

Illinois Appellate Court Reinforces that Physician Contracts Help Protect Against Vicarious Liability Claims

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The **Illinois** Appellate Court, First District recently released its opinion in [Magnini v. Centegra Health System](#), 2015 IL App (1st) 133451, which arose out of complications following bariatric surgery. Despite contracts between *Centegra* and the surgeons indicating an independent contractor relationship, the plaintiff argued that Centegra exercised sufficient control over the surgeons to create an actual agency relationship, *i.e.* employer-employee relationship, and Centegra should be held vicariously liable for the surgeons' alleged negligence. Notably, the plaintiff did not attempt to rely upon an apparent agency theory in this case because of well-written consent forms signed by the plaintiff, something that all healthcare entities should be vigilant to maintain.

The hallmark of an actual agency relationship is the principal's right to control the manner in which the agent performs his work. In *Magnini*, the plaintiff argued there was sufficient evidence of control because one of the surgeons entered into an agreement to be the hospital's director of bariatric health services and the surgical group entered an agreement to become the hospital's exclusive provider of bariatric surgery services, as well as certain requirements of the hospital's bylaws. Thanks to well-written agreements between the hospital and surgeon/surgical group indicating that the hospital did not exercise control over the surgeons' methods for carrying out their general medical duties to patients, the court rejected the plaintiff's arguments. Furthermore, the bylaws the plaintiff relied on were all collateral to patient care decisions, and did not interfere with the surgeons' exercise of independent medical judgment.

Hospitals and other entities that contract with physicians and other providers should take note of *Magnini*, and should consider evaluating their own contracts, bylaws and policies to protect against potential actual agency claims.

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