

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2005-009398

02/12/2007

THE HONORABLE ANNA M. BACA

CLERK OF THE COURT  
A. Gonzalez  
Deputy

JOSE VICENCIO, et al.

JAMES J SYME JR.

v.

V H S ACQUISITION CORPORATION, et al.

SHERLE R FLAGGMAN

RENEE M COURY  
KEITH B FORSYTH  
MICHAEL R GOLDER

**CONTINUED ORAL ARGUMENT – RULINGS**

10:13 a.m. This is the time set for additional oral argument regarding Motions and Cross-Motions taken under advisement January 26, 2007. Plaintiffs are represented by counsel, James J. Syme. Defendant Maryvale Hospital is represented by counsel, Sherle R. Flaggman. Defendant Rollins is represented by counsel, Renee M. Coury. Defendants Kelly are represented by counsel, Michael R. Golder. Defendants Johnson are represented by counsel, Ronda Micheale Kelso. Mr. Golder appears telephonically.

Proceedings are digitally recorded.

Mr. Golder states his alignment with other two defendants and is excused from the hearing.

Arguments are presented.

As to Defendant Rollins' Motion for Summary Judgment because Plaintiff's designated expert did not meet the requirements of A.R.S. § 12-2604,

For the reasons stated on the record,

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**THE COURT FINDS** that the statute is unconstitutional. Therefore,

**IT IS ORDERED** denying Defendant Rollins Motion for Summary Judgment as Plaintiff's expert and granting in part Plaintiff's Cross-Motion for Summary Judgment. The court having found that A.R.S. § 12-2604 is unconstitutional, Plaintiff's expert Dr. Wayne may testify against Dr. Rollins as to the standard of care and breach thereof. Based on this ruling, the court does not find it necessary to reach the issue of Dr. Rollins' standard of care arising from the terms of his contract with the hospital.

**IT IS FURTHER ORDERED** denying in part Plaintiff's Cross-Motion for Summary Judgment as to VHS/Maryvale Hospital's duty of care as set out by *Thompson v. Sun City Community Hospital*, 141 Ariz. 597 (1984) and applicable statutes and regulations governing the hospital. Plaintiff may re-urge and further brief this issue by filing a Motion for Summary Judgment on this issue only within ten (10) days or no later than close of business **February 22, 2007**.

As to Defendant VHS' Motion for Partial Summary Judgment re Ostensible Agency of Dr. Rollins and Dr. Kelly,

**IT IS ORDERED** granting VHS' Motion for Partial Summary Judgment and denying Plaintiff's Cross-Motion for Summary Judgment on vicarious liability claims.

As to Plaintiff's Motion in Limine re One Expert Rule and Defendant VHS Motion to Strike Duplicate Causation Experts, as stated on the record the parties agree as to causation experts. As to standard of care relating to the hospital, the issue will be reconsidered if/when Plaintiff refiles its Motion for Summary Judgment on Hospital's Independent Liability and based on the ruling on that issue.

Per request of counsel for Dr. Rollins,

**IT IS ORDERED** that Dr. Rollins may file an additional Motion for Summary Judgment within one week, or no later than close of business **February 20, 2007**, as to Plaintiff's designated expert, Dr. Diego.

11:15 a.m. Matter concludes.

**LATER:**

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The court has received and reviewed Defendant VHS Acquisition Corporation dba Maryvale Hospital Medical Center's Motion to Strike Plaintiff's First Supplemental Disclosure Statement, Defendant Rollins' Joinder, Plaintiff's Response and Defendant VHS Acquisition's Reply.

The court has considered the legal memoranda, the court's file and the relevant law and having done so, the court resolves the matter pursuant to Rule 7.1(c)(2) Ariz. R. Civ. P. without oral argument in order to expedite the court's business.

Defendants move to strike Plaintiff's First Supplemental Disclosure Statement raising the EMTALA Statute. Because the court previously ruled that Plaintiff could not raise EMTALA when the court ruled on the summary judgment motions involving standard of care,

**IT IS ORDERED** granting Defendant's Motion and striking Plaintiff's disclosure of the EMTALA theory of liability.