

**78B-3-424 Limitation of liability for ostensible agent.**

- (1) For purposes of this section:
  - (a) "Agent" means a person who is an "employee," "worker," or "operative," as defined in Section 34A-2-104, of a health care provider.
  - (b) "Ostensible agent" means a person:
    - (i) who is not an agent of the health care provider; and
    - (ii) who the plaintiff reasonably believes is an agent of the health care provider because the health care provider intentionally, or as a result of a lack of ordinary care, caused the plaintiff to believe that the person was an agent of the health care provider.
- (2) A health care provider named as a defendant in a medical malpractice action is not liable for the acts or omissions of an ostensible agent if:
  - (a) the ostensible agent has privileges with the health care provider, but is not an agent of the health care provider;
  - (b) the health care provider has, by policy or practice, ensured that a person providing professional services has insurance of a type and amount required, if any is required, by the rules or regulations as established in:
    - (i) medical staff by-laws for a health care facility; or
    - (ii) other health care facility contracts, indemnification agreements, rules or regulations;
  - (c) the insurance required in Subsection (2)(b) is in effect at the time of the alleged act or omission of the ostensible agent; and
  - (d) there is a claim of agency or ostensible agency in a plaintiff's notice of intent to commence an action, the health care provider, within 60 days of the service of the notice of intent to commence an action, lists each person identified by the plaintiff who the provider claims is not an agent or ostensible agent of the provider.
- (3) This section applies to a cause of action that arises on or after July 1, 2010.

Enacted by Chapter 97, 2010 General Session