[Cite as *Wagner v. Ohio State Univ. Med. Ctr.*, 2009-Ohio-5447.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JOHN T. WAGNER, et al.

Plaintiffs

v.

THE OHIO STATE UNIVERSITY MEDICAL CENTER, et al.

Defendants
Case No. 2005-05124

Judge Joseph T. Clark

DECISION

{¶ 1} On June 6, 2008, defendants[1] filed a motion for summary judgment. On February 20, 2009, plaintiffs filed a response. A reply brief was filed by defendants on February 27, 2009. On April 2, 2009, the court held an oral hearing on defendants' motion for summary judgment.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable

minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} Gregory T. Schulte graduated from The Ohio State University with his M.D. in 1991 and completed his anesthesiology residency at the Ohio State University College of Medicine in 1995. Dr. Schulte was a member of the American Society of Anesthesiologists, the American Board of Pain Medicine, and the Ohio State Anesthesia Association. Dr. Schulte also published several articles in the International Journal of Clinical Monitoring and Biophysics Research. Before beginning his employment at The Ohio State University, Dr. Schulte had privileges at Mansfield General Hospital; Adena Regional Medical Center; Coshocton County Memorial Hospital; Southern Ohio Medical Center; and Park Medical Center. When he was hired by OSU, Dr. Schulte was board-certified in anesthesiology and interventional pain medicine, and he was licensed to practice medicine in Ohio.

{¶ 5} It is not disputed that Dr. Schulte and plaintiff, John Wagner, developed a physician-patient relationship as early as 1990. Plaintiffs assert that this relationship was akin to a father-son relationship. Some 11 years later, on September 21, 2001, Dr. Schulte and the State Medical Board of Ohio (board) entered into a Step I Consent Agreement, regarding Dr. Schulte's substance abuse. Several months thereafter, the board and Dr. Schulte entered into a Step II Consent Agreement followed by an Addendum to the Step II Consent Agreement dated February 13, 2002.

{¶ 6} On March 26, 2002, the Ohio State University College of Medicine and Public Health offered Dr. Schulte a position as a Clinical Assistant Professor of Medicine in the Department of Anesthesiology. OSU, on behalf of its Health Systems Department of Anesthesiology (Health Systems) subsequently entered into a Physician Employment Agreement with Dr. Schulte effective June 1, 2002. The agreement required Dr. Schulte to obtain clinical privileges at the Ohio State University Hospitals (OSU Hospital). Dr. Schulte's contract identified him as a part-time (50 percent)

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[1]Defendants, the Ohio State University Medical Center and the Ohio State University Pain

employee with a 42-month term apportioned as follows: 25 percent Clinical Assistant Professor and 25 percent physician. Dr. Schulte conducted his medical practice in the pain clinic, which operated under the umbrella of the Department of Anesthesiology.

{¶ 7} In February 2003, eight months into Dr. Schulte's initial contract term, OSU and Dr. Schulte entered a new Physician Employment Agreement whereby OSU elevated Dr. Schulte's status from part-time to full-time (100 percent), thereby increasing his clinical assistant professorship to 50 percent, and his physician appointment to 50 percent. In a September 20, 2004 letter to Dr. Michael Howie, Chair of the Department of Anesthesiology at OSU, Dr. Steven Severyn, Clinical Assistant Professor in the Department of Anesthesiology, describes an event that allegedly occurred on September 7, 2004. In the letter, Dr. Severyn reports that Dr. Schulte appeared to be "impaired" while at work. Dr. Howie subsequently placed Dr. Schulte on administrative leave, effective September 21, 2004, and forbade him from providing patient care of any sort. The board was subsequently notified of Dr. Schulte's conduct and OSU's actions. Dr. Schulte retained his faculty appointment and a salary of $30,000, but his continued employment was placed under review. According to Dr. Mekhjian, Chief Medical Officer for Health Systems, Dr. Schulte had no assigned faculty duties effective September 21, 2004. However, during the pendency of the review proceedings, Dr. Schulte was permitted to keep his pager, and both his ID badge and computer password, which gave him access to OSU facilities, equipment, and computers. Dr. Schulte also retained the OSU scrubs that he had purchased with his own funds.

{¶ 8} On November 12, 2004, the board suspended Dr. Schulte's license for an indefinite period of not less than one year. As a result of the board's actions, OSU terminated Dr. Schulte's employment with Health Systems effective December 1, 2004, and revoked Dr. Schulte's staff privileges.

{¶ 9} On or around December 12, 2004, Dr. Schulte met with Dr. Howie regarding Dr. Schulte's written request to participate in medical research. Plaintiffs assert that Dr. Howie approved Dr. Schulte's request and that Dr. Howie was aware that

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Control Center, collectively, shall be referred to as "OSU."

Dr. Schulte intended to proceed with his research. Defendants assert that Dr. Howie told Dr. Schulte that his request was denied.

{¶ 10} On January 3, 2005, OSU became aware that, in December 2004, Dr. Schulte had siphoned morphine from the intravenous line of OSU patient, Tom Schulte, Dr. Schulte's father. On January 12, 2005, Dr. Schulte, while dressed in his OSU scrubs, using his customary bag of equipment, and representing that he was performing research on behalf of OSU, gained access to Wagner's home and siphoned morphine from his implanted pump. On January 25, 2005, OSU notified Dr. Schulte that his faculty appointment had been terminated effective January 21, 2005.

{¶ 11} Plaintiffs argue that OSU is liable to them for the actions of Dr. Schulte. OSU argues that it owed no duty to protect plaintiff from Dr. Schulte's tortious conduct inasmuch as such conduct occurred outside OSU's premises and outside the scope of his employment.

{¶ 12} The general rule is that "[i]f the Court of Claims finds that the employee was acting within the scope of employment and without malice, bad faith, or wantonness or recklessness, then the plaintiff may pursue the action against the state in the Court of Claims." *Elliott v. Ohio Department of Rehabilitation & Correction* (1994), 92 Ohio App.3d 772, 776. Indeed, "an employer is not liable for independent self-serving acts of his employees which in no way facilitate or promote his business." *Byrd v. Faber* (1991), 57 Ohio St.3d 56, 59.

{¶ 13} In another case involving OSU and the misdeeds of Dr. Schulte, this court granted defendant's motion for partial summary judgment as to OSU's liability to plaintiffs under the theory of respondeat superior.[2] In granting OSU's motion for partial summary judgment the court stated: "The evidence submitted in support of the motion establishes that at the time of the incident, Dr. Schulte's hospital privileges had been terminated, his medical license had been revoked, his employment with Ohio State University Health System had been terminated, and that [OSU] had placed him on administrative leave from his clinical faculty position.

{¶ 14} "In light of the standard of review, and construing the facts in a light most favorable to plaintiffs, the court finds that the only reasonable conclusion to be drawn

from the undisputed evidence set forth above is that Dr. Schulte was acting manifestly outside the scope of his employment with defendant at the time of the assault and battery upon Jesse Persinger." See *Persinger v. The Ohio State University Hospitals* (Dec. 20, 2005), Ct. of Cl. No. 2005-04969.

{¶ 15} As was the case in *Persinger*, supra, the only reasonable conclusion to draw from the evidence is that Dr. Schulte was acting manifestly outside the scope of his employment when he went to plaintiffs' private residence and, under the guise of conducting a fictitious pain study, siphoned morphine from Wagner's pump. Dr. Schulte has testified by way of deposition that he believed he was permitted to conduct research while he was on administrative leave and that he went to plaintiffs' home with the intention of conducting such research. He admitted, however, that he subsequently abandoned that intention in favor of his drug-seeking behavior. He further stated that he withdrew much more fluid than any alleged research protocol required and that he did not test the substance that he had withdrawn. Based upon this testimony, there is no question that Dr. Schulte's conduct did not advance any legitimate interests of OSU and that such conduct was not within the scope of his employment. Consequently, applying the general rule, liability may not be imposed upon OSU under the theory of respondeat superior.

{¶ 16} In an effort to distinguish *Persinger*, plaintiffs contend that liability may be imposed on OSU under one of the exceptions to the general rule set forth in the Restatement of the Law 2d, Agency (1958) Section 219(2). The Restatement provides that "[a] master is not subject to liability for the torts of his servants acting outside the scope of their employment, unless: (a) the master intended the conduct or the consequences, or (b) the master was negligent or reckless, or (c) the conduct violated a non-delegable duty of the master, or (d) the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation." *Groob v. Keybank,*

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[2]Plaintiffs dismissed the action in Case No. 2005-04969 prior to trial by filing a notice of voluntary dismissal pursuant to Civ.R. 41(A).

(2006) 108 Ohio St.3d 348, 2006-Ohio-1189.[3] The court will address each exception to the general rule in turn.

{¶ 17} Plaintiffs do not assert that OSU intended either the conduct or consequences at issue. Plaintiffs do, however, contend that OSU was negligent or reckless in hiring and/or retaining Dr. Schulte. Negligent hiring or retention consists of "(1) the existence of an employment relationship; (2) the employee's incompetence; (3) the employer's actual or constructive knowledge of such incompetence; (4) the employee's act or omission causing the plaintiff's injuries; and (5) the employer's negligence in hiring or retaining the employee as the proximate cause of plaintiff's injuries." *Evans v. Ohio State University* (1996), 112 Ohio. App.3d 724, 739.

{¶ 18} With respect to negligent hiring, the court notes that the consent agreements presented no legal impediment to the hiring of Dr. Schulte. There is also no dispute that Dr. Schulte's medical credentials satisfied the requirements of the part-time position that he accepted. OSU subsequently tested Dr. Schulte's urine for signs of drug use over a period of eight months before offering him a full-time position. To that point, Dr. Schulte had passed every urine test and plaintiffs have offered no evidence that Dr. Schulte was otherwise incompetent at the time he was offered the full-time position. Thus, plaintiffs have failed to produce evidence in support of their claim of negligent hiring.

{¶ 19} As legal support for the claim of negligent retention, plaintiffs cite *White v. Ohio Dept. Rehab. & Corr.*, Ct. of Cl. No. 2004-04981, 2005-Ohio-5063. *White* involves a corrections officer's sexual misconduct with an inmate. White sued the Department of Rehabilitation and Correction under the theory of negligent hiring, retention, and supervision. The court specifically noted that as early as August 2002, "many people in the institution, including inmates, COs, captains, and executive staff members became aware of the improper relationship." Id. ¶7. The defendant in *White* took no action even after the corrections officer's superiors had become aware of the rumors. Id. ¶16. In fact, it was not until late June 2003, after plaintiff became pregnant, that defendant finally began an investigation into the relationship. Id. ¶23-24. The corrections officer

[3]The relevant provisions are now contained in Restatement of the Law 3d, Agency Volume 2 (2005) §§ 7.03, at 151, and Restatement of the Law 3d, Agency Volume 2 (2005) §7.08.

was subsequently fired. In finding for plaintiff, the court noted that the defendant had a right to control the corrections officer because of "a substantial command and control structure." Id. ¶48.

{¶ 20} The undisputed facts in this case present significantly different circumstances. In *White*, the defendant had become aware of rumors regarding the improper sexual relationship and did nothing for ten months. Here, once OSU became aware of potential problems with Dr. Schulte in September 2004, he was immediately placed on administrative leave both from his faculty position and his position as a physician with OSU Hospital. He was also stripped of his privileges at the hospital with his faculty appointment being placed "under review." It is not disputed that OSU took such action well ahead of the board's decision to revoke Dr. Schulte's medical license.

{¶ 21} Plaintiffs argue, however, that OSU "retained" Dr. Schulte for several months after having notice of his drug abuse inasmuch as Dr. Schulte's faculty appointment was not formally terminated until January 2005. It is true that Dr. Schulte was still an OSU faculty member, albeit without duties, at the time of the incident involving plaintiffs. However, even if Dr. Schulte were a fully employed faculty member at the time of this incident, the court cannot conclude that OSU had either the right or the opportunity to monitor and/or control Dr. Schulte's conduct while he was away from OSU's premises. It is not reasonable to compare the opportunity for prison officials to control the conduct of corrections officers while on duty in a correctional facility with OSU's opportunity to control the conduct of faculty members while they are outside the academic and medical facilities. Dr. Schulte's tortious conduct occurred off OSU's premises and in the private residence of plaintiffs. Although Dr. Schulte claims that Dr. Howie authorized him to conduct some unspecified research, he did not state that he was authorized to conduct such activity outside OSU's premises. Furthermore, once OSU became aware that Dr. Schulte had siphoned morphine from his father's intravenous line, OSU responded by making a written report and, ultimately, terminating Dr. Schulte from his remaining faculty position.[4] Thus, this case is distinguishable from *White*, supra.

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[4]The evidence does not establish the reason Dr. Schulte was permitted to retain his faculty position, just that his faculty appointment was "under review."

{¶ 22} Plaintiffs next contend that OSU violated a non-delegable duty to plaintiffs and that it is subject to liability to plaintiffs under Restatement of the Law 2d, Agency (1958) Section 219(2)(c).[5] Specifically, plaintiffs assert that the hospital owed a duty, arising from the hospital-patient relationship, to notify them of the change in Dr. Schulte's employment status in September 2004.

{¶ 23} A duty to notify patients of the employment status of a particular treating physician has been recognized in the context of a hospital-patient relationship; however, such duty arises only within the hospital that is providing patient care. See *Clark v. Southview Hospital and Family Health Center* (1994), 68 Ohio St.3d 435. Plaintiffs do not cite any case that extends the duty to circumstances where the patient has left the hospital prior to a change in a practitioner's employment status. Indeed, the cases that are cited by plaintiffs in support of a duty involve patients seeking treatment at a hospital. See *Laderer v. St. Rita's Medical Center* (1997), 122 Ohio App.3d 587; *Moore v. Burt* (1994), 96 Ohio App.3d 520; *Gaines v. Preterm-Cleveland, Inc*. (1987), 33 Ohio St.3d 54; and *Albain v. Flower Hospital* (1990), 50 Ohio St.3d 251.

{¶ 24} "The existence of a duty in a negligence action is a question of law for the court to determine. There is no formula for ascertaining whether a duty exists. Duty is the courts' expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection. Any number of considerations may justify the imposition of [a] duty in particular circumstances, including the guidance of history, our continually refined concepts of morals and justice, the convenience of the rule, and social judgment as to where the loss should fall." *Mussivand v. David* (1989), 45 Ohio St.3d 314, 318. (Internal citations omitted.)

{¶ 25} In the opinion of the court, it would be both unreasonable and impractical to require a hospital to immediately notify patients who are not receiving treatment on hospital grounds that a particular physician is no longer employed by the hospital.[6] In short, OSU had no duty to warn plaintiffs of the change in Dr. Schulte's employment status.

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[5]This provision is now contained in Restatement of the Law 3d, Agency § 7.06.

[6]Plaintiffs do not dispute defendants' assertion that the licensing status of Dr. Schulte would be available to the public on the board's website.

{¶ 26} Finally, the Ohio Supreme Court "has not adopted Section 219(2)(d)" (apparent authority) nor has the court "previously determined that an employer can be found liable for the acts of its employee committed outside the scope of employment." *Groob*, supra, at 357-58. Because Ohio law does not recognize liability of the principal based upon apparent authority when the employee is acting outside the scope of employment, plaintiffs cannot proceed against OSU under the theory that Dr. Schulte acted with apparent authority on behalf of OSU.[7] For similar reasons plaintiffs may not rely on the theory of apparent authority set forth in Restatement of the Law 2d, Agency (1958) Section 261, now appearing in Restatement of the Law 3rd, Agency §7.08 comment a, at p. 221.

{¶ 27} In short, plaintiffs have not produced evidence sufficient to impose liability upon OSU for Dr. Schulte's actions based upon any of the recognized exceptions to the general rule in Section 219(2).

{¶ 28} In addition to liability premised upon either the agent/principal relationship or the hospital/patient relationship, plaintiffs assert that OSU is liable to plaintiffs to the same extent as any other individual would be liable to plaintiffs for the criminal acts of third parties. The court is not convinced that the analysis of such alternative theories of liability differ in any meaningful way from those theories previously discussed. Nevertheless, in fairness to plaintiffs the court will examine defendants' potential liability under such alternative theories.

{¶ 29} "'Ordinarily, there is no duty to control the conduct of a third person by preventing him or her from causing harm to another, except in cases where there exists a special relationship between the actor and the third person which gives rise to a duty to control, or between the actor and another which gives the other the right to protection. Thus, liability in negligence will not lie in the absence of a special duty owed by a particular defendant.'" *Evans v. Ohio State University*, supra, at 740, quoting *Federal Steel & Wire Corp. v. Ruhlin Construction Co.* (1989), 45 Ohio St.3d 171, 173-174.

{¶ 30} Plaintiffs cite *Douglass v. Salem Community Hospital* for the proposition that OSU may be liable for the criminal acts of its former employees. See *Douglass v.*

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[7]The relevant provisions are now contained in Restatement of the Law 3d, Agency, § 7.08.

Salem Community Hospital, 153 Ohio App.3d 350, 2003-Ohio-4006. In *Douglass,* a former hospital counselor molested the teenage friend of a child he had treated while in defendant's employ. The court found that when the counselor left his hospital employment, his superior suspected the counselor of improper relationships with children under his care, but that "the [h]ospital had no reason to know or suspect any particular child was being abused or in danger of being abused." Id. at 365-366. Significantly however, when the child's mother called the hospital to specifically inquire about the former employee, his former supervisor did not disclose any of her suspicions nor did she inform the mother that the counselor was no longer employed by the hospital. Id. In fact, the mother left the conversation with a positive reference about the doctor. Id. In concluding that the hospital had breached a duty of care owed to the mother, the court stated that "[w]hile the [h]ospital may not have had an affirmative duty to disclose to all former patients or clients that were involved with [the counselor] about his past history, when inquiry was made and they were asked for advice concerning him, they were bound to offer that advice in a non-negligent manner." *Douglass*, supra, at 368. In imposing such a duty upon the hospital the court noted that the state legislature had enacted a statute requiring disclosure of suspected child abuse. Id. at 365.

{¶ 31} Plaintiffs provide no evidentiary support for the existence of a special relationship between plaintiffs and OSU such that OSU assumed a duty to protect Wagner outside the hospital. In this case, unlike *Douglass*, Wagner's relationship with Dr. Schulte developed prior to Dr. Schulte's employment at OSU. Additionally, plaintiffs never inquired of OSU about Dr. Schulte's employment status. Plaintiffs have also failed to cite any statutory provisions which would lead the court to conclude that a duty should be imposed upon OSU under the circumstances of this case.

{¶ 32} Plaintiffs, however, assert that Wagner's presence at a meeting regarding Dr. Schulte's medical malpractice coverage evidences the existence of a special relationship between OSU and plaintiff. Plaintiffs claim that in July 2004, Dr. Schulte asked Wagner to accompany him to a meeting with Dr. Howie for the ostensible purpose of discussing Dr. Schulte's difficulties in obtaining malpractice insurance.

According to Wagner, Dr. Schulte "seemed very tired," and he appeared "to be very sleepy" during the meeting. Plaintiffs have stated that Wagner did not suspect Dr. Schulte of drug abuse at that time. In the opinion of the court, Wagner's presence at the meeting evidenced only that he had a pre-existing relationship with Dr. Schulte. Such evidence does not permit an inference that OSU had a special relationship with plaintiffs such that OSU assumed a duty to protect Wagner from Schulte's tortious conduct that occurred more than six months later, off hospital grounds, and outside the scope of Dr. Schulte's employment.

{¶ 33} Finally, plaintiffs contend that OSU owed a duty to plaintiffs simply because Dr. Schulte's conduct was foreseeable. The Supreme Court of Ohio has stated "[c]oncerning criminal acts of a third party which the defendant might reasonably anticipate, the mere fact that misconduct on the part of another might be foreseen is not of itself sufficient to place the responsibility upon the defendant. Rather, it is only where misconduct was to be anticipated, and taking the risk of it was unreasonable, that liability will be imposed for consequences to which such intervening acts contributed." *Evans*, supra, at 740. (Internal citations omitted.) Indeed, as a general rule, there is no common law duty to anticipate or foresee criminal activity. See *Federal Steel and Wire Corp. v. Ruhlin Construction Co.*, supra, at 173-174.

{¶ 34} The *Federal Steel* case involved repeated vandalism on defendant's job site, which was located on a railroad bridge directly above plaintiffs' property. Defendant erected a chainlink fence to keep potential vandals off the job site; however, during the winter months, the measures were withdrawn in favor of a snow retaining fence. Id. Although defendant had removed all of its heavy equipment from the job site, vandals used discarded construction materials to litter and damage plaintiffs' property below.

{¶ 35} Overturning a directed verdict in favor of defendant, The Supreme Court of Ohio concluded that "if a person exercises control over real or personal property and such person is aware that the property is subject to repeated third-party vandalism, causing injury to or affecting parties off the controller's premises, then a special duty may arise to those parties whose injuries are reasonably foreseeable, to take adequate measures under the circumstances to prevent future vandalism." Id. Thus, in *Federal*

Steel, the court focused on defendant's ability to control the premises and the foreseeability of the subsequent act occurring on such premises.

{¶ 36} Here, plaintiffs argue that OSU had knowledge of Dr. Schulte's drug addiction when he was hired and that it was, therefore, foreseeable that he would harm OSU patients. However, at the time of Dr. Schulte's hiring, and pursuant to the Consent Agreements, Dr. Schulte did periodically provide urine samples to OSU to determine compliance with the Consent Agreements and ensure that Dr. Schulte was not using drugs. These measures were taken to prevent harm to OSU patients and thus represent a reasonable attempt to prevent probable foreseeable harm. Additionally, when OSU became aware that Dr. Schulte was continuing to use drugs, OSU placed Dr. Schulte on administrative leave from his hospital and faculty positions and then terminated his staff privileges. Moreover, Dr. Schulte's tortious conduct occurred outside hospital grounds, a fact which distinguishes this case from *Federal Steel*, supra.

{¶ 37} This case is also distinguishable from *Semadeni v. Ohio Dept. of Transp*. (1996), 75 Ohio St.3d 128, another case relied upon by plaintiffs. In *Semadeni* the Department of Transportation (ODOT) had enacted a basic policy of installing fencing to prevent third parties from throwing objects off specified existing bridges. Id. at 132-133. The Court determined that ODOT's failure to timely implement the policy was a breach of a duty of care owed to a motorist who was injured by a rock thrown from one such bridge. Id. at 133. Here, plaintiffs have not pointed to a single OSU policy that was violated in regard to Dr. Schulte. Indeed, there is no dispute that OSU complied with the consent agreement.

{¶ 38} Plaintiffs also argue that OSU should have foreseen that Dr. Schulte would siphon drugs from Wagner's pump based upon OSU's knowledge that Dr. Schulte had illegally siphoned drugs from his own father's intravenous line. The court disagrees.

{¶ 39} Although foreseeability may also be based upon either "prior similar acts" or "the totality of circumstances," such totality of the circumstances would have to be "'somewhat overwhelming' before a business owner or operator will be held to be on notice of and under a duty to protect against the criminal acts of third parties." *Mack v. Ravenna Men's Club*, Portage App. No. 2006-P-0044, 2007-Ohio-2431 at ¶18-20.

When OSU learned that Dr. Schulte had siphoned morphine from his father, who was an OSU patient at the time, Dr. Schulte had already lost his license to practice medicine, he was on administrative leave, and had lost his privileges at OSU hospital. The only reasonable conclusion to draw from such evidence is that Dr. Schulte's criminal conduct was not foreseeable.

{¶ 40} In short, plaintiffs cannot support the contention that defendants owed a duty to plaintiffs based solely upon foreseeability of the crime.

{¶ 41} Construing the evidence in plaintiffs' favor, reasonable minds can conclude only that OSU did not breach a duty of care owed to plaintiffs. Accordingly, OSU is entitled to judgment as a matter of law. Defendants' motion for summary judgment shall be granted.

Court of Claims of Ohio

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JOHN T. WAGNER, et al.

Plaintiffs

v.

THE OHIO STATE UNIVERSITY MEDICAL CENTER, et al.

Defendants
Case No. 2005-05124

Judge Joseph T. Clark

JUDGMENT ENTRY

An oral hearing was conducted in this case upon defendants' motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendants' motion for summary judgment is GRANTED and judgment is rendered in favor of defendants. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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JOSEPH T. CLARK
Judge

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