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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAWRENCE SPIES, SR., and
LINDA SPIES, Individually and
as Successors in Interest of
LAWRENCE SPIES, Jr.
(deceased);

Plaintiffs,

v.

EL DORADO COUNTY; CALIFORNIA
FORENSIC MEDICAL GROUP, INC.;
MARSHALL MEDICAL CENTER; JOHN
D'AGOSTINI; RANDY PESHON;
MATT FOXWORTHY; JACKIE NOREN;
ROBIN HOPE; RAYMOND HERR,
M.D.; LISA ISSACSON; TAYLOR
FITHIAN, M.D.; MARK
HANGEBRAUCK; JOHN J. SKRATT,
M.D.; ALEXIS F. LIESER, M.D.;
DOES 1-50;

Defendants.

CIV. NO. 16-02232 WBS GGH

ORDER RE: MOTION FOR SUMMARY
JUDGMENT

Before the court is defendant Marshall Medical's Motion
for summary judgment. (Docket No. 37.) Defendant John J. Skratt
("Dr. Skratt) joins in the Motion.

"Under California law, a hospital is liable for a
physician's malpractice when the physician is 'actually employed

1 by or is the ostensible agent of the hospital.'" Sampson v.
2 Ukiah Valley Med. Ctr., Civ. No. 15-160 WHO, 2017 WL 2834001, at
3 *4 (N.D. Cal. June 30, 2017) (citation omitted).¹ "Generally,
4 under California law, ostensible authority is for a trier of fact
5 to resolve and the issue should not be decided by an order
6 granting summary judgment." Whitlow v. Rideout Mem'l Hosp., 237
7 Cal. App. 4th 631, 639 (3d Dist. 2015) (citation omitted).
8 Ostensible agency can be inferred "from the mere fact that the
9 plaintiff sought treatment at the hospital without being informed
10 that the doctors were independent contractors." Mejia v. Cmty.
11 Hosp. of San Bernardino, 99 Cal. App. 4th 1448, 1457 (4th Dist.
12 2002). Here, the evidence is disputed as to whether decedent was
13 informed that Dr. Skratt was an independent contractor.
14 Specifically the hospital chart contains an admission form which
15 states "PHYSICIANS ARE INDEPENDENT MEDICAL PRACTITIONERS."
16 However, that form is unsigned. (Pls.' Suppl. Br. Ex. B (Docket
17 No. 78-3).) Thus, there is a triable issue of fact as to whether
18 Dr. Skratt was an ostensible agent of Marshall Medical.

19 Additionally, there are disputed issues of fact as to
20 whether Dr. Skratt's conduct met the applicable standard of care.
21 Defendants' expert witness, Dr. David Barnes, an emergency
22 medicine physician, testified that in his opinion, to a
23 reasonable degree of medical certainty, Dr. Skratt's evaluation
24 of the decedent was within the standard of care. (Decl. of Dr.
25 David Barnes ¶¶ 1, 7 (Docket No. 40).) In response, plaintiffs'
26 expert witness, Dr. Donald Maisel, also an emergency medicine

27 ¹ There is no evidence of negligence on the part of the
28 nurses employed by Marshall Medical.

1 physician, testified that in his opinion, to a reasonable degree
2 of medical certainty, Dr. Skratt's evaluation of the decedent did
3 not meet the applicable standard of care. (Decl. of Dr. Donald
4 Maisel ¶¶ 1, 19 (Docket No. 54-1).) Accordingly, the court must
5 deny the Motion for summary judgment as to Dr. Skratt.

6 IT IS THEREFORE ORDERED that defendants' Motion for
7 summary judgment be, and the same hereby is, GRANTED IN PART.
8 Plaintiffs' claims against Marshall Medical, to the extent they
9 are based on the care provided by the nurses working at Marshall
10 Medical, are hereby DISMISSED. Remaining in this case are
11 plaintiffs' claims for wrongful death and professional negligence
12 against Dr. Skratt, individually, and Marshall Medical to the
13 extent they are based on Dr. Skratt's care.

14 Dated: January 22, 2018



15 **WILLIAM B. SHUBB**
16 **UNITED STATES DISTRICT JUDGE**

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