



# vital signs

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STATE OF MEDICAL MALPRACTICE &amp; NURSING HOME LIABILITY

## Analysis of Hospital's "Control" Necessary in Determining Vicarious Liability for a Physician's Conduct

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August 26, 2016

### SECRET WARDLE NOTES

A hospital's on-call policy is not enough to establish control over an independent contractor physician's manner and method of his work or professional judgment. In an agency relationship, the key is the ability of the principal to "control" the agent that creates vicarious liability, and the "control" must relate to the method or manner by which the independent contractor's work is done.

\* \* \* \*

The Court of Appeals' published decision in *Laster, et al v Henry Ford Health System, et al* overturned the trial court's ruling that the on-call policy created a question of fact as to whether or not the doctor was acting as an agent of the hospital, noting that the defendant doctor was "clearly an independent contractor because [the hospital] did not control the manner or method used by on-call doctors to diagnose or treat their patients." Even though the on-call agreement established that the schedule was made by the hospital and set requirements related thereto, these were only logistical and quality assurance measurements that did not rise to the level of "control" over the physician's work.

In this case, plaintiff alleged that the physician was negligent in performing an appendectomy. She sued the physician and the hospital, claiming the hospital was vicariously liable for the surgeon's alleged negligence. Generally, under Michigan law a defendant is not vicariously liable for the negligence of another unless the other person is an employee or agent. This Court solely addressed whether the hospital was vicariously liable for the doctor's alleged malpractice. In applying the "control" test, the Court of Appeals determined that, although the physician was an on-call surgeon for the hospital, the hospital did not control how he performed plaintiff's surgery or what his professional judgment was in relation to same. The on-call agreement did not address the manner and method of how the doctor functioned in his professional capacity.

Accordingly, the Court of Appeals held that the hospital did not have vicarious liability for the physician in this case.

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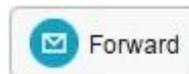
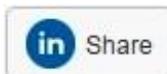
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