocratic Oath mandates physicians to give primordial consideration to the health and welfare of their patients. If a doctor fails to live up to this precept, he is made accountable for his acts. A mistake, through gross negligence or incompetence or plain human error, may spell the difference between life and death. In this sense, the doctor plays God on his patient's fate.[16]

The practice of medicine is carefully regulated by the Medical Act of 1959. The law provides for the standardization and regulation of medical education, the examination for registration of physicians, and the supervision, control, and regulation of the practice of medicine in the Philippines.[17] Gross negligence, ignorance, or incompetence in the practice of medicine resulting in an injury to or death of the patient shall be sufficient

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> would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed; if it would have constituted a light felony, the penalty of *arresto menor* in its maximum period shall be imposed.
>
> Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of *arresto mayor* in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period shall be imposed. ...

9. The Medical Act of 1959 [MEDICAL ACT], Republic Act No. 2382 (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 amends sections 3-7, 9-16, and 18- 21 of the Medical Act of 1959.
10. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, arts. 20, 2176 (1950).
11. SOLIS, *supra* note 3, at 171-72; MEDICAL ACT, §§24-27.
12. Professional Services, Inc. v. Agana, G.R. No.126297, Jan. 31, 2007.
13. A hysterectomy is the operation to remove the uterus and is usually performed by a physician specializing in Obstetrics and Gynecology.
14. Sponge as used in the operation refers to sterile gauze used during the procedure to control bleeding and other purposes.
15. *Professional Services, Inc.*, G.R. No.126297. In the corresponding Record of Operation, dated Apr. 11, 1984, the attending nurses entered these remarks:

    "sponge count lacking 2

    "announced to surgeon searched (sic) done but to no avail continue for closure."
16. Ramos v. Court of Appeals 321 SCRA 585, 588-89 (1999).
17. MEDICAL ACT, §1.

ground to suspend or revoke the certificate of registration of any physician.[18] The Medical Act, however, does not impose any civil or criminal penalty for acts constituting gross negligence, ignorance, or incompetence.[19] In case of acts or omissions constituting negligence, the physician may be held liable under the Revised Penal Code.[20] In the case of *Ang v. Grageda*, for example, the physician was charged with reckless imprudence resulting to homicide after his patient died during a liposuction surgery.[21] 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.[22]

The relationship between the patient and the physician has been described as a contractual relation based on mutual trust and confidence in one another.[23] 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.[24] In an action for breach of contract, the negligence of the

18. *Id.* §24(5).

19. *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 §10) without complying with the prerequisites provided by the same act (as provided in §8). There is no penalty for gross negligence, ignorance, or incompetence other than administrative liability.

20. REVISED PENAL CODE, art. 365.

21. Ang v. Grageda, 490 SCRA 424 (2006). *See also*, Cruz v. Court of Appeals, 282 SCRA 188 (1997).

22. CIVIL CODE, arts. 19-21, 2176.

> Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
>
> Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.
>
> Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.
>
> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict* and is governed by the provisions of this Chapter.

23. SOLIS, *supra* note 3, at 68.

24. *Id.* at 213. The physician may agree with the patient that specific result or cure will be the outcome of the physician's procedure. If the stipulated result is not attained, then there is breach of contract on the part of the physician.

doctor is not an issue. Nevertheless, 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.[25] A malpractice action against a physician is generally based on torts, and his negligence, as a ground for injury, must be proven.[26]

The Court identified four elements involved in medical negligence cases: duty, breach, injury, and proximate causation.[27] It said:

> 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.
>
> In order to successfully pursue such a claim, a patient must prove that a health care provider, in most cases a physician, either failed to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent provider would not have done; and that that failure or action caused injury to the patient.[28]

In *Ramos v. Court of Appeals*, the Court awarded damages based primarily on the doctrine of *res ipsa loquitur* where a patient became comatose following intubation.[29] *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.[30] The same doctrine was used to establish the negligence

25. Air France v. Carrascoso, 18 SCRA 155 (1966). The Court awarded damages based on *quasi-delict* even if there was a pre-existing contractual relationship between the parties.

26. SOLIS, *supra* note 3, at 214.

27. Garcia-Rueda v. Pascasio, *et al.*, 278 SCRA 769, 778 (1997).

28. *Id.* at 778.

29. Ramos v. Court of Appeals, 321 SCRA 585, 602 (1999). Courts 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 anesthetic for the removal of his tonsils, and loss of an eye while the patient plaintiff was under the influence of anesthetic, during or following an operation for appendicitis, among others.

30. *Id.* at 600. The requisites are:

of the physician in a case where a patient incurred a burn wound on her left arm due to contact with a droplight while in the recovery room.[31]

The primary surgeon has been held liable under the Captain of Ship Doctrine based on the surgeon's responsibility to see to it that those under his or her physical control, and those over whom the surgeon has extension of control, perform their tasks in the proper manner.[32] There is, however, a decreasing popularity of the Captain of Ship Doctrine because of 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,
3. Liability for damage suit has shifted from surgeon to hospital[33]

In some of these decisions, where a physician has been held civilly liable, the Court also ruled that the hospitals are solidarily liable with the physicians for damages.[34] A hospital is 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.[35] In order to operate, a hospital must first secure a license in accordance with law.[36] The liabilities of a hospital may be classified as corporate liabilities or vicarious liabilities.[37] 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

1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.

31. Cantre v. Spouses Go, G.R. No. 160889, Apr. 27, 2007.
32. *Ramos*, 321 SCRA at 619-20; SOLIS, *supra* note 3, at 237-39.
33. SOLIS, *supra* note 3, at 238.
34. *Ramos*, 321 SCRA at 620-23; Nogales v. Capitol Medical Center, 511 SCRA 208, 218-33 (2006).
35. An Act Requiring the Licensure of all Hospitals in the Philippines and Authorizing the Bureau of Medical Services to Serve as Licensing Agency, Republic Act No. 4226, §1 (1965).
36. *Id.* §4.
37. SOLIS, *supra* note 3, at 321.

standard of conduct to which it should conform.[38] Vicarious liabilities refer to the liability of hospitals for the acts of its employees.[39] In this case, the critical point is to determine who are to be considered as hospital employees. In *Ramos v. Court of Appeals*, the hospital was held solidarily liable for acts of its physicians based on a responsibility under a relationship of *patria potestas*.[40] In *Nogales v. Capitol Medical Center*, the issue of whether the hospital could be held vicariously liable for the doctor's negligence based on article 2180 in relation to article 2176 of the Civil Code was discussed.[41] Similarly, in the United States, a hospital which is the employer, master, or principal of a physician employee, servant, or agent, may be held liable for the physician's negligence under the doctrine of *respondeat superior*.[42]

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.[43] In the case of private hospitals, aside from the imposition of penalty upon the person or persons guilty of the violations, the license of the hospital to operate may be suspended or revoked.[44] It shall be unlawful for any hospital or medical clinic in the country to detain or to

38. *Id.*
39. *Id.* at 324-29.
40. Ramos v. Court of Appeals, 321 SCRA 585, 622 (1999). The basis for holding an employer solidarily responsible for the negligence of its employee is found in article 2180 of the Civil Code which considers a person accountable not only for his own acts but also for those of others based on the former's responsibility under a relationship of *patria potestas*.
41. Nogales v. Capitol Medical Center, 511 SCRA 208, 218-33 (2006); CIVIL CODE, art. 2180, which provides:

> 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.
>
> ...
>
> 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.

42. *Id.*
43. An Act Requiring Government and Private Hospitals and Clinics to Extend Medical Assistance in Emergency Cases, Republic Act No. 6615, §1 (1972).
44. *Id.* §3.

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.[45]

IV. THE DECISION OF THE COURT

In *Professional Services, Inc. v. Agana*, 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. Dr. Ampil was liable because the Court considered him as the negligent party. The injury was attributed to the act of ordering the closure of the incision, notwithstanding that two pieces of gauze remained unaccounted for. 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.

The owner of the hospital was held to be solidarily liable with Dr. Ampil. 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. The hospital was also liable based on the theories of corporate negligence and agency by *estoppel*.

V. ANALYSIS

A. Physician Liability

In order to prove medical negligence, the elements of duty, breach, injury, and proximate causation must be proven.[46]

There is no question that a physician has a duty to his patient. Physicians must possess the knowledge and skill of the profession, utilize these with care and diligence, and exercise the best judgment.[47] The standard of care required of the physician is the diligence that would be exercised by a reasonably prudent health care provider or that which other physicians would do when confronted with the same or a similar case under the same or similar situation. In *Ramos v. Court of Appeals*, the physician was held

45. 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, by this act, violates the provisions of the law.

46. Professional Services, Inc. v. Agana, G.R. No.126297, Jan. 31, 2007; Garcia-Rueda v. Pascasio, *et al.*, 278 SCRA 769, 778 (1997).

47. SOLIS, *supra* note 3, at 216-18.

liable for failing to do a pre-operative evaluation and such is considered a failure to observe common medical standards.[48] All that must be proven in order to establish medical negligence is that physicians, through their acts or omissions, failed to do what is required of them in the context of their duty.

In the instant case, the facts have established that the patient suffered a major infection as a result of sponges retained in her body after an operation. The Court cited foreign jurisprudence to the effect that the leaving of sponges constituted negligence *per se*.[49]

The main thrust of the controversy is establishing proximate causation. In this case, two surgeons operated on the patient. In addition, the patient also underwent consultation in the United States. Dr. Ampil attempted to evade liability by distancing himself from the actual leaving of the sponges, claiming that he was not the one directly responsible. He raised several defenses which the Court considered "purely conjectural and without basis."[50] Nevertheless, in the instant case, the Court did not deem it necessary to determine who actually and directly left the sponges in the patient to establish the liability of Dr. Ampil.

Whether or not Dr. Ampil left the sponges in the course of the operation was of no moment. The Court said that the act of Dr. Ampil in ordering the closure of the incision even after the nurses have announced that two sponges were missing was considered to be that which led to the subsequent demise of the patient. The doctrine underlying this determination was the Captain of Ship Doctrine.

Dr. Ampil was considered the lead surgeon by the Court. This was based on Dr. Ampil's acts of calling Dr. Fuentes, examining the work of the latter, granting the latter permission to leave, and ordering the closure of the incision.[51] Dr, Ampil, as the lead surgeon, had the duty to remove all foreign objects, such as gauzes, from patient's body before closure of the incision.

48. Ramos, v. Court of Appeals, 321 SCRA 585, 607-15 (1999).

49. *Professional Services, Inc.*, G.R. No.126297 (citing Smith v. Zeagler, 157 So. 328 Fla. (1934)).

50. *Professional Services, Inc.*, G.R. No.126297. Dr. Ampil, in an attempt to absolve himself, gears the Court's attention to other possible causes of the patient's detriment. He argues that the Court should not discount either of the following possibilities:

    (1) Dr. Fuentes left the gauzes in Natividad's body after performing hysterectomy;

    (2) The attending nurses erred in counting the gauzes; and

    (3) The American doctors were the ones who placed the gauzes in Natividad's body. Dr. Ampil's arguments are purely conjectural and without basis.

51. Professional Services, Inc. v. Agana, G.R. No.126297, Jan. 31, 2007.

He should have informed the patient that the two sponges were missing on follow-up. Instead, Dr. Ampil misled the patient by trivializing the pain she was complaining of and even informing her that the pain she was experiencing was the ordinary consequence of her operation.[52] Ordering the said closure is deemed to be the proximate cause of injury to the patient.

The Court rejected the petitioner's prayer that Dr. Fuentes be held liable under the doctrine of *res ipsa loquitur*. For *res ipsa loquitur* to be applicable, the thing which caused the injury should be under the control and management of the physician sought to be held liable.[53] The operating room was under the control of Dr. Ampil and he had the authority to order closure. Dr. Fuentes clearly did not have such authority and, as such, the doctrine of *res ipsa loquitur* is not applicable. The Court reiterated that *res ipsa loquitur* is not a rule of substantive law and does not dispense with the requirement of proof of negligence. The Court is of the opinion that if Dr. Ampil exercised due care and diligence, the injury could have been avoided. Thus, the negligence was attributed to Dr. Ampil.[54]

Dr. Fuentes was absolved of the liability also upon application of the Captain of Ship Doctrine. This doctrine finds its greatest application in cases involving an operation where the lead surgeon is made liable for practically everything that happens in the operating room. This is a variation of the Borrowed Servant Doctrine where the injured party is allowed to recover damages from a responsible party for the negligent acts of employees under his or her supervision, though the responsible party is not actually the employer.

The increasing complexity of operating rooms, the trend towards specialization, and the emergence of skilled nurses may put undue responsibility on surgeons who need to concentrate on their own jobs.[55] In foreign jurisdictions, the trend has been to limit the application of the Captain of Ship Doctrine.[56] In one case, the Court held that:

52. *Id.*

53. *Id.*

54. *Id.* (citing Ramos, *et al.* v. Court of Appeals, 321 SCRA 585 (1999)).

55. SOLIS, *supra* note 3, at 238.

56. *See generally*, Ohio in Baird v. Sickler, 433 NE2d 593 (Ohio 1982); Oregon in May v. Broun, 492 P2d 776, 780-81 (Ore 1972) (acknowledged that changes in the O.R. have made it impossible for the surgeon to directly supervise all personnel and concluded that the Captain of the Ship Doctrine is no longer viable with the demise of charitable immunity); Parker v. Vanderbilt University 767 SW2d 412, 415 (Tenn Ct App 1988) (asserted that the term Captain of the Ship is confusing and unnecessary); Sparger v. Worley Hospital, 547 SW2d 582, 585 (Tex 1977) (disapproved of the Captain of Ship Doctrine as a "false special rule of agency"); New Jersey in Sesselman v. Muhlenberg Hospital, 306 A2d 474, 476 (NJ Super Ct App Div 1973) (rejected the Captain of Ship Doctrine).

> The captain-of-the-ship doctrine should be applied only in cases where a doctor who is working in a hospital has direct control over a nurse's actions, such as in the operating room, or where the doctor personally supervises a nurse's performance of a technically complicated treatment. The doctrine should not be applied where the nurse performs routine tasks even though done pursuant to a doctor's orders.[57]

The Captain of Ship Doctrine is not in accord with modern practice and many United States courts have refused to adopt it.[58] In the Philippines, the doctrine has not been abandoned; however, it is submitted that even if the doctrine is not applied, the liability of Dr. Ampil could still be established. Assuming, without admitting, that it was Dr. Fuentes who left the sponges inside the body of the patient, the actual negligence that set into motion the sequence of events that led to the death of the patient is not the leaving of the sponges itself. Surgeons are not perfect and, in cases of emergencies, a sponge may inadvertently be left in the operation site. That is the reason why it has been a standard practice to require nurses to conduct a sponge count before and after every surgical procedure.

In this case, where negligence is attributed to two defendants, it was found that the omission that failed to meet the established standards of 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, when a surgeon has to act quickly, and to avoid further complications, the operative site may be closed despite missing sponges. 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. 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. 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. Finally, he should have conducted reasonable examinations to determine the cause of the pain that the patient was feeling after the operation. If he was 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. Dr. Ampil, on these occasions, had the reasonable opportunity to avert the injury but he

57. Nelson v. Trinity Medical Center, 419 N.W.2d 886 (N.D. 1988) (citing Elizondo v. Tavarez, 596 S.W.2d 667 (Tex. Civ. App. 1980)) (holding that a doctor who ordered the insertion of a tube down a patient's throat was not liable when a nurse negligently inserted that tube).

58. Tappe v. Iowa Methodist Medical Center, 477 NW2d 396, 402-403 (Iowa 1991).

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, is properly held to be the negligent act that resulted to the injury.

B. Hospital Liability

The Court has shown an increasing willingness to hold hospitals jointly and severally liable with a negligent physician. In the instant case, the decision included a review of the historical development of hospitals. Hospitals are no longer charitable institutions but have become profit-oriented businesses. In the past, hospitals were exempted from liability due to the Doctrine of Charitable Immunity. This has led to the adherence to the Borrowed Servant Doctrine and Captain of Ship Doctrine to allow a patient to recover damages when the hospital cannot be made liable. In the context of tort law:

> The courts are very reluctant to deny an injured person a legal remedy for the injury. Thus, a person who was injured through the negligence of a hospital employee would be denied any legal recourse unless the courts created a theory to circumvent the doctrine of charitable immunity. One analysis of hospitals during the period of charitable immunity showed that the physicians controlled hospital policies and were the prime economic beneficiaries of the hospital. Since a goal of tort law is to shift the burden of economic loss from the injured party to the person who caused the injury, the court used the borrowed servant doctrine to hold the physicians liable for the actions of the hospital employees.[59]

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. The demise of charitable immunity to damage suit has paved the way for a change in assignment of liability. The Court held that, as a consequence, one important legal change is an increase in hospital liability for medical malpractice.[60] Many jurisdictions now allow claims for hospital vicarious liability under the theories of *respondeat superior, apparent authority, ostensible authority, or agency by estoppel.*[61]

In the instant case, the Court delved on the liability of hospitals for the negligent act of a visiting consultant. The *Schloendorff* Doctrine regards 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

59. EDWARD P. RICHARDS & KATHARINE C. RATHBUN, MEDICAL RISK MANAGEMENT, http://biotech.law.lsu.edu/Books/aspen/Aspen-Historic.html (last accessed July 20, 2007).

60. Professional Services, Inc. v. Agana, G.R. No.126297, Jan. 31, 2007.

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

work.[62] Under this 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.[63]

Nevertheless, in the Philippines, the Court has held, in *Ramos v. Court of Appeals,* that for purposes of apportioning responsibility in medical negligence cases, an employer-employee relationship exists between hospitals and their attending and visiting physicians.[64] The Court said:

> hospitals exercise significant control in the hiring and firing of consultants and in the conduct of their work within the hospital premises. Doctors who apply for *consultant* slots, visiting or attending, are required to submit proof of completion of residency, their educational qualifications; generally, evidence of accreditation by the appropriate board (diplomate), evidence of fellowship in most cases, and references. These requirements are carefully scrutinized by members of the hospital administration or by a review committee set up by the hospital who either accept or reject the application.[65]

This ruling, however, neglects the fact that 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 as to the end to be achieved but also as to the means and methods by which the same is to be accomplished.[66] 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. Strictly, the surgeon is not an employee of the hospital. That is the reason why the court qualifies that the employer-employee relationship exists between hospitals and doctors *for purposes of apportioning responsibility in medical negligence cases.* The liability of the hospital for negligent acts of the doctor, in the strict sense, is therefore not based on *respondeat superior* where the

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

63. *Id.* 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. For subsequent application of the doctrine, *see, e.g.,* Hendrickson v. Hodkin, 294 NYS 982, *rev'd. on other grounds,* 276 NY 252 (1937); Necolayff v. Genesee Hospital, 61 NYS 2d 832, *aff'd* 296 NY 936 (1946); Davie v. Lenox Hill Hospital, Inc., 81 NYS 2d 583 (1948); Roth v. Beth El Hospital, Inc., 110 NYS 2d 583 (1952); Rufino v. U.S., 126 F. Supp. 132 (1954); Mrachek v. Sunshine Biscuit, Inc., 308 NY 116 (1954).

64. Ramos v. Court of Appeals, 321 SCRA 585, 620-21 (1999). The instant case upheld this ruling and considered it as a categorical pronouncement. Nevertheless, in the Motion for Reconsideration, the Court later absolved the hospital from liability. *See,* Ramos v. Court of Appeals, 380 SCRA 467 (2002).

65. *Id.* at 621.

66. Philippine Global Communications, Inc. v. De Vera, 459 SCRA 260 (2005).

exercising of due care in the selection and supervision of employees would be a defense. Adherence to this could be problematic if the cases become more complicated. In this case, it was easy to trace the hospital's liability because of its failure to conduct an investigation on the sponge count reported in the nurses' notes. Clearly, there was negligence in the supervision of its employees.

The case of *Nogales v. Capitol Medical Center*, where the physician was deemed an independent contractor and not under the control and supervision of the hospital, discusses the element of control more extensively.[67] The ruling in that case is more in point. There, the Court said that, in general, a hospital is not liable for the negligence of an independent contractor-physician.[68] Even if the physician was considered an independent contractor, the hospital was still held liable 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.[69] Essentially, a hospital is not automatically exempted from liability notwithstanding the fact that the negligent doctor is not its employee.

In the instant case, the Court held that in addition to liability of the hospital as employer of Dr. Ampil, its liability is also anchored upon the agency principle of apparent authority or agency by *estoppel* and the Doctrine of Corporate Negligence. Apparent authority, or what is sometimes referred to as the Holding Out Theory, or Doctrine of Ostensible Agency, has its origin from the law of agency. [70] Article 1869 of the Civil Code reads:

> Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.[71]

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 employer in somehow misleading the public into believing that the relationship or the authority exists.[72] The concept is that if

67. Nogales v. Capitol Medical Center, 511 SCRA 204, 218-33 (2006).

68. *Id.* at 220.

69. Gilbert v. Sycamore Municipal Hospital, 156 Ill.2d 511 (1993).

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

71. CIVIL CODE, art. 1869.

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

evidence can be shown that the hospital, by its actions, has held out a physician as its agent or employee, and that a patient has accepted treatment based on such apparent representation, the hospital can be held liable for the negligent acts of the physician.

In this case, the hospital publicly displays in its lobby the names and specializations of the physicians associated or accredited by it, including those of Dr. Ampil and Dr. Fuentes. By accrediting Dr. Ampil and Dr. Fuentes and publicly advertising their qualifications, the hospital created the impression that they were its agents, authorized to perform medical or surgical services for its patients. Corporate entities are capable of acting only through individuals, such as physicians. If these accredited physicians do their job well, the hospital succeeds in its mission of offering quality medical services and, thus, profits financially. Logically, where negligence mars the quality of its services, the hospital should not be allowed to escape liability for the acts of its ostensible agents. 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.[73]

In addition to the liability of the hospital for the negligence of its ostensible agents, the Court also found that the liability of the owners of the hospital may be based on the Doctrine of Corporate Negligence or Corporate Responsibility. The hospital has four general areas of corporate liability:

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 physician
3. A duty to oversee all persons who practice medicine within its walls as to patient care
4. A duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for patients[74]

Recent years have seen the Doctrine of Corporate Negligence as the judicial answer to the problem of allocating 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

73. Professional Services, Inc. v. Agana, G.R. No.126297, Jan. 31, 2007.

74. Thompson v. Nason Hospital, 527 PA 330 (Pa. 1991).

providing quality medical service is no longer the sole prerogative and responsibility of the physician.[75] The doctrine in fact creates a non-delegable duty on a hospital to uphold a proper standard of care to patients.[76]

Premised on the Doctrine of Corporate Negligence, the Court held that PSI is directly liable for such breach of duty. Modern hospitals have changed structure and 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.[77] This increasing complexity in the organization of hospitals demands a greater degree of responsibility. In the instant case, it was duly established that PSI operates the Medical City Hospital and represents that it will provide a comprehensive array of medical services to the public. Accordingly, it has the duty to exercise reasonable care to protect from harm all patients admitted into its facility for medical treatment. The Court considers that the PSI was negligent in failing to conduct proper investigation on the matter of two missing sponges during the operation of the patient. The Court said that since the fact was duly noted in the nurses' notes, the hospital is deemed to have constructive notice of the procedure and attendant problems. The operation was performed by the surgeons with the assistance of the Medical City Hospital's staff, composed of resident doctors, nurses, and interns. The Court held:

> This means that the knowledge of any of the staff of Medical City Hospital constitutes knowledge of PSI. Now, the failure of PSI, despite the attending nurses' report, to investigate and inform Natividad the patient regarding the missing gauzes amounts to callous negligence. Not only did PSI breach its duties to oversee or supervise all persons who practice medicine within its walls, it also failed to take an active step in fixing the negligence committed.[78]

In upholding the Doctrine of Corporate Responsibility, the Court emphasized the responsibilities of hospitals to patients. This is a good doctrine because not only does it provide a way for patients to be compensated for damages, it also puts a premium on the duty of the hospital to a patient and emphasizes the fact that hospitals are institutions vested with public interest. The doctrine makes it possible for an injured patient to sue and recover from hospitals without being forced to resort to the legal fictions of Borrowed Servant or Captain of Ship.[79]

75. *Professional Services, Inc.*, G.R. No.126297.

76. Rauch v. Mike-Mayer, 783 A.2d 815, 821 (2001).

77. Purcell v. Zimbelman, 18 Ariz. App. 75 (1972).

78. *Professional Services, Inc.*, G.R. No.126297.

79. RICHARDS, *supra* note 59.

The decision of the Court in this case laid down important jurisprudential guidelines that would significantly affect similar cases in the future. The Court proceeds from a recognition of the growth of proprietary hospitals and has responded accordingly. Hospitals have greater responsibilities and, as established in this case, may be held liable for the negligent acts of its physicians under the following principles: *respondeat superior*, agency by *estoppel*, and corporate responsibility.

VI. CONCLUSION AND RECOMMENDATIONS

The increasing number of cases of medical negligence in the Philippines demands clear guidelines with regard to establishing the liability of physicians and hospitals. While there are adequate laws in place, their specific application in the context of medical negligence deserves attention. In the United States, malpractice suits against physicians and hospitals have caused expensive litigation resulting in a health crisis where there are few doctors and fewer students enrolling in medical schools. Efforts have been made in the United States Congress to pass a bill that introduces tort reforms and puts a cap on the damages that may be awarded to plaintiffs in malpractice suits.[80] In light of the experience of the United States, cases of medical negligence should be decided with caution and always with the goal of avoiding abuse of the judicial process through malicious prosecution while at the same time ensuring the protection of the rights of patients. The crippled health care system of the country may not be able to withstand additional problems.

The instant case is important because it clarified the present doctrines adhered to by the Court in cases of medical negligence. Nevertheless, some of the principles upheld should be modified in light of the changing medical scene shown by the advancements in medicine and growth of highly complex proprietary hospitals. In establishing liability, the proof of medical negligence requires the showing of the elements of duty, breach, injury, and proximate causation. This is the basic principle. What is lacking are guidelines with regard to proof required in establishing standards of care in the medical profession and regulations in terms of awarding damages other

80. *Gingrey Introduces Medical Liability Reform Legislation - Bipartisan Bill Will Ensure Physicians Are In Our Communities When We Need Them*, MEDICAL NEWS TODAY, June 13, 2007, http://www.medicalnewstoday.com/medicalnews.php?newsid=73922 (last accessed July 14, 2007). The American Medical Association (AMA) has claimed that malpractice lawsuits are creating "crisis" conditions for health care in 19 states. U.S. Congressman Phil Gingrey, M.D. introduced the Help Efficient, Accessible, Low-Cost, Timely Healthcare (HEALTH) Act to reduce frivolous medical lawsuits that are raising the cost of healthcare and driving many physicians out of business. This bipartisan bill would abolish the financial incentives for filing expansive lawsuits, while providing a fair and timely reparations process for those who have been wronged.

than indemnification for actual injury. If the United States sees it fit to implement tort reforms then the same should be considered before the cases of medical practice in the Philippines reach an alarming proportion.

The main thrust in cases of medical negligence, as shown in the instant case, is to establish proximate causation. The next requirement would be to determine the party who exercises control over the event that causes injury. With regard to this, the remote, immediate, and proximate cause of the injury should be identified. The application of the doctrine of *res ipsa loquitur* requires that the person sought to be charged is in control of the event or condition that resulted in the injury. In the operating room, the application of the Captain of Ship Doctrine should be limited to instances where the negligent act of a *borrowed servant* is actually under the direct control of the surgeon. The decision should consider the need for surgeons to focus in their area of expertise, recognize the highly specialized practice of medicine, and acknowledge the development of complex and technical equipment. As in a tort case, what is important is determining what act or omission constitutes the proximate cause of the injury.

The Court, in the instant case, seemingly advanced a public policy that allows a person to recover for injury sustained while availing the service from the provider who is deemed to be the economic beneficiary. Much importance has been given to the fact that hospitals are now being run as businesses. The fact that hospitals represent to the public their capacity to provide comprehensive medical services carries with it a corresponding responsibility to ensure that such services are carried out and given in accordance with the exacting standards of being a health care provider.

Philippine jurisprudence has established that hospitals will be held jointly and severally liable for the negligent acts of its physicians, whether they are employees or independent contractors. The basis for the liability, however, should no longer be hinged on *quasi-delict* where employers are liable for failing to exercise due diligence in the supervision and control of their employees. It is submitted that in most cases, physicians are independent contractors and are not employees because the hospital does not exercise control in the manner or method adopted by doctors while working. There is no sufficient legal justification or need for the court to hold that for purposes of assigning liability, the doctor is to be considered an employee of the hospital.

Even if the principle is not applied, there are other doctrines by which the hospital can be held liable. In this case, the Court upheld the liability of hospitals under the Doctrine of Agency by *Estoppel*. Doctors are ostensible agents of the hospital. The patients who avail of the services of the hospital see and deal with the doctors instead of administrative officers. This circumstance creates the presumption that doctors are acting for and in behalf of the hospital and therefore legally justifies the liability of the latter for the injury that may result from the acts of the former.

The most important principle set forth in the instant case is that hospitals may be held liable for the negligent acts of the doctors based on the Doctrine of Corporate Responsibility. The hospital has a primary duty to uphold standards of responsibility to ensure quality patient care, exercise due diligence in selection and supervision of all person who practice medicine within its walls, and use reasonable care in the maintenance of safe and adequate facilities and equipment within the hospital.[81] In essence, the hospital is not made liable because its employees are negligent but because such negligent acts constitute a breach of the hospital's primary duty. This doctrine should be upheld because there is no question that such a duty is proper and necessary in view of the important services that hospitals provide. In certain contracts, from the nature of their business and for reasons of public policy, the law has required more than ordinary diligence in the performance of duties.[82] It is urged that when the relationship between parties involves human lives, as in the case of hospitals, where patients entrust their lives to the hands of the physician, extraordinary diligence is required. The Doctrine of Corporate Responsibility identifies the key duties that a hospital must perform. Non-performance of such duties constitutes negligence, which if it results in an injury, properly makes the hospital liable for the damages.

In fine, the pronouncements of the Court in this decision lay down important precedents for future cases of Medical Negligence. If the trend continues and more cases of medical negligence begin requiring resolution, the need for establishing uniform guidelines in establishing liability of both physicians and hospitals may become more apparent.

81. Professional Services, Inc. v. Agana, G.R. No.126297, Jan. 31, 2007.

82. CIVIL CODE, art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.