

105.11 Claims Based On Apparent Agency--Principal Sued, But Not Agent--Principal Sued Under Respondeat Superior Only--Medical Malpractice Actions--Reliance On Principal Alleged

Under certain circumstances, the liability of a party may arise from an act or omission of that party's apparent agent.

In the present case, [plaintiff's name] has sued [principal's name] as the principal. [plaintiff's name] claims that [apparent agent's name] was the apparent agent of [principal's name]. [principals' name] denies that any apparent agency relationship existed.

In order for an apparent agency relationship to have existed, [plaintiff's name] must prove the following:

First, that [principal's name] held [himself] [herself] [itself] out as a provider of [type of care, *e.g.*, complete emergency room care] and that [plaintiff's/decedent's name] neither knew nor should have known that [apparent agent's name] was not an employee of [principal's name].

Second, that [plaintiff's/decedent's name] [or others] did not choose [apparent agent's name] but relied upon [principal's name] to provide [type of care, *e.g.*, complete emergency room care].

If you find that [apparent agent's name] was the apparent agent of [principal's name] at the time of the occurrence, then any act or omission of [apparent agent's name] was the act or omission of [principal's name], and [principal's name] is liable for the acts or omissions of [apparent agent's name].

If you find that [apparent agent's name] was the apparent agent of [principal's name] at the time of the occurrence, then any act or omission of [apparent agent's name] was the act or omission of [principal's name], and [principal's name] is not liable for the acts or omissions of [apparent agent's name].

Notes on Use

This instruction should be used where the issue of apparent agency is in dispute, the principal alone is sued, and plaintiff alleges reliance upon a “holding out” on the part of the principal. If plaintiff alleges reliance upon a “holding out” by the agent and “acquiescence” by the principal, please see *Gilbert v. Sycamore*, 156 Ill.2d 511, 622 N.E.2d 788, 190 Ill.Dec. 758 (1993), for a discussion of the necessary elements. If there is a basis for liability against the principal independent of apparent agency, this instruction should be modified accordingly or replaced by other instructions. IPI 105.10 should be used where the issue of apparent agency is in dispute and where the principal and agent are sued in the same case.

Comments

Please refer to the comment to IPI 105.10.