Order

Michigan Supreme Court
Lansing, Michigan

July 9, 2025

166702

MARY ANNE MARKEL,
Plaintiff-Appellant,

v

SC: 166702
COA: 350655
Oakland CC: 2018-164979-NH

WILLIAM BEAUMONT HOSPITAL,
Defendant-Appellee,
and

HOSPITAL CONSULTANTS, PC, LINET LONAPPAN, M.D., and IOANA MORARIU,
Defendants.

_____/

On April 10, 2025, the Court heard oral argument on the application for leave to appeal the January 4, 2024 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(I)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REMAND this case to the Oakland Circuit Court for further proceedings not inconsistent with this order.

This case returns to this Court after our remand to the Court of Appeals to apply the appropriate test under *Grewe v Mt Clemens Gen Hosp*, 404 Mich 240 (1978). *Markel v William Beaumont Hosp*, 510 Mich 1071, 1073 (2022) (*Markel II*). In *Markel II*, we rejected the holding that because plaintiff " 'did not recall' " her treating physician, Dr. Linet Lonappan, who was employed by Hospital Consultants, she could not have formed a reasonable belief that Dr. Lonappan was an agent of defendant William Beaumont Hospital (Beaumont). *Id*. at 1072-1073, quoting *Markel v William Beaumont Hosp*, unpublished per curiam opinion of the Court of Appeals, issued April 22, 2021 (Docket No. 350655) (*Markel I*), pp 6-7. We clarified that

> [t]he rule from *Grewe* is that when a patient presents for treatment at a hospital emergency room and is treated during their hospital stay by a doctor with whom they have no prior relationship, a belief that the doctor is the hospital's agent is reasonable unless the hospital does something to dispel that belief. Put another way, the "act or neglect" of the hospital is operating

> an emergency room staffed with doctors with whom the patient, presenting themselves for treatment, has no prior relationship. [*Markel II*, 510 Mich at 1071-1072, quoting *Grewe*, 404 Mich at 253.]

This explanation served to clarify the scope of a "reasonable belief" under the *Grewe* test.

But in its opinion on remand, the Court of Appeals determined that for plaintiff to prevail under *Grewe*, plaintiff must also show that she relied upon a representation from Beaumont that Dr. Lonappan was Beaumont's agent. The Court of Appeals further concluded that plaintiff had failed to show such reliance. *Markel v William Beaumont Hosp (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued January 4, 2024 (Docket No. 350655) (*Markel III*), p 8. That is, the panel reasoned that "because *Grewe* was decided on the basis of agency by estoppel, and because agency by estoppel requires reliance on the apparent authority of the purported agent, a plaintiff invoking *Grewe* and agency by estoppel must establish that reliance." *Id*.

The Court of Appeals erred by distinguishing between ostensible agency and agency by estoppel. While the panel accurately recognized that some secondary sources support the conclusion that there is a meaningful distinction between ostensible agency and agency by estoppel, see 1 Restatement Agency, 3d, § 2.03, comment *e*, pp 122-124, other secondary sources do not. See *Black's Law Dictionary* (12th ed) (noting that agency by estoppel is "[a]lso termed . . . ostensible agency").

Michigan law also has not distinguished between the terms. Our courts have used "ostensible agency" and "agency by estoppel" interchangeably. See *Grewe*, 404 Mich at 250-251 ("However, if the individual looked to the hospital to provide him with medical treatment and there has been a representation by the hospital that medical treatment would be afforded by physicians working therein, an agency by estoppel can be found."); cf. *id*. at 255 ("It is abundantly clear on the strength of this record that the plaintiff looked to defendant hospital for his treatment and was treated by medical personnel who were the ostensible agents of defendant hospital."); see also *Chapa v St Mary's Hosp of Saginaw*, 192 Mich App 29, 30-32 (1991), quoting *Grewe*, 404 Mich at 250-251 (characterizing *Grewe* as the leading authority on ostensible agency but quoting the portion of *Grewe* that states that " 'an agency by estoppel can be found' ") (emphasis omitted).

In keeping with the above authorities, the Court of Appeals cited *Wilson v Stilwill*, 411 Mich 587, 609 (1981), which explained that "[i]n [*Grewe*], we held that, under the doctrine of *agency by estoppel, or ostensible agency*, a hospital may be held liable for the acts of medical personnel who were its ostensible agents although the named defendant physician is not found liable." However, rather than recognize these authorities as using "ostensible agency" and "agency by estoppel" interchangeably, the Court of Appeals in the instant case latched onto the phrase "agency by estoppel" to hold that "for plaintiff to prevail under *Grewe* at the summary-disposition stage, she must show that she relied upon

Beaumont's representation, through its operation of an emergency department, that Dr. Lonappan was its agent." *Markel III*, unpub op at 8.

The panel majority is correct that reliance is relevant under the *Grewe* test, i.e., the test for ostensible agency or agency by estoppel. In *Markel II*, we explained that to establish liability a plaintiff must show, in addition to a reasonable belief in the agent's authority that is generated by the act or neglect of the principal, that "the third person *relying on* the agent's apparent authority must not be guilty of negligence." *Markel II*, 510 Mich at 1071, quoting *Grewe*, 404 Mich at 253 (quotation marks omitted; emphasis added).[1] *Grewe* therefore recognized that the plaintiff must rely on the agent's apparent authority.

The Court of Appeals erred, however, in its analysis of plaintiff's reliance. Reliance may be found where the patient presents to the hospital and is " 'looking to the hospital for treatment.' " *Markel II*, 510 Mich at 1071, quoting *Grewe*, 404 Mich at 251. Under *Grewe*, the " 'critical question' " in determining whether ostensible agency exists " 'is whether the plaintiff, at the time of his admission to the hospital, was looking to the hospital for treatment of his physical ailments or merely viewed the hospital as the situs where his physician would treat him for his problems.' " *Markel II*, 510 Mich at 1071, quoting *Grewe*, 404 Mich at 251. We agree with Judge SHAPIRO that

> when a person enters a hospital through the emergency room and is assigned an attending physician by the hospital, those actions alone are sufficient to create reliance by the patient and to create a question of fact as to ostensible agency unless it is shown that the patient was advised and understood that the physician was not the hospital's agent. [*Markel III* (SHAPIRO, J., dissenting), unpub op at 6.[2]]

No additional act of reliance on a plaintiff's part is necessary.

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[1] In this case, the "third person" is the patient. *Grewe* distinguished between the principal (the hospital), its agent, and a "third person" who receives communication of the principal's authority through the agent. See *Markel II*, 510 Mich at 1071-1072, citing *Grewe*, 404 Mich at 253-255.

[2] This construction of the rule finds support both in secondary sources, see, e.g., 40A Am Jur 2d, Hosps & Asylums, § 36, and in caselaw from other jurisdictions applying our *Grewe* framework, see, e.g., *Clark v Southview Hosp & Family Health Ctr*, 68 Ohio St 3d 435, 444 (1994); *Pamperin v Trinity Mem Hosp*, 144 Wis 2d 188, 211 (1988); cf. *Gilbert v Sycamore Muni Hosp*, 156 Ill 2d 511, 525 (1993) (adopting the same rule without looking to *Grewe*).

Applying the appropriate test, we hold that plaintiff has demonstrated a genuine issue of material fact as to Beaumont's liability for medical malpractice under the theory of ostensible agency. Plaintiff presented for treatment at the hospital emergency room and was treated at the hospital by a doctor with whom she had no prior relationship. See *Markel II*, 510 Mich at 1071. Beaumont has not set forth facts establishing as a matter of law that it dispelled plaintiff's reasonable belief that Dr. Lonappan was the hospital's agent. See *id*. We disagree with the Court of Appeals majority that the existence of an agreement between plaintiff's primary care physician and Hospital Consultants, Dr. Lonappan's employer, without more, establishes that plaintiff did not rely on Beaumont for care. *Markel III* (opinion of the court), unpub op at 9. As an initial matter, the agreement goes not to reliance, but to whether plaintiff's belief that Dr. Lonappan was Beaumont's agent was reasonable, as the agreement pertains to whether plaintiff had a preexisting relationship with Dr. Lonappan. See *Markel II*, 510 Mich at 1071. But even if the agreement could pertain to reliance, there is no evidence that plaintiff had any knowledge of the agreement at the time that she was admitted. Therefore, the mere existence of the agreement does not, as a matter of law, rebut plaintiff's reasonable belief that Dr. Lonappan was Beaumont's agent, or dispel plaintiff's reliance on that belief when she was treated by Dr. Lonappan.[3] Because the Court of Appeals erred by affirming the trial court's order granting summary disposition in favor of Beaumont, we reverse and remand this case to the Oakland Circuit Court for proceedings not inconsistent with this order.

We do not retain jurisdiction.

ZAHRA, J. (*dissenting*).

I dissent from this Court's order that again reverses the lower courts' decisions in this case. In the previous appeal before this Court, *Markel II*,[4] a majority of this Court held that *Grewe v Mt Clemens Gen Hosp*[5] is good law and supports an ostensible-agency claim "when a patient presents for treatment at a hospital emergency room and is treated during their hospital stay by a doctor with whom they have no prior relationship[.]"[6] Under such circumstances, a majority of this Court observed, "a belief that the doctor is the hospital's

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[3] The dissent does not argue that, in so holding, we are misapplying *Markel II*. Instead, the dissent's chief concern seems to be with our order in *Markel II*. We emphasize, however, that *Markel II* is both settled law and the law of the case. See *Rott v Rott*, 508 Mich 274, 286-288 (2021).

[4] *Markel v William Beaumont Hosp*, 510 Mich 1071 (2022) (*Markel II*).

[5] *Grewe v Mt Clemens Gen Hosp*, 404 Mich 240 (1978).

[6] *Markel II*, 510 Mich at 1071, 1073.

agent is reasonable unless the hospital does something to dispel that belief."[7] The Court's majority reached this conclusion although "for decades the Court of Appeals and this Court have indicated that the act-or-neglect requirement demands something more than the emergency room's mere existence."[8] The majority also ignored that *Grewe* itself at times stated that ostensible agency must be proven in part by " 'some act or neglect of the principal sought to be charged' "[9] or by " 'a *representation* by the hospital that medical treatment would be afforded by physicians working therein . . . .' "[10] Despite making these acknowledgments of law, *Grewe* oddly pivoted and "asked only whether the plaintiff, when admitted to the hospital, sought treatment from the hospital or merely viewed it as the location where his or her physician would provide treatment."[11] This question suggests that the determination of liability for ostensible agency relates to a plaintiff's beliefs and not the principal's conduct. *Markel II* represents a significant departure in this state's jurisprudence. As noted in former Justice Viviano's dissenting statement, "[t]he majority has essentially made hospital liability in these cases the default rule unless a patient's belief in an agency relationship 'is . . . dispelled in some manner by the hospital . . . .' "[12]

The Court's majority in *Markel II* concluded that the trial court and the Court of Appeals misinterpreted and misapplied *Grewe* and remanded "this case for reconsideration under the appropriate standard."[13] According to the majority in this case, the *Markel II* majority "explained that to establish liability by way of ostensible agency, a plaintiff must show, in addition to a reasonable belief in the agent's authority that is generated by the act or neglect of the principal, that 'the third person relying on the agent's apparent authority must not be guilty of negligence.' "[14]

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[7] *Id*. at 1071.

[8] *Id*. at 1076 (VIVIANO, J., dissenting).

[9] *Id*. at 1075, quoting *Grewe*, 404 Mich at 253.

[10] *Markel II*, 510 Mich at 1075, quoting *Grewe*, 404 Mich at 250-251 (ellipsis in *Markel II*).

[11] *Markel II*, 510 Mich at 1075, citing *Grewe*, 404 Mich at 251.

[12] *Markel II*, 510 Mich at 1082 (ellipses in *Markel II*).

[13] *Markel II*, 510 Mich at 1073 (opinion of the Court).

[14] Citing *Markel II*, 510 Mich at 1071, quoting *Grewe*, 404 Mich at 253 (quotation marks, citations, and emphasis omitted).

On remand, the Court of Appeals panel explained that "because *Grewe* was decided on the basis of agency by estoppel, and because agency by estoppel requires reliance on the apparent authority of the purported agent, a plaintiff invoking *Grewe* and agency by estoppel must establish that reliance."[15]

This Court again reverses the Court of Appeals' decision. A majority of the Court concludes that "[t]he Court of Appeals erred . . . in its analysis of plaintiff's reliance. Reliance may be found where the patient presents to the hospital and is looking to the hospital for treatment."[16] The majority agrees with former Judge SHAPIRO that,

> when a person enters a hospital through the emergency room and is assigned an attending physician by the hospital, those actions alone are sufficient to create reliance by the patient and to create a question of fact as to ostensible agency unless it is shown that the patient was advised and understood that the physician was not the hospital's agent.[17]

Essentially, the majority improperly assumes a patient's reliance based solely on their arrival at the hospital, which invariably results in being assigned an attending physician by the hospital, particularly in an emergency setting. Since the majority has continued down the clear path toward making hospital liability in these cases the default rule unless a patient's belief in an agency relationship " 'is . . . dispelled in some manner by the hospital,' " I dissent.

HOOD, J., did not participate because the Court considered this case before he assumed office.

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[15] *Markel v William Beaumont Hosp (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued January 4, 2024 (Docket No. 350655) (*Markel III*), p 8.

[16] Quoting *Grewe*, 404 Mich at 251 (quotation marks omitted).

[17] Quoting *Markel III* (SHAPIRO, J., dissenting), unpub op at 6.

STATE OF MICHIGAN

COURT OF APPEALS

MARY ANNE MARKEL,

Plaintiff-Appellant,

v

WILLIAM BEAUMONT HOSPITAL,

Defendant-Appellee,

and

HOSPITAL CONSULTANTS, PC, LINET LONAPPAN, M.D., and IOANA MORARIU,

Defendants.

UNPUBLISHED
January 4, 2024

No. 350655
Oakland Circuit Court
LC No. 2018-164979-NH

ON REMAND

Before: RIORDAN, P.J., and SHAPIRO and SWARTZLE, JJ.

PER CURIAM.

The issue before this Court involves defendant William Beaumont Hospital's (Beaumont) vicarious liability for alleged malpractice committed by defendant Linet Lonappan, M.D., an independent contractor who treated plaintiff, Mary Anne Markel, at Beaumont. The trial court granted summary disposition in favor of Beaumont, concluding that Dr. Lonappan was not an actual or ostensible agent of Beaumont.

In plaintiff's initial appeal,[1] this Court held that the trial court erred with respect to plaintiff's actual-agency theory, but affirmed the trial court's ruling with respect to ostensible agency. *Markel v William Beaumont Hosp*, unpublished per curiam opinion of the Court of Appeals, issued April 22, 2021 (Docket No. 350655) (*Markel I*). Our Supreme Court reversed the latter holding, concluding that this Court's analysis of the ostensible-agency issue was inconsistent with *Grewe v Mt Clemens Gen Hosp*, 404 Mich 240; 273 NW2d 429 (1978), and remanded to this Court for reconsideration of that issue under the appropriate standard. *Markel v William Beaumont Hosp*, 510 Mich 1071 (2022) (*Markel II*).

We once again affirm on the issue before us.[2]

I. FACTS

In *Markel I*, this Court set forth the background facts of this case:

> In early October 2015, plaintiff underwent an endometrial ablation and was discharged the same day. A week later, on October 9, 2015, plaintiff went to Beaumont's emergency department complaining of numbness in her feet, back pain, and an inability to urinate. After a blood count, CT scan, and MRI, it was determined plaintiff had degenerative disc disease in her lumbar spine, with several disc extrusions and protrusions, and a urinalysis was conducted. On October 10, 2015, plaintiff was transferred to Beaumont's observation unit and a physician's assistant, Janay Warner, ordered another urinalysis and a urine culture study. Later that afternoon, plaintiff was admitted to the hospital and seen by defendant, Dr. Linet Lonappan. Dr. Lonappan, a board-certified internist and hospitalist, was employed by defendant, Hospital Consultants, PC. Hospital Consultants had an agreement with plaintiff's physician, Dr. John Bonema, to provide treatment for his patients that presented to Beaumont. Dr. Lonappan completed a history of plaintiff, performed a physical examination, and was aware a urine culture study and urinalysis had been ordered.
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> On the morning of October 11, 2015, plaintiff, whose fever spiked the night before but had returned to normal since, spoke with a pain-medicine physician, Dr. Daniel Sapeika, regarding her back pain. Dr. Sapeika noted plaintiff's desire to be discharged and recommended that, if she were discharged that day, she was to receive an epidural on October 12, 2015, on an outpatient basis. On the afternoon of October 11, 2015, Dr. Lonappan discharged plaintiff from the hospital and instructed her to follow up with neurosurgery, internal medicine, and pain

[1] After denying plaintiff's application for leave to appeal, *Markel v William Beaumont Hosp*, unpublished order of the Court of Appeals, entered November 6, 2019 (Docket No. 350655), this Court was directed by our Supreme Court to consider her appeal as on leave granted, *Markel v William Beaumont Hosp*, 505 Mich 961 (2020).

[2] Our earlier decision concerning actual agency remains unchanged as the Supreme Court did not consider this issue.

medicine. Approximately three hours later, at 5:47 p.m., a preliminary result from plaintiff's urine culture tested positive for streptococcus agalactiae. Dr. Lonappan testified that although she was aware of the result of plaintiff's urine culture study, she did not believe the standard of care required her to contact plaintiff with the results, nor that the results were relevant to plaintiff's care. On October 12, 2015, the final report for the urine culture study was released and showed plaintiff was positive for Group B Streptococcus. On October 13, 2015, plaintiff returned to Beaumont's emergency department complaining of pain in both knees and pain in multiple joints. Plaintiff was provided intravenous antibiotics, and had surgical drainage of an epidural abscess and revision of her knee replacements. Plaintiff remained admitted to Beaumont until November 22, 2015.

Plaintiff filed a complaint alleging, relevant here, that Dr. Lonappan was negligent and Beaumont was vicariously liable for Dr. Lonappan's negligent acts. Plaintiff alleged Dr. Lonappan was an "actual agent[ ], apparent agent[ ], ostensible agent[ ], servant and/or employee[ ] of William Beaumont Hospital" and, as a result, Beaumont was "vicariously liable for the negligent acts and/or omissions" of Dr. Lonappan. Beaumont moved for summary disposition under MCR 2.116(C)(10), asserting, in relevant part, that it was not vicariously liable for the allegations against Dr. Lonappan under either an ostensible-agency theory or an actual agency theory. Beaumont argued that it was undisputed that Dr. Lonappan was employed by Hospital Consultants but never employed by Beaumont. Beaumont further asserted that Dr. Lonappan became involved in plaintiff's treatment through an agreement between Hospital Consultants and Dr. Bonema, and asserted that Beaumont did not make any representations to plaintiff to "lead her to believe that an agency existed between the hospital" and Dr. Lonappan. Beaumont noted that, as a result, and on the basis of existing caselaw, it was not vicariously liable for the allegations against Dr. Lonappan and was entitled to summary disposition under MCR 2.116(C)(10).

Plaintiff responded, arguing the existence of an agency relationship was a question of fact for the jury. Plaintiff also argued that, under [*Grewe*] and its progeny, Dr. Lonappan was the ostensible agent of Beaumont. Plaintiff, pointing to Dr. Lonappan's deposition testimony, asserted she had a reasonable belief that Dr. Lonappan was acting on Beaumont's behalf. Plaintiff noted that Dr. Lonappan wore a white laboratory coat with credentials from Beaumont as she provided care and treatment to plaintiff, and that Dr. Lonappan introduced herself to patients by stating her name and indicating she was assigned to their care by Beaumont. Further, plaintiff asserted that Dr. Lonappan "made no statements" and "took [no] affirmative action to indicate to [plaintiff] that she was not an employ[ee] of the hospital."

* * *

Following a hearing on Beaumont's motion for summary disposition, the trial court concluded Dr. Lonappan was not an actual agent of Beaumont, noting that once Beaumont assigned Dr. Lonappan a patient, Dr. Lonappan was

> responsible for examining the patient, coming up with a plan for that patient's diagnosis and treatment, and ultimately deciding whether to discharge the patient. . . .
>
> The trial court also agreed with Beaumont that an ostensible agency did not exist between Beaumont and Dr. Lonappan, and, as a result, summary disposition of plaintiff's vicarious-liability claim was also proper on that basis. The trial court found that plaintiff only recalled seeing a "pain doctor" during her time at Beaumont from October 9, 2015 to October 11, 2015, and plaintiff "essentially testified she had no recollection of Dr. Lonappan." The trial court concluded that, "[w]ithout any recollection of Dr. Lonappan, there [was] nothing to support [p]laintiff's claim that she harbored a reasonable belief that Dr. Lonappan was acting as a hospital employee." Moreover, the trial court concluded it could not consider plaintiff's affidavit because it "conflict[ed] with her previous deposition testimony." The trial court also found that while Dr. Lonappan testified she typically informed patients that Beaumont assigned her to their care, there was no indication Beaumont "encouraged Dr. Lonappan to say this or that it acquiesced in the use of this vernacular." The trial court recognized that Dr. Lonappan's laboratory coat indicated an affiliation with Beaumont, potentially supporting a conclusion Beaumont encouraged a belief that Dr. Lonappan was its employee or agent. However, the trial court noted that Dr. Lonappan's laboratory coat also reflected her affiliation with Hospital Consultants. Additionally, the trial court found the affiliations printed on the laboratory coat "immaterial given that Plaintiff does not even recall having seen it." [*Markel I*, unpub op at 1-3.]

We affirmed the trial court to the extent that it dismissed plaintiff's vicarious-liability claim on the basis of ostensible agency but reversed that court to the extent that it dismissed the claim on the basis of actual agency. *Id*. at 7. Accordingly, this Court remanded to the trial court for further proceedings with respect to the actual-agency theory. *Id*. at 9.

Plaintiff sought leave to appeal in our Supreme Court, which was granted. *Markel v William Beaumont Hosp*, 508 Mich 957 (2021). Following oral argument, our Supreme Court reversed and remanded to this Court "for reconsideration under the proper legal standard," explaining, in relevant part:

> In *Grewe*, a patient presented at the emergency room for treatment and received care from a doctor with whom she had no preexisting relationship. The *Grewe* Court explained that to determine if ostensible agency exists, "the critical question is whether the plaintiff, at the time of his admission to the hospital, was looking to the hospital for treatment of his physical ailments or merely viewed the hospital as the situs where his physician would treat him for his problems." When determining in *Grewe* that the patient had been looking to the hospital for treatment rather than as a mere situs, we acknowledged as significant that there was "nothing in the record which should have put the plaintiff on notice that [the doctor] . . . was an independent contractor as opposed to an employee of the hospital" and there was "no record of any preexisting patient-physician relationship with any of the medical personnel who treated the plaintiff at the hospital." A patient who has clear notice

of a treating physician's employment status or who has a preexisting relationship with a physician outside of the hospital setting cannot reasonably assume that the same physician is an employee of the hospital merely because treatment is provided within a hospital.

In concluding the doctor was the hospital's ostensible agent, the *Grewe* Court cited the emergency room setting and the lack of a preexisting relationship between doctor and patient. The rule from *Grewe* is that when a patient presents for treatment at a hospital emergency room and is treated during their hospital stay by a doctor with whom they have no prior relationship, a belief that the doctor is the hospital's agent is reasonable unless the hospital does something to dispel that belief. Put another way, the "act or neglect" of the hospital is operating an emergency room staffed with doctors with whom the patient, presenting themselves for treatment, has no prior relationship. . . .

* * *

The panel majority concluded that because the plaintiff "did not recall" the doctor who treated her at the hospital, she could not have formed a reasonable belief that the doctor was the hospital's agent. This holding is in tension with *Grewe*, which held that when a patient presents at the emergency room for treatment, the patient's belief that a doctor is the hospital's agent is reasonable unless dispelled in some manner by the hospital or the treating physician. We also note that patient testimony is not required to establish ostensible agency under *Grewe*.

* * *

Because the trial court and the Court of Appeals misinterpreted and misapplied *Grewe*, we remand this case for reconsideration under the appropriate standard. . . . [*Markel II*, 510 Mich at 1071-1073 (citations omitted).]

Having received and considered the parties' respective supplemental briefs, we now again decide this case.[3]

[3] In its supplemental brief, Beaumont referred to the following excerpt from plaintiff's deposition, which was not included in the trial-court record, in support of its argument that she was aware that Dr. Lonappan was an independent contractor at the time of her hospitalization:

Q. Okay. Do you know what Hospital Consultants is?

A. I do.

Q. What's your understanding with that?

II. STANDARD OF REVIEW

"This Court reviews de novo a trial court's decision to grant or deny summary disposition under MCR 2.116(C)(10)." *Mazzola v Deeplands Dev Co LLC*, 329 Mich App 216, 223; 942 NW2d 107 (2019). "A motion under MCR 2.116(C)(10) . . . tests the factual sufficiency of a claim." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019) (emphasis omitted). "When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id*. "A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact." *Id*. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

III. DISCUSSION

"A hospital may be 1) directly liable for malpractice, through claims of negligence in supervision of staff physicians as well as selection and retention of medical staff, or 2) vicariously liable for the negligence of its agents." *Cox v Bd of Hosp Managers for the City of Flint*, 467 Mich 1, 11; 651 NW2d 356 (2002). "Generally speaking, a hospital is not vicariously liable for the negligence of a physician who is an independent contractor and merely uses the hospital's facilities to render treatment to his patients." *Grewe*, 404 Mich at 250. However, a hospital may be vicariously liable under a theory of ostensible agency. See *id*. at 252. "An ostensible agency may be created when the principal intentionally or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him." *People v Jordan*, 275 Mich App 659, 663; 739 NW2d 706 (2007) (quotation marks and citations omitted). In the hospital context,

> before a recovery can be had against a principal for the alleged acts of an ostensible agent, three things must be proved, to wit: (First) The person dealing with the agent

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> *A*. My understanding is my internists don't go to the hospital so if I have to go to the hospital they need someone medical to treat me they refer it to this kind of a group.

In response to this argument, plaintiff sought to expand the record with her recent affidavit explaining that her testimony in this regard referred to knowledge acquired after her hospitalization. We denied the motion to expand the record with her affidavit but expanded the record to include her complete deposition. *Markel v William Beaumont Hosp*, unpublished order of the Court of Appeals, entered August 18, 2023 (Docket No. 350655).

After reviewing the entirety of plaintiff's deposition testimony at issue, we agree with plaintiff that her testimony does not necessarily establish her knowledge at the time of her hospitalization. The use of the present tense "is" in her testimony may reasonably refer to her knowledge at the time of her deposition but not at the time of her hospitalization. Since plaintiff's knowledge at the time of her deposition is not relevant to the issue before us, this deposition testimony is not considered in our analysis.

> must do so with belief in the agent's authority and this belief must be a reasonable one; (second) such belief must be generated by some act or neglect of the principal sought to be charged; (third) and the third person relying on the agent's apparent authority must not be guilty of negligence. [*Grewe*, 404 Mich at 252-253 (cleaned up).]

In *Markel II*, our Supreme Court clarified the first two elements of the *Grewe* test. With regard to the first element, "[a] patient who has clear notice of a treating physician's employment status or who has a preexisting relationship with a physician outside of the hospital setting cannot reasonably assume that the same physician is an employee of the hospital merely because treatment is provided within a hospital." *Markel II*, 510 Mich at 1071. However, in most cases, "when a patient presents at the emergency room for treatment, the patient's belief that a doctor is the hospital's agent is reasonable unless dispelled in some manner by the hospital or the treating physician." *Id*. at 1072. With regard to the second element, "the 'act or neglect' of the hospital is operating an emergency room staffed with doctors with whom the patient, presenting themselves for treatment, has no prior relationship." *Id*. at 1071-1072.

While this appeal generally has been framed in terms of "ostensible agency," our Supreme Court has explained that *Grewe* was an application of both "the doctrine of agency by estoppel" and "ostensible agency." *Wilson v Stilwill*, 411 Mich 587, 609; 309 NW2d 898 (1981) ("In [*Grewe*], we held that, under the doctrine of agency by estoppel, or ostensible agency, a hospital may be held liable for the acts of medical personnel who were its ostensible agents although the named defendant physician is not found liable.").[4] Indeed, *Grewe* itself referred to "agency by estoppel" as the basis for its decision. See *Grewe*, 404 Mich at 250-251 ("[I]f the individual looked to the hospital to provide him with medical treatment and there has been a representation by the hospital that medical treatment would be afforded by physicians working therein, an agency by estoppel can be found.").

Both our Supreme Court and this Court have consistently held that agency by estoppel requires reasonable or justifiable "reliance" on the apparent authority of the purported agent. See, e.g., *Flat Hots Co v Peschke Packing Co*, 301 Mich 331, 337; 3 NW2d 295 (1942) ("Agency by estoppel can be established only where defendant holds the agent out as being authorized, and the plaintiff, relying thereon, has acted in good faith upon such representation."); *David Stott Flour Mills v Saginaw Co Farm Bureau*, 237 Mich 657, 662; 213 NW 147 (1927) ("[I]n order for the holding out of another as an agent to act in a given capacity, or knowingly and without dissent permitting him to do so, or where the habits and course of dealing have been such as to warrant a presumption of authority, to constitute an estoppel it must also appear that persons claiming rights

[4] The doctrine of "agency by estoppel" provides that "when a principal by any such acts or conduct has knowingly caused or permitted another to appear to be his agent either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances." *Pettinger v Alpena Cedar Co*, 175 Mich 162, 166; 141 NW2d 535 (1913) (quotation marks and citation omitted).

by reason thereof have relied thereon in good faith and in the exercise of reasonable prudence.") (quotation marks and citation omitted); *Little v Howard Johnson Co*, 183 Mich App 675, 683; 455 NW2d 390 (1990) ("Hence, the alleged principal must have made a representation that leads the plaintiff to reasonably believe that an agency existed and to suffer harm on account of a justifiable reliance thereon.").[5]

Accordingly, because *Grewe* was decided on the basis of agency by estoppel, and because agency by estoppel requires reliance on the apparent authority of the purported agent, a plaintiff invoking *Grewe* and agency by estoppel must establish that reliance. Indeed, the third element of the *Grewe* test refers to "the third person *relying on* the agent's apparent authority." (Emphasis added.) Therefore, for plaintiff to prevail under *Grewe* at the summary-disposition stage, she must show that she relied upon Beaumont's representation, through its operation of an emergency department, that Dr. Lonappan was its agent.[6]

We conclude that plaintiff has failed to show such reliance. We first note that plaintiff, in her supplemental brief, does not contend that she showed reliance. Instead, she argues that reliance is not an element of her ostensible-agency theory.[7] We recognize that some of the secondary legal authorities cited by plaintiff suggest that there is a distinction between ostensible agency and agency by estoppel, such that ostensible agency does not require reliance but agency by estoppel does. See, e.g., 1 Restatement Agency, 3d, § 2.03, comment e. ("To establish that an agent acted with apparent authority, it is not necessary for the plaintiff to establish that the principal's manifestation induced the plaintiff to make a detrimental change in position, in contrast to the showing required by the estoppel doctrines . . . ."). However, because our Supreme Court has characterized *Grewe* as involving agency by estoppel, see *Grewe*, 404 Mich at 250-251; *Wilson*, 411 Mich at 609, and because agency by estoppel unquestionably requires reliance, see *Flat Hots Co*, 301 Mich at 337, that is the law by which we are bound and which we must apply.

There is nothing in the record to suggest that plaintiff relied upon any representation by Beaumont that Dr. Lonappan was its agent. On October 9, 2015, plaintiff went to Beaumont's emergency department to seek treatment for her pain and other symptoms. Although it may reasonably be contended that plaintiff did so in reliance upon the representation that the emergency department (or "ER") doctors were agents of Beaumont, see *Markel II*, 510 Mich at 1071-1072 (explaining that "the 'act or neglect' of the hospital is operating an emergency room staffed with

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[5] See also *Sasseen v Comm'y Hosp Foundation*, 159 Mich App 231, 239; 406 NW2d 193 (1986) ("[A]n ostensible agency arises when circumstances are such as to cause a third party to reasonably rely upon the existence of an agency relationship so as to estop the alleged principal or agent from denying the agency.") (quotation marks and citation omitted).

[6] Compare *Markel II*, 510 Mich at 1084 n 12 (VIVIANO, J., *dissenting*) ("I would not address defendant's alternative argument that reliance on the hospital's act or omission is required and plaintiff here has failed to demonstrate it. This issue might arise on remand to the Court of Appeals, which should consider this Court's pre-*Grewe* caselaw discussed above to determine whether reliance is required.").

[7] Further, she contends that JUSTICE VIVIANO in his *Markel II* dissent erred by suggesting otherwise because he "confused two separate concepts," ostensible agency and agency by estoppel.

doctors with whom the patient, presenting themselves for treatment has no prior relationship"), Dr. Lonappan was not an ER doctor. In fact, Dr. Lonappan did not treat plaintiff until the day following her decision to go to Beaumont's emergency room. It was not until then that she was referred to plaintiff pursuant to a pre-existing agreement between Hospital Consultants and her primary care physician, Dr. Bonema.

In other words, while plaintiff may have relied upon Beaumont's initial representation regarding its emergency-department doctors when she first decided to go to Beaumont, the evidence in this case indicates that she was a passive participant when she was subsequently treated by Dr. Lonappan a day later, per an agreement Dr. Lonappan's practice group has with her physician. That is, plaintiff received medical care from whomever was assigned to her at the time by Hospital Consultants without any action by her or reliance on her part to any representation relating to Beaumont. Consequently, there is no genuine issue of material fact as to whether plaintiff relied upon Beaumont's representation that Dr. Lonappan was its agent. Thus, the trial court correctly granted summary disposition in favor of Beaumont on this issue.

IV. CONCLUSION

The *Grewe* test, as applicable to the matter before us, requires a showing of "reliance" upon the apparent authority of the purported agent. The evidence fails to show such reliance, and plaintiff seemingly concedes as much in her supplemental brief. Therefore, the trial court properly granted summary disposition in favor of Beaumont on the issue of ostensible agency as laid out in *Grewe*, and we once again affirm that aspect of its ruling.[8]

/s/ Michael J. Riordan
/s/ Brock A. Swartzle

[8] As noted, however, further proceedings are necessary concerning actual agency.

STATE OF MICHIGAN

COURT OF APPEALS

MARY ANNE MARKEL,

Plaintiff-Appellant,

v

WILLIAM BEAUMONT HOSPITAL,

Defendant-Appellee,

and

HOSPITAL CONSULTANTS, PC, LINET LONAPPAN, M.D., and IOANA MORARIU,

Defendants.

UNPUBLISHED
January 4, 2024

No. 350655
Oakland Circuit Court
LC No. 2018-164979-NH

ON REMAND

Before: RIORDAN, P.J., and SHAPIRO and SWARTZLE, JJ.

SHAPIRO, J. *(dissenting).*

I respectfully dissent, as the majority has (1) failed to comply with the Supreme Court's remand directions, and (2) erred on the question of ostensible agency.

In our prior opinion, *Markel v William Beaumont Hosp*, unpublished per curiam opinion of the Court of Appeals, issued April 22, 2021 (Docket No. 350655) (*Markel I*), the panel concluded that a question of fact on ostensible agency was not created, despite the following facts:

1. The patient entered the hospital through the emergency department and was admitted by emergency room physicians, not her personal physician. Her personal physician had no involvement with any of plaintiff's treatment at the hospital.

2. Plaintiff had no preexisting relationship with defendant Dr. Lonappan.

3. Dr. Lonappan is an internal medicine physician with a subspecialty in "hospitalist medicine." She has no private clinic and does not see or treat patients outside of Beaumont Hospital. Her practice is limited solely to serving as the attending physician for hospitalized patients not being admitted by their own, personal physician. According to Yale Medicine:

> A hospitalist is a physician who cares for inpatients, meaning they only work inside a hospital. These doctors have often completed residency training in general internal medicine, pediatrics, neurology, obstetrics and gynecology, or oncology. They may also be board-certified in hospital medicine. Hospitalists provide timely attention to all your needs, including diagnosis, treatment, and coordination of care across the many specialists you might see during your stay.
>
> Because they only work in this setting, hospitalists know how to navigate the hospital staff and protocols, and they are experts in treating the most common conditions that bring people to the hospital. You can think of a hospitalist as an in-house, temporary primary care physician focused on your care while you are hospitalized. Though hospitalists sometimes get to know their patients well, they do not continue to care for them after discharge. [Carrie MacMillan, Yale Medicine, *What Is a Hospitalist?* <https://www.yalemedicine.org/news/what-is-hospitalist> (posted October 26, 2022) (accessed December 21, 2023).]

4. Upon admission, the hospital assigned Dr. Lonappan to serve as plaintiff's attending physician. As the trial court put it, "once Beaumont assigned Dr. Lonappan a patient, Dr. Lonappan was responsible for examining the patient, coming up with a plan for that patient's diagnosis and treatment, and ultimately deciding whether to discharge the patient."

5. When on duty, Dr. Lonappan wears a white lab coat with credentials that say: "Beaumont Health System." The credentials also contain the words: "Hospital Consultants, PC." Plaintiff does not recall how Dr. Lonappan introduced herself and neither did Dr. Lonappan when she testified. However, Dr. Lonappan testified that when she introduces herself to patients, she simply says: "I'm Dr. Lonappan," without identifying any affiliations.[1]

[1] When questioned by plaintiff's counsel, Dr. Lonappan testified that introducing herself by name only was her standard practice. However, when questioned by her own counsel, she said that if

The Supreme Court reversed this Court's prior opinion and remanded for this Court to again consider the case, but this time "under the proper legal standard." *Markel v William Beaumont Hosp*, ___ Mich ___, ___; 982 NW2d 151, 152 (2022) (*Markel II*). The Supreme Court cited *Grewe v Mt Clemens Gen Hosp*, 404 Mich 240; 273 NW2d 429 (1978), for the three elements of that standard:

> [First] The person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one; [second] such belief must be generated by some act or neglect of the principal sought to be charged; [third] and the third person relying on the agent's apparent authority must not be guilty of negligence. [*Markel II*, 982 NW2d at 152, quoting *Grewe*, 404 Mich at 253 (alterations in original).]

The Supreme Court's order remanding this case went on to state:

> The rule from *Grewe* is that when a patient presents for treatment at a hospital emergency room and is treated during their hospital stay by a doctor with whom they have no prior relationship, a belief that the doctor is the hospital's agent is reasonable unless the hospital does something to dispel that belief. [*Markel II*, 982 NW2d at 153.]

In *Brackens v Detroit Osteopathic Hosp*, 174 Mich App 290; 435 NW2d 472 (1989), this Court held that it was a question of fact whether the defendant hospital could be held liable for two physicians' negligence in failing to properly diagnose the plaintiff. The two physicians were both independent contractors. In reversing summary disposition and reaching the conclusion that the agency issue was one for the jury, this Court stated: "Factors to be considered are whether the plaintiff had an independent relationship with the physician prior to entering the hospital and whether the hospital was really the situs for treatment by plaintiff's own physician." *Id.* at 293.

Application of this rule is straightforward in this case. First, plaintiff presented for treatment at the hospital emergency room. Second, she was treated during her hospital stay by a physician with whom she had no prior relationship. Third, she reasonably believed that Dr. Lonappan was an agent of the hospital, and the hospital did nothing to dispel that belief.

In our prior opinion, *Markel I*, unpub op at 4, the majority, citing *VanStelle v Macaskill*, 255 Mich App 1; 662 NW2d 41 (2003), overruled in part by *Markel II*, 982 NW2d 151, erroneously concluded that ostensible agency may not be found absent an affirmative act by the hospital. This Court stated: "[T]he defendant as the putative principal must have done something that would

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the patient's primary care physician contracted with Hospital Consultants, she would tell the patient that she was seeing them in place of their primary care physician, and that she is a hospitalist "associated" with that physician. Certainly, if the fact-finder finds this second explanation credible, it would weigh against a finding of ostensible agency, but, at this stage, our role is to consider the evidence in the light most favorable to the nonmovant, plaintiff.

create in the patient's mind the reasonable belief that the doctors were acting on behalf of the defendant hospital." *Markel I*, unpub at 4.

The *Markel I* majority went on to cite *VanStelle*'s reliance on *Sasseen v Community Hosp Foundation*, 159 Mich App 231, 240; 406 NW2d 193 (1986), for the principle that "[a]gency does not arise merely because one goes to a hospital for medical treatment. There must be some action or representation by the principal (hospital) to lead the third person (plaintiff) to reasonably believe an agency in fact existed." *Markel I*, unpub op at 4. *VanStelle*'s reliance on *Sasseen* is dubious. In *Sasseen*, the plaintiff was admitted and treated by her personal physician while at the hospital.[2] *Sasseen*, 159 Mich App at 233-234. That situation clearly falls outside of *Grewe* and is far afield from circumstances in the instant case. Indeed, the majority's initial reliance on *VanStelle* is difficult to understand since that case involved treatment at a physician's private office. *VanStelle*, 255 Mich App at 3-5. Thus, the circumstances in *VanStelle* and *Sasseen* affirmatively demonstrate that the physician was not the hospital's agent.

However, when a patient is admitted by the emergency department or by a hospitalist, the opposite is true. A patient will reasonably assume a physician is the hospital's agent absent some action that makes clear to a reasonable person that this is not the case.

The only post-*Grewe* medical malpractice case even cited in the majority's opinion is *Wilson v Stilwill*, 411 Mich 587; 309 NW2d 898 (1981).[3] However, like *Sasseen* and *VanStelle*, the facts in *Wilson* are far afield from the instant case. In *Wilson*, "there was an independent physician-patient relationship prior to the hospital treatment." *Id.* at 610. Given that the physician in *Wilson* was not negligent, there could be no hospital liability based on agency, regardless of whether it was termed "ostensible agency" or "agency by estoppel." *Id.* Rather than recognizing *Wilson*'s inability to support its view, the majority opinion hangs its hat on the fact that, in *Wilson*, the Court referred to both "agency by estoppel" and "ostensible agency." From there, it backs into the view it stated in *Markel I*—that unless the plaintiff can demonstrate an affirmative

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[2] Similarly, in *Chapa v St Mary's Hosp of Saginaw*, 192 Mich App 29; 480 NW2d 590 (1991), the plaintiff asserted that the hospital was liable for the negligence of his attending physician and a consultant requested by the attending physician. *Id.* at 30-31. We held the hospital was not vicariously liable, because even though the malpractice occurred at the hospital, the attending physician was the plaintiff's own family physician. *Id.* at 32-34.

[3] The majority does, however, cite a 1927 case involving a commercial contract for the sale of flour, *David Stott Flour Mills v Saginaw Co Farm Bureau*, 237 Mich 657; 213 NW 147 (1927), a 1942 commercial case dealing with the sale of sausages, *Flat Hots Co, Inc v Peschke Packing Co*, 301 Mich 331; 3 NW2d 295 (1942), a 1990 case involving the potential liability of a franchisor for a franchisee's negligence, *Little v Howard Johnson Co*, 183 Mich App 675; 455 NW2d 390 (1990), and a 2007 criminal case in which the defendant sought to suppress a witness's testimony on the grounds that a private individual should be considered an agent of the police, *People v Jordan*, 275 Mich App 659; 739 NW2d 706 (2007). A footnote in the majority opinion cites a fourth commercial case, this one from 1913, but fails to recognize that the Supreme Court concluded the existence of agency by estoppel was a question for the jury. *Pettinger v Alpena Cedar*, 175 Mich 162, 167; 141 NW 535 (1913).

representation of agency by the hospital, there can be no ostensible agency. In sum, rather than adhering to the remand order and applying the *Grewe* standard as defined in that order, the majority chooses instead to follow the standard advocated in Justice VIVIANO'S dissent. Notably, the remand order makes no reference to "agency by estoppel."

I recognize that the majority does cite to *Grewe* and points out that *Grewe* used the term "agency by estoppel." However, in the entire *Grewe* opinion, the word "estoppel" appears only once, immediately following which it states:

> In our view, the critical question is whether the plaintiff, at the time of his admission to the hospital, was looking to the hospital for treatment of his physical ailments or merely viewed the hospital as the situs where his physician would treat him for his problems. A relevant factor in this determination involves resolution of the question of whether the hospital provided the plaintiff with Dr. Katzowitz or whether the plaintiff and Dr. Katzowitz had a patient-physician relationship independent of the hospital setting. [*Grewe*, 404 Mich at 251.]

Grewe further clarified that "[t]he relationship between a given physician and a hospital may well be that of an independent contractor performing services for, but not subject to, the direct control of the hospital. However, that is not of critical importance to the patient who is the ultimate victim of that physician's malpractice[,]" *id.* at 252, and noted the lack of evidence that the hospital put the plaintiff on notice of the physician's status as an independent contractor. *Id.* at 253-255.[4]

[4] The hospital argues that ostensible agency may not be found because the attending physician was part of a hospitalist group that contracted with plaintiff's primary care physician to act as attending physician to any of the group's patients should they be hospitalized. As noted, Dr. Lonappan offered two different versions of what she told plaintiff, one of which included a statement that she was seeing plaintiff in lieu of her primary care physician, but another in which she simply introduced herself to plaintiff as her attending physician. In any event, as noted in *Johnson v Kolachalam*, unpublished per curiam opinion of the Court of Appeals, issued July 21, 2016 (Docket No. 326615):

> Defendants contend that the hospital did not identify Sabir as its agent. Defendants presented plaintiff's signed consent form, in which she acknowledged that "some of the physicians who manage the care are independent physicians and not agents, representatives, or employees of the facility." Plaintiff contends that the hospital neglected to inform her that Sabir was not a staff doctor, which was sufficient to establish ostensible agency. Plaintiff explained that she presented to the hospital as an emergency case and she did not present to a specific physician. Plaintiff said she believed she was being treated by the hospital, and by admitting her, the hospital represented that she would be treated. Given her pain and distress when she arrived, plaintiff did not unreasonably fail to ask whether the individual doctor who treated her was an employee of the hospital or an independent contractor. See *Grewe*, 404 Mich at 253. Under the circumstances, plaintiff could have reasonably believed that defendant Sabir was an employee of the hospital. Accordingly, the

The majority asserts that there is no evidence of "reliance." However, if affirmative assertions of reliance are required, it is difficult to see how *Grewe* could have been routinely applied to emergency room cases. The fact that the physician's practice takes place solely in the hospital is adequate to create reliance by the patient.[5]

It is not our role to weigh the facts for or against a showing of ostensible agency. So long as there is evidence to support a finding of ostensible agency, the question is for the fact-finder. As *Grewe* noted: "Agency is always a question of fact for the jury." *Id.* at 253, citing with approval *Stanhope v Los Angeles College of Chiropractic*, 54 Cal App 141, 146 (1942).

In sum, when a person enters a hospital through the emergency room and is assigned an attending physician by the hospital, those actions alone are sufficient to create reliance by the patient and to create a question of fact as to ostensible agency unless it is shown that the patient was advised and understood that the physician was not the hospital's agent. Put in the language favored by the majority, admission through the emergency room, the hospital's assignment of an attending physician, and permitting that physician to wear hospital identification are all affirmative acts giving rise to a reasonable belief that the physician is an agent of the hospital.[6] At a minimum,

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> trial court did not err by denying defendants' motion for summary disposition on plaintiff's ostensible agency claim. [*Johnson*, unpub op at 10.]

[5] The nature of a patient's reliance on a hospital was discussed at length in *Popovich v Allina Health Sys*, 946 NW2d 885 (Minn, 2020). In *Popovich*, the parties disagreed on the nature of the "reliance" that the plaintiff patient was required to show. According to the hospital in *Popovich*, "a plaintiff's claim fails unless the plaintiff can show that the patient would not have accepted care had the patient known that the personnel in the emergency were not actually agents or employees of the hospital." *Id.* at 895. The Minnesota Supreme Court rejected this argument, concluding that the issue of reliance does not require explicit affirmative reliance:

> The second element, "reliance," focuses on the beliefs of patients and considers whether the patient looked to the hospital, rather than to a particular doctor, to provide care. Specifically, the fact-finder should determine if the plaintiff relied on the hospital to select the physician and other medical professionals to provide the necessary services. This reliance standard reflects the reality that most people who go to the emergency room do not know which medical professionals will treat them once they arrive. Instead, they rely on the hospital to select the professionals for them. [*Id.* at 898 (citations omitted).]

[6] As noted in *Smith v Saginaw S&L Ass'n*, 94 Mich App 263, 271-271; 288 NW2d 613 (1979), the focus should not be on whether the principal has affirmatively identified the alleged wrongdoer as its agent. In *Smith*, this Court held:

> Whenever a principal has placed an 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 assuming that such agent is authorized to perform in behalf of the principal the particular act, and such particular act has been

in the absence of providing clear information to the contrary, the hospital has "generated [that belief] by some act or neglect[.]" *Grewe*, 404 Mich at 253. Indeed, imposing the requirements sought by defendant would result in the end of ostensible agency even for emergency room physicians, a radical alteration in the law since *Grewe*.[7] If an affirmative act beyond those just mentioned is required to establish even a question of fact regarding agency, it is difficult to see why the hospital should even be deemed the principal of the physicians who work in their emergency rooms, but are actually independent contractors. In other words, the majority's approach is to wholly undo the standard defined in *Grewe* and referenced in *Markel II*.

For these reasons, I would reverse the trial court's grant of summary disposition and remand for trial. Accordingly, I dissent.

/s/ Douglas B. Shapiro

> performed, the principal is estopped from denying the agent's authority to perform it. [*Id.* at 271-272 (quotation marks and citation omitted).]

[7] Justice VIVIANO'S dissent makes a policy argument that patients who are victims of malpractice need not seek compensation from the hospital. *Markel II*, 982 NW2d at 161 (VIVIANO, J, dissenting) ("Physicians staffing the hospital can be sued directly and *will likely have sufficient resources or insurance to make the plaintiff whole*.") (emphasis added). However, Justice VIVIANO does not cite to any actual statistics or evidence regarding physician liability coverage in Michigan. In fact, "[i]n the State of Michigan, medical malpractice insurance coverage is not required of physicians by law[,]" and "[t]he most common minimum limits of coverage are $200,000/$600,000." Nexus Insurance Services, *Michigan Medical Malpractice Insurance Coverage*, <https://www.nexus-insurance.net/michigan> (accessed December 21, 2023).