

## Health Law: Quality & Liability

Prof. Thaddeus Pope

Managed Care Liability



MCO liability  
very **similar** to  
hospital  
liability



2 categories of  
MCO liability:

1. Vicarious
2. Direct



## Vicarious

Actual agency

Ostensible agency



## Direct

Negligent selection

Negligent retention

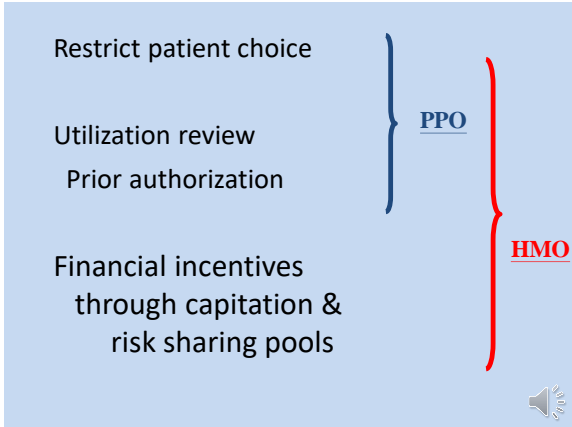
Negligent supervision

**Negligent (UR)**



**MCO  
Vicarious  
Liability**

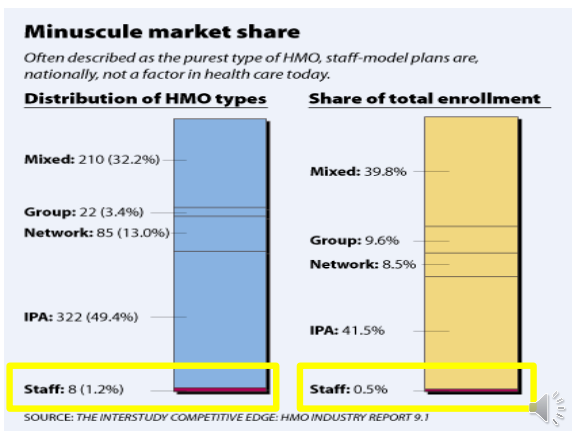
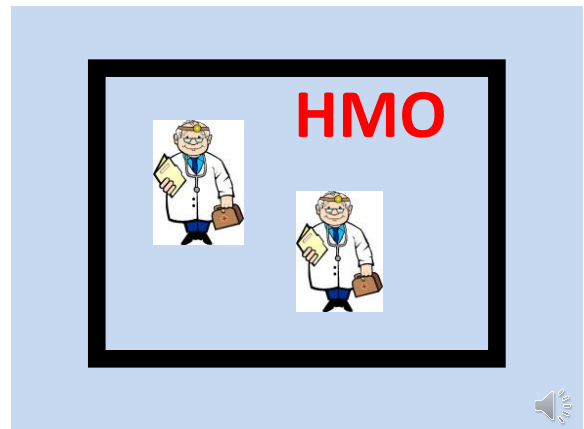




# Staff model

Docs work **exclusively** for HMO in centralized clinic

Strongest case for showing **master-servant**



# IPA model

No centralized office – docs have own offices

Probably will fail to show master-servant

Can still show other vicarious liability theories



# Ostensible agency



Baum & Baum



HMO



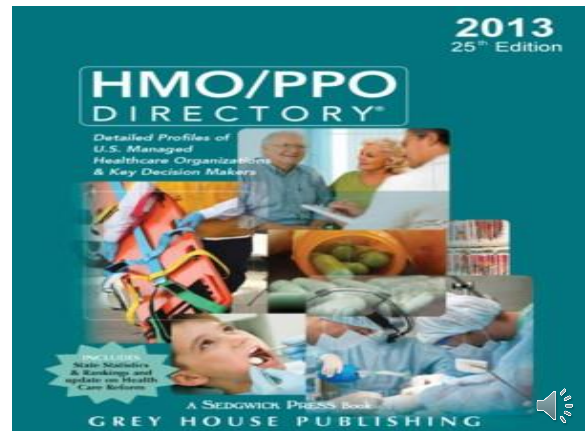
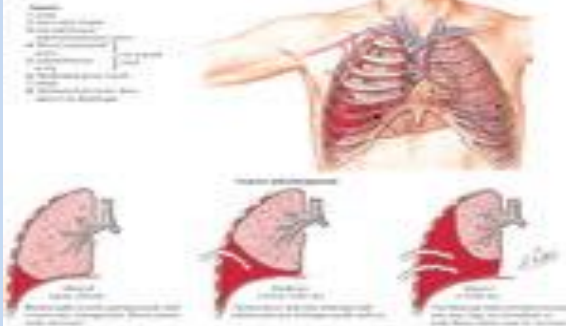
## Boyd

v.

## Albert Einstein



### Hemothorax



“Your PPO Co.  
physician”

“our staff”



## MCO Direct Liability



### Direct

- Negligent selection
- Negligent retention
- Negligent supervision
- Negligent (UR)

### Vicarious

- Direct agency (Resp. Sup.)
- Ostensible agency



## MCO Direct Liability for UR



These are claims  
arising from a  
**coverage**  
decision



We are **not** talking  
about other forms of  
direct & vicarious  
liability (e.g.  
malpractice)



# Wickline v. California



1. **Public**
  - a. Medicare
  - b. Medicaid**
  - c. Other
2. **Private**
  - a. Individual
  - b. Employer

HOSPITAL NAME & ADDRESS: Community Acute Hospital 123 Health Road Anytown, CA 95814		<b>CONFIDENTIAL Patient Information</b>		PATIENT'S AUTHORIZED REPRESENTATIVE: <b>Raquel Conrad</b>	
		<b>MEDI-CAL</b>		NAME: <b>Raquel Conrad</b>	
		<b>MANAGED CARE AUTHORIZATION</b>		ADDRESS: <b>789 River Road Anytown, CA 95814</b>	
<b>PATIENT INFORMATION</b>					
PATIENT NAME: <b>Conrad, Jose M</b>		AGE, SEX: 58 <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	MEDICAL NUMBER		TRANSFER TO:
PATIENT ADDRESS: <b>789 River Road Anytown, CA 95814</b>		DATE OF BIRTH: <b>06 / 30 / 42</b>	COUNTY CODE: <b>34</b>	AID CODE: <b>6 0</b>	HOME BOUND & CARE: <input type="checkbox"/> MEDIC: <input type="checkbox"/>
MEDICARE? <input type="checkbox"/> YES <input type="checkbox"/> NO		ICD-9-CM: <b>897.2</b>	DIAGNOSIS: <b>S/P traumatic amputation, above knee, left leg</b>		
<b>SPECIFIC SERVICES REQUESTED</b>					
1	FROM [ ] TO [ ]	COMMENTS: <b>Open draining stump wound requires daily dressing changes for one week 3x week for 2 weeks, 2x week for one week.</b>	PROVIDER ID: <b>HHA666660</b>	PROVIDER NAME: <b>Caring Home Health Agency (916) 556-1111</b>	
2	FROM [ ] TO [ ]	COMMENTS: <b>To continue range of motion - transfer - ambulation with assistive device 3x week for 3 weeks.</b>	PROVIDER ID: <b>HHA666660</b>	PROVIDER NAME: <b>Caring Home Health Agency (916) 556-1111</b>	
3	FROM [ ] TO [ ]	COMMENTS: <b>To continue goal of independent wheelchair transfer from bed to commode 3x week for 3 weeks.</b>	PROVIDER ID: <b>HHA666660</b>	PROVIDER NAME: <b>Caring Home Health Agency (916) 556-1111</b>	
4	FROM [ ] TO [ ]	COMMENTS: <b>Requires varying bed height to facilitate patient transfers and personal care.</b>	PROVIDER ID: <b>HHA666660</b>	PROVIDER NAME: <b>Caring Home Health Agency (916) 556-1111</b>	

**August 1976**

Lois Wickline treated by Dr. Daniels

**October 1976**

Dr. Polonsky diagnoses Leriche syndrome

**January 6, 1977**

Wickline admitted

Medi-Cal authorizes 10 days

**January 7, 1977**

Dr. Polonsky repairs artery in leg

**January 12, 1977**

Complications

Lois needs follow-up surgery

**January 16, 1977**

Dr. Polonsky determines Lois needs 8 more days

**January 16, 1977**

Medi-Cal denies 8 days

Authorizes only 4 more days

January 21, 1977

Dr. Polonsky discharges Wickline

January 23, 1977

Complications at home

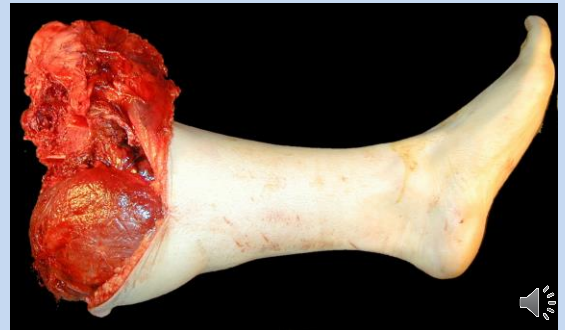
January 25, 1977

Dr. Polonsky's requested discharge date



February 8, 1977

Amputate



Why does Wickline lose?

Causation problem?

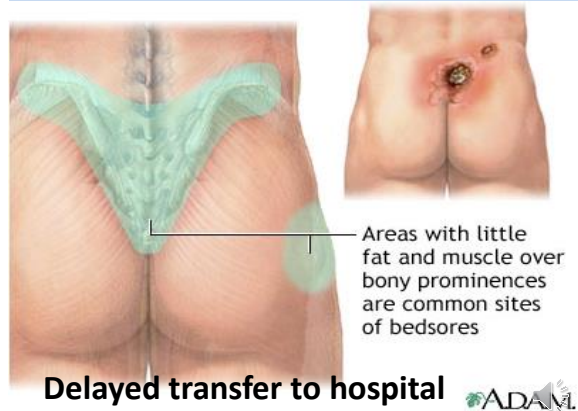


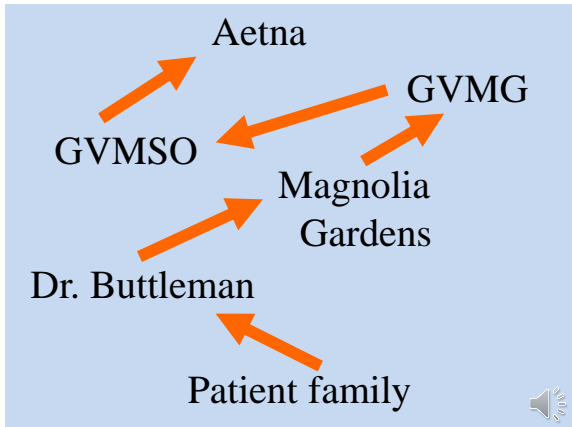
Malpractice case  
against Medi-Cal nurse  
against Medi-Cal physician

If Medi-Cal were liable, would  
Dr. Polonsky be off the hook



**Pagarigan  
v.  
Aetna**





Contrast Wickline –  
no **external** UR

Physician **incentivized**  
ex ante to do it for  
the insurer

