Specific Personal Jurisdiction Over Non-Illinois Physicians: What Do Courts Consider Minimum Contacts?

As the number of physicians leaving Illinois continues the issue of Illinois personal jurisdiction over an out-of-state physician will arise more frequently. According to a 2010 Illinois Physician Workforce report by Northwestern University’s Feinberg School of Medicine, the Illinois Hospital Association and Illinois State Medical Society, nearly one-half of residents and fellows who graduate medical school end up leaving the state to practice. http://www.isms.org/newsroom/documents/2010_1111_workforce_study.pdf (visited February 10, 2012). Of those leaving Illinois, over 30% will establish practices in bordering states. Armed with these statistics, the number of Illinois residents seeking medical care from neighboring states will undoubtedly increase and out-of-state physicians may find themselves back in Illinois disputing personal jurisdiction due to care rendered to Illinois residents.

Illinois courts may exercise either “general” or “specific” personal jurisdiction over a non-resident. “General” jurisdiction exists in suits that do not arise out of or relate to a defendant’s Illinois contacts so long as a defendant was “doing business” in Illinois. Kostal v. Pinkus Dermatopathology Lab., P.C., 357 Ill. App. 3d 381, 385 (1st Dist. 2005); Hyatt Int’l Corp. v. Coco, 302 F. 3d 707, 713 (7th Cir. 2002). On the other hand, “specific” jurisdiction arises when an out-of-state defendant purposefully directs his activities to Illinois residents and the injuries arise out of those activities. Kostal, 357 Ill. App. 3d at 385; Sabados v. Planned Parenthood of Greater Indiana, 378 Ill. App. 3d 243, 248 (1st Dist. 2007).

When the basis for personal jurisdiction is “specific,” courts must ensure that the exercise of jurisdiction “comports with traditional notions of fair play and substantial justice.” International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-78 (Ill. 1985); Culligan Intl. Co. v. Wallace, Ross & Simms, 273 Ill. App. 3d 230, 231 (1st Dist. 1995). To satisfy these principles, courts inquire:

- whether the nonresident defendant had “minimum contacts” with Illinois such that the defendant had “fair warning” that he may be required to defend a suit there;
- whether the action arose out of or relates to the defendant’s contacts with Illinois;
- whether it is reasonable to require the defendant to litigate in Illinois.

International Shoe Co., 326 U.S. at 316; Burger King Corp., 471 U.S. at 472-78; Culligan Intl. Co., 273 Ill. App. 3d at 231. In determining whether Illinois has “specific” personal jurisdiction over an out-of-state defendant, Illinois courts consistently hold that a “plaintiff may not lure a nonresident defendant into a
jurisdiction and the mere unilateral action of the plaintiff . . . cannot serve to satisfy the jurisdictional requirement of minimum contacts.” Muffo v. Forsyth, 37 Ill. App. 3d 6, 9 (5th Dist. 1976) (emphasis added).

Whether the nonresident defendant had sufficient “minimum contacts” is a highly factual inquiry and requires courts to consider any Illinois contacts by the out-of-state defendant. Muffo, 37 Ill. App. 3d at 6. In the context of physicians, Illinois courts have considered whether the out-of-state physician: (1) advertised or solicited the Illinois resident; (2) accepted any payments or financial benefits from the state as to that resident, such as payments from Illinois Public Aid; (3) is licensed to practice in Illinois or had any Illinois hospital affiliations; (4) owned or leased any Illinois real estate; (5) had a significant number of Illinois patients in comparison to home state patients; and (6) had any communications with Illinois individuals or entities concerning the Illinois plaintiff. Muffo, 37 Ill. App. 3d at 9-10; Veeninga v. Alt, 111 Ill. App. 3d 775 (1st Dist. 1982); Sabados, 378 Ill. App. 3d at 245-46; Ballard v. Rawlings, 101 Ill. App. 3d 601 (5th Dist. 1981); Weiden v. Benveniste, 298 Ill. App. 3d 531, 534 (3rd Dist. 1998).

Recently, the Illinois Appellate Court, Fifth District, issued a Rule 23 Order that addresses Illinois’ “specific” personal jurisdiction over a Missouri physician. In Unterreiner v. Pernikoff, the court held that Illinois lacked personal jurisdiction over a Missouri physician whose sole “minimum contact” to Illinois was a returned telephone call. 2011 Ill App (5th) 110006-U. The plaintiff was an Illinois resident who treated with a Missouri physician for several years. Id. at ¶3. The defendant physician was not licensed to practice medicine in Illinois. Id. Neither he nor the other defendant, his professional corporation, advertised in Illinois, owned property in Illinois or rented property in Illinois. Id.

After the plaintiff underwent an aortic valve replacement, she was placed on anticoagulation medication and the physician continued to regularly monitor her coagulation levels. Id. These monitoring appointments all took place at the defendant’s office in Missouri. Id. The lab values were generally not available on the day of the appointment and on the date in question, defendants’ office contacted the plaintiff via telephone to discuss her results. Id. When plaintiff returned the call she was advised by defendants’ office to modify her medication regimen. Id. Shortly thereafter she suffered a stroke and suit followed. Id. The plaintiff alleged that the modification of medication caused the stroke and subsequent injuries. Id.

In Unterreiner, the appellate court highlighted that the only contacts between the defendant Missouri physician and the Illinois plaintiff were one unanswered phone call to the plaintiff’s Illinois home and a subsequent return phone call by the plaintiff to defendant’s Missouri office. Unterreiner, 2011 Ill App (5th) 110006-U, ¶9. The plaintiff argued that since the physician-initiated phone call was “the incipient negligence” that directly led to the plaintiff’s damages, Illinois had jurisdiction over physician’s conduct. Id. at ¶6. The Fifth District disagreed and emphasized that “a solitary phone call” advising a patient does not equate to the voluntary invocation of protections and benefits of Illinois. Id. at ¶9.

While some courts, as noted in the Unterreiner order, unequivocally find that mere telephone calls and correspondence by an out-of-state defendant generally are insufficient to establish “minimum contacts” and do not confer jurisdiction, the Fifth District left open the possibility that multiple telephone calls may be sufficient. Id. at ¶9 (citing Campbell v. Gasper, 102 F.R.D. 159, 162 (D. Nev. 1984); Bond v. Messerman, 391 Md. 706, 723 (Ct. App. Md. 2006); Greenberg v. Miami Children’s Hospital Research Institute, Inc., 208 F. Supp. 2d 918, 925-926 (N.D. Ill. 2002)).

As the modern-day practice of medicine continues to evolve, it is becoming more common for physicians’ offices to charge patients yearly administrative fees, intended to cover the overhead expenses such as responding to patient’s telephone calls. Doctors Tack On Fees For Patients, USA Today, June 7, 2010 (citing to What’s Keeping Us So Busy in Primary Care?, R. Baron, M.D., New Eng. J. Med., 210; 32:1632-1636 (April 29, 2010). In fact, some practices go as far as directly billing patients for each telephone consultation. How To Get Paid For Care Delivered Over The Telephone, http://www.ama-assn.org/amednews/2010/02/01/bica0201.htm (visited February 10, 2012). Had the physician in Unterreiner billed the plaintiff for the telephone consultation, perhaps the outcome would have been different. In distinguishing plaintiff-cited cases of Calligan Intl. Co. and Ores v. Kennedy, the Fifth District highlighted that in those cases there was jurisdiction over the out-of-state defendants because defendants “purposefully derived
a financial benefit from these [telephone and correspondence] contacts” by billing the plaintiff for each communication. Unterreiner, 2011 Ill App (5th) 110006-U, ¶10 (citing Ores v. Kennedy, 218 Ill. App. 3d 866, 873 (5th Dist. 1991); see also Culligan Intl. Co., 218 Ill. App. 3d at 873).

Based on the cases distinguished by the Fifth District, there remains a possibility that a single telephone call, for which the patient is charged, may be sufficient to confer “specific” personal jurisdiction over an out-of-state physician. Charging patients for telephone calls could have broad implications and surprising effects as to inadvertent personal jurisdiction over non-Illinois physicians. A physician may subject himself to jurisdiction in any state simply by providing a patient with paid telephone medical advice via a few phone calls.

With today’s ever changing methods and means of communication, the non-resident physician may find him or herself more vulnerable to a non-forum state’s exercise of personal jurisdiction. Counsel should consider advising physician clients that certain practices (i.e. charging patients for telephone contact) may have such an unintended effect.

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