IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Latasha Cook, individually and as independent administrator of the estate of De'Aryiah Cook, deceased, Plaintiff, v. Natasha Noel, M.D., Saint Anthony Health Affiliates, a corporation d/b/a SAH Community Care Clinic, George Dengler, D.O., St. Bernard Hospital, a corporation, Michael Cobb, M.D., Virtual Radiologic Professionals, LLC and Saint Anthony Hospital, a corporation, Marcia Dawson, M.D., Neethi Pinto, M.D., Boran Li, M.D., The University of Chicago Medical Center, a domestic corporation, The Mount Sinai Community Foundation, The University of Chicago, and South Yale Emergency Physicians, S.C. Defendants.	)	No. 19 L 6674

MEMORANDUM OPINION AND ORDER

Summary judgment should not be granted unless there exist no questions of material fact and the movant is deserving of judgment as a matter of law. Here, an ambiguous consent form and physician badges linking the defendant-physicians with a defendant-hospital raise genuine issues of material fact. Accordingly the defendants-hospitals' summary judgment motions must be denied. Separately, a motion for partial summary judgment that has not been fully briefed by the parties must be denied so as to ensure that the plaintiff has sufficient opportunity to plead her case.

Facts

On April 5, 2021, Latasha Cook filed a 45-count complaint relating to the 2017 death of her daughter, De'Aryiah. The complaint names 14 defendants, stating negligence causes of action against each for wrongful death, survival, and funeral and burial expenses. Counts one through three are asserted against Natasha Noel, M.D. Counts four through six assert *respondeat superior* claims against St. Anthony Health Affiliates d/b/a SAH Community Care Clinic (Care

Clinic) for the negligence of Noel and others. Counts seven through nine are asserted against George Dengler, D.O. Counts 10 through 12 assert *respondeat superior* claims against St. Bernard Hospital (St. Bernard) for the negligence of Dengler and Marcia Dawson, M.D. Counts 13 through 15 are asserted against Michael Cobb, M.D. Counts 16 through 18 assert *respondeat superior* claims against Virtual Radiologic Professionals, LLC (VRAD), for the negligence of Cobb and others. Counts 19 through 21 also assert *respondeat superior* claims against St. Anthony Hospital (St. Anthony), for the negligence of Cobb and others. Counts 22 through 24 are asserted against Dawson. Counts 25 through 27 are asserted against Neethi Pinto, M.D. Counts 28 through 30 are asserted against Boran Li, M.D. Counts 31 through 33 assert *respondeat superior* claims against the University of Chicago Medical Center (UCMC) for Li's negligence. UCMC is also sued under a theory of direct liability for institutional negligence in counts 34 through 36. Counts 37 through 39 assert *respondeat superior* claims against the Mount Sinai Community Foundation (Mt. Sinai) for the negligence of Dengler, Dawson, and others. Counts 40 through 42 assert *respondeat superior* claims against the University of Chicago (UofC) for the negligence of Pinto. And counts 43 through 45 assert *respondeat superior* claims against South Yale Emergency Physicians, S.C. (South Yale), for Dengler's negligence.

Noel is a pediatrician, who Cook alleges was an agent of Care Clinic. Dengler is an emergency medicine specialist, who Cook alleges was an employee or agent of St. Bernard. Dawson is a neonatologist, who Cook alleges was also an employee or agent of St. Bernard. Cook also alleges that Dawson and Dengler were employees or agents of Mt. Sinai and South Yale. Cobb is a radiologist, who Cook alleges was an employee or agent of VRAD and St. Anthony. Pinto is a physician specializing in pediatric critical care. Li is a pediatrician. Pinto and Li were employees or agents of UCMC.

On January 30, 2017, while Cook was in the second trimester of her pregnancy with De'Aryiah, she received a trans-abdominal ultrasound at St. Anthony. Cobb interpreted the ultrasound and reported a "three vessel cord and a four chamber heart" as well as "no evidence of fetal abnormality." Cook alleges that Cobb failed to identify a congenital heart defect because the ultrasound images were inadequate, and should have ordered an additional ultrasound to produce acceptable images.

Cobb and St. Anthony both filed answers denying that Cobb was an agent of St. Anthony. Cobb testified that he is an independent contractor working with VRAD and that he did not speak with anyone at St. Anthony regarding the January 30, 2017, ultrasound. Cobb additionally testified that he is a tele-radiologist who interprets radiology studies from his at-home work station in Atlanta, Georgia. Cook testified that she did not recall any communications with Cobb. The

ultrasound in question was the second ultrasound that Cook received at St. Anthony.

On each occasion when Cook underwent an ultrasound, she signed a two-page, multi-part consent form. The form provided in pertinent part:

> E. HEALTH CARE OPERATIONS. I understand that SAH may use and disclose medical information about me for SAH operations in order to run SAH and make sure that all of its patients receive quality care. SAH may use medical information to review treatment and services and to evaluate the performance of its staff in caring for me. SAH may also combine the medical information it has with medical information from other hospitals to compare how it is doing and see where it can make improvements in the care and service it offers.
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> **5. INDEPENDENT PHYSICIAN SERVICES.** I understand that many of the physicians on the staff of this hospital are not employees or agents of the hospital but rather are independent providers who have been granted the privilege of using its facilities for the care and treatment of their patients. They include, but are not limited to, my physician, radiologists, anesthesiologists, pathologists, surgeons, obstetricians and other specialists. My decision to seek care is not based upon any understanding, representation or advertisement that the physicians who will be treating me are employees or agents of SAH. I understand that the physicians who will be providing such professional services will be doing so on my behalf and as such will be my employees or agents. SAH bills do not include physician services and I understand that I will receive a separate physician bill[.]

Cook did not read the consent form and there were no signs posted at St. Anthony notifying patients that doctors may be independent contractors. In her deposition, Cook stated that she went to St. Anthony for her ultrasounds at the direction of her obstetrician, whose office was located at Care Clinic:

> Q. But, I understand that, from time to time during your pregnancy, you had some lab work and ultrasounds and other tests that were performed at Saint Anthony, is that fair?
> A. At the hospital, right? Yes.
> Q. Yeah. Dr. Aponte would write orders for you to have testing done—
> A. Yes.
> Q. —is that true. Would Dr. Aponte tell you where to go to have those tests performed?
> A. Yes.

Q. And, would Dr. Aponte tell you to go to Saint Anthony Hospital to have the tests done?
A. Yes.
Q. And, I take it you would follow his instructions?
A. Yes.

Cook supplemented her deposition testimony with an affidavit attached to her brief opposing St. Anthony's summary judgment motion. In the affidavit, Cook avers that St. Anthony represented itself—through its website and flyers sent to Cook's home—as an ultrasound provider.[1] In addition to her obstetrician's directions, Cook claims that she relied on these representations when she chose to go to St. Anthony for her ultrasounds.

Cook gave birth to De'Aryiah on June 11, 2017 at St. Anthony. Prior to being discharge, De'Aryiah was seen for a neonatal examination. Noel performed the examination and found De'Aryiah to be a healthy newborn. A pediatric primary care follow-up visit was scheduled for June 15 in Noel's office at Care Clinic, and De'Aryiah was discharged. During the June 15 visit, Noel recorded De'Aryiah's pulse, which was abnormally high at 188 beats per minute. Noel also recorded De'Aryiah's oxygenation level at 96%. Noel did not record De'Aryiah's respiratory rate. Noel recommended a follow-up visit in three weeks. Noel allegedly breached her duty of care by not investigating De'Aryiah's abnormally high pulse rate via a referral to a pediatric cardiologist or an emergency department capable of performing an immediate cardiac assessment. According to Cook, this investigation would have revealed coarctation of De'Aryiah's aorta in time to provide life saving medical intervention.

At 1:19 p.m. on June 17, 2017, De'Aryiah was taken by city ambulance to St. Bernard, where she presented with history of not feeding, irritability, and intermittent screaming. While at St. Bernard, De'Aryiah was treated by Dengler and Dawson. De'Aryiah's pulse was recorded at 169 beats per minute, respirations at 49, oxygenation level at 95 percent, and temperature at 97.2 degrees Fahrenheit. Subsequently, De'Aryiah's temperature dropped to 93.7 degrees and oxygen saturation levels on her left hand and right foot were recorded at 91 percent and 75-77 percent, respectively. At some point, St. Bernard personnel performed a chest X ray on De'Aryiah.

Cook's reviewing health professional report—provided in accordance with 735 ILCS 5/2-622—states that Dengler breached his duty of care by failing to:

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[1] Specifically, Group Exhibit B consists of two screen captures from St. Anthony's website. The first screen capture states, "Our maternal-fetal specialists . . . may also perform diagnostic sonograms[.]" A sonogram is the image produced by an ultrasound. The second screen capture states, "our ultrasound offers a full range of obstetric, abdominal, pelvic, and non-invasive vascular studies."

recognize that De'Aryiah was in respiratory acidosis, order additional laboratory and diagnostic tests, appreciate the pattern present on chest x-ray of fine diffuse bilateral coats and interstitial pneumonitis, begin treatment with prostaglandin, place De'Aryiah on a ventilator, communicate with the University of Chicago Medical Center physicians for advice, perform serial examinations of De'Aryiah and appreciate the significance of De'Aryiah's temperature of 93.7 degrees and the discrepancy between De'Aryiah's saturation levels in her upper and lower extremities.

Also while De'Aryiah was at St. Bernard, Cook alleges that Dawson attempted to initiate intravenous (IV) therapy on De'Aryiah, but was unsuccessful. The report of the health professional who reviewed Dawson's conduct states that Dawson breached her duty of care as follows:

1. failed to perform an assessment of De'Aryiah Cook while she was with her in the emergency department of St. Bernard Hospital on June 17, 2017; and/or,
2. failed to communicate with De'Aryiah Cook's other healthcare providers, including UCMC physicians; and/or,
3. failed to appreciate De'Aryiah Cook's presentation of a duct-dependent congenital heart defect; and/or,
4. failed to give prostaglandin to De'Aryiah Cook; and/or,
5. after initially attempting to start an IV in De'Aryiah Cook, stopped providing care despite being present and being a Neonatologist specifically trained to provide care to newborns.

St. Bernard denies that Dengler and Dawson were its agents, as do the doctors. Dengler admits that he was an employee or agent of both South Yale and Mt. Sinai, while Dawson admits that she was an employee of Mt. Sinai.

After arriving at St. Bernard, Cook signed a seven-part consent form that provided in pertinent part:

> ***INDEPENDENT MEDICAL STAFF:***
> The physicians on staff at St. Bernard Hospital are not employees or agents of the hospital, but independent medical practitioners who have been permitted to use its facilities for the care and treatment of their patients and therefore, bill separately for their services.

No signs were posted in the emergency room of St. Bernard stating that emergency room physicians were not employees of the hospital. Both doctors wore badges displaying the name, "St. Bernard Hospital."

At 3:28 p.m. on June 17, 2017, De'Aryiah was transferred to UCMC, where she was placed under the care of Pinto and Li. Cook alleges that whether by failure to appreciate De'Aryiah's condition, failure to have prostaglandin available, failure to order and administer prostaglandin in a timely fashion, or some combination of these, De'Aryiah was not given the prostaglandin that would have saved her life. On June 18, 2017, De'Aryiah died of severe coarction of the aorta and multi-system organ failure.

Four motions are currently pending. St. Anthony seeks summary judgment, arguing that it cannot be liable for Cobb's negligence, because Cobb was not a St. Anthony employee or agent. St. Bernard similarly motions for summary judgment, arguing that it cannot be liable for Dengler's and Dawson's negligence, because they were not St. Bernard employees or agents. Separately, Pinto, Li, and UCMC (UCMC Defendants) seek partial summary judgment, arguing that they are immune from liability for negligence that occurred before De'Aryiah arrived at UCMC. Finally, Cook seeks leave to file a third amended complaint.

The UCMC Defendants filed their motion for partial summary judgment on December 10, 2021. Cook subsequently requested leave to conduct additional Rule 191(b) discovery, which this court granted, and entered and continued the UCMC Defendants' motion. Discovery closed on June 24, 2022, at which point this court again entered and continued the UCMC Defendants' motion to determine whether to compel the UCMC Defendants' to comply with a discovery request from Cook. This court indicated at the time that a briefing schedule would be set on disposition of this issue. This court denied Cook's request on July 28, 2022, but no briefing schedule was set on the UCMC Defendants' motion. On September 9, 2022, Cook filed a motion for leave to file a third amended complaint, and on October 11, 2022, filed an amendment to that motion. The UCMC Defendants subsequently motioned for a ruling on their pending motion for partial summary judgment.

Analysis

The defendants bring their summary judgment motions pursuant to the Code of Civil Procedure. Summary judgment is appropriate if the evidentiary record shows "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The Code permits partial summary judgment on discrete issues for which there is no genuine dispute of material fact even if other issues involving such disputes remain unresolved. *Id.* The purpose of summary judgment is not to resolve issues of material fact but rather to determine whether such issues exist. *Monson v. City of Danville*, 2018 IL 122486, ¶ 12 (citing *Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 42-43 (2004)).

Summary judgment should not be granted unless "the movant's right to judgment is clear and free from doubt." *Seymour v. Collins*, 2015 118432, ¶ 42

(citing *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154 (163) (2007)). Accordingly, courts determining whether a genuine dispute of material fact exists are required to view the record in the light most favorable to the non-movant, construing all facts and reasonable inferences liberally in their favor. *See Adams*, 211 Ill. 2d at 43. Summary judgment should not be granted if either the material facts remain in dispute or reasonable observers could draw different inferences based on the undisputed facts. *See Seymour*, 2015 IL 118432, ¶ 42 (citing *Pielet v. Pielet*, 2012 IL 112064, ¶ 53).

A defendant moving for summary judgment may disprove a plaintiff's case in one of two ways. First, the defendant may introduce affirmative evidence that, if uncontroverted, would entitle the defendant to judgment as a matter of law; this is the so-called "traditional test." *See Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986). Second, the defendant may establish that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action; this is the so-called "*Celotex* test." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only when the record indicates the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

Regardless of the approach, if the defendant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

St. Anthony and St. Bernard both argue that they cannot be liable for the negligence of doctors who were not their agents. An agency relationship arises if an agent acts on behalf of a principal and is subject to the principal's right of control.

Zahl v. Krupa, 365 Ill. App. 3d 653, 660 (2d Dist. 2006). Whether an agency relationship exists is a question of fact, unless the undisputed facts permit no other reasonable conclusion. *See Shoemaker v. Elmhurst-Chicago Stone Co.*, 273 Ill. App. 3d 916, 920 (1st Dist. 1994) (citing *Perkinson v. Manion*, 163 Ill. App. 3d 262, 266 (5th Dist. 1987)). If an agency relationship exists, a principal may be held vicariously liable for the torts of the agent acting within the scope of the agency. *See Gilbert v. Sycamore Mun. Hosp.*, 156 Ill. 2d 511, 522 (1993).

Agency may be predicated on actual or apparent authority. *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 34 (citing *Zahl*, 365 Ill. App. 3d at 660). Before 1993, Illinois hospitals could be find vicariously liable through an agency relationship only if the physician's purported agency was predicated on actual authority. *Schroeder v. Northwest Cmty. Hosp.*, 371 Ill. App. 3d 584, 590 (1st Dist. 2006). In 1993, however, the Illinois Supreme Court recognized the "reality of modern hospital care" in which patients seeking emergency care usually rely on a hospital's reputation, rather than individual doctors. *Frezados v. Ingalls Mem'l Hosp.*, 2013 IL App (1st) 121835, ¶ 14 (quoting *Gilbert*, 156 Ill. 2d at 521). Given that reality, a hospital may also be vicariously liable through agency relationships with physicians predicated on apparent authority. *Id.* Apparent authority is the authority imposed by equity that a principal holds out an agent as possessing and that "a reasonably prudent person, exercising diligence and discretion, in view of the principal's conduct, would naturally suppose the agent to possess." *Gilbert*, 156 Ill. 2d at 523-24 (citing *State Sec. Ins. Co. v. Burgos*, 145 Ill. 2d 423, 431-32 (1991)).

To prove agency predicated on apparent authority, a claimant must show that: (1) either the principal or agent acted in a way that would lead a reasonable person to believe the alleged tortfeasor was the principal's agent; (2) the principal knew of and acquiesced in the agent's acts, thereby creating the appearance of authority; and (3) the plaintiff relied on the principal's or the agent's conduct. *See Gilbert*, 156 Ill. 2d at 525. The first two elements comprise the so-called "holding out" element of apparent agency. *Id.* In a medical negligence case, a hospital will not be liable if the patient knew or should have known that the treating physician was an independent contractor, rather than the hospital's agent. *Id.* at 522. The existence of a consent form disclaiming agency is one important factor in determining whether a patient knew or should have known that the physician was an independent contractor. *James by James v. Ingalls Mem'l Hosp.*, 299 Ill. App. 627, 633 (1st Dist. 1998).

St. Anthony and St. Bernard correctly note that a patient's signature on an unambiguous consent form may show that the patient knew or should have known that the physician was an independent contractor. *See, e.g., Mizyed v. Palos Cmty. Hosp.*, 2016 IL App (1st) 142790, ¶ 8 (affirming summary judgment for hospital because plaintiff signed several forms stating, "I understand that all physicians providing services to me, including emergency room physicians, radiologists,

pathologists, anesthesiologist, my attending physician and all physician consultants, are independent medical staff physicians and not employees or agents of Palos Community Hospital."); *Lamb-Rosenfeldt v. Burke Med. Grp., Ltd.*, 2012 IL App (1st) 101558, ¶ 28 (affirming summary judgment for hospital because plaintiff's decedent signed several forms stating: "'PHYSICIANS ARE NOT EMPLOYEES OF THE MEDICAL CENTER' and 'NONE OF THE PHYSICIANS WHO ATTEND ME AT THE HOSPITAL ARE AGENTS OR EMPLOYEES OF THE HOSPITAL'"); *Wallace v. Alexian Bros. Med. Ctr.*, 389 Ill. App. 3d 1081, 1083 (1st Dist. 2009) (hospital entitled to summary judgment because plaintiff signed same consent form four times stating, "I understand that physicians who provide professional services to me such as my attending physician . . . are not the employees or agents of [the hospital], but they are independent contractors"). Yet the existence of such a disclaimer is not dispositive. *James*, 299 Ill. App. at 633. Disclaimers that are confusing, ambiguous, or open to multiple interpretations do not preclude a finding that a hospital held out a physician as an agent. *See Spiegelman v. Victory Mem'l Hosp.*, 392 Ill. App. 3d 826, 837 (1st Dist. 2009). Further, courts have found that disclaimers incorporated in a multi-part consent form were not sufficiently clear and unambiguous to support a summary judgment on the issue of apparent agency. *See, e.g., id.* (finding that jury could reasonably conclude multi-part consent form was "confusing and ambiguous"); *Schroeder*, 371 Ill. App. 3d at 587, 594 (finding summary judgment inappropriate because independent physician disclosure was buried in six-part consent form); *Williams v. Tissier*, 2019 IL App (5th) 180046, ¶¶ 6, 9, 46 (reversing lower court's grant of summary judgment in which independent physician disclaimer was one of several consent forms plaintiff signed).

Cook contends that the consent forms at issue here were ambiguous. St Anthony's form provides that "many of the physicians on the staff of this hospital are not employees or agents of the hospital but rather are independent providers[.]" The form specifically identifies "radiologists" like Cobb as included in this group. On its own, this language is unambiguous. *See Delegatto v. Advocate Health & Hosps.*, 2021 IL App (1st) 200484, ¶ 47. However, the broader context presents several factors that weigh in favor of finding a genuine issue of material fact as to Cobb's purported agency. First, St. Anthony's form contains seven parts and five sub-parts, making it appear substantially more involved than the six-part consent form that the *Schroeder* court found to be ambiguous. *Cf.* 371 Ill. App. 3d at 587, 594. Second, the consent form is printed entirely in small font and the independent physician disclaimer is not prominently displayed, grounds on which the appellate court has reversed summary judgment. *See Williams*, 2019 IL App (5th) 180046, ¶¶ 39, 59.

Finally, St. Anthony's form is not internally consistent. The paragraph immediately preceding the independent physician disclaimer provides that St. Anthony collects patient medical information "to review treatment services and to evaluate the performance of its staff[,]" as well as to "make sure that all of its

patients receive quality care." A jury could reasonably take this to imply that St. Anthony exercises control over physicians in a manner consistent with the agency relationship that the subsequent paragraph disclaims. *See Simich v. Edgewater Beach Apartments Corp.*, 368 Ill. App. 3d 394, 402 (1st Dist. 2006) (quoting *Kaporovskiy v. Grecian Delight Foods, Inc.*, 338 Ill. App. 3d 206, 210 (1st Dist. 2003)) ("hallmark of agency" is principal's right to control manner in which agent performs work). The First District has relied on such internal inconsistencies to reverse summary judgment, because they can cause patient confusion. *See Spiegelman*, 392 Ill. App. 3d at 837 (finding disclosure that "hospital employees" would attend to medical needs potentially confusing in light of independent physician disclaimer). By contrast, the *Frezados* decision, which St. Anthony cites for support, relied on the absence of such internal inconsistencies in finding the consent form at issue to be unambiguous. 2013 IL App (1st) 121835, ¶ 22. In sum, a jury could reasonably find that St. Anthony held Cobb out as an agent, because its consent form was ambiguous and implied that St. Anthony retained the right to control Cobb's work.

In addition to the holding out element, a plaintiff seeking to avoid summary judgment on apparent agency must also show that the individual interacting with the purported agent justifiably relied on the principal's conduct. *See Robers v. Condell Med. Ctr.*, 344 Ill. App. 3d 1095, 1097 (2d Dist. 2003). In a medical negligence case, justifiable reliance may be established through evidence that the patient relied on the hospital, rather than a specific physician, to provide care. *Gilbert*, 156 Ill. 2d at 525. Courts distinguish between cases in which the plaintiff sought care from a hospital and cases in which the plaintiff merely looked to the hospital as a place where the plaintiff's personal physician provided care and treatment. *Id.* at 525-26. Here, Cook testified that she went to St. Anthony because her obstetrician directed her to do so. Upon arriving at St. Anthony, nothing in the record suggests that Cook had any say in choosing Cobb as her radiologist, other than going to St. Anthony for her ultrasound. Cook has, therefore, sufficiently established her justifiable reliance with respect to St. Anthony.

St. Bernard's consent form is less ambiguous. The form clearly disclaims that physicians on staff are independent medical practitioners. Moreover, while the form has several parts, it fits neatly onto one page, contains no internal inconsistencies, and prominently displays the independent physician disclaimer as the only underlined paragraph. However, again, the existence of such a clear and unambiguous disclaimer is not dispositive. *See James*, 299 Ill. App. at 633. The uncontroverted facts show that Dengler and Dawson wore badges bearing the hospital's name. Such forms of identification linking physicians to a hospital sends mixed signals to patients as to the physicians' employment, *see York v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 222 Ill. 2d 147, 197 (2006), thereby preventing their status as independent contractors from being free from doubt. *See Seymour*, 2015 118432, ¶ 42 (citation omitted).

The uncontroverted facts also show that Cook had no say in selecting Dengler and Dawson to treat De'Aryiah. "Upon admission to a hospital, a patient seeks care from the hospital itself, except for that portion of medical treatment provided by physicians specifically selected by the patient. If a patient has not selected a specific physician to provide certain treatment, it follows that the patient relies upon the hospital to provide complete care . . . through the hospital's staff." *York*, 222 Ill. 2d at 194. Thus, Cook has sufficiently established her justifiable reliance with respect to St. Bernard.

A briefing schedule was never set for the UCMC Defendants' motion for partial summary judgment, so Cook has not had the opportunity to plead her case. Accordingly, it would be premature to grant the UCMC Defendants' motion. *See Colburn*, 2012 App (2d) 110624, ¶ 33. The UCMC Defendants argue that Cook has tacitly conceded their immunity from liability for negligence that occurred prior to De'Aryiah's arrival at UCMC, but this reads too much into Cook's motion. While Cook does seek to add willful and wanton counts that would insulate her complaint against UCMC's immunity argument, she does not withdraw her negligence counts.

Conclusion

For the reasons presented above, it is ordered that:

1. St. Anthony's summary judgment motion is denied;
2. St. Bernard's summary judgment motion is denied;
3. Pinto, Li, and UCMC's motion for partial summary judgment is stricken;
4. Cook's motion for leave to file her third amended complaint is granted; and
5. Pinto, Li, and UCMC are granted leave to file an amended motion for partial summary judgment on Cook's third amended complaint.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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