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HEALTH LAW
A SHIPMAN & GOODWIN® ALERT

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Authors:

Joan W. Feldman
(860) 251-5104
jfeldman@goodwin.com

Stephanie M. Gomes-Ganhão
(860) 251-5239
sgomesganhao@goodwin.com

Alexander R. Cox
(860) 251-5236
acox@goodwin.com

www.shipmangoodwin.com

# Connecticut Supreme Court Reminds Teaching Hospitals that They May be Responsible for Residents' Negligence

On August 14, 2018, in *Gagliano v. Advanced Specialty Care, P.C.*, the Connecticut Supreme Court reversed the Connecticut Appellate Court's ruling with respect to a hospital's liability for a fourth year resident's negligence during a surgical procedure and affirmed a jury's $12 million medical malpractice award.[1] Although the Court was only asked to rule on the sufficiency of the evidence for the jury's medical malpractice verdict, the Court's decision serves as an important reminder to teaching hospitals that they may be found vicariously liable for the negligence of their residents.

In this case, the plaintiff had scheduled a hernia repair surgery with her general surgeon at Danbury Hospital.[2] However, unbeknownst to her, the chief resident of the surgical residency program had assigned a fourth year resident, who was enrolled in the surgical residency program at Sound Shore Medical Center in New Rochelle, New York, to the surgery approximately thirty minutes before the surgery began.[3] Under the general surgeon's supervision, the resident participated in the surgery.[4] Two days after the surgery, the plaintiff began to exhibit signs of infection and it was discovered that the plaintiff's colon had been perforated during the surgery.[5]

The jury found that the resident and the hospital were 80 percent liable for the injuries sustained by the plaintiff and her husband and also found that the resident was the actual agent of the hospital.[6] The trial court denied the defendants' motion to set aside the verdict or to render judgment notwithstanding the verdict, concluding that there was sufficient evidence for the jury to find that the hospital was vicariously liable for the resident's negligence.[7]

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1 See *Gagliano v. Advanced Specialty Care, P.C.*, No. 19804, 2018 WL 3829221 (Conn. Aug. 14, 2018). The jury awarded the plaintiff $902,985.04 in economic damages and $9.6 million in noneconomic damages. Gagliano v. Advanced Specialty Care, P.C., 167 Conn. App. 826, 834 (2016), *aff'd in part, rev'd in part*, No. 19804, 2018 WL 3829221 (Conn. Aug. 14, 2018). The plaintiff's husband was awarded $1.5 million in loss of consortium damages. Id. The resident and the hospital were found liable for 80 percent of the plaintiff's damages, and the remaining 20 percent of liability was assigned to the plaintiff's attending physician. *Id.*

2 *Gagliano v. Advanced Specialty Care, P.C.,* No. CV106003939S, 2014 WL 7156739, at *1 (Conn. Super. Ct. Nov. 7, 2014), *amended sub nom. Gagliano v. Advanced Specialty Care PC* (Conn. Super. Ct. 2014).

3 *Id.; see also* id. at 10.

4 *Id.* at 1.

5 *Id.*

6 *Id.*

7 *Id.* at 13, 28.

The hospital appealed, arguing that "insufficient evidence was presented from which the jury reasonably could have found that [the resident] was the hospital's agent for purposes of assisting in the plaintiff's surgery and, therefore, the hospital could not be held vicariously liable for the plaintiff's injuries."[8] The Connecticut Appellate Court agreed with the hospital and reversed the trial court's decision.[9] The Appellate Court reasoned that, although the trial court's ruling "relied almost exclusively on the hospital's manual," the manual did "not serve as a contract between [the resident] and the hospital, did not appear to be fully applicable to the surgical residency program, and did not address control over a resident during a surgical procedure."[10] Additionally, the Appellate Court explained that the residency agreement was not introduced into evidence at trial and that a "close and careful reading of the manual reveals no contractual language or agreement between the parties creating an agency relationship for purposes of assisting in surgical procedures."[11]

On appeal, the Connecticut Supreme Court reversed the Appellate Court's decision as to the hospital's vicarious liability for the resident's negligence and concluded that the trial court properly determined that there was sufficient evidence to establish an agency relationship between the hospital and the resident.[12] Specifically, the Court determined that evidence of an agency relationship between the resident and the hospital emanated from three sources: (i) the hospital house staff manual; (ii) witness testimony; and (iii) a hospital consent form signed by the plaintiff.[13] The Court highlighted the fact that the "manual included sections of general applicability to all residents and ones of specific applicability to surgical residents," which set forth the structure and goals of the clinic program, as well as the responsibilities of the hospital, the faculty, and the residents with respect to the clinic program.[14] Moreover, the plaintiff had presented the testimony of a standard of care expert who stated that "accreditation for a clinical setting requires that residents be subject to the setting's quality control" and that "a teaching hospital benefits from a residency program because it affords such hospitals 'highly trained, low cost' physicians to assist nurses and to provide patient care around the clock."[15] Lastly, the evidence demonstrated that the plaintiff signed an authorization form prior to her surgery, which authorized a surgical resident to perform part of the surgery and "prominently displayed the hospital's name and logo" without "other indicia that residents or medical support positions listed on the form had any other affiliation."[16]

The Court concluded that the above evidence provided "a sufficient basis for the jury to have concluded that the hospital had the general right to control [the] resident, such that he was the hospital's actual agent prior to and after he entered the operating room."[17] The Court

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8 *Gagliano v. Advanced Specialty Care, P.C.,* 167 Conn. App. 826, 828–29, 145 A.3d 331, 334 (2016), *aff'd in part, rev'd in part,* No. 19804, 2018 WL 3829221 (Conn. Aug. 14, 2018).
9 *Id.* at 851.
10 *Id.*
11 *Id.* at 839, 845.
12 *See Gagliano v. Advanced Specialty Care, P.C.,* No. 19804, 2018 WL 3829221 (Conn. Aug. 14, 2018).
13 *Id.* at 7.
14 *Id.* at 7-8.
15 *Id.* at 9.
16 *Id.*
17 *Id.*

Our Health Law Practice Group:

Joan W. Feldman

Vincenzo Carannante

William J. Roberts

Stephanie M. Gomes-Ganhão

Damian J. Privitera

Alexander R. Cox

www.shipmangoodwin.com

reasoned as follows: "The hospital agreed to oversee the provision of a specific medical education for residents in exchange for the provision of low cost labor and the prestige attached to being a teaching hospital. The hospital fulfilled that obligation by implementing systems whereby residents were provided opportunities to participate in progressively more difficult tasks, charging its faculty with executing that mission. Hospital officials overseeing the program had the right to constrain the activities in which [the resident] could participate and to take disciplinary action against him should he fail to provide patient care that satisfied the hospital's standards, which in turn could jeopardize his ability to complete the residency program and become a board certified surgeon. . . . The mere fact that the hospital did not dictate the precise conditions under which [the attending physician] could permit [the resident] to participate in the surgery or the limits thereto does not compel the conclusion that the hospital surrendered its general right to control [the resident's] participation in such procedures."[18]

Although the Connecticut Supreme Court emphasized in its opinion that the question before the Court was one of evidentiary sufficiency and not "whether residents or physicians generally are per se agents of hospitals," this decision serves as a reminder to Connecticut teaching hospitals to be wary of the risks involved in hosting medical residency programs. This decision demonstrates that the residency agreement is not the only source of evidence of an agency relationship between a hospital and a resident. Therefore, teaching hospitals may want to review their current practices and policies, surgical and procedural consent forms, and agreements with residency programs to assess their risk, including determining whether the inclusion of insurance and indemnification provisions are indicated when entering into contractual arrangements with graduate medical education programs, and determining whether processes exist to ensure that residents have the proper competencies and supervision necessary to provide safe care to their patients.

## Questions or Assistance

If you have any questions about this alert, please contact: Joan Feldman (jfeldman@goodwin.com or 860.251.5104); Stephanie Gomes-Ganhão (sgomesganhao@goodwin.com or 860.251.5239) or Alex Cox (acox@goodwin.com or 860.251.5236).

18 *Id.* at 9-10.
19 *Id.* at 12.

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289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

265 Church Street - Suite 1207
New Haven, CT 06510-7013
203-836-2801

400 Park Avenue - Fifth Floor
New York, NY 10022-4406
212-376-3010

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1875 K St., NW - Suite 600
Washington, DC 20006-1251
202-469-7750

www.shipmangoodwin.com