

No. 121367

In the
Supreme Court of Illinois

CHRISTINA YARBROUGH and DAVID GOODPASTER, on behalf of
HALEY JOE GOODPASTER, a minor,

Plaintiffs-Appellees,

v.

NORTHWESTERN MEMORIAL HOSPITAL,

Defendant-Appellant,

and

NORTHWESTERN MEDICAL FACULTY FOUNDATION

Defendant.

On Appeal from the Illinois Appellate Court, First Judicial District, Case No.
1-14-1585, There Heard on Appeal from the Circuit Court of Cook County,
Illinois, County Department, Law Division, Case No. 10 L 296

BRIEF OF *AMICI CURIAE*
THE UNIVERSITY OF CHICAGO MEDICAL CENTER,
RUSH UNIVERSITY MEDICAL CENTER, ADVOCATE HEALTH CARE,
NORTHSHORE UNIVERSITY HEALTHSYSTEM,
PRESENCE HEALTH & TRINITY HEALTH

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INTEREST OF THE *AMICI*

The University of Chicago Medical Center (“UCMC”), Rush University Medical Center (“Rush”), Advocate Health Care (“Advocate”), NorthShore University Healthsystem (“NorthShore”), Presence Health (“Presence”) and Trinity Health (“Trinity”) (collectively, the “Amici”) are all among the largest and most respected hospitals and health systems in the country. Together, the Amici treat many hundreds of thousands of patients in Illinois each year.

For instance, UCMC has approximately 900 physicians on staff, treating nearly 30,000 admitted patients and over 760,000 outpatients each year. Rush similarly carries a staff of over 800 medical professionals serving tens of thousands of patients annually, and NorthShore has over 900 physicians treating more than 127,000 patients each year. Advocate, for its part, is the largest health system in Illinois, operating 450 sites of care, including 12 acute-care hospitals, and is one of the leading employers in the state. Presence likewise operates a great number of medical facilities in Illinois at more than 150 locations, including 11 hospitals. And, even more broadly, Trinity employs 5,300 physicians, serving patients in 93 hospitals located in 22 states across the country.¹

Illinois has the sixth largest number of Federally Qualified Health Centers (“FHQCs”), (like Erie Family Health Center), in the country. *Number*

¹ The facts and figures used in this brief are taken from the Amici’s publicly available annual reports, financial reports, and audit reports, all of which can be found online at each institution’s website, but are not attached hereto due to their considerable collective volume.

of Federally-Funded Federally Qualified Health Centers, HENRY J. KAISER FAM. FOUND., <http://kff.org/other/state-indicator/total-fqhcs/?currentTimeframe=0> (last visited February 27, 2017). A decision from this Court affirming the lower courts' rulings in this case would have far-reaching consequences endangering the Amici's, and all Illinois FHQCs', worthy and much-needed undertakings associated with aiding the most vulnerable in our state and further exacerbating the lack of health care services to those in need on a national level which is very much at a crisis point. It is no exaggeration to say that the Amici's interest in this case, and that of the state and country, can be fairly and accurately described as one of life and death.

The shared mission of all the Amici is to provide the highest quality health care to its patients and to improve the health and wellbeing of their communities, including the wellbeing of the otherwise underserved members of those communities. The Amici respectfully submit this brief so that the Court may better understand the vital role they play in supporting independent clinics like Erie Family Health Center ("Erie") and thereby understand the consequences of undermining those relationships by holding hospitals liable for the actions of independent clinic staff, over whom the hospitals have no control and share no employment relationship.

STATEMENT OF FACTS

The Amici collectively contribute billions of dollars to medically underserved, uninsured or underinsured Illinois residents each year, improving and saving lives on a daily basis. For example, UCMC invested nearly \$321 million in its community in 2015, providing over \$295 million in uncompensated care, much of which included free or discounted charitable care. Aside from providing direct charitable care to patients, UCMC's charitable activities include its work organizing the South Side Healthcare Collaborative clinic network, which collaborates with over 30 FHQCs, free and charitable clinics and community hospitals in 34 Chicago communities to improve the health of Chicago's south side residents. Another example of UCMC's charitable activities includes its Expanded HIV Testing and Linkage to Care program, which has partnered with local Chicago health care facilities to screen over 15,000 individuals for HIV.

Rush provided approximately \$275 million in community services in 2015, including over \$27 million in direct charitable care. Indeed, nearly one-fifth of Rush's total spending (16%) is directed toward community benefit spending, which is more than twice the national average for comparable academic medical centers. Volunteer Rush faculty, staff and students provided more than 16,000 clinic visits that year and, through its Rush Community Service Initiatives Program, delivered free exams, free wound care, free health education, and free medications to more than 3,300 others.

Rush is also pioneering a “disparities navigator” to detect and sort patterns of disparate health care and outcomes among persons of different racial, ethnic, age, gender and employment status backgrounds to improve the impact of its charitable activities.

Advocate contributed approximately \$624 Million in community benefits and services during 2015, including approximately \$455 Million in charity and uncompensated care, and additional contributions in volunteer services, donations of supplies and medical equipment, community education, and subsidies for health clinics and other community groups. Similarly, NorthShore contributed over \$209 million in reportable community benefit spending in 2015, including over \$15 million in direct charitable care and millions more in direct cash donations and volunteer services, much of it also going to free clinics and community organizations. NorthShore additionally provides several programs designed to improve health outcomes for underserved communities, including a Medication Assistance Program that helps pay for patients’ prescription drugs and a Perinatal Depression Program that offers thousands of free screenings, free psychological support and referrals, as well as a 24/7 crisis hotline for at-risk women.

Presence contributed over \$206 million in 2015 to improve the health of those in its communities, giving \$47 million in medical financial assistance to its community members in 2015, not including Medicare and Medicaid shortfalls. Presence staff further spent over 225,000 hours participating in

community benefit programs, providing, among other things, more than 11,000 free preventative screenings and immunizations. And last, Trinity's Illinois health systems invested more than \$173 million in 2016 in its Community Benefit Ministry, designed to serve those who need help the most, particularly the indigent, poor and uninsured. \$171 million of those funds were directed to pay for free charity care, subsidized care, community health services, financial contributions, and community benefits operations.

This is but a sampling of the charitable care and efforts donated by the Amici to their communities on a yearly basis, care these communities have come to depend on in an age when public financial support is increasingly difficult to obtain, and care that cannot be undermined without obvious and devastating consequences.

ARGUMENT

The appellate court below found that hospitals may be held liable under the doctrine of apparent agency for the acts of employees of independent clinics even where such clinics are not a part of the hospitals' network, operate independently of those hospitals, and are federally funded operations. In reaching that conclusion, the appellate court relied on the following allegations concerning the relationship between Northwestern Memorial Hospital ("NMH") and Erie:

- NMH "promotes itself as a community-oriented hospital" that helps provide care to those in need.

- NMH publicized its charitable relationship with Erie on its website and in annual reports, community reports and press releases.
- Two NMH representatives volunteer their time to sit on Erie's board.
- Erie was founded by volunteer physicians who also worked at NMH.
- NMH helps support Erie programs to tackle diabetes and women's health issues.
- NMH makes generous and charitable financial contributions to Erie and even provides Erie with information technology assistance.
- And NMH does not charge Erie patients for care given at NMH. Indeed, more than one-in-ten of the babies delivered at NMH are delivered free of charge to their families because they received prenatal care at Erie.

Yarbrough v. Northwestern Mem'l Hosp., 2016 IL App (1st) 141585, ¶¶ 52-55.

As demonstrated above, the Amici engage extensively in similar activities and have comparable connections with independent clinics and charitable organizations throughout the state. Affiliations with such clinics and organizations improve patient care for at-risk populations, alleviate pressure on emergency departments, and reduce avoidable readmissions. Lindsey Dunn, *Caring for the Uninsured: How Free Clinics, Hospitals Can Partner to Treat a Community's Most Vulnerable*, BECKER'S HOSP. REV. (June 11, 2013), <http://www.beckershospitalreview.com/news-and-analysis/caring-for-the-uninsured-how-free-clinics-hospitals-can-partner-to-treat-a-communitys-most-vulnerable.html>. Charitable relationships between hospitals and clinics also offer volunteer outlets for physicians and establish

significant community support and involvement among local business and governmental units. *Id.*

If, as the appellate court found, such charitable activities can subject Illinois hospitals to legal liability for the negligent acts of employees of independent clinics like Erie, all such giving will be under direct threat. To be clear, this is not a situation in which a hospital's employees acted negligently in their provision of charitable care. Rather, the appellate court opinion would hold hospitals responsible for actions committed by another institution's employees, without any negligence committed by hospital employees.

The appellate court's opinion thus penalizes socially responsible hospitals for generously aiding those in need and places them in a difficult position by forcing them to choose between continuing their good works at the risk of undeserved legal liability and dramatically scaling back their community and charitable involvement to avoid such exposure. The likely result of foisting this Hobson's choice on hospitals will be fairly predictable. While institutions like NMH and the Amici will, if the appellate court's holding stands, be able to continue their own "in house" charitable care, any connections they have with independent community clinics will be curtailed, if not altogether eliminated.

This is important because independent community clinics like Erie provide health care to hundreds of thousands of patients each year in

neighborhoods where traditional hospitals are, for various reasons, not located. Erie alone provides care to 70,000 medical patients and 12,000 dental patients, the vast majority of whom belong to underserved racial minorities living below the poverty line. Compelling hospitals to retrench for fear of legal liability, as the appellate court's holding would do, will only cause these already struggling communities to fall further behind as the cascading consequences of ill health further devastate their social and economic fabric.

Moreover, telling hospitals that they can avoid liability in circumstances like this by dismantling the multifaceted support they provide to independent clinics, and simply converting all their charitable efforts into direct financial contributions to those clinics, provides no answer to this problem. Encouraging staff to volunteer at clinics like Erie supplies those institutions with much needed expertise, knowledge and capability they would otherwise struggle to find. The same can be said of the equipment hospitals charitably furnish to independent clinics, the proper use of which often requires extensive training. And, of course, the free charitable treatment that hospitals provide to the patients of independent clinics when the needs of those patients exceed the clinics' capabilities is, while perhaps measurable, invaluable when considering the weight of lives improved and saved. In short, when it comes to addressing the health care deficits faced by poor communities, money is not enough.

At a time when more and more Americans are uncertain about how, or even if, they will be able to access quality health care in the coming years, expanding the legal doctrine of apparent authority in such a way that would endanger charitable programs, relationships and funding designed to help provide health care to those most in need of it is—regardless of politics or party affiliation—bad policy. And yet that is precisely what the appellate court’s holding does, leading to unintended adverse consequences much more severe than the problem it was meant to ameliorate. Illinois hospitals cannot afford to markedly extend their legal liability as a form of charity. Illinois independent medical clinics cannot afford to operate without the extensive charitable services and support those hospitals provide to them. And hundreds of thousands of Illinois residents each year will not be able to afford or obtain the health care they need if the relationships between hospitals and independent clinics like Erie are undermined.

CONCLUSION

Illinois hospitals have long played a vital role in supporting independent clinics for the benefit of their communities and, indeed, the entire state. That proud and valuable legacy is now in danger at a time when it is needed most. The Amici ask this Court to guard that legacy and thereby protect the lives and wellbeing of all those they have and may still benefit, not destroy it.

WHEREFORE, and the for all the reasons stated above, *Amicus Curiae* the University of Chicago Medical Center, Rush University Medical Center, Advocate Health Care, NorthShore University Healthsystem, Presence Health and Trinity Health respectfully suggest that this Court should reverse the answer provided by the appellate court to the certified question in this matter.

Dated: February 28, 2017

Respectfully submitted,

The University of Chicago Medical Center, Rush University Medical Center, Advocate Health Care, NorthShore University Healthsystem, Presence Health and Trinity Health, *Amici Curiae*,

By: /s/ J. Timothy Eaton
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CERTIFICATE OF COMPLIANCE

The undersigned, an attorney, certifies that Brief of the *Amici Curiae* the University of Chicago Medical Center, Rush University Medical Center, Advocate Health Care, NorthShore University Healthsystem, Presence Health and Trinity Health conforms to the requirements of Rule 341(a) and (b). The length of this Brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 2,398 words.

Dated: February 28, 2017

/s/ J. Timothy Eaton

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Illinois, County Department, Law Division, Case No. 10 L 296

NOTICE OF FILING

TO: *See Attached Certificate of Service*

PLEASE TAKE NOTICE that on the 28th day of February, 2017, the undersigned electronically submitted to the Clerk of the Supreme Court of Illinois the attached Motion of the University of Chicago Medical Center, Rush University Medical Center, Advocate Health Care, NorthShore University Healthsystem, Presence Health & Trinity Health For Leave to Appear and File Brief as *Amici Curiae* and Brief Of *Amici Curiae* The University Of Chicago Medical Center, Rush University Medical Center, Advocate Health Care, NorthShore University Healthsystem, Presence Health & Trinity Health, a copy of which is hereby served on you. Upon receipt of acknowledgment that said document has been accepted for filing, we will submit the required number of copies bearing the electronic file stamp within five (5) days.

Respectfully submitted,

***** Electronically Filed *****

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03/07/2017

Supreme Court Clerk

The University of Chicago Medical Center, Rush University Medical Center, Advocate Health Care, NorthShore University Healthsystem, Presence Health and Trinity Health, *Amicus Curiae*,

By: /s/ J. Timothy Eaton
One of Their Attorneys

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CERTIFICATE OF SERVICE

The undersigned, a non-attorney, pursuant to the provisions of 1-109 of the Illinois Code of Civil Procedure, and Ill. S. Ct. R. 12, hereby certifies and affirms that I caused the foregoing Notice of Filing and Motion of the University of Chicago Medical Center, Rush University Medical Center, Advocate Health Care, Northshore University Healthsystem, Presence Health & Trinity Health For leave to Appear and File Brief as *Amici Curiae* and Brief of *Amici Curiae* The University of Chicago Medical Center, Rush University Medical Center, Advocate Health Care, NorthShore University HealthSystem, Presence Health & Trinity Health, to be sent to the party listed below on this 28th day of February, 2017, by electronic mail and U. S. Mail, deposited from the offices of Taft Stettinius & Hollister LLP before the hour of 5:00 p.m.

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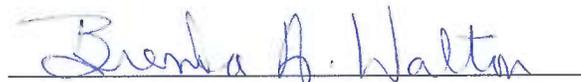
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STATE OF ILLINOIS)
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COUNTY OF COOK)

SUBSCRIBED and SWORN TO before me this 28th day of February, 2017.



Notary Public/18501393.1

