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"Relation Back" Rule: Defeating Statute of Limitations Defense When Adding New Defendant to Medical Malpractice Complaint

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Although the hospital logo on their name tags may be the same, doctors and nurses at any given medical center can be employed by different entities. Depending on what information is publicly available for any given healthcare provider, it can be difficult to determine who should be named as a defendant and served at the onset of a lawsuit: particularly, as hospitals develop more sophisticated methods of shielding the identity of a healthcare provider's employer from public view.

Taken together with a client who contacts a lawyer -- or is referred to a lawyer -- close in time to the expiration of the statute of limitations, the decision of who to name as a defendant in a malpractice claim can carry significant consequences. This is an issue we confronted, and litigated, recently.

On November 2, 2017, our minor client was born prematurely and received medical care at Southern New Hampshire Medical Center (SNHMC). On October 30, 2020, our predecessor counsel filed a Complaint against SNHMC: in Count I, asserting claims for medical malpractice against the individual physicians who treated her; and in Count II, asserting liability against SNHMC based on the doctrine of *respondeat superior*. The Complaint sought recovery for, *inter alia*, medical bills and expenses our minor client's mother would incur on her behalf before she turned 18.[1]

In October 2021, our predecessor counsel withdrew, and our firm entered its appearance in the case. During the course of discovery, we learned that the individual physicians who treated our client were not actually employees of SNHMC; rather, they were employed by a separate entity called "Foundation Medical Partners" (FMP).

Notably, SNHMC publishes a website with pages featuring each of the individually-named physicians. Those pages list the physicians' place of business as the SNHMC hospital in Nashua, and *nowhere disclosed* that they were actually employed by FMP. Accordingly, in February 2022, we amended the Complaint to assert the *respondeat superior* claim against FMP, rather than SNHMC.

FMP moved to dismiss that Amended Complaint, claiming the statute of limitations for the claims of our minor client's mother[2] had already expired. In response, we argued that pursuant to NH Superior Court Rule 8(b)(3)(A)-(B), the Amended Complaint "related back" to the original complaint and therefore was not time-barred.

As relevant here, pursuant to NH's Rule 8: "(b) an amendment to a pleading relates back to the date of the original pleading when: (3) the amendment changes the party or the naming of the party against whom is asserted ... and if, within the period provided for serving the summons and complaint, the party to be brought in by amendment: (A) received such notice of the action that it will be prejudiced in defending on the merits; and (B) knew or should have known that the action would have been brought against it, but for a mistake or lack of information concerning the proper party's identity." N.H. Super Ct. R. 8(b)(3)(A)-(B).[3]

After defeating FMP's motion to dismiss, we conducted targeted discovery on the issue of whether FMP "received such notice of the action" that it would not be prejudiced in defending the claim. Specifically, we deposed members of FMP's Senior Leadership Team, who uniformly claimed they had "no knowledge" of the October 2020 complaint.

Those contentions notwithstanding, however, at their depositions, the members of the Senior Leadership Team acknowledged that SNHMC and FMP were both wholly-owned by the same parent company, Southern New Hampshire Health System, Inc.; that SNHMC and FMP were "highly dependent on each other"; that FMP's physicians were required to be "members of the medical staff at SNHMC" and have "privileges to see patients" at SNHMC; that leadership for both corporations worked "in the same building and on the same floor"; that both SNHMC and FMP -- as well as the individual physician defendants -- were covered by the same insurance policy; *and that FMP and SNHMC shared a single Risk Management Department* (RMD).

According to FMP's Senior Leadership Team, when the RMD received a malpractice complaint, it would review the complaint and then "exercise discretion" to determine whether that complaint was brought against SNHMC, FMP, or both, before forwarding the complaint to legal counsel. Thus, in this case, it became clear that the RMD reviewed the October 2020 Complaint, concluded that FMP was not implicated, and retained counsel to defend SNHMC only.

Thus, in opposing FMP's subsequent motion for partial summary judgment, we argued that the notion that FMP could claim ignorance of a lawsuit for purposes of asserting a statute of limitations defense -- *after its own RMD had received and reviewed a copy of that lawsuit within the statute of limitations* -- would constitute and impermissible end-around of Rule 8's "Relation Back" Rule.

The court agreed, observing that "a corporation receives 'notice of the action' within the meaning of Rule 8(b)(3)(A) when its agent for service receives notice." Thus, because the shared RMD received notice of the original Complaint within the three-year statute of limitations, FMP -- as a matter of law -- had actual knowledge of the Complaint at that time. *See* Rule 8(b)(3)(A).

Moreover, the court found FMP's arguments of "prejudice" for purposes of Rule 8(b)(3)(A) unavailing, reasoning that even if FMP was successful in dismissing the claims of our minor client's mother, FMP would "remain a party to the case and will need to participate in ongoing discovery," because our claims "against FMP on behalf of [the minor client] are undoubtedly timely."

Finally, the court determined that, for purposes of Rule 8(b)(3)(B), FMP "knew or should have known that the action would have been brought against it, but for a mistake or lack of information concerning the proper party's identity." As the court concluded, because the original Complaint (mistakenly) asserted vicarious liability against SNHMC for the individually-named physicians' negligence, "when FMP received notice of this action involving its employees and a count entitled "*respondeat superior*," it should have recognized that the gravamen of that count was "conspicuously centered on an absent party: itself."

This case serves as a concrete example of the purpose of "Relation Back" Rule, which is to ensure that cases are decided on their merits, rather than dismissed on procedural technicalities. As set out above, however, as healthcare corporations create increasingly intricate shell games to hide the identity of a provider's employer, this is an issue that may likely appear more frequently: especially in situations where our initial intake with a client (or referring attorney) occurs close in time to the expiration of the statute of limitations.

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[1] In NH, when a minor child is injured by the negligence of a third party, "two causes of action arise. One by the child itself for personal injuries upon it; a second by the parent or parents for consequential damages such as loss of services and expenses caused by the injury." *Vachon v. Halford*, 125 N.H. 577, 579 (1984). The third-party tortfeasor is liable to the parent because "the parent ... is under a legal duty to furnish medical treatment for any expenses reasonably incurred or likely to be incurred for such treatment during the child's minority." *Heath v. Seymour*, 110 N.H. 425, 429-30 (1970).

[2] NH's general three-year statute of limitations applied to our minor client's mother, RSA 508:4 (2024), while our minor client's claims tolled pursuant to RSA 508:8.

[3] For all purposes relevant to this analysis, NH's Superior Court Rule 8(b)(3)(B) is identical to Maine's "Relation Back" Rule contained in M.R. Civ. P. 15(c)(1)-(3).