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Hospital Immunity

*Ellis B. Brannon**

AN ARCHAIC RULE has been modified in Ohio by the Supreme Court decision in *Avellone v. St. John's Hospital.*[1] However, this decision leaves open the question of whether the Ohio Supreme Court will apply the New York Rule to hospital liability in Ohio, or whether it will apply a less restrictive rule of liability to hospitals in this State. Essentially, the question is whether the hospital will be held responsible for all acts of negligence of its agents occurring within the physical confines of hospital premises, or whether it will be excluded from liability in those instances where the act of negligence was committed by a physician or an agent of the physician on the ground that such physician-practitioner is an independent contractor.

The first enunciation of hospital immunity by Ohio courts was that of strict and total immunity. In *Taylor v. Protestant Hospital,*[2] the rule was challenged for the first time in this State. The second branch of the syllabus in that decision stated the rule:

> "A public charitable hospital organized as such and open to all persons although conducted under private management is not liable for injuries to a patient of the hospital resulting from the negligence of a nurse employed by it."

Thus, the Ohio Supreme Court established hospital immunity. The court stated, in essence, that a hospital was peculiar compared to other types of businesses, and because no profit was expected, that hospitals were "masters different from others." The doctrine of respondeat superior was not applied to the charitable institution, because the hospital was supposed not to have the power to control the acts of its servants.

A second case of immunity was decided in 1922, in *Taylor v. Flower Deaconess Home and Hospital.*[3] For the first time,

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[1] Avellone v. St. John's Hospital, 165 Ohio St. 467, 135 N. E. 2d 410 (1956); discussed in, Jacobson, Hospital Tort Liability, 5 Clev.-Mar. L. R. 118 (1956) and in, Morris, Sequelae of Recent Hospital Tort Liability, 6 Clev.-Mar. L. R. 47 (1957).

[2] Taylor v. Protestant Hospital, 85 Ohio St. 90, 96 N. E. 1089 (1911).

[3] Taylor v. Flower Deaconess Home and Hospital, 104 Ohio St. 61, 135 N. E. 287 (1922).

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then, the immunity rule was breached. The Supreme Court held that the hospital would be liable for improper selection or retention of its employee, where the employee was incompetent to perform his duties.

In 1930, a third case made the hospital liable for negligence to those individuals who were not patients in the hospital nor beneficiaries of its charity, but who were strangers to the hospital. In *Sisters of Charity v. Durelius,*[4] the court held, in paragraph two of the syllabus:

> "Charitable institutions, public and private, are on the same basis as other corporations and individuals as to the liability for negligence to those who are not beneficiaries of the charity."

Then followed a series of cases in which immunity was maintained in favor of a hospital or other charitable institution.[5]

Preceding the *Avellone* decision, *supra,* the Ohio Supreme Court reaffirmed, in *Cullen v. Schmit,*[6] that a charitable institution is liable:

> "1. When the injured person is not a beneficiary of the institution, and
> 2. When a beneficiary suffers harm as a result of the failure *on the part of the authorities of the institution* to exercise due care in the selection or retention of an employee." (Emphasis supplied.)

The immunity rule as applied to paying patients was changed as a result of the *Avellone v. St. John's Hospital* decision.[7] The syllabus of that decision is as follows:

> "(1) A corporation not for profit, which has as its purpose the maintenance and operation of a hospital, is, under the doctrine of respondeat superior, liable for the torts of its servants. (*Taylor, Admr. v. Protestant Hospital Assn.,* 85 Ohio St., 90, *Rudy v. Lakeside Hospital,* 115 Ohio St. 539, and paragraphs one and two of the syllabus of *Lakeside Hospital v. Kovar, Admr.,* 131 Ohio St. 333, overruled).
>
> "(2) In an action to recover damages for injury to a patient alleged to have been caused by the negligence of a nonprofit hospital, an answer filed by the defendant, which alleges that it is a corporation not for profit maintaining and operating a public charitable hospital, does not state a defense and is subject to demurrer."

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[4] Sisters of Charity v. Durelius, 123 Ohio St. 52, 173 N. E. 737 (1930).

[5] Lakeside Hospital v. Kovar, 131 Ohio St. 333, 2 N. E. 2d 857 (1936); Waddell v. Y. W. C. A., 133 Ohio St. 601, 15 N. E. 2d 140 (1938).

[6] Cullen v. Schmidt, 139 Ohio St. 194, 39 N. E. 2d 148 (1942).

[7] Supra, n. 1.

The first branch of the syllabus of the *Avellone* case decided only the right of a paying patient to maintain a suit against the hospital, where formerly that right did not exist. The language of the court which amplifies the first branch of the syllabus is as follows:

"(165 O. S. 477-478 (1956))

"We, thus, conclude that a corporation not for profit, which has as its purpose the maintenance and operation of a hospital, is, under the doctrine respondeat superior (and the various rules and exceptions applicable thereto), liable for the torts of its servants, and leave for future determination the application of this doctrine to the facts of the instant case as may be proved on trial. For instance, we are not deciding that persons working in a hospital, such as doctors and nurses, under circumstances where the hospital has no authority or right of control over them, can bind the hospital by their negligent actions. See *Schloendorff vs. Society of New York Hospital,* 211 N. Y., 125, 105 N. E. 92, 52 L. R. A. (N. S.) 505."

It was urged, at the time of argument before the Supreme Court, that the New York Rule should be adopted in Ohio, since the New York Rule was the only tested and developed rule available to the parties at that time. The New York Rule is stated as follows: [8]

A hospital is held liable for those "administrative" acts wherein the employees of the hospital negligently perform routine administrative duties, but the "professional" acts involving surgery or treatment of a patient do not impose liability upon the hospital.

It was also urged during argument that the New York Rule had "severe limitations of its own," for it leads *to,* rather than away *from,* litigation. It was further stated that, under this rule, "the parties never know whether a particular act of a nurse will be deemed a 'professional' act granting immunity to the hospital or be held to be an 'administrative' act invoking respondeat superior against the hospital until it is litigated and so determined on its own facts." [9]

The question obviously is this: If the New York Rule, which distinguishes between "administrative" and "professional" acts, is unsatisfactory, would it not be logical to hold a hospital responsible for all acts of negligence occurring on its premises,

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[8] Schloendorff v. Society of New York Hospital, 211 N. Y. 125, 105 N. E. 92 (1914). See 25 A. L. R. 2d 29, at p. 170.

[9] Argument and brief—Defendant's counsel.

since the hospital itself is in the best position to control the number of accidents and to provide for accident prevention. A hospital, of all places, ought to inaugurate and follow a safety program for the benefit of employees and patients alike. Would it not be wise to use the hospital machinery which already is in existence, in order to control all of the many regular activities which occur within the physical plant of the hospital? The hospital has an administrative staff, hired and controlled by a Board of Trustees. In conjunction, the hospital ordinarily has an Executive Council which usually consists of the trustees, the staff doctors, and other executive-administrative personnel.

It is the function of this executive committee to determine whether or not a particular doctor shall have the privilege to use hospital facilities. Here, surely, is a "control."

Although the private physician himself theoretically controls his patient while in the hospital, both the doctor and the patient must observe the rules and regulations of the hospital.

For example, suppose that X is injured in an accident and arrives at the Emergency Room. The intern or resident on duty decides that this particular injury requires the services of a specialist. Many times no opportunity is afforded to members of the family, because of the emergency, to select the specialist. Therefore, the hospital provides a specialist who has been accorded privileges to practice in the particular institution. Under the New York Rule, the specialist thus called to the hospital is treated as an independent contractor.

The Ohio Supreme Court thus far has not decided that a private physician using hospital facilities is an independent contractor. Probably this is so because the application of the general hospital immunity rule in Ohio, until the time of the *Avellone* decision, made it unnecessary for the court to rule on his status.

Within the last few months, in the case of *Andrews v. Youngstown Osteopathic Hospital Association, d.b.a. Cafaro Memorial Hospital,*[10] the Seventh District Court of Appeals held a hospital liable for the negligent injection of an anti-toxin shot by an intern of that hospital. The purpose of the test was to determine whether or not the patient was sensitive to the anti-toxin. The plaintiff contended that the intern failed to allow a sufficient amount of time to elapse before giving the shot. It

[10] Andrews v. Youngstown Osteopathic Hospital Association, d.b.a. Cafaro Memorial Hospital, 166 Ohio St. 228 (1957).

developed, after some little time had elapsed, that the plaintiff was sensitive to the anti-toxin. But the shot already had been administered. This resulted in a condition known as serum sickness, which incapacitated the plaintiff for several days. The Supreme Court refused the Motion to Certify (in 166 Ohio State 228).

However, in view of the above-quoted excerpt from the *Avellone* case, which cites the *Schloendorff* decision,[11] it is fair to assume that the Ohio Supreme Court would approve that part of the Schloendorff opinion which holds that the private physician occupies the status of an independent contractor rather than that of an agent of the hospital.

We believe that the relation between a private physician and a modern hospital makes the classification of the physician as an independent contractor untenable. If the private physician must be approved by the Executive Council in order to have hospital privileges in a particular institution, then he must abide by the recognized hospital rules and regulations governing his privilege to practice in that hospital. Along with the rules and regulations, the hospital Executive Committee imposes certain other restrictions and limitations upon the degree to which he may apply his personal authority over employees of the hospital.

Modern developments in the role of the hospital in the physician-patient relation increase the need for the private practitioner to rely on equipment and technicians in the general employ of a hospital. Nowadays it appears that the private physician, when he practices medicine within the confines of the hospital, almost never has the opportunity to exercise that degree of independent control and supervision which has traditionally characterized the status of a truly independent contractor.

Certainly, the development of the relation of the private physician with the hospital has changed substantially in the last fifty years. There is every indication that the private physician will be quite completely integrated into, and controlled by, the hospital in the near future.

Even when the private practitioner performs his most significant service to his patient—that is when he is operating as a surgeon—he is assisted by one or more physicians, in addition to one or more nurses, most of whom are probably in the general employ of the hospital. It seems to be basic logic that there is no real distinction between the surgeon enjoying hospital privileges

[11] Supra, n. 8.

in treating his private patient, and the treatment rendered by the resident doctor or the intern hired by the hospital. Many times the same so-called "professional" act is performed by any one of these three medical men.

The *Journal* of the American Medical Association recently discussed some of the limitations of the New York Rule.[12] In substance it said that:

> "the distinction between medical and administrative negligence that prevailed in New York was an artificial one. If it serves the public interest that a charitable hospital shall enjoy immunity for the negligence of its employees, then such interest is best served if the immunity is recognized without artificial exception."

Then it went on to say:

> "On the other hand, if social necessity recognizes that, as between even a charitable hospital and an injured patient, the hospital is better able to bear the risk, here, too, the needs of an injured person to be compensated for negligent injuries are exactly the same, regardless of any false legalisms that linger in the decisions of our courts."

In 1946 the New York Court of Appeals recognized some of the limitations of its rule in the case of *Nicolayff v. Genesee Hospital.*[13] The plaintiff there had entered the defendant hospital through arrangements made by her private physician. A surgical operation was performed, and while she was recovering from the operation an intern and a nurse entered her room and told her that she was to have a blood transfusion from her daughter. She protested, and advised both the nurse and the intern that she had no daughter. Over her objections, they nevertheless administered the transfusion. As a result of administration of improper blood, she became seriously ill and temporarily insane. Actually, the transfusion had been intended for another patient. The New York Court held the hospital to be liable for damages, and asserted that a charitable hospital could be held liable for an injury to a patient resulting from the negligence of an employee acting in an administrative capacity, even though such employee be a physician, nurse, or other person normally considered to be professional. The thinking of the Court, whether it is considered as appalling or reasonable, was to the effect that giving a transfusion to the wrong patient was negligence, and that the entrance of the intern and nurse into the wrong room

[12] 163 J. Amer. Med. Assn. (4) (January 26, 1957).

[13] Nicolayff v. Genesee Hospital, 270 App. Div. 648, 61 N. Y. S. 2d 832 (1946).

caused the professional nature of their errand to cease. The hospital was held liable for such negligence.

The *Journal* of the American Medical Association stated, in an article of January 26, 1957, commenting on the *Nicolayff* case, that:

> "giving a blood transfusion is clearly a medical act, and its professional nature is not destroyed merely because, as in the Nicolayff case, it was performed upon the wrong patient. By calling it administrative because of the mistake, the New York Court imposed liability upon a charitable hospital."

The following was also stated in the same article:[14]

> "In New York, charitable hospitals are liable for the acts of employees that are administrative and not professional in nature. As a matter of common sense there does not seem to be much logic in holding charitable hospitals free from liability by labeling an act as 'professional' in one case and imposing liability in a similar situation by the semantic device of calling the act 'administrative.' "

With respect to blood transfusions, such as occurred in the *Nicolayff* case, it goes without saying that accuracy in blood grouping and cross-matching tests is fundamental to safe blood transfusion. The physician, of necessity, must rely upon the laboratory, because a physician usually has no way of knowing whether incorrect grouping or cross-matching of blood has occurred in the laboratory prior to the use of the blood for transfusion. Utmost care must be taken, says the American Medical Association, to provide precautionary measures in the laboratory that will minimize the possibility of errors. Medical men, and not lawyers, will reduce and control hospital accidents, states the *Journal,* as follows:[15]

> "Those in charge of such laboratories should entrust grouping and cross-matching tests only to reliable and specially trained technicians. Many of the accidents that have occurred are directly attributable to untrained interns and physicians who performed these tests at night or on holidays, in the absence of regularly assigned technicians.
>
> "Even when grouping and cross-matching tests are performed by highly skilled persons, labels are sometimes switched or bottles of blood mislabeled. A transfusion accident is practically inevitable once a bottle of blood has been mislabeled. Accidents occurring because of mislabeling seem to be just as prevalent as those resulting from errors in blood grouping

[14] Supra, n. 12.

[15] Supra, n. 12.

> or cross-matching. Besides errors in blood grouping, accidents occur because of clerical errors of sheer carelessness, as in the case in which one of two patients with similar or identical names may require a transfusion and blood is administered to the wrong person. If a patient suffers a prolonged illness or dies as a result of a transfusion of blood of an incorrect group, the patient, or his family, if he does not survive, may be entitled to damages unless the immediate need for blood to sustain life allowed no time for adequate tests. The transfusion of blood of an incompatible group is prima facie evidence of negligence and legal liability."

The Ohio Supreme Court has not stated in what degree it will apply the doctrine of respondeat superior to the many facets of hospital operation. The question for our Supreme Court apparently is whether the Court will apply the New York Rule to Ohio cases, or whether it will supplant the New York Rule with a more workable rule of law, which will do away with the troublesome fiction on which the New York Rule is based. The case to which most authorities point as questioning the future application of the New York Rule is *Berg v. New York Society for the Relief of the Ruptured and Crippled.*[16]

There are several interesting medical and legal facets in this case, and it deserves detailed discussion. The plaintiff, Mrs. Berg, suffering from rheumatoid arthritis, entered the defendant's hospital for a course of treatment that included the administration of 500 cc. of blood. Prior to the performance of the transfusion, a sample of her blood was sent to the hospital's laboratory for analysis. The technician who tested it reported that Mrs. Berg's blood was Type A, *Rh* positive. She was transfused with *Rh* positive blood, but the transfusion was stopped when she started to develop an unfavorable reaction. A few months after she was discharged from the hospital she became pregnant, and was directed by her family physician to a laboratory for the purpose of determining her blood type and *Rh* factor. It was then discovered, and later verified, that she was Type A, *Rh* negative, and not *Rh* positive. During the course of Mrs. Berg's pregnancy it was established that the fetus was an *Rh* positive one, since her titer index rose substantially. She was advised that this increased titer would in all probability be fatal to the fetus. Later the fetus

[16] Berg v. New York Society for the Relief of the Ruptured and Crippled, 136 N. Y. S. 2d 528 (1954). For a general view of the conflicting doctrines followed in various States see, Oleck, Non-Profit Corporations & Associations, Secs. 55-57 (1956).

died, but Mrs. Berg was advised to carry through for the full period. Because of the circumstances, the attending physician at delivery found it necessary to use manual pressure upon the abdomen for a much longer period than is usual or customary. This caused various internal difficulties that required medical treatment and ultimately a vaginal hysterectomy.

In the trial court, suit was brought against the attending physician and the defendant hospital. The case against the physician was dismissed, and, after a trial without a jury, the court awarded a judgment for the plaintiff against the hospital, on the ground that the act of the laboratory technician was an administrative and not a medical act, and that the hospital was therefore responsible for the technician's negligence.

From this decision, the defendant hospital appealed to the Appellate Division. There was a rather lengthy dissenting opinion that viewed the negligent act as administrative. But the majority of the court felt that in this individual case, without making law to apply to other cases, it could have simply followed the pattern of the trial court, the dissenting opinion of the Appellate Division, and the many other New York cases that hinged upon the distinction between administrative and medical acts of negligence. Instead, the Court of Appeals chose to make judicial law by acknowledging the act of negligence to be medical, and nevertheless holding the hospital liable because the negligent technician was "no independent practitioner of a learned profession." Thus it appears that, although the Court of Appeals did not by express language overrule its prior line of decisions, charitable hospitals in New York are no longer immune from liability for negligence of its employees of a routine medical nature.

On January 10, 1957, in the case of *Becker v. City of New York*,[17] the New York Court of Appeals permitted recovery against a hospital operated by the City of New York, where a nurse administered an intravenous injection of a dye preceding the taking of x-rays. The plaintiff was acutely ill from a kidney ailment. He was twenty-nine years old, and had immigrated from Poland two years previously. He had been in the same hospital on two other occasions, and had received treatment for the same ailment, including a cystoscopy, intravenous pyelograms and an operation. The city hospital was operated on a nonprofit basis,

[17] Becker v. City of New York, 1 A. D. 2d 1003, 153 N. Y. S. 2d 538; revd. 2 N. Y. 2d 226, 140 N. E. 2d 262 (1957); Noted, 12 The Record (Assn. of the Bar of the City of N. Y.) 162 (Mar. 1957).

although patients were charged for the care received. Interestingly enough, however, the plaintiff had not yet paid for the charges for any of his visits.

The plaintiff was placed in a ward with forty or fifty other patients, with two nurses and four resident physicians in attendance. On September 21st he was taken in a wheel chair to the cystoscopy room. He was to be given an intravenous pyelogram, known as an "IVP," an injection of a dye into the vein in order to outline the kidney for x-ray purposes. A nurse employed by the city for twenty years had been in charge of the cystoscopy room for the past two years. She testified that her function in that position was "to see that everything is run properly in that room," to assist the doctor, and to take "care of all factors pertaining to that room." She was authorized to administer skin tests to determine allergy conditions, but she was not authorized by the hospital to perform "IVP's." Apparently, it was accepted practice for her to insert a hypodermic needle beneath the skin and to release a small quantity of dye in conducting the allergy test, but she was not similarly authorized to inject a large amount of dye into the vein for the "IVP." This latter function was one to be conducted by a physician, and the testimony disclosed that, unless a nurse is specially trained, she is not qualified to perform an "IVP." The nurse in question had never been so trained.

On entering the cystoscopy room, plaintiff was removed from the wheel chair and placed on a table. Despite his protests against being injected in the right arm, by the nurse, without any preliminary test, she inserted a hypodermic needle into the plaintiff's right arm below the elbow joint in the palmar surface. With the needle in his arm, plaintiff started screaming, but the nurse told him "you are a baby," and did not withdraw the needle until she had finished the injection. When the needle was withdrawn, plaintiff's arm was black and blue, with a feeling "like I hold electricity." The hospital record discloses that some days later that plaintiff "still complains of arm pain." There was no preceding entry in the hospital records indicating prior pain.

Subsequently, the plaintiff was examined by a neurologist. He found an injury to the median nerve, a nerve running down the arm in the vicinity of the vein into which dye is injected for the "IVP," and having to do with the control of the hand, resulting in a nerve disorder known as causalgia.

The complaint of the plaintiff was dismissed by the trial court. An appeal was taken to the Appellate Division of the Supreme

Court, which affirmed the dismissal of the complaint by the trial court. Subsequently, an appeal was prosecuted to the Court of Appeals. This court held, according to the first branch of the syllabus:

> "The City of New York is liable, under the doctrine of respondeat superior, for a negligent medical act performed upon a patient in a nonprofit city hospital by a registered nurse who was a paid employee of the city. Under *Liubowsky v. State of New York* (260 App. Div. 416, affd. 285 N. Y. 701) and *Robinson v. State of New York* (292 N. Y. 631), the effect of section 8 of the Court of Claims Act is to make the State and its subdivisions liable for the negligent acts of their paid employees, including nurses employed by them in their hospitals."

In the second branch of the syllabus it stated:

> ". . . The city may not escape liability solely because the employee was performing a medical act."

Admittedly, the *Becker* case is not squarely "on all fours" with the thoughts expressed in this article, because the *Schloendorff* rule (which is that a physician is an independent contractor) is not applicable to the relation between the State and its physicians, by reason of Section 8 of the New York Court of Claims Act. The gist of that section, as stated in *Jackson v. State of New York*,[18] is that the statute "waives immunity not only from suit but also from liability," and constitutes a "recognition of a moral duty demanded by the principles of equity and justice."

It transforms a questionable moral obligation into an actionable right, and applies to the State the rule of respondeat superior.

The *Becker* case does, however, hold the city-owned hospital to be liable for a "medical" or "professional" act. The New York Court of Appeals refused to allow the nonprofit hospital of the city to hide behind the *Schloendorff* rule. The Court of Appeals did not hesitate to place liability on the hospital in this situation because of the Court of Claims Act. However, because of the court's prior decisions in the *Nicolayff* case and the *Berg* case, it seems that the court will have to decide the "ultimate fate of the Schloendorff rule." [19]

As a result of the foregoing cases, it would appear that the Ohio Supreme Court may be reluctant to adopt the New York Rule, which distinguishes between "administrative" and "pro-

[18] Jackson v. State of New York, 261 N. Y. 134, 138, 184 N. E. 735, 736 (1933).
[19] Supra, n. 8.

fessional" acts. It seems more probable that our court will profit from the difficulties inherent in the New York Rule, and will apply a rule of law stating that a hospital should be responsible for all acts of negligence of its agents occurring within the physical confines of the hospital premises.

The writer is convinced that the above-cited New York cases should stimulate much thinking in regard to the future course of the law of physician-patient-hospital relations in Ohio.

The *Journal* of the American Medical Association has published in recent months a series of articles dealing with medico-legal problems. The *Journal's* Legal Department prepared these articles. We believe it pertinent and fair to summarize some of the conclusions of the *Journal,* dealing with the precise question of the application of the New York Rule to hospital tort liability.[20] They are as follows:

> "A number of medical, social, and legal conclusions can be drawn from a study of the recent cases. . . .
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> "From a medical standpoint, the taking and transfusion of blood have evolved from difficult to relatively simple techniques, while at the same time the number of accidents has apparently increased appreciably. This is characteristic of medical progress, for as the number of lifesaving procedures increase the number of accidents likewise tend to increase even though the ratio of accidents to treatment may remain constant or even diminish.
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> "The compensation of injured persons at the expense of those who are deemed responsible is determined fundamentally by the social philosophy of the courts and justified by legal doctrines. Most lawyers will acknowledge the pliability of the law applicable to personal injuries and the manner in which the courts use legal doctrines to accommodate their conceptions of social justice. More and more it is evident that the courts are relying upon recognition of an underlying principle of risk distribution, and this is reflected in the frequency of verdicts for the plaintiff.
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> "No hospital, even if it is a charitable hospital that is operated in a jurisdiction that holds such institutions to be immune from tort liability, can afford to be without insurance coverage in the face of ever-broadening liability.
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> "When effective ways are discovered to eliminate the legal problems that arise out of accidents in blood transfusions and similar accidents, it will be physicians and not lawyers who will lead the way by devising fool-proof techniques that will avoid such errors as mistakes in blood-grouping or

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[20] Supra, n. 12.

label-switching. In some of the grey areas the use of good medicolegal forms will offer a measure of protection. However, in the final analysis these legal problems can be dealt with adequately only if medicine will provide similar emphasis upon accident prevention and the utilization of already acquired knowledge as it does to scientific advancement, for true medical progress can only be measured by the preservation of life."

CONCLUSION

The charitable immunity doctrine has been modified in Ohio by the *Avellone* decision. Now it appears that further steps must be taken by the Ohio Supreme Court, so that every shred of the so-called charitable institution rule as applied to hospitals will be removed. The New York Rule has become bogged down with exceptions, resulting in virtual impossibility of accurate application of the rule. It is apparent that a change has taken place in the structure of the physician-hospital relation which calls for the creation of a different and more reasonable rule, predicated upon the real facts of hospital operation. This is being brought about by the necessity of the courts to admit that economic and social changes, as well as the principle of risk distribution, demand that the general public be protected against *all* negligence committed within the physical plant of the hospital. The Ohio Supreme Court has the opportunity to become the first State court to adopt a truly sensible and workable rule of law to govern hospital liability.[21]

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[21] In all jurisdictions where hospital immunity has been removed by court decision, only one state has seen fit to inquire into the matter by legislative action (Rhode Island) and to enact a statute granting immunity to the charity. The New York legislature, however, extended liability and made the state and its political subdivisions responsible for their negligent acts respecting hospitals as indicated by enactment of the Court of Claims Act. Supra, n. 17.