The Connecticut Appellate Court issued a significant decision last year in L&V Contractors LLC v. Heritage Warranty Insurance Risk Retention Group Inc., 136 Conn. App. 662 (2012), wherein it concluded that "the doctrine of apparent authority cannot be used to hold a principal liable for the tortious actions of its alleged agent." Following L&V, several superior courts have held that the doctrine of apparent authority is inapplicable in medical negligence cases. This is a meaningful victory for hospitals and other institutional health care providers faced with vicarious liability claims.

The facts of L&V involved the referral of plaintiff’s vehicle to the defendant, Drive Train Unlimited LLC, for examination following a transmission failure. At the time of referral, Drive Train had an agreement with AAMCO Transmissions Inc. to use AAMCO’s name in its advertisements and letterhead in exchange for royalties. After accepting the vehicle, Drive Train failed to repair the vehicle, attempted to charge storage fees, and claimed to have sold the vehicle at auction while using it for personal purposes.

The plaintiff sued AAMCO, among others, arguing that Drive Train was "the agent, servant, and/or employee of [AAMCO]" and acted within the scope of this relationship during its dealings with the plaintiff. The trial court concluded that Drive Train was AAMCO’s actual and apparent agent. AAMCO appealed and a unanimous Appellate Court reversed.

The court concluded that despite the licensing and trademark agreement between AAMCO and Drive Train, there was no evidence that AAMCO exercised any control over Drive Train’s operations sufficient to establish an agency relationship. The court further dismissed the apparent authority allegations against AAMCO on the grounds that "the doctrine of apparent authority cannot be used to hold a principal liable for the tortious actions of its alleged agent . . . ." In reversing the trial court’s ruling, Judge Richard Robinson concluded that Connecticut "has yet to apply the
doctrine of apparent authority to allow for a principal to be held liable to a third person who was harmed by the tortious conduct of a person held out as the principal’s agent.”

**Med-Mal Applications**

Although not a medical malpractice decision, L&V has had a significant impact in medical negligence cases. Several superior courts have held that negligence claims cannot be based on alleged apparent authority.

For example, in Cefaratti v. Aranow, MMXCV106003280, 2013 WL 2278778 (Conn. Superior Court, April 29, 2013), the plaintiff sued the defendant, Jonathan S. Aranow, M.D., his employer, Shoreline Surgical Associates, and Middlesex Hospital, alleging that the doctor failed to remove a sponge from a patient following a gastric bypass procedure performed at Middlesex Hospital. The plaintiff alleged liability against Shoreline Surgical and Middlesex Hospital by virtue of Aranow’s employment contract with Shoreline Surgical and the fact that he held privileges at Middlesex Hospital and the hospital featured him on the Center for Weight Loss website as a founder and staff member of this department.

Applying L&V, the court concluded that "the Hospital would not have vicarious liability for Dr. Aranow’s alleged negligence" under a theory of apparent agency. In granting the hospital’s motion for summary judgment, the court affirmed that “no appellate court has ever held that Shoreline Surgical and Middlesex Hospital can be vicariously liable for the actions of an individually-named physician based on a theory of apparent agency. The court explained that L&V "expressly and clearly addresses the fundamental issue of whether in Connecticut the doctrine of apparent agency can be utilized to allow a principal to be held liable for the tortious conduct of an apparent agent who is not an actual agent of the principal."

Most recently, in Wood v. Club LLC, FSTCV136016946S, 2013 WL 2383642 (Conn. Superior Court, May 9, 2013), the court granted defendants’ motion to strike negligent misrepresentation claims premised on apparent authority in a tort action, concluding that "[w]ith respect to the allegation of apparent agency the court is bound by the holding in [L&V, that] a tort action, cannot be premised on apparent authority."

Some courts have declined to follow L&V, concluding that Fireman’s Fund Indemnity Co. v. Longshore Beach & Country Club Inc., 127 Conn. 493, 496-97 (1941), recognized the viability of apparent authority claims in the tort context. However, Fireman’s Fund never actually reached the issue of whether apparent authority is appropriate in tort cases, because it concluded that there was no basis for apparent authority on the facts of the case.

Accordingly, according to the court, L&V correctly held that "Connecticut . . . has yet to apply the doctrine of apparent authority to allow for a principal to be held liable to a third person who was harmed by the tortious conduct of a person held out as the principal’s agent.” (136 Conn. App. at 669.) Indeed, no appellate court has ever used the doctrine that way.

**Conclusion**

Considering that the vast majority of vicarious liability claims are resolved at the trial court level through dispositive motions, the effect of L&V cannot be underestimated. Since the decision, a number of cases involving agency claims have been successfully dismissed on motions to strike or for summary judgment.

In addition, the limitation on vicarious liability recognized under L&V is a positive step towards reducing the overall liability/risk faced by hospitals and other health care providers who contract with medical professionals and groups to provide specialized services and quality care for their patients. The decision provides an equitable balance in risk-sharing in the medical malpractice context because it does not completely insulate health care providers from liability in cases where actual agency exists, but it also ensures protection from liability for the actions for virtually every health care provider who enters the premises.