On July 29, 2020, the Minnesota Supreme Court issued an unexpected decision that is likely to impact Minnesota hospitals and could impact independent physician practices who contract with Minnesota hospitals. The following resource is intended to give an overview of the likely impact of the case so you can worry less about your malpractice risk and more about the health and safety of your patients.

What did the Supreme Court decide?
The Minnesota Supreme Court issued a decision in the case of Popovich v. Allina Health. In this case, several radiologists and emergency room physicians – independent contractors – were sued for negligence for failure to diagnose an impending stroke in a 38-year-old male. Allina Health, owner and operator of the hospitals where the independent contractors worked, was also sued for negligence on a theory of vicarious liability. Under this theory, a court can hold a party legally responsible for the negligence of another, not because the party did anything wrong, but rather because of the party’s relationship to the wrongdoer.

Mr. Popovich went to the emergency room of Unity Hospital, a facility owned and operated by Allina Health System, complaining of dizziness, loss of balance, blurry vision, and trouble breathing. While there a CT scan was conducted and reviewed by a radiologist; Popovich was then sent home. After returning home Popovich became unresponsive and an ambulance took him to Mercy Hospital, also owned and operated by Allina. There, ER physicians conducted a second CT scan which showed increased brain swelling since the first scan. He was transferred to another hospital where physicians diagnosed him with having suffered a stroke from dissection of the left proximal vertebral artery with thrombus. The stroke has left him with irreversible brain damage. Popovich’s wife sued on his behalf claiming that the emergency room physicians and radiologists at Unity and Mercy were negligent in providing care. Allina, as the owner-operator of both hospitals was sued on a theory of vicarious liability.

The Court found that a hospital may be vicariously liable for the negligence of non-employees, independent contractors, in the hospital’s emergency room if the hospital held itself out as a provider of emergency medical care and the patient looked to the hospital, rather than a specific physician, to select the personnel for the services.

What does this ruling mean for Minnesota physicians?
Before this ruling, it was understood from a prior Minnesota Court of Appeals’ ruling that a hospital can only be liable for a physician’s acts if the physician is an employee of the hospital. The Court’s ruling in the Popovich case upends this precedent and expands hospital liability to all independently contracting physicians if certain conditions are met. It is unclear what, if any,
impact this ruling will have on independent physician groups who contract with hospitals. Likely the impact will mostly be felt by hospitals, who may utilize some of the following to reduce their risk of liability:

- **Advertisements**: Hospitals will likely ensure advertisements clearly inform patients that they utilize independent contractors or will not refer to all physicians working in their hospital as employees.

- **Disclaimers**: Hospitals may require patients to sign disclaimers on “consent to treat” forms explaining that the hospital utilizes independent contractors and that the patient may be seen by one of these independent contractors.

- **Signs**: Hospitals may begin posting conspicuous signs in registration areas with notice that the physicians and advanced practice professionals are responsible for their own actions and are not employees or agents of the hospital.

- **Uniform**: Physicians who are not employed by the hospitals will wear name tags or coats/scrubs with the logo of their independent physician practice, not the logo of the hospital – which is already done in many cases.

While this may be a novel decision by the Supreme Court in Minnesota, it has been the law for some time in other states.

**What is the MMA doing in response?**
The MMA is working with community and national partners to identify opportunities to advance its existing policies on tort reform, alternative dispute resolution, and risk management. For more information on MMA policies, visit our policy compendium here.

**Do you need to reevaluate your malpractice insurance needs?**
Given the implications of the *Popovich v. Allina Health* decision, hospitals will be the most affected. However, it will be important to stay vigilant when reviewing contracts with hospitals to ensure that there is nothing unexpected because of the *Popovich* decision. The MMA is proud to partner with COPIC as the association’s preferred medical professional liability insurance (MPLI) carrier. COPIC provides medical liability insurance that goes beyond basic coverage to offer educational resources, expert guidance, and proven programs designed to address health care risks and improve outcomes. Along with Minnesota, COPIC is the preferred MPLI provider in Colorado, Iowa, Nebraska, Utah, as well as North and South Dakota. COPIC’s network of insured entities includes more than 14,000 physicians and more than 190 hospitals and health care facilities. MMA members are eligible for a 10 percent discount off their premiums with COPIC. Interested members should contact their current medical professional liability insurance agent or Jerry O’Connell, COPIC’s Senior Market Manager, at 800-421-1834, ext. 6182, to learn more about what COPIC offers.

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**For more information**
on the *Popovich v. Allina* case or medical malpractice more generally, please contact the MMA at mma@mnmed.org.