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    IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

ALBERT BURKHART, a Minor,    :  No.  01-00310
By NEDRA BURKHART, Guardian  :
        Plaintiff            :
                             :
     vs.                     :  Civil Action - Law
                             :
PHILLIP BYLER, M.D.; CHARLES :
LAMADE, M.D. LYCOMING        :
OBSTETRICS & GYNECOLOGY;     :
ASSOCIATES, P.C.; CORNERSTONE:
FAMILY HEALTH, P.C.; THE     :  Plaintiff's Motion in Limine
WILIAMSPORT HOSPITAL and     :  to Determine as a Matter of
SUSQUEHANNA HEALTH SYSTEM,   :  Law that the Physicians are
        Defendants           :  Agents of the Hospital
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<u>ORDER</u>

AND NOW, this ___ day of March 2003, the Court DENIES

the Plaintiffs' Motion in Limine to Determine as a Matter of

Law that the Physician Defendants in this case are the

Agents of Defendant, Williamsport Hospital. First, the

Plaintiffs have not pleaded facts in their complaint to

support this theory of liability against the Hospital. The

Plaintiffs did not allege that the Hospital was a

participant in the federal Medicare/Medicaid program until

they filed their Motion in Limine on March 5, 2003. Second,

the motion is untimely and/or waived. The Court set a

dispositive motion deadline of January 4, 2003 and a motion

in limine deadline of February 19, 2003. Although the motion

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is styled a motion in limine, it would more aptly be

described as a motion for partial summary judgment.

Moreover, the Hospital filed a motion for summary judgment

on the issue of agency and the Plaintiffs did not raise this

issue in response to the Hospital's motion. Lastly, and

most importantly, the Medicare Act does not provide for a

private right of action,[1] and the Court does not believe the

regulations were intended for this type of situation.

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By The Court,

_____

Kenneth D. Brown, Judge

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cc: John Kusturiss, Esquire
      David Bahl, Esquire
      Darryl Wishard, Esquire
      Mark Perry, Esquire
      Gary Weber, Esquire (Lycoming Reporter)
      Work File

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[1] See Howard Medical, Inc. v. Temple University Hospital, 2002 US Dist. Lexis 1599 (E.D.Pa. 2002); Cronin v. United States Professional Consultants, 2001 US Dist. Lexis 2581 (E.D.Pa. 2001).