

1939

## The Position of the Private Hospital in State Laws

M. Ann Joachim

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

---

### Recommended Citation

M. Ann Joachim, *The Position of the Private Hospital in State Laws*, 8 Fordham L. Rev. 378 (1939).  
Available at: <https://ir.lawnet.fordham.edu/flr/vol8/iss3/4>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact [tmelnick@law.fordham.edu](mailto:tmelnick@law.fordham.edu).

---

## The Position of the Private Hospital in State Laws

### Cover Page Footnote

This article is a synopsis of a paper read before the Catholic Hospital Association of the United States and Canada, June 13, 1939, at Milwaukee, Wis. Acknowledgement is made to the Catholic Hospital Association for kind permission to publish this synopsis.

## COMMENTS

### THE POSITION OF THE PRIVATE HOSPITAL IN STATE LAWS

Private hospitals are commonly incorporated under the laws of some state and are either charitable non-profit or are organized for profit. The title might suggest that this paper is confined to legislation. But for all practical purposes the judicial decisions affect hospital operation just as much as does legislation, for it is the courts that interpret the statutory laws.

We will first discuss the private charitable hospital and then the private hospital organized for profit. There was a time when a non-profit or charitable institution was exempt from all liability, but that is no longer the general rule. It seems now to be settled law in some states that the charter itself does not decide the question.<sup>1</sup> The corporation must not only call itself a charity, but it must so conduct its business as to be in truth a philanthropic organization. It is well established, however, that if a corporation is essentially a charitable one, the mere fact that a certain department, for example, the X-ray laboratory, earns a profit does not affect the general character of the institution.<sup>2</sup> Furthermore, the department showing a profit is not to be considered apart from the hospital itself in determining its status. The courts are questioning more and more the granting of immunity from liability for damages solely on the basis of the *form* of incorporation. Proof that the organization is charitable in fact as well as in name is being demanded.<sup>3</sup> Courts have shown less generosity in granting immunity and are finding ways and means to achieve their end. One case bears mention here. Catherine Sheehan had been a paying patient in the North County Community Hospital, a charitable corporation. While she was being removed in its ambulance to her home, negligence of the driver brought the ambulance into collision with another vehicle and the plaintiff suffered injuries. On these facts there was squarely presented for the first time in the New York Court of Appeals the question whether a charitable institution, not of itself in default in the performance of any non-delegable duty, should be declared exempt from liability to a beneficiary for personal harm caused by the negligence of one acting as its mere servant or employee. The court held the defendant was not exempt and submitted the question of negligence to the jury who returned a verdict in favor of the plaintiff.<sup>4</sup> There is ample

---

This article is a synopsis of a paper read before the Catholic Hospital Association of the United States and Canada, June 13, 1939, at Milwaukee, Wis. Acknowledgement is made to the Catholic Hospital Association for kind permission to publish this synopsis.

1. *England v. Hospital of Good Samaritan*, 16 Cal. App. (2d) 640, 61 P. (2d) 48 (1936).
2. *Ritchie v. Long Beach Community Hospital*, 139 Cal. App. 688, 34 P. (2d) 771 (1934); *Silva v. Providence Hospital*, 87 P. (2d) 374 (Cal. App. 1939).
3. *McDonald v. Mass. Gen. Hospital*, 120 Mass. 432 (1876); *Collins v. Post Graduate Medical School*, 59 App. Div. 63, 69 N. Y. Supp. 106 (2d Dep't 1901); *Hamilton v. Corvallis Hospital*, 146 Ore. 167, 30 P. (2d) 9 (1934).
4. *Sheehan v. North Country Community Hospital*, 273 N. Y. 163, 7 N. E. (2d) 28 (1937); *id.*, 273 N. Y. 580, 7 N. E. (2d) 701 (1937); *cf. Schloendorff v. Society of N. Y. Hospital*, 211 N. Y. 125, 105 N. E. 92 (1914).

reason to believe that the future will bring more encroachments on the rule of exemption and that other courts will be influenced by this decision.

It is not surprising that there is a great diversity of opinion and ruling among the various courts of last resort. Their decisions might be classed into three general groups: one, which holds the charitable hospital just as liable as any other corporation or individual, another which holds the hospital immune from all liability for the injurious acts of its servants or employees, and a third, which avoids the two extremes and in which most of the states concur, imposes liability or grants immunity under certain circumstances. General opinion against hospitals is gaining momentum. The view that modern conditions do not justify that hospitals receive special legal exemption, is increasing. In fact, in this era, the whole social and political structure is undergoing a change. One law always necessitates another so that legislation is so voluminous and scattered that the actual or potential menace of each cannot be estimated.

Now what is the liability for injuries to a paying patient? There is a growing minority of jurisdictions which holds the hospital liable for negligence of its nurses resulting in injury or death of a paying patient, notwithstanding that hospitals are organized as charity and give charitable services.<sup>5</sup> There was a time when such institutions were few and needed encouragement, but these courts of last resort say that it is no longer necessary to protect such institutions against individuals who are injured. In this, Georgia is not as severe as some of the other states. It limits liability only to the extent of funds received from paying patients or other sources not charitable.<sup>6</sup> What merits particular attention is the growing feeling that the individual needs the protection of the law more than institutions.

Concerning liability for negligence of servants, the majority of states still holds that a private hospital operated as a charity is not liable for negligence of employees unless it failed to use due care in the selection or *retention* of servants who caused the injury.<sup>7</sup> The burden of proof is on the plaintiff.<sup>8</sup> The trust fund theory, implied waiver theory, or public policy theory of immunity is usually given as a reason for exemption. One court said "a hospital undertakes not to heal or attempt to heal through the agency of others,

---

5. Budge Memorial Hospital v. Maughan, 79 Utah 516, 3 P. (2d) 258 (1931); Getzhoffen v. Sisters of Holy Cross, 32 Utah 46, 88 Pac. 691 (1907); *cf.* Sessions v. Dee Memorial Hospital, 94 Utah 460, 78 P. (2d) 645 (1938); Zeidler v. Sisters of the Sorrowful Mother, 183 Okla. 454, 82 P. (2d) 996 (1938).

6. Robertson v. Baptist Convention, 190 S. E. 432 (Ga. 1937).

7. Stine v. St. Vincent's Hospital, 196 Ind. 350, 144 N. E. 537, Note 33 A. L. R. 1361 (1924); Roosen v. Brigham Hospital, 235 Mass. 66, 126 N. E. 392 (1920); Taylor v. Flower Deaconess Home, 104 Ohio St. 61, 135 N. E. 287 (1922); Barnes v. Providence Sanitarium, 229 S. W. 588 (Tex. Civ. App. 1921); Williamson v. St. Paul's Sanitarium, 164 S. W. 36 (Tex. Civ. App. 1914); Moore v. Baptist Hospital, 156 Miss. 676, 126 So. 465 (1930); Hendrickson v. Hodkin, 276 N. Y. 252, 11 N. E. (2d) 899 (1937).

8. Waddell v. Y.M.C.A., 133 Ohio St. 601, 15 N. E. (2d) 140 (1938); Hartley v. Randall Hospital, 24 Wyo. 408, 160 Pac. 385 (1916).

but merely to supply others who will heal or attempt to heal on their own responsibility."<sup>9</sup> Some hospitals are seeking protection by carrying liability insurance. Legally, it has not affected the hospital's standing in court. Courts have generally held that the fact of insurance is immaterial; that it will not of itself impose liability upon a charitable organization if no liability exists under the laws of the state.<sup>10</sup>

The last few years have seen a remarkable increase in the number of reported decisions involving hospitals not only in the United States but also in Canada. The difficult problem concerning the liability of a hospital for the negligence of its trained nurses was extensively discussed in the recent Canadian case of *Fleming v. Sisters of St. Joseph*.<sup>11</sup> The Supreme Court of Canada held the defendant hospital liable for the negligence of one of its nurses who had severely burned the plaintiff during a diathermic treatment. The court held that the duty of the hospital was not limited in supplying competent nurses; the hospital having undertaken to provide certain treatment, there was no reason to exonerate it for the negligent acts of persons who were in its employ and subject to its control.

There are numerous American cases on this point. One bears explanation in detail. It is the Minnesota case often quoted.<sup>12</sup> Lawrence Grotte had been admitted to the defendant's hospital as a pneumonia patient. He became delirious and during the absence of attendants, jumped from the second story window of his room. Death resulted. It was shown that the attendants knew of patient's delirium for some forty hours before his death. The attending nurse left the window slightly open and was absent from the room for about five minutes. The court held that the evidence of negligence was sufficient and that liability should be imposed even though the defendant was operating a charitable hospital. In the words of the learned judge:

"We do not believe that a policy of irresponsibility best subserves the beneficent purpose for which the hospital is maintained. We do not approve the public policy, which would require the widow and children of deceased, rather than the corporation, to suffer the loss incurred through the fault of the corporation's employees, or, in other words, which would compel the persons damaged to contribute the amount of their loss to the purposes of even the most worthy corporation. We are of the opinion that public policy does not favor exemption from liability."<sup>13</sup>

Plaintiff recovered judgment in the sum of \$6500.

This leads to another question. Is the nurse an agent and servant of the physician or of the hospital? Some duties of a nurse are routine matters for the benefit of the hospital, others are under the direct control of the attending physician. Even in the operating room there may be acts which the hospital

---

9. See *Morrison v. Henke*, 165 Wis. 166, 170, 160 N. W. 173, 174 (1916).

10. *Moore v. Baptist Hospital*, 156 Miss. 676, 126 So. 465 (1930).

11. 2 D. L. R. 417 (1938). See discussion in (1938) III CANADIAN L. REP. 172.

12. *Mullin v. Evangelisches Diakoniessenverein*, 144 Minn. 372 (1920).

13. *Id.* at 376.

may control. Under which category a nurse's particular act will fall is a question of fact to be determined in each individual case. Some courts hold that it is the duty of the physician, in using the nurses furnished by the hospital, to see that every act necessary for the operation is properly performed. Under such circumstances the nurse is the servant of the operating surgeon.<sup>14</sup>

There are conflicting decisions as to the liability of a charitable hospital for injuries to employees, visitors, servants, or strangers. In one case the plaintiff employee was injured as a result of her hand being caught in a defective ironing machine, but the court held the hospital exempt because it was a charitable institution.<sup>15</sup> In another case the plaintiff was a student nurse and was assigned to a contagious case but was not so informed. The patient developed diphtheria and the plaintiff contracted it also. The court held that the defendant was negligent and that it was an adopted rule in that state (New Hampshire) that charitable hospitals were not to be held exempt from the consequences of their negligent acts, but that they are to be treated as individuals and other corporations.<sup>16</sup> As to visitors, it is the general view that there could be no recovery unless there was sufficient proof that the hospital failed to exercise ordinary care.<sup>17</sup>

Louisiana has made an inroad on the doctrine of exemption from liability. A plaintiff was injured by a truck owned by the defendant hospital. The court held that he was not a beneficiary and that he could recover because all persons and corporations must answer for the consequences of their negligent acts.<sup>18</sup> Another court stressed this point:

"Where innocent persons suffer through their fault, they should not be exempted. . . . It is almost contrary to hold that an institution organized to dispense charity shall be charitable and extend aid to others, but shall not compensate or aid those injured by it in carrying on its activities."<sup>19</sup>

Now let us dwell on the liability of the private profit hospital. The laws of the various states agree that private hospitals organized for profit have approximately the same responsibility as other corporations or individuals. Private institutions are obliged by express or implied contract to render reasonable care and attention to their patients for their safety, as their mental and

14. *Emerson v. Chapman*, 138 Okla. 270, 280 Pac. 820 (1929). It is a rule in Oklahoma that the operating surgeon and not the hospital is responsible for the nurses. *Hart v. Flower Hospital*, 178 Okla. 447, 62 P. (2d) 1248 (1936).

15. *Whittaker v. St. Luke Hospital*, 137 Mo. App. 116, 117 S. W. 1189 (1903). Accord: *Emery v. Jewish Hospital Ass'n*, 193 Ky. 400, 236 S. W. 577 (1921).

16. *Hewitt v. Woman's Hospital Aid Ass'n*, 73 N. H. 556, 64 Atl. 190 (1906). Accord: *Murtha v. Flower Hospital*, 228 N. Y. 183, 126 N. E. 722 (1920). Note: an interne is an employee of the hospital within the meaning of the Workmen's Compensation Act. *Bernstein v. Beth Israel Hospital*, 236 N. Y. 268, 140 N. E. 694 (1923).

17. *Daniel v. Jackson Infirmary*, 173 Miss. 832, 163 So. 447 (1935); *Bonawitt v. Sisters of Charity*, 43 Ohio App. 347, 182 N. E. 661 (1932).

18. *Bougon v. Volunteers of America*, 151 So. 797 (La. 1934).

19. *Geiger v. Simpson M. E. Church*, 174 Minn. 389, 395, 219 N. W. 463, 465 (1928). Accord: *Murtha v. Flower Hospital*, 228 N. Y. 183, 126 N. E. 722 (1920).

physical condition, if known, may require. Private hospitals, conducted for gain, have been held liable for the negligent and careless acts of nurses and other employees. The master is responsible for the acts of his servants, if they are within the scope of his employment.<sup>20</sup> For instance, a patient sustained a severe shock when an electric fan flew to pieces in her room. The fright, caused by ordinary negligence, resulted in physical injury to the patient. The court declared the hospital liable.<sup>21</sup>

The much appealed and much discussed case of *Hendrickson v. Hodkin* merits our attention. At the first trial the question of importance was the liability for negligence of the physician. All three defendants, the hospital, physician, and nurse, were held responsible. But only the hospital appealed and on this appeal the complaint was dismissed because, as the court said:

"The rule is now well settled that a hospital, whether charitable or private, is immune from liability to patients by reason of the negligence of its doctors with respect to any matter relating to the patient's medical care and attention."<sup>22</sup>

At the second trial, the important question was the liability of a private institution for permitting treatment by a non-medical practitioner. The court held "private non-charitable hospital corporations operated for profit are liable for the torts of their executive officers committed within the general scope of their authority."<sup>23</sup> Further that:

"In the case at bar the basis of liability is not the negligence of the doctor or nurse in charge, but the wrongful conduct of the executive manager and superintendent acting within the scope of his authority in offering for pay the use of the hospital and its facilities for the purpose of commission of acts which constitute a tort, and a crime in violation of a duty owed a patient."<sup>24</sup>

Noting a few of the facts, we find that the defendant corporation permitted for several weeks, a non-medical practitioner the use of hospital facilities to carry on his treatment. He held himself out as having a cancer cure which in fact injured the plaintiff to such an extent that after a few weeks no lip or chin remained and his teeth fell out. The manager and superintendent had the right and even the obligation to refuse facilities to one not authorized to practice medicine under the state laws, and since they did not exercise reasonable care for the safety of this patient, they were held responsible.

Charitable hospitals have been granted certain exemptions in order to foster and encourage them. But when a hospital, no matter what the legal status,

20. *Meridian Sanatorium v. Scruggs*, 121 Miss. 330, 83 So. 532 (1920); *Green v. Biggs*, 167 N. C. 417, 83 S. E. 553 (1914); *Fawcett v. Ryder*, 23 N. D. 20, 135 N. W. 800 (1912); *Duke Sanitarium v. Hearn*, 159 Okla. 1, 13 P. (2d) 183 (1932).

21. *Garner v. Newman Hospital*, 58 Ga. App. 104, 198 S. E. 122 (1938).

22. 250 App. Div. 619, 620, 294 N. Y. Supp. 982, 983 (2d Dep't 1937), discussed in (1938) 22 MINN. L. REV. 283.

23. *Hendrickson v. Hodkin*, 276 N. Y. 252, 11 N. E. (2d) 899 (1937), *rev'g* 250 App. Div. 619, 294 N. Y. Supp. 982 (2d Dep't 1937).

24. *Id.* at 258, 11 N. E. (2d) 899 at 902.

enters into a legal contract to perform certain acts, such an agreement the courts will enforce. The hospital's liability for breach of a contract is the same as any other private corporation or person.<sup>25</sup>

Of growing interest are hospital lien laws. They are passed to protect hospitals, physicians and nurses. They usually give an institution or person the right to interpose a claim for services rendered to an injured person. Hospital lien laws differ in some detail in the various states.<sup>26</sup> The variations make an interesting study. Some lien laws cover only charitable institutions, others, those supported in whole or in part by public funds. Rarely, however, is the small doctor-owned or private hospital given this protection. Some lien laws give priority to the attorney; some limit reimbursement to 50% of the sum recovered, others to \$200; others permit the so-called ward rates, some \$50 to all physicians and \$50 to all nurses. Nevertheless, most of the states provide full remuneration for reasonable services and accommodations. The laws differ in various other details. Liens must be filed within five days, others within ten days and still others, twenty days. Some require suits to enforce liens within one year, others two years, still others the usual statute of limitations applies. Filing fees range from 12¢ to \$1.00. Some states<sup>27</sup> have no lien laws but the hospitals have agreements with insurance companies which work satisfactorily.

Most of the thirty-one states which have as yet no hospital lien laws have made an effort in the last few years to seek that protection. The number of the bills and a description of them are detailed, state for state, in the report of which this paper is a synopsis.<sup>28</sup> A study of the several lien laws and how they are enforced is recommended.<sup>29</sup>

The hospital is always a community enterprise; whether public or private, profit or charitable, it needs the support and faith of the community and of members of the legal profession in particular. The absence of any specific regulation and control in the statutes of many states indicates not the absence

25. *Roche v. St. John's Riverside Hospital*, 96 Misc. 289, 160 N. Y. Supp. 401 (Sup. Ct. 1916); see *Loewinthen v. Beth David Hospital*, 9 N. Y. S. (2d) 367, 371 (Sup. Ct. 1938).

26. In general, these statutes give hospitals liens on the right of action of any patient receiving treatment on account of personal injuries incurred as a result of some third person's negligence prior to admission to the hospital. See IOWA CODE (1935) § 10437; IND. STAT. ANN. (Burns, 1933) § 43-501; MINN. STAT. (Mason, Supp. 1934) § 8556-3; MONT. REV. CODE ANN. (Anderson and McFarland, 1935) § 8395-1; N. D. LAWS (1935) 217; N. J. LAWS (1935) 759; N. Y. LIEN LAW (1939) § 189; ORE. CODE ANN. (Supp. 1935) § 51-1501; TEX. STAT. (Vernon, Supp. 1934) art. 5506a; VA. CODE (Michie, 1936) § 1560(1). Another type of statute restricts a hospital's lien to the patient's accident and liability insurance policy. See CONN. GEN. STAT. (1930) § 5139. For a further discussion of hospital lien laws, see (1937) 37 COL. L. REV. 1036 and Comment (1937) 12 WASH. L. REV. 295.

27. Massachusetts and Wisconsin.

28. Sister M. Ann Joachim, *The Position of the Private Hospital in State Laws* (1939) HOSPITAL PROGRESS 274-283.

29. Note 26, *supra*.

of power but rather a satisfaction on the part of the legislatures that hospitals are being carefully and properly managed and that there is no need for state regulation. The hospitals themselves, by organizing into associations and by grading the hospitals according to set standards, have regulated themselves and raised the standard of quality and service far more than any legislative act could possibly do.

SISTER M. ANN JOACHIM, O.P.†

#### THE EFFECT OF MECHANIC'S LIENS ON THE REVERSIONARY INTEREST OF LANDLORDS\*

The improvement of leased real property at the instance of a tenant frequently gives rise to knotty problems involving the liability for the cost of repairs. The unpaid contractor receives certain rights in the realty in addition to his right to a money judgment against the tenant for the cost of the work and materials. Under the various forms of mechanic's lien statutes in effect in this country, the contractor is given the right to file a lien against the tenant's interest in the property, and, under proper circumstances, against the reversionary interest of the landlord as well. The tenant who orders the work is clearly bound. Passing this question of contractual liability, the advent of mechanic's liens as supplementary protection for the contractor making repairs on leased property presents several vexatious problems. Shall the landlord who is a step removed from the contractor also be bound? It is his land which is improved. If the tenant in ordering the work is complying with his lessor's prescription, it is clear that the reversionary interest is bound under all types of statutes herein discussed, despite their differences in form. But suppose the landlord has not sought the improvement. Is he to be improved out of his freehold? The improvement may not, in his eyes, improve. It may be singularly inappropriate—an idiosyncrasy of the tenant. It may be a unique structure or a specialty building designed for the particular use of the tenant and of no functional utility otherwise. A ducal chateau erected in a slum district adds no value to the land. It depresses the value by the cost of its removal.

It should be borne in mind in these cases that the tenant ordering the work is liable to the contractor *in personam* for the cost, and that his leasehold interest may be bound *in rem* by the lien. The landlord, consenting to or acquiring the work, is never liable *in personam* for the cost unless he has agreed to contribute thereto.<sup>1</sup> This distinction may not be of importance if the owner's equity is substantial, for as a practical matter, he will not permit its foreclosure. Today, however, the average property, through depression of

---

† Admitted to practice before United States Supreme Court.

\*Acknowledgement is made to Milton R. Friedman of the New York Bar for helpful suggestions in the preparation of this paper.

1. *Weinheimer v. Hutzler*, 234 App. Div. 566, 256 N. Y. Supp. 7 (4th Dep't 1932); see *Brigham v. Young*, 241 N. Y. 435, 439, 150 N. E. 207, 208 (1926).