

# CHICAGO LAWYER®

## MED-MAL MATTERS

**T**hough a medical negligence plaintiff's burden of proof does not include motive or a systemic explanation of why a preventable injury was allowed to occur, proof of this sort can be extremely compelling, especially if the explanation involves profit or greed.

While nurses are laid off, healthcare executives and administrators are paid handsomely. According to the American Federation of Teachers (AFT), for instance, the CEO of the for-profit hospital system, HCA Healthcare, Inc., was paid \$46 million in 2013. In 2013, the average annual compensation of a CEO at a "nonprofit" hospital was \$600,000, with many nonprofit executives or administrators making more than \$1 million per year. According to the AFT, the 2013 data showed CEO compensation was not tied to higher quality, better outcomes or any other factor that would benefit patients. Instead, CEO compensation was linked to things such as the purchase of new technology or, in some cases, increases in revenue and in hospital admissions. Regardless of the label, healthcare entities are a profit center for someone.

The experience of one emergency room physician provides an important lesson on the for-profit model. Dr. Ray Brovont was the medical director of the ER at Overland Park Regional Medical Center in Kansas. As reported by NBC News, Brovont, a former Army physician who served in Iraq, began working at the hospital in 2012 as the ER's medical director. Staffing at the hospital's ER was provided by EmCare Holdings, a self-billed physician practice management company.

In 2011, EmCare was owned by a private equity firm. According to NBC, that firm sold its investment in 2015 when EmCare issued public stock, but several of its directors remained on EmCare's board into 2017. In 2018, NBC reports, EmCare became Envision and was taken private again by a different private equity firm. Envision bills itself as the nation's largest emergency medicine group, "partnering with more than 540 facilities across 45 states to care for more than 15 million patients each year."

Starting in 2012, Brovont began urging EmCare to address patient safety concerns by hiring more physicians. He was ignored. In 2014, HCA-owned Overland Park doubled its bed ca-



## FOLLOW THE MONEY

Understaffed ER proves deadly and costly

By **THOMAS A. DEMETRIO** and **KENNETH T. LUMB**

capacity and added a pediatric ER. Brovont and his fellow ER physicians concluded this expansion rendered the hospital's code blue policy unsafe. ER physicians were required to respond to codes outside of the hospital but EmCare's staffing level meant the ER would be left without an ER physician during some of these codes. "My physicians were being asked to be in three places at once," Brovont told NBC.

Brovont complained to his superior at EmCare, pointing out that simply hiring an additional physician would solve the problem. EmCare refused, however, pointing out in an email sent to the ER physicians and quoted by NBC: "Profits are in everyone's best interest." Undeterred, Brovont then sent a memo to EmCare's management. He was fired six weeks later.

Brovont's experience could have come from any of the 45 states in which EmCare/Envision operate, including Illinois. Typical provider service agreements between hospitals and ER or anesthesiology providers in Illinois award the provider the exclusive right to provide those specific services at the hospital but require them to provide personnel sufficient to "enhance access for persons requiring such services; assure consistency of service, quality and safety of persons receiving such services; and assure prompt availability of services," quoting one Chicago-area contract.

In a typical ER case, the hospital disclaims any responsibility because it hired "independent contractor" EmCare to staff its ER. EmCare then denies any responsibility because it simply hired "independent contractor" physicians to run the ER. In the case of a diagnostic error or a delay in intubation during a code, the individual physician is of course the most obvious defendant, but a plaintiff's search should not stop there. The ER physician probably has limited liability insurance coverage, of course, but that's not the only reason to cast a wider net for culpable defendants.

Perhaps the physician missed subtle signs of myocardial infarction on an EKG or was delayed in responding to a code because he was being asked to "be in three places at once." Perhaps she or her colleagues complained in the past about patient safety issues. Get the contracts. Get the correspondence. Find the Brovonts of the world and follow the money. [CL](#)

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