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Position of the Private Hospital in State Laws

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LEGAL questions concerning hospitals arise from the time of their organization and continue through their entire existence. We must realize that the Private Hospital is an instrument of democracy, which we need more today than ever before.

What are we doing to retain and strengthen this institution? Hospitals must appreciate that it is necessary to be vitally interested in legislative matters. Regulations regarding almost every activity are being introduced, few of which are advantageous. Directly and indirectly, hospitals are affected by bills relating to hours of labor, wages, taxes, use of drugs, medical procedure, rates, licenses, supervision, liability, and dozens of other problems, and what are we doing to present our side of the proposals? What efforts are we making to keep the hospital constantly before the public so that they may become health-conscious and hospital-minded? How can we expect their representatives, our legislators, to understand our problems and to protect this needed demo-

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ocratic institution? Our future depends entirely on our educating the public concerning our functions, accomplishments, and objectives.

Our discussion concerns private hospitals which are commonly incorporated under the laws of some state and are either charitable non-profit or are organized for profit. The title suggests that it be confined to legislation but for all practical purposes the judicial decisions affect hospital operation just as much as does legislation. It is the courts who interpret the laws.

CHARITABLE IN FORM OR IN FACT

One of our first encounters then is whether a hospital is organized for profit or not, whether it may enjoy the privileges on the one hand and be responsible for the duties on the other, further how the courts have interpreted the construction and the status of such an organization. There was a time when a non-profit or charitable institution was exempted from liability, but that is no longer the general rule. It seems now to be the settled law in California\(^1\) that the charter of itself does not control the question whether the corporation is organized for charitable purposes. The corporation must not only call itself a charity, but it must so conduct its business as to be in truth a philanthropic organization. This decision seems to be directed to the imposition of liability on charitable hospitals. However, an earlier case\(^2\) in the same state established the principle that if a corporation is essentially a charitable one, the mere fact that one of its departments, the X-ray laboratory, earns a profit, does not affect the general character of the institution, and further, the department showing a profit is not to be considered apart from the hospital itself in determining its status. Notice the tendency to be less generous in fact and construction. In the recent case of Silva v. Providence Hospital of Oak-

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\(^1\) England v. Hospital of the Good Samaritan, 61 P(2) 48, Calif., 1936.

\(^2\) Ritchie v. Long Beach Community Hospital, 34 P(2) 771, Calif., 1934.
land, the Court held that not only the purpose of a corpora-
tion but its manner of operating determine its charitable
character. Evidence sustained the finding that the hospital
was operated for profit notwithstanding that the general
purposes might have been charitable. The hospital was held
liable for the negligence of its servants. In Oregon, the Court
held, in the case of Hamilton v. Cornwallis General Hospital,
that the failure of the defendant to make a profit did not
prove that it was a charitable corporation, and further “An
important feature of this case is the absence of any charitable
trust for the defendant to administer. There is no income
from a fund or funds created by ‘contribution of benevolent
and charitably minded persons’ to be used by the association
in relieving the distress of the needy. Even the trustees of the
association have a personal interest in the operation of the
institution.” The Courts are questioning more and more
the granting of immunity from liability for damages solely
on the basis of the form of incorporation. Proof that the or-
ganization is charitable in fact as well as in name is being
demanded. In Boetcher v. Budd in North Dakota, the de-
fendant was operating the hospital under a contract with an
association for three years, all profits to be retained by him.
The Court held that the facts did not substantiate the argu-
ment that the defendant was managing a charitable hospital
and was therefore liable for the negligence of the nurses. The
Evangelical Lutheran Hospital Association in Nebraska was supported by subscriptions of stockholders and dividends
were declared on this stock. This is a clear case in which
the hospital was not organized as a charity. In the Arizona
case of Southern Methodist Hospital and Sanatorium in Tuc-
son v. Wilson, which was appealed twice, the court definite-
ly stated that “the test is not whether the patients of the

8 87 P(2) 374, Cal. App. 1939.
4 146 Oregon 167; 30 P(2) 9.
5 61 N. D. 50; 237 N. W. 650.
6 Malcolm v. Evangelical Lutheran Hospital Association, 107 Neb. 101; 185 N.
W. 330.
7 45 Ariz. 507; 46 P(2) 118.
hospital pay more or less for their services, but whether those charged with its operation were conducting it for their private profit or advantage." New York concurs in saying that an institution receiving pay patients does not change its status as a charitable organization. A Missouri hospital was even allowed to recover a judgment for services rendered a patient, holding that the trustees had the right to recover money owing to the charitable trust.

Lately, Courts have shown less generosity in granting hospitals immunity from liability. Catherine Sheehan had been a paying patient in the North Country Community Hospital, a charitable corporation. She was being removed in its ambulance to her home. Negligence of the driver brought the ambulance into collision with another vehicle and the plaintiff suffered injuries. On these facts there is squarely presented for the first time in the New York Court the question whether a charitable institution, not itself in default in the performance of any non-delegable duty, should be declared exempt from liability to a beneficiary for personal harm caused by the negligence of one acting as its mere servant or employee. The Court held the defendant was not exempt and submitted the question of negligence to the jury who returned a verdict in favor of the plaintiff.

There is ample reason to believe that the future will bring more encroachments on the rule of exemption and that other courts will be influenced by this decision.

After it is determined whether the hospital is really charitable or not, the question of liability is still complicated. Many questions arise which have not been foreseen by legislators and it is then left to the courts. It is not surprising then that there is a great diversity of opinion and ruling among the various courts of last resort.

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9 Barnes Hospital et al. v. Schultz, 90 S. W. (2) 164, Missouri.
These decisions might be classed in three general groups: one which holds the hospital immune from all liability for the injurious acts of its servants or employees; another which holds the private charitable hospital just as liable as any other individual or corporation; and a third, which avoids the two extremes and in which most of the states concur, imposes liability or grants immunity under certain circumstances. The current against hospitals is gaining momentum and the general opinion, that modern conditions do not justify that they receive special exemption, is increasing. In fact, in this era, the whole social and political structure is undergoing a change. There can be no general rule for all cases. One law always necessitates another so that legislation is so voluminous and scattered that the actual or potential menace of each cannot be estimated. Instead of investigating state for state, let us look at the national picture from the various cases which have been decided on important hospital questions.

**Liability for Injuries to a Paying Patient**

It is well established in Utah that the hospital is liable for negligence of its nurses resulting in the death of a paying patient, notwithstanding that the hospital is organized as a charity and gives charitable services.\(^{11}\) The Supreme Court of Utah has thus aligned itself with a growing minority refusing to grant immunity to hospitals in these modern times, saying that it is no longer necessary to protect such institutions against individuals who are injured, just because they perform acts of charity. There was a time, they agree, when such institutions were few and needed encouragement.\(^{12}\)

St. John’s Hospital of Tulsa, Oklahoma, was sued by the administrator of the estate of a deceased patient to recover

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\(^{11}\) Art. 13, sec. 2 of the Constitution; see also William Budge Memorial Hospital v. Maughan, 79 Utah 516; Getzhoften v. Sisters of H. C. Hospital Association, 32 Utah 46.

\(^{12}\) Sessions v. Thomas D. Dee Memorial Hospital Association, 78 P(2) 645.
damages for the alleged wrongful death of the delirious patient, who, while unguarded, jumped or fell from a hospital window. The jury found that the hospital was negligent in allowing the patient to remain unguarded and the court held that a paying patient in a hospital conducted without stock or profit, in which indigent patients are treated without cost, and the fees exacted from patients who can pay are used in promoting the work, may recover damages for injury caused by the negligence of the attending nurse. Judgment was $3,000 for loss of life and $500 for pain and suffering.\(^\text{13}\)

The Georgia decision that "although an institution which is chartered as a hospital for the treatment of sick people is established primarily as an eleemosynary or charitable institution, yet where in its operation, it takes pay patients and charges them for its services, the institution is liable to a patient who pays for the services rendered for injuries to the patient while in the hospital, caused from the negligence of the institution, but the recovery would be restricted to the income derived from the pay patients or from other non-charitable sources."\(^\text{14}\)

Georgia seems to concur with Utah and Oklahoma but on careful study this decision will not have the same influence because it is limited to paying patients and then only to the extent of funds received from that or other sources not charitable. Services rendered to such patients usually exceed the revenue derived so the chance of recovery is not very secure. This case seems to fit between the Utah and Oklahoma decisions and those which hold that even if charitable institutions derive some profit from their services that does not generally take it out of the class of charitable organizations.

Illinois has held that even "a person who pays an adequate fee for services rendered by a purely charitable hospital cannot maintain an action against the hospital for damages from injuries caused by the hospital's negligence."\(^\text{15}\)

\(^{13}\) Zeidler v. Sisters of the Sorrowful Mother, 82 P(2) 996, June 7, 1938.

\(^{14}\) Robertson v. Executive Committee of Baptist Convention, 190 S. E. 432 (Georgia).

\(^{15}\) Illinois Digest, 1938, Vol. 1, p. 529, citing Hogan v. Chicago Lying-In Hospital & Dispensary, 335 Ill. 42, 166 N. E. 461, Affirming 247 A. 331.
In Kentucky an action was brought by an administrator of the estate of a pay patient who had fallen from a window in defendant's hospital shortly after an operation. The defendant pleaded that it was a charitable institution, and the learned judge in his opinion said:

"An examination of authorities has convinced us that a purely charitable institution such as defendant's hospital is described in the pleadings to be, is not amenable to its patients, although paid ones, for any damages which they may have sustained growing out of the alleged negligence, although such negligence might consist in violation by the hospital of some duty imposed either by an express or implied contract."

A pay patient in an Indiana hospital suffered such a severe burn because a nurse had placed a hot-water bottle on the patient's foot that it ultimately resulted in the amputation of the plaintiff's leg. Plaintiff was successful in the lower court but this was reversed by the Supreme Court. The defendant successfully alleged that it was a charitable organization, had no stock, paid no dividends, and made no profits. The Court believed the rule that is sustained by the weight of authority and the best reason to be, that a charitable institution or corporation is not liable to a beneficiary for an injury caused by the negligence of its employees, and added that this exemption does not extend to outsiders or third persons.

A similar case arose in New Mexico and the rule was not altered just because the plaintiff was a pay patient.

"The rule is that those who furnish hospital accommodation and profit thereby, but out of charity or in the course of the administration of a charitable enterprise, are not liable for the mal-practice of the physicians or the negligence of the attendants they employ, but are responsible only for their own want of ordinary care in selecting them."

A pay patient in New Jersey fell and broke her left knee cap while a nurse was attempting to remove her from a wheelchair. The hospital gave evidence that the pay received was

16 Cook Adm. v. John N. Norton Memorial Infirmary, 180 Ky. 333.
17 Stine v. St. Vincent's Hospital, 195 Ind. 350, 144 N. E. 537.
disproportionate to the expense of caring for the patient but the court was satisfied that the act under which the hospital was organized was non-profit. It based its decision on the theory of public policy, but added:

"We are not required in this decision to go so far as to hold that a charitable corporation maintaining a hospital might not be liable to a patient, if carelessness were shown in the selection of the agent responsible for the injury, as that question is not raised in this case." 10

The fact that the defendant in a New York case accepted pay for its services was held by the court not to amount to a waiver of its right to claim an exemption from liability for the negligence of its nurses. 20

The majority view in charity hospital cases is that they are not liable for the negligence of their employees even when the party plaintiff is a pay patient, but the courts are qualifying the three early theories of immunity. More are now holding that the position of the pay patient is the same whether in a charity hospital or in one conducted for profit and that he should be entitled to the same remedies against one as against the other. What merits particular attention at the present time is the growing feeling that the individual needs the protection of the law more than institutions.

LIABILITY FOR NEGLIGENCE OF SERVANTS

Probably the most discussed phase of hospital law is that of liability for injuries to patients because of negligence of servants and employees. When and to what extent is a charitable institution liable? The Supreme Court of Maine said "No principle of law seems to be better established, both upon reason and authority, than that which declares that a purely charitable institution, supported by funds furnished by private and public charity, cannot be made liable in dam-

10 D'Amato v. Orange Memorial Hospital, 101 N. J. L. 61, 127 Atl. 340.
ages for the negligent acts of its servants." 21 "A charitable hospital is not liable for the torts or omission of its professional staff unless its has failed to exercise due care in selecting the staff" is the Digest of a recent Illinois case, 22 and again, "Private charitable institutions, charitable organization, as hospital, is not liable for action in tort for negligence in its servants and employees." 23

The majority of States still hold that a private hospital operated as a charity is not liable for negligence of employees where proper care was exercised in selecting them. 24

Other courts held the hospital not liable unless it failed to use due care in the selection or retention of the servants who caused the injury. The burden of proof is on the plaintiff. 25 Wisconsin gives as a reason that "the beneficiary of a charity impliedly waives his right to sue in tort for the injuries negligently caused by the carefully selected agents of his benefactor," 26 and further "such a hospital undertakes not to heal or attempt to heal through the agency of others, but merely to supply others who will heal or attempt to heal on their own responsibility." 27 Virginia concurred in this, saying that the only duty which a charitable hospital owes to its patients is the exercise of due care in the selection and retention of its servants. This court further explained the competency of nurses in this regard.

23 Maretick v. South Chicago Community Hospital, 297 A. 488, 17 N. E. (2) 1012, quoted by Callaghan's Illinois Digest, 1939 Cumulative Supplement, p. 23.
26 Morrison v. Henke, 165 Wis. 166, 170; 160 N. W. 173, 175. See also Silva v. Providence Hospital of Oakland, 87 P(2) 374.
27 Morrison v. Henke, supra, 170
"It is not sufficient to say that a nurse is competent simply because she is capable of discharging the manual duties incumbent upon her as a nurse. It is a matter of common knowledge that the welfare of a patient is as much the responsibility of the nurse as it is of the physician. If she is lacking in educational preparation, if she is guilty of indiscretions that impair her physical or mental status, if she is lacking in that moral character which imbues the patient with confidence, then it cannot be said that she is a competent person to be placed in charge of a helpless patient." 28

The same principle of law was applied to all the so-called "Hotwater bottle cases." No recovery was had unless the plaintiff proved that the defendant did not exercise due care in the selection and retention of the employee in question. 29

Recently more than ever before, it has been recommended that a hospital seek protection by carrying liability insurance. Often even when liability is established the hospital can successfully claim exemption because of its charitable character, but occasionally a hospital is assessed for large damages. Does the fact that a hospital carries insurance affect its standing in court? The courts have generally held that the fact of insurance is immaterial; that it will not of itself impose liability upon a charitable organization if no liability exists under the laws of the State. 30

The last few years have seen a remarkable increase in the number of reported decisions not only in the United States but also in Canada. The difficult problem concerning the liability of a hospital for the negligence of its trained nurses was extensively discussed in the recent Canadian case of Edward Fleming v. Sisters of St. Joseph of the Diocese of

28 Norfolk Protestant Hospital v. Plunkett, 162 Va. 151, (1938).
30 Moore v. Miss. Baptist Hospital, 156 Miss. 676. See also West Suburban Hospital v. Julia Peck, Circuit Court for Kane County, Illinois, No. 61380. Plaintiff sued to recover for services rendered, defendant filed counterclaim for injuries sustained because of unsafe lobby steps. Defendant contended her counterclaim ought to succeed because of the fact the hospital was insured. Court held that it made no difference on the question of liability.
London, Ontario. The Supreme Court of Canada held the defendant hospital liable for the negligence of one of its nurses who had severely burned the plaintiff during a diathermic treatment. The court held that the duty of the hospital was not limited to supplying competent nurses; the hospital having undertaken to provide certain treatment, there was no reason to exonerate it for the negligent acts of persons who were in its employ and subject to its control.

The Alabama court of last resort is severe in its opinion that: "there exists no reason in law for the courts to create an exemption of a person or association from liability for negligence of servants of such person or association, merely because such servant is employed by such master in the operation of an institution for purposes other than profit or gain." 32

Then there is a Minnesota case in which the plaintiffs sued for injuries sustained when their infant child contracted tuberculosis while in the hospital. Evidence showed that the nurse had a bad cough at the time she took care of the baby; that everyone including the superintendent knew of the cough; that the nurse was later found to be tubercular, and the court held that the hospital was liable for communicating infectious disease to a patient, saying:

"If, by the exercise of ordinary care, you can prevent this infection, then you are bound to do so; and if you fail to use ordinary care to prevent such fatalities, then you must answer in damages." 33

A verdict for $1,500 was rendered in favor of the plaintiffs.

The Minnesota case often quoted is the one where Lawrence Grotte had been admitted to the defendant's hospital as a pneumonia patient. He became delirious and during the absence of attendants, jumped from the second story window of his room and was killed. It was shown that the attendants knew of the patient's delirious state for some forty

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32 Tucker v. Mobile Infirmary Association, 191 Ala. 572.

33 Taaje v. St. Olef's Hospital, 271 N. W. 109. See Stone v. Lutheran Deaconess Home and Hospital, 280 N. W. 178, Minn., in which case the plaintiff failed to prove negligence on the part of the defendant.
hours before his death. The attending nurse left the window slightly open and left the room for about five minutes. The court held that the evidence of negligence was sufficient and that liability should be imposed even though the defendant was operating a charitable hospital:

"We do not believe that a policy or irresponsibility best subserves the beneficient purposes for which the hospital is maintained. We do not approve the public policy, which would require the widow and children of deceased, rather than the corporation, to suffer the loss incurred through the fault of the corporation's employees, or, in other words, which would compel the persons damaged to contribute the amount of their loss to the purposes of even the most worthy corporation. We are of the opinion that public policy does not favor exemption from liability."

Plaintiff recovered judgment in the sum of $6,500.

The plaintiff had paid for a special nurse in a Georgia case; while in a delirious state and the nurse was off duty, the plaintiff jumped out of a hospital window and the court held the hospital liable for neglect of its duty to provide some effective safeguard to protect the delirious patient.

Not all cases involving injuries to delirious patients have been decided the same way. The plaintiff's petition in an Iowa case was dismissed as against the Sisters of Mercy et al. Although the defendant was found to have failed in providing proper window guards and failed to provide proper attendants to the patient who was suffering from typhoid fever, and while in the state of delirium had thrown himself from the window in his room, was held exempt from liability. The Iowa court was of the opinion that the defendant would be liable only for failure to use due care in the selection of its employees and that if it had exercised reasonable care then it would not be liable for the negligent act of such employee. Since the plaintiff's petition failed to allege any facts from which the court might infer that the defendant could

34 Mullin Adm. v. Evangelisches Diakonissenverein, 144 Min. 372.
be proved guilty in that charge, the petition was dismissed because of the defect.\textsuperscript{36}

The South Dakota Supreme Court held that the hospital was not required to take any precautions other than those which would be taken by reasonable persons in the same circumstances. In other words, the defendant was not required to anticipate that a delirious patient might succeed in opening and jumping from a window. In this case delirium followed six days after an appendix operation.\textsuperscript{37}

Another "window" case resulted in favor of the hospital in New York where a child fell out of a window during the absence of the attendant. Defendant was a charitable institution and no lack of care in the selection or retention of the attendant was shown by the plaintiff.\textsuperscript{38}

This leads us to another question. Is the nurse an agent and servant of the physician or of the hospital? Some duties of a nurse are routine matters for the benefit of the hospital, others are under the direct control of the physician. Even in the operating room there may be acts over which the hospital may have control. Under which category a nurse's particular act will fall is a question of fact to be determined in each individual case. Some courts hold that it is the duty of the physician, in using the nurses furnished by the hospital, to see that every act necessary for the operation, under his immediate supervision and control, is properly performed. Under such circumstances the nurse is the servant of the operating surgeon.\textsuperscript{39} In a certain Missouri case, the plaintiff, a pay patient, sued a charitable hospital to recover damages for injuries suffered by her as the result of negligence on the part of one of the nurses in administering a carbolic acid solution. The trial brought out the fact that

\textsuperscript{36} Mikota v. Sisters of Mercy et al., 183 Ia. 1378.
\textsuperscript{37} Fetzer v. Aberdeen Clinic et al., 48 S. D. 308.
\textsuperscript{38} Cunningham v. The Sheltering Arms, 135 App. Div. 178, 119 N. Y. S. 1033.
\textsuperscript{39} Emerson v. Chapman, 138 Oklahoma 270. It is a rule in Oklahoma that the operating surgeon and not the hospital is responsible for the nurses. Hart v. Flower Hospital, 62 P(2) 1248.
the nurse was a private nurse, paid by the patient, and consequently any negligence on her part could not be commuted to the defendant. There are many other cases in which the court decided that the nurse was a private duty nurse and in the employ of plaintiff and hence defendant could not be held.

No successful defense has been presented by hospitals in defending a suit to recover damages for the unlawful detention of a body. In the Ohio case of Howard v. Children's Hospital of the Protestant Episcopal Church, the defendant was charged with violating a statute permitting recovery of not less than $500 or more than $5,000 against persons guilty of unlawfully possessing a corpse. The defense that it was a charitable institution was of no avail to the hospital. The Court said:

"It can hardly be imagined that the legislature did not have in mind hospitals supported by benevolence and administering charity when enacting the statute quoted. It must have been foreseen that such organizations would come within the operation of the statute which creates a liability upon any person, association or company having unlawful possession of a deceased person." And in Oklahoma, the court said: "The wrongful dissection of a dead body is regarded as a wilful and intentional wrong against the person entitled to the possession and control of the body for burial, and a recovery may be had for the mental anguish resulting from such a mutilation."

LIABILITY FOR INJURIES TO THIRD PERSON

Does the same reasoning of liability and immunity apply when the injured is a servant, an employee, a visitor or a stranger? Most courts have held the hospital liable if the

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40 Nicholas v. Evangelical Deaconess Home and Hospital, 281 Mo. 182.
42 37 Ohio App. 144.
43 McPosey v. Sisters of the Sorrowful Mother, 57 P(2) 617.
victim was not a beneficiary and not a patient and the defendant was guilty of negligence.\textsuperscript{44} In Missouri, however, a plaintiff employee was injured as the result of her hand being caught in a defective ironing machine because a guard was out of place. The court decided in favor of the defendant because it was a charitable hospital.\textsuperscript{45} Contradicting decision is to be found in New Hampshire where the plaintiff was a student nurse and was assigned to a contagious case but was not so informed. The patient developed diphtheria and the plaintiff contracted it also. The court held that the defendant was negligent and that it was an adopted rule in that state that charitable hospitals were not to be held exempt from the consequences of their negligent acts. They are to be treated as all other individuals and corporations.\textsuperscript{46}

As to visitors, the Ohio Court held as a matter of law that there could be no recovery by a visitor unless there was sufficient proof that the hospital failed to exercise ordinary care.\textsuperscript{47} In another case, the plaintiff was bringing some injured men into the hospital when he fell over a wire. It was an unfortunate accident but there was no negligence shown.\textsuperscript{48} As in other cases, contributory negligence on the part of the plaintiff prevents recovery. A nurse employed by a patient, slipped on the floor of the room in which the patient was confined. The floor was covered with standard linoleum which had been cleaned and waxed in the ordinary manner. The nurse could have seen and did see the condition it was in and had previously complained about it but continued to


\textsuperscript{45} Whittaker v. St. Luke Hospital, 137 Mo. App. 116. See also Amery v. Jewish Hospital Association, 193 Ky. 400.

\textsuperscript{46} Hewitt v. Woman's Hospital Aid Ass'n, 73 N. H. 556. See also Martha v. Flower Hospital et al., 228 N. Y. 183.

Note: An interne is an employee of the Hospital within the meaning of the Workmen's Compensation Act. Bernstein v. Beth Israel Hospital et al., 236 N. Y. 269.

\textsuperscript{47} Bonawitt v. Sisters of Charity, 43 Ohio App. 347, 183 N. E. 661. See also Daniel v. Jackson Infirmary, 173 Miss. 832, (1935).

\textsuperscript{48} Ammons v. St. Peter's Hospital, Inc., 195 N. C. 548, 142 S. E. 765.
discharge her duties. The hospital was compelled to exercise reasonable care, and the nurse failed to prove that it had not, and further the condition of the floor was as well known to the nurse as it was to the defendant, and she could not recover.\footnote{Mautino v. Sutter Hospital Assn., 211 Calif. 556; 206 P. 76.} Is a third person who enters the hospital as a visitor considered a beneficiary and therefore prevented from recovering for injuries sustained? The New Jersey Law says that she is. The plaintiff came to visit her daughter; she came voluntarily and for her own purposes. She fell and was injured. She tried to show that the defendant was negligent in not removing the wet spot on the stairs which was the cause of her fall. The court held that she was a recipient of the same benevolence as was the patient and applied the theory that public policy denies recovery.\footnote{Boeckel v. Orange Memorial Hospital, 108 N. J. L. 453, 158 Atl. 832. See also Foley v. Wesson Memorial Hospital, 246 Mass. 363, 141 N. E. 113.}

Louisiana had made an inroad on the doctrine of exemption from liability for negligence on the part of charitable organizations. The plaintiff was injured by a truck owned by the defendant. The court held that he was not a beneficiary and that he could recover because all persons and corporations must answer for the consequences of their negligent acts.\footnote{Bougon v. Volunteers of America et al., 151 So. 797.} In the New Jersey automobile accident case the judge agreed with the soundness of the trust fund, public policy and implied waiver theories, but held that the plaintiffs were absolute strangers to the defendant and had obtained no benefits from them, further that to uphold the defendant in its selection of servants and in the carelessness of those selected would be “repugnant to one’s sense of justice.”\footnote{Simmons et al. v. Wiley Methodist Episcopal Church et al., 112 N. J. L. 129, 170 Atl. 237.} Again, the Minnesota court stressed this point, saying “Where innocent persons suffer through their fault, they should not be exempted. . . . It is almost contrary to hold that an institution organized to dispense charity shall be
charitable and extend aid to others, but shall not compensate or aid those injured by it in carrying on its activities."

Loss of Personal Property

Other problems have arisen for the private hospital to solve. To what extent is it responsible for the loss of personal property? New York holds the private hospital liable. In the instant case the plaintiff recovered for the loss of bridgework which was given to one of defendant’s nurses. The court held that persons or corporations conducting private hospitals for profit have no exemption for the negligent acts of their servants. Concerning the liability of a charitable hospital for the loss of jewelry, Ohio held that it was “unable to make any distinction between cases involving damages to the person of a patient and damages to his property, where such are caused by the wrongful act of an employee” and that there being no proof that defendant was negligent in selecting or retaining the servant in question, the plaintiff failed to recover. The plaintiff had entered the hospital unconscious and later found her jewelry missing and the defendant claimed to have delivered the valuables to a person believed to have been the plaintiff’s son-in-law but was an imposter.

Liability of the Private Profit Hospital

The laws of the various states agree that private hospitals organized for profit have approximately the same responsibility as other corporations or individuals. Private institutions are obliged, by express or implied contract, to render reasonable care and attention to their patients for their safety, as their mental and physical condition, if known, may require.

Such private hospitals, conducted for gain, have been held liable for the negligent and careless acts of nurses and other

53 Geiger v. Simpson M. E. Church, et al. 174 Minn. 389. See also Murtha v. N. Y. Homeopathic Medical College et al., 228 N. Y. 183.
54 Yohalem v. Yasuma, 300 N. Y. 929.
55 Rudy vs. Lakewise Hospital, 115 Ohio S. 539.
employees. The master is responsible for the acts of his servants if they are within the scope of his employment.\textsuperscript{56}

In the instant Indiana case, one Baker brought a suit against Iterman and the New Castle Clinic. The Clinic urged as a defense that since a corporation cannot practice medicine, and the suit was for malpractice, that it should be relieved from liability. The court held that defendant Iterman was an agent and employee of the Clinic, and since the Clinic was a corporation organized for gain, that it was responsible for the acts of its agents and employees, and the plaintiff recovered.\textsuperscript{57}

Let us review a few of the more interesting decisions under this classification. In this Georgia case, the plaintiff's suit was dismissed by the trial court but this order was reversed by the Supreme Court. It seems as if a certain electric fan was placed in the plaintiff's room three days after an operation; that after it had been running for an hour and a half it flew to pieces and exploded. All this noise and confusion shocked and frightened the plaintiff and she jumped up, her stitches were pulled out, and an infection set in causing much pain and discomfort. The court said among other things, "we do not understand that it is the law of Georgia that there can be no recovery of damages for fright resulting from ordinary negligence, where such fright directly and immediately causes physical injury."\textsuperscript{58}

Mrs. Stevenson won an affirmation of a $5,000 judgment in California against a hospital and a nurse. The patient was admitted to the hospital and treated for paralysis following a stroke. While learning to walk with the help of two nurses,


\textsuperscript{57} Baker v. Iterman, 11 N. E. 2, 64, Indiana.

\textsuperscript{58} R. M. Garner v. Neuman Hospital, 198 S. E. 122, Georgia.
one left her side to prepare a chair for the patient, the second nurse was unable to support her and she fell, painfully injuring herself.\textsuperscript{59}

In Idaho, if the plaintiff could prove that the nurses were in the employ of the hospital at the time of the operation, recovery could be had as against the hospital, because private hospitals are liable for the negligence of their employees, but if the defendant proved that they were in the employ of the operating surgeon it would be relieved from liability.\textsuperscript{60}

Mabel W. Lofgren operating a private hospital was sued by the patient, Rose Goldfoot, for injuries sustained because of negligence. Plaintiff had her tonsils removed and shortly thereafter abscesses formed in the lungs, which were alleged to have been caused by aspiration of infected blood during the post-operative period. Expert witnesses agreed that the patient should have been kept on her side so that the blood could flow from her mouth. The patient's husband testified that the nurse made no effort in this regard and the jury found the defendant negligent and the plaintiff recovered.\textsuperscript{61}

In Maine, a patient had recovered $2,000 damages and her husband the sum of $500 at the first trial and now it was reduced to $500 and $200 respectively, because there was conflict in the evidence as to contributory causes which brought about the injuries complained of. The question of liability, however, was not raised but just the extent of damages.\textsuperscript{62}

The much-appealed and much-discussed case of Hendrickson v. Hodkin merits our attention. It was first tried with the question of liability for negligence of the physician of importance. All three defendants were held responsible but only the hospital appealed and on this appeal the complaint was dismissed because, as the court held, "The rule is now well

\textsuperscript{59} Stevenson v. Alte Bates Inc., 66 P. (2) 1265, California.
\textsuperscript{60} Corey v. Beck et al., 72 P. (2) 856, Idaho.
\textsuperscript{61} 135 Or. 533, 296 P. 843.
\textsuperscript{62} Mills v. Richardson, 125 Me. 12, retried in 126 Me. 244.
settled that a hospital, whether charitable or private, is immune from liability to patients by reason of the negligence of its doctors with respect to any matter relating to the patient's medical care and attention." 63 At the second trial the question was on the liability of a private institution for permitting treatment by a non-medical practitioner, and the court held "Private non-charitable hospital corporations operated for profit are liable for the torts of their executive officers committed within the general scope of their authority." Further that:

"In the case at bar the basis of liability is not the negligence of the doctor or nurse in charge, but the wrongful conduct of the executive manager and superintendent acting within the scope of his authority in offering for pay the use of the hospital and its facilities for the purpose of the commission of acts which constitute a tort, and a crime in violation of a duty owed a patient." 64

Noting a few of the facts we find that the defendant corporation permitted a non-medical practitioner the use of hospital facilities to carry on his treatment for the care of cancer for several weeks. This "cure" injured the plaintiff to such an extent that after a few weeks there was no lip or chin left and the patient's teeth fell out. The manager and superintendent had the right and even the obligation to refuse facilities to one not authorized to practice medicine under the state laws, and since they did not exercise reasonable care for the safety of this patient, they were held responsible. Take heed and do not permit one with doubtful qualifications to practice medicine in your institution. Ascertain from the local medical society or from the state license commission whether such an applicant is in good standing.

Not all cases which have reached the highest court of any of the states have been successful for the plaintiff against private hospitals. They are scarce but in the much quoted

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case of Schloendorff v. The Society of the New York Hospital, the plaintiff brought suit to recover damages for an operation which had been performed without her consent. She was a pay patient and claimed that she had notified the doctors and the nurses that she would undergo an examination but that she would not permit them to operate. No proof was shown that the administrative department of the hospital had heard of the patient's instructions to the nurses or the doctors and did not interfere with their work. The court agreed that the physicians and the nurses were independent of the hospital and if they violated their patient's demands it was not commutable to the hospital. It was in this case also, that the rule was laid down that the nurse was the agent of the operating surgeon and not of the hospital.

To what extent is the hospital responsible for injuries resulting from the premature discharge of a patient? We know that it is very difficult to get out of a hospital, and cases similar to this one in North Carolina must have been the cause. Plaintiff Bowdick had a leg injury and was being treated at defendant hospital when he decided that he would like to go home. He told a student nurse his desire and she promised to see his physician and would send up the bill if it was all right. Later, a clerk brought the plaintiff his bill and he returned to his home although he was suffering from a fractured leg. The court said:

"In the case at bar the plaintiff selected his own physician. Therefore the hospital assumed no liability and was charged with no responsibility for the medical treatment of plaintiff or the time when the relationship of patient and physician should be terminated by discharge of the patient. Nor was the hospital, under the circumstances, charged with any duty in procuring termination of the relationship of patient and physician. Hence, if no such duty was imposed upon the defendant, and if it did not assume the performance of such duty, then there is no negligence upon its part, and consequently no liability." 66

66 Bowdick v. French Broad Hospital, 201 N. C. 168.
The nurse was not considered an agent of the hospital and hence the hospital could not be charged with negligence or lack of reasonable care on behalf of the patient.

We can note another case, in which the patient was treated for temporary insanity. His father requested less service after signs of improvement. Later, when the attendant left the patient for a few moments the patient walked up several steps and then fell from a landing over the banisters. Plaintiff claimed that the defendant was negligent in permitting him to be unattended. The evidence was conflicting, the jury returned a verdict in favor of the defendant which the supreme court affirmed.67

**LIABILITY ON CONTRACTS**

Charitable Hospitals have been granted certain exemptions in order to foster and encourage the development of such institutions, but when a hospital, no matter what the legal status, enters into a legal contract to perform certain acts such an agreement will be enforced. Their liability for breach of contract is the same as that of any other person or private corporation.68 It is of no consequence whether the contract is made with a patient, employee, physician or business organization. Whether a contract exists or not, and whether it was properly fulfilled is generally a question for the jury to decide.69

An interesting legal problem arose in an Illinois court in 1936 where a mother and her new born son remained in the hospital for about ten days and upon their removal to their home the child developed erysipelas from which it died. The Illinois courts hold, as all others, that the hospital, even though it be charitable, is liable for the negligent acts of agent or employee in violating a valid contract. In this case

67 Stansfield v. Gardner, 193 S. E. 375, Georgia.
68 Loewinthen v. Beth David Hospital, et al., 9 N. Y. S. 2 367. See also the famous case of Roche v. St. John’s Riverside Hospital, 161 N. Y. S. 1143.
69 Coffey v. Northwestern Hospital Ass’n, 183 P. 762.
there had been an agreement for the care of child and mother for a stipulated price, and had the plaintiff been able to prove that the child contracted erysipelas while in the hospital, because of the defendant's negligence in caring for the child, i.e., in carrying out the terms of the contract, she might have recovered damages from the hospital. 70

**Hospital Lien Laws** 71

These laws are passed to protect hospitals, physicians or nurses and in some jurisdictions all three. 72 They usually give an institution or person the right to interpose a claim for the services rendered to an injured person. These laws differ in some detail in the various states but they all describe the individual or institution who shall be entitled to such protection, whether it is the nurse or physician or the hospital and what kind of hospital, public or private, profit or non-profit. Another provision sets forth the manner of lien, whether it shall be effective against real and personal property, all rights of action, suits, claims, counterclaims or demands of any patient receiving treatment, care and maintenance on account of personal injuries received in any accident, or whether it is more restricted; whether the accident must have resulted from negligence of any other person or corporation or whether the lien can attach even if the patient was guilty of negligence if covered by insurance. The extent to which the lien should apply varies also because the states have different forms of government and means of carrying out their laws. In some states insurance companies and lawyers oppose such a law, and if passed by the legislature they do what they can to make it ineffective in practice.

70 Mater v. Silver Cross Hospital, 2 N. E. (2) 138.
71 Compiled from State Digests, Copies of Bills received from the various State Legislatives, Legislative Bulletins of the American Hospital Ass'n, and "Legislation of Interest to Physicians" in the Journal of the American Medical Association.
72 Arkansas.
At least seventeen states have enacted lien laws. The variations in the present laws of these states make an interesting study. Some lien laws cover only charitable institutions, others those supported in whole or in part by public funds, but rarely is the small doctor-owned or private hospital given this protection.

Montana, New York and Virginia place the lien of the attorney first and then of the hospital. Others make no special mention and presume that the order in which they are filed will govern. North Carolina’s law states that the lien shall not exceed 50% of recovery excluding attorney fees. New Jersey permits recovery only for ward rates. Virginia limits the amount of the hospital lien to $200, and by Chap. 374 of the 1938 Acts of the Assembly, it limited the amount from physicians to $50 and $50 for all nurses. Most of the states provide full remuneration for reasonable services and accommodations. The laws differ in various other details, liens must be filed within five days after the injury in some states, in others within ten days; and in still others within twenty days. Some states require suit for the enforcement of lien to be started within one year, others, within two years. In some the usual statute of limitations for all claims hold. Filing fees range all the way from 12 cents to $1, some charge an additional fee per folio for entry. Most of the states require 25 cents to file and 25 cents to discharge the lien.

California has no lien law, but since 1929 the owner of the motor vehicle is responsible for all accidents, that is, if the driver thereof had permission for the use of the car from the owner at the time of the accident. This, at least, helps a

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74 Chap. 121, Laws of 1935.
75 Chap. 287, 1932.
little in making collections. Massachusetts and Wisconsin have no lien laws. Insurance companies and the hospitals have a friendly agreement in which the insurance company withholds the amount of the hospital bill from any settlement. Minnesota has a lien law which has worked satisfactorily since 1933, it also has a compulsory insurance law requiring motorists to carry accident insurance. Massachusetts has only the compulsory insurance. Most of the lien laws do not extend to cases coming under the Workmen’s Compensation Act or Public Liability. New York adds that the laws do not apply where the recovery by the patient is under $300. Washington’s Physician and Hospital liens are for the value of the services, plus costs and such reasonable attorneys’ fees as the court may allow, incurred in enforcing the lien, but it cannot exceed 25% of the award. Montana adds that no lien shall exceed the provisions of the schedule of fees, as adopted by the Montana State Medical Association.

Louisiana has a law whereby a hospital could be subrogated to the rights of a patient. It could recover for services rendered from the party causing injury to the patient and thus secure its bill for hospitalization. These are the facts. Mrs. Effie Jones brought suit against the driver of an automobile who caused the death of her son. She included in the suit the American Mutual Liability Insurance Company who carried the insurance. Charity Hospital of the State of Louisiana intervened in this suit in order to recover $353 for services rendered the deceased. The trial court dismissed the petition of the hospital but the Court of Appeals reversed that order and entered judgment in favor of the plaintiff and the hospital, stating that under the law

76 Chap. 534 of the Laws of 1936; Sec. 189 of the N. Y. Lien Law.
77 Chap. 69, Laws of 1937.
78 Chap. 57, Laws of Montana, 1931; Sec. 8993, Revised Code of Montana of 1921.
79 Act No. 320 of 1932.
the hospital had the right to recover if the plaintiff did.  

The hospital in this case was protected, but what of the thousand like cases which are settled out of court with insurance companies to which this law of subrogation and intervention could not apply. What percentage of accounts for services rendered the injured in automobile cases are lost to the hospital? The legislatures of the various states are beginning to realize the losses such institutions sustain each year and efforts have been repeatedly made for their protection.

Most of the thirty-one states which have as yet no hospital lien law have made an effort in the last few years to seek that protection. One must realize that in 1937 there were 6,128 hospitals registered by the American Medical Association in the United States, 617 were refused registration, 100 whose registration was pending, 70 more hospitals which were under construction and 179 were planning construction, or a grand total of 7,094 hospitals. Of the registered hospitals 2,693 were non-profit organizations, 1,713 were proprietary profit organizations, a total of 4,406 non-governmental, as compared to 1,722 governmental. Let us just get a glimpse of the efforts made in some of these states:

Colorado: In 1935 and in 1937 (S. 276 and S. 633) had bills introduced relating to liens of hospitals for the care and treatment of injured persons.

Delaware: Has a lien law since 1931 and in 1939 had a bill introduced (S. 253) providing for a Uniform State Act concerning Liens for money due physicians, dentists, nurses, hospitals, etc.

Florida: In 1937 two bills were introduced (S. 485 same as H. 899) which provided that a lien for any medical nursing or hospital service shall not exceed maximum fees prescribed by the Florida Industrial Commission if such fees have been fixed.

Georgia: Lien bills for physicians and hospitals were presented and killed in the Senate (S. 37, 1937). Early in 1935 a bill (H. 331) was introduced "for the creating in favor of hospitals and sanitariums a lien on the claim or action for damages on the part of any person receiving hospital and medical care by reason of personal in-

80  185 So. 509.
juries based on the negligent act of another; to provide how said lien shall be claimed and perfected; and for other purposes.” In 1939 H. 526 was introduced amending Title 52, Code of 1933, relating to liens in favor of Taverns, etc., so as to extend the provision of said title to hospitals.

Illinois: H. 236 was introduced in 1935 “Concerning liens of physicians, surgeons, dentists, drugless practitioners, nurses and hospitals, for services rendered for the relief and cure of persons injured through neglect of others, on claims, judgments and rights of action accruing to such injured person by reason of such injuries.” In 1937, S. 8 was introduced which would limit lien for both physician and hospital to one third of sum paid to the insured.

On Jan. 24, 1939, S.B. 52 providing for liens for dental, medical and surgical treatment of injured persons was referred to the Public Welfare Committee.

Indiana: This State has a lien law but H. 224 was introduced permitting hospitals to file liens on damages which patients collect. It was referred to the Judiciary Committee on Jan. 24, 1939, and died in the House.

Kansas: H. 509 was introduced early in March, 1939. It provided that “hospitals caring for injured persons shall have a lien upon damages recovered by such injured persons.” Did not apply to workmen’s compensation cases, and is junior to attorneys’ liens, provided for filing a notice also. This was approved by the House on March 30, 1939.

Maine: In 1937, S. 282 was introduced, stating that hospital liens become void unless itemized statement is filed within 60 days after termination of care and unless suit is begun to reduce such claim to judgment within one year after termination of treatment.

On Feb. 15, 1939, H. 1416 which authorizes liens on insurance proceeds in favor of hospitals was referred to the Committee on Judiciary and later died in the House.

Massachusetts: In this State there is compulsory insurance but no lien law. In 1935 H. 1109 was introduced for liens of physicians, nurses and hospitals, it provided for the reasonable value of services necessarily performed; was not to apply to those eligible under the workmen’s compensation act, giving rules for filing but stating that if an action is pending for the recovery of such damages that it would be sufficient to file the notice of such lien in the pending action.

In 1936 Bill No. H. 1045 for physician’s liens was introduced but was killed.

Finally in 1938 S. 166 for nurse’s liens was introduced which provided for the securing of liens by nurses to cover charges for services ren-
dered to personal injury cases. The Board of Registration of nurses was to establish a schedule of rates for each county which were to be used for charges covered by the lien.

**Michigan:** S. 60, 1937 liens for hospitals only was rejected.

**Missouri:** Liens in favor of public and charity supported hospitals, clinics, etc. with hospital charges limited to reward rates was expressed in S. 76 introduced in 1937.

In 1939 S. 22 was introduced providing that public or private clinics and hospitals, supported in whole or part by charity or the state, shall have a lien upon the claims, suits, rights of action, etc., of anyone admitted to the hospital.

**New Hampshire:** H. 153 was introduced in 1935 to provide for liens in favor of hospitals furnishing care, treatment and maintenance of persons injured in accidents upon the rights of action.

**New Jersey:** The State has had a lien law since 1931, Chap. 231. Many other states have modeled their law after New Jersey's.

In 1937, by A. 499, an effort was made to repeal the lien law in order to correct an evil condition which has developed under the law as it is at present and that the passage of the act would not in any way affect the liens of hospitals in accident cases.

In 1938 a bill was introduced, A. 233, by which hospitals were to be given preference in claims against decedents' estates. Judgments entered against the decedent in his lifetime, funeral expenses, hospital bills, whether of a public or private hospital, physicians' and nurses' bills during the last sickness should have preference, and be first paid out of the personal and real estate of the decedent.

S. 321 was also introduced and approved in 1938. It created a lien in favor of State and County institutions upon the real and personal property of persons receiving care and treatment therein, and supplementing Title 30 of the Revised Statutes, shall have a lien against the property of persons confined therein and receiving care and treatment. Such lien when properly filed as set forth herein shall have priority over all unrecorded encumbrances and shall be in an amount to be determined as provided in Title 30 aforesaid. Enacted 1938. Chap. 239.

Details as to name and method of recording were submitted in S. 174 and S. 175, 1939.

S. 209 would make it unnecessary for the physician to file a statement of the injuries sustained by an injured person in establishing a lien but S. 210 "Providing that where an injured person is treated in a public institution that the staff physician or his assistant who has charge of the case shall be retained by the person accused of the
negligence or his insurance carrier or if such physician transmits in-
formation or advice to a person accused of causing the accident or
his insurance carrier.” Public Health Committee reported favorably
March 9, 1939.

New York: Chap. 534 of 1936 gave New York its lien law. Numerous
efforts have been made to amend this Act and even to repeal it. We
will glance at just a few. S. 915 was introduced in 1937 in order to
amend. S. 2091, same as A. 2526 limits liens to fees charged, the rates
not to exceed cost rates in hospitals. Provision is made whereby after
filing of lien the injured person, his legal representative or the hos-
pital, may serve a notice of motion whereby the court will determine
the amount to which the hospital is entitled for treatment of patients
which shall determine the amount of the lien.

In 1938, S. 869 gives physicians a lien; S. 876 gives registered nurses
lien on rights of action, suits, etc., and A. 858 physicians lien except
where settlement or verdict is less than $300.00.

In 1939, A. 340 same as S. 323 filing fees, etc.; A. 413, similar to
A. 858 of 1938; A. 2028 repeals portions. S. 1349 same as A. 1400
provides that person or corporation making payment to person for
injuries sustained shall remain liable to hospital having lien, etc., for
period of one year from date upon which a written notice of pay-
ment shall have been mailed, registered mail, to the hospital, instead
of one year from date of payment. S. 1800 fixes county clerk's fees
for hospital liens at 25c instead of 12c for filing claims and 25c for
every search, 50c for discharging.

North Carolina: This State has a lien law since 1935, Chap. 121, 122,
not to exceed 50% of recovery excluding attorney's fees. S. 96, 1937,
provides for liability insurance for each owner of an automobile and
truck, further it specifies that all services for first aid, medical and
hospital care, funeral expenses and repairs of automobiles shall be a
first lien upon the amount awarded a claimant.

H. 63 was introduced, 1939, to amend section 3 of Chapter 122, P. L.
1935 in favor of sums due for medical attention and hospitalization
but this died in the House.

Ohio: Medical Lien Bill H. 454 was introduced in Ohio in 1937 which
allows physicians, hospitals, dentists, nurses to file lien for services to
persons injured against settlement made to injured party, but ex-
cepts workmen's compensation.

Oklahoma: In 1935 S. 62 was introduced to create liens to assure
doctors and hospitals their payment. H. 90 was also introduced the
same year, providing a lien for doctors, nurses and hospitals from
awards and judgments to injured persons.

Oregon: A lien law has been in force since 1931, Chap. 400. Section
4 states “no rights or claims for lien under this act shall be allowed
for hospitalization rendered an injured person after a settlement has been effected by or on behalf of the party causing the injury."

S. 353, 1939 was submitted but withdrawn in the Senate.

Pennsylvania: An effort was made by H. 2109 in 1937 to amend Act of April 26, 1855, P. L. 309, to make an amount recovered liable for the payment of expenses of last illness and funeral expenses.

Rhode Island: In 1936, S. 27 was introduced providing a lien for the value of services rendered by any physician, nurse, dentist, or hospital in the treatment or care of any person injured through the fault or neglect of another; defining the manner of perfecting such lien and providing to what it shall attach and the liability thereon. This bill died in the Senate.

In 1939, H. 782 providing a lien in favor of hospitals for services rendered to persons injured as result of accident providing liens on insurance in accident cases, was introduced and referred to Judiciary Committee.

South Dakota: In 1939, S. 25 was introduced and referred to the Committee on Judiciary. This provided that any person rendering personal service shall have a lien upon property, real or personal.

Tennessee: H. 1111 was introduced in 1937, and H. 758 this session (1939) providing for hospital lien, both died in the House.

Utah: This State made an effort in 1935 for a hospital lien law in the introduction of S. 170 but failed.

Virginia: A hospital lien law was operated since 1932, Chap. 287, but it was amended, Chap. 374, 1938, as to provide that where personal injury results in death the lien of a physician, hospital or nurse caring for the decedent can be asserted against either a judgment or compromise because of the injuries and death or the general estate of the decedent, but not against both.

As has been noted, lien laws have been adopted by at least seventeen states. They are not all entirely successful. Some jurisdictions require compliance with every detail or the benefits thereunder are lost. In Ferguson v. Ruppert 81 the court held that inasmuch as the hospital had not been cited to appear in the case, it refused to rule upon the validity of the lien it claimed because all technicalities had not been complied with. In the same state, New York, the hospital

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81 1 N. Y. S. (2) 967.
lien has been construed to be nothing more than a right of action in contract for services rendered.\textsuperscript{82}

It is a progressive sign when so many legislators endeavor to protect the rights of the hospitals in conjunction with hospital and insurance officials. Lien laws should be carefully studied and the representative of the insurance companies at the state capital in charge of legislation should be consulted. A review of the several lien laws is advisable so as to determine the construction placed on several plans and to accept the best suited to the circumstances and the laws of the state. Hospitals are definitely in politics and it is essential that careful study be continuous. There is a growing attitude that hospitalization of the needy be made a local responsibility and that all aid, financial and legal, be given to such publicly controlled institutions.

In conclusion, need we stress the importance of studying legislation? Approximately 62,000 bills are introduced in the legislatures of the forty-eight states each year, and of these more than 3,500 pertain to hospitals, doctors and nurses. We have shown the activity with just a few of the major problems. Within the past few months legislation pertaining to contracts for hospitalization, groups, insurance, payment for care of indigent patients, compulsory health or accident insurance, service plans,\textsuperscript{82} licensing laws, regulations for all the different departments, social security and old age assistance, unemployment compensation, workmen's compensation, socialized medicine, minimum wage laws,\textsuperscript{84} taxation of every nature and description, real and personal property, sales tax, gift tax, privilege tax, etc., medical ethics, actions for malpractice, pauper aid, childbirth duties, nurses, registration, license, education, internes, motor vehicle, sirens, ambulance operation and service, furnishing of oxygen tents,

\textsuperscript{82} Goldwater, Commissioner of Hospitals of New York v. Mendelson et al., 8 N. Y. S. (2) 627.
\textsuperscript{83} Eighteen states have passed special enabling acts permitting non-profit hospital service plans under regulation of their insurance departments.
\textsuperscript{84} Seven states have a minimum wage law.
healing, crippled children, blind, dependent and indigent sick, reports of all kinds, accident, death, wounds, diseases and defects, fire inspection, building laws, water supply, food and drugs, labor relations, collective bargaining, fair labor practices, child labor, mental health and disease, hospital facilities available to all physicians, selection of doctor, hospital incorporation, license and inspection, and dozens of others, have been introduced in the various states. The time to influence legislation is before its enactment and this necessitates close study and watchfulness on the part of hospital officials. Legislators are anxious that the various institutions express their opinion and show them how the legislative projects are either to their advantage or disadvantage. They are usually interested in the welfare of the public and you will find them cooperative when you work with them. The hospital is always a community enterprise, whether public or private, profit or charitable, and it needs the support and faith of that community. Our hospitals are doing wonderful work. They have developed from the same roots as churches and schools. They are the fulfillment of a primary need of man. They serve the rich and the poor and the average man; they serve the entire community. We cannot do without them and still consider ourselves a democracy. We must not only preserve these splendid institutions but we must help to strengthen and develop them.

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