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Appellate Practice Pointer

HOSPITAL NON-DELEGABLE DUTY Pope v. Winter Park Healthcare Group, Ltd.

In Pope v. Winter Park Healthcare Group, Ltd., Case No. 5D04-3284, 2006 WL 2844182 (Fla. 5th DCA Oct. 6, 2006), the Fifth District Court of Appeal held that a hospital was not liable for physician malpractice under a theory of non-delegable duty. Florida law does not impose upon hospitals a non-delegable duty to provide competent medical care. However, a hospital may be deemed to have undertaken such a duty under an express contract with the patient to provide medical services or care. The court noted that a contract that is ambiguous in this regard could be construed against the hospital as the drafter of the contract.

In light of Pope, hospitals and other medical facilities should review their contracts to assure that there is no assumption of such liability by such contracts, and that the disclaimer of any such duty is clear and unambiguous.

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