

# Texas Supreme Court Holds Unique Employment Structure Limits Liability for Physicians

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In *Renaissance Medical Foundation v. Lugo* (No. 23-0607), the Texas Supreme Court held that the legislature modified traditional, common-law vicarious liability for certain health care entities that employ physicians. The Court pronounced that non-profit health organizations (NPHOs) certified as such by the Texas Medical Board may employ physicians, but they “may not interfere with, control, or otherwise direct a physician’s professional judgment” in violation of Section 162.0021 of the Texas Occupations Code (Code) and other long-standing civil and criminal prohibitions on interfering with physicians’ independent, professional judgment.

The Court explained that making an NPHO vicariously liable<sup>1</sup> “for employee conduct it is statutorily prohibited from controlling would be inconsistent with” the principle that control of the employee’s work justifies vicarious liability. The majority opinion explained that this “unique” employment structure in Section 162 of the Code “altered the landscape” and allows NPHOs “to choose to employ physicians without engaging in the unlicensed practice of medicine.”

The concurring opinion by three justices more firmly explained that “[v]icarious liability claims against these [NPHOs] that allege a physician’s medical judgment caused the patient’s injury thus have no merit absent allegations of the [NPHOs]’ unlawful interference.” Indeed, “Section 162.0021 forecloses such liability to the extent it rests on a physician’s exercise of medical judgment as the cause of the injury.”

This decision overruled the court of appeals’ conclusions that Section 162’s text does not modify common-law vicarious liability and the preclusion on NPHOs controlling a physician’s independent medical judgment is largely inapplicable as a defense to this type of vicarious liability claim. The court of appeals reached these conclusions despite acknowledging that there is no “suggestion or evidence” that the NPHO exercised actual control of the surgeon’s medical care to the patient, which is the alleged injury-causing conduct.

The Court’s majority opinion left open the theoretical possibility that an NPHO might have sufficient lawful control over a physician to justify vicarious liability. The Court remanded the case to the trial court and invited the NPHO to file a new motion for summary judgment to flesh out application of the Court’s newly articulated limitation on vicarious liability to the facts of this case.

Health care industry stakeholders may wish to monitor development of the law relating to this unique structure that the legislature created with the objective of expanding health care, particularly in rural Texas. An amicus brief from the Texas Hospital Association showed progress in meeting this goal by noting that more than 10,000 physicians in Texas had already been employed by the more than 1,000 NPHOs certified by the Texas Medical Board.

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<sup>1</sup> Employers generally are vicariously liable for conduct of their employees within the scope of employment. Historically, this rule does not apply to physicians credentialed to perform procedures in hospitals in Texas because physicians performing procedures in hospitals are independent contractors. This is part of Texas's prohibition on the corporate practice of medicine. Section 162 applies similar treatment to physicians engaged by NPHOs pursuant to the statute.

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