

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Anna Chylinski and Bart Chylinski,)	
)	
Plaintiffs,)	
)	
v.)	No. 2022 L 005118
)	
Advocate Health Partners d/b/a)	
Advocate Physician Partners, a corporation,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

A trial court will grant a post-trial motion for a new trial if, after considering all the evidence, the verdict appears to be contrary to the manifest weight of the evidence, meaning that either the opposite conclusion is clearly evident or the jury’s findings are unreasonable, arbitrary, and not based on any of the evidence. Here, the evidence presented during the trial fully supported the jury’s verdict and conforming special interrogatory answer. For that reason, the plaintiffs’ motion for a new trial must be denied.

Facts

For 18 days in November and December 2025, the parties tried this case before this court and a jury. During the trial, the jury learned that on June 2, 2014, Dr. Baeta Danek executed a Physician Participation Agreement (“PPA”) with Advocate Physician Partners (“APP”). Pursuant to the PPA, Danek became an “aligned physician,” meaning that, while she owned and operated her own family medicine practice, she was aligned under the Advocate Health and Hospitals umbrella, which included APP as a subsidiary. Danek saw patients at her office called New You Chicago, PLLC, in Chicago’s Jefferson Park neighborhood.

The jury heard that this case concerned the alleged medical negligence committed by Danek and her employee-nurse practitioner Magdalena Jarzabek from 2013 to 2020. During that period, Danek and Jarzabek were the only medical care providers to treat Anna Chylinski for her dermatological issues although Danek was not a dermatologist. Anna saw Danek and Jarzabek for examinations at Danek’s office where Danek and Jarzabek had worked together for a very long time.

The trial evidence established that APP existed to provide participating physicians with collaborative contracting and negotiating power with insurance

companies that the physicians would otherwise not have on their own. APP also coordinated physician and practice compliance with insurance companies' policies and programs. APP, itself, did not provide medical care or treatment to patients.

The jury also learned that the PPA did not give APP the right to terminate Danek's license to practice medicine, to treat patients, to see patients in another insurance company network, or to admit patients to Advocate hospitals. The PPA did provide a clinical bonus incentive program based on an annual clinical incentive score. During the seven years at issue in this case, Danek surpassed the minimum incentive score and received bonuses totaling approximately \$500,000. The PPA also gave APP the right to terminate Danek from participating in APP if she failed to meet certain minimums set by APP.

Given that Anna's treatment with Danek and Jarzabek lasted seven years, the evidence the jury heard and saw during the trial was especially time sensitive. Significant events that occurred during the seven-year period are presented, in part, in the following timeline.

- April 2, 2013. Danek conducted a skin examination of Anna. Danek noted “[m]ultiple moles, growing, changing, irritating, some bleeding.” Danek performed seven Ellman excisions of lesions using a cautery device. The parties appeared to agree that at least one of the excisions was on Anna's left-upper arm. The parties appear to disagree about another excision. Anna claimed that Danek performed an elliptical excision of a lesion on Anna's left-lower arm. For its part, APP claimed that the second excision was on Anna's shoulder and that Danek used the cautery device on that lesion. Regardless, Danek sent each excised artifact to Quest Diagnostics, a pathology laboratory, for examination.
- April 8, 2013. Dr. Lucy Liu, a Quest pathologist, reported that the artifact identified as specimen E—the left-upper arm—could not receive detailed morphology because it had been damaged, *i.e.*, burned, by the cautery device. Dr. Amanda Allmon, the Chylinskis' family practice expert witness, explained that the damage to specimen E meant that cancer in that artifact could not be ruled out. Further, Dr. Simon Warren, the Chylinskis' dermatopathology expert witness, testified that specimen B—the left-lower arm—contained melanoma but that Liu had failed to report it. In contrast, APP elicited evidence that Liu found both biopsies benign.
- July 23, 2013. Jarzabek examined Anna during her annual checkup.
- August 30, 2013. Jarzabek conducted a skin examination of Anna. No skin changes were noted.

- October 11, 2013. Jarzabek conducted a skin examination of Anna.
- December 16, 2013. Jarzabek conducted a skin examination of Anna. No skin changes were noted.
- 2013-2020. Danek testified that either she or Jarzabek conducted a full-body skin examination of Anna during each of her visits in the seven-year period and that the medical records do not note any skin changes or abnormal skin lesions.
- April 14, 2014. Danek examined Anna and noted no skin changes.
- March 24, 2015. Jarzabek examined Anna during her annual visit.
- September 23 & November 23, 2015. Jarzabek examined Anna and noted no skin changes.
- April 20, 2016. Jarzabek saw Anna for her annual visit and for a thyroid examination. Jarzabek noted multiple pigmented lesions all over Anna's body, including a new lesion on the left-upper arm at the location of the April 2013 Ellman excision, an irregular macule on the upper back, and a dark brown macule on the abdomen.
- April 25, 2016. Jarzabek saw Anna for mole removal. Jarzabek excised a lesion from Anna's left-upper arm where the Ellman excision had been made in April 2013. Danek sent the artifact to Quest for examination.
- April 29, 2016. Biopsy results reported that the left-upper arm showed recurrent and residual dysplastic compound melanocytic nevus with severe atypia. The report also indicated that an evolving malignant melanoma could not be excluded and, therefore, recommended a re-excision to obtain adequate margins. Warren opined that the biopsy showed evidence of melanoma in Anna's left-upper arm as of April 2016. Morgan Grothaus, the Chylinskis' nurse practitioner expert witness, testified that, based on these biopsy results, a reasonably careful nurse practitioner would have referred Anna to a dermatologist for suspected melanoma.
- May 19, 2016. Danek examined Anna and performed a re-excision of a mole on her left-upper arm where Jarzabek had excised a mole on April 25, 2016.
- May 23, 2016. The pathology results of the biopsy from Quest indicated no evidence of residual dysplastic melanocytic lesion, and that the changes and scar were consistent with previous surgical procedures.

- October 24, 2016, & February 27, 2017. Jarzabek examined Anna during visits on those days.
- September 13, 2017. Danek examined Anna and found new moles on her midback and chin. Danek performed an elliptical excision on Anna's back lesion and an Ellman excision of the jaw lesion.
- November 6, 2017 & April 30, 2018. Jarzabek examined Anna during visits on those days.
- December 10, 2018. Danek examined Anna and noted multiple benign appearing moles.
- December 18, 2019. Jarzabek examined Anna and diagnosed a 1.5 cm keloid scar on her left-upper arm.
- December 18, 2019, through September 28, 2020. On five occasions, Jarzabek treated Anna's left-upper arm lesion with a steroid injection.
- August 2020. A photograph was taken of the lesion on Anna's left-upper arm. Allmon and Grothaus both reviewed the photograph and testified that the lesion did not appear to be a keloid scar.
- October 26, 2020. Jarzabek examined Anna and noted that the left-upper arm lesion had grown to 2 cm x 2 cm and presented with a palpable lump beneath the lesion. Jarzabek ordered an ultrasound of Anna's upper arm that showed a mass located there.
- November 16, 2020. Dr. Joubin Khorsand, a treating surgeon, examined Anna. He testified that the lesion on her left-upper arm was not a keloid scar and, therefore, he ordered magnetic resonance imaging (MRI) for possible malignancy.
- November 21, 2020. Anna underwent an incisional biopsy on her left-upper arm that indicated a malignant melanoma at least 0.8 cm in dimension.
- January 6, 2021. Dr. Richard Baker, a plastic and reconstructive surgeon, performed a wide excision of Anna's left-upper arm lesion with skin grafting taken from her thigh. Baker also conducted a sentinel lymph node biopsy that pathology revealed one lymph node had tested positive for metastatic melanoma. Following the surgery, Anna underwent immunotherapy.

On June 8, 2022, the Chylinskis filed a complaint against APP, Danek, and Jarzabek. The complaint presented one count alleging medical negligence as to

Anna and one count alleging loss of consortium as to Bart Chylinski. Although the Chylinskis initially named three defendants, at trial they chose to present their case solely against APP. To that end, the Chylinskis claimed that APP was liable on a *respondeat superior* basis because Danek: (1) used cautery during the April 2, 2013, excision on Anna's left-upper arm; (2) failed to refer Anna to a dermatologist in April 2013 or thereafter; (3) delegated care to Jarzabek; and (4) failed to supervise Jarzabek.

During trial, the Chylinskis introduced evidence from the PPA that they believe supported a finding that Danek was APP's agent. Under the PPA, Danek's reimbursement from insurers was contingent on her meeting each of the PPA's requirements. Those requirements included the APP's clinical incentive program under which Danek received a bonus only if she achieved APP's yearly minimum clinical incentive score. APP retained the right to terminate Danek as a PPA member if she failed to comply with any term of the PPA. The PPA also controlled to whom Danek could refer patients and to which hospitals she could refer them.

For its part, APP presented evidence—some of it the same as the Chylinskis'—that it believed showed that no agency relationship existed between APP and Danek. For example, Danek and former APP employees emphasized that the PPA explicitly stated that aligned physicians such as Danek were independent contractors. Further, these same witnesses made it plain that APP was and is not a clinical entity and did not control Danek's medical judgment. APP did not dictate how an aligned physician such as Danek examined patients or made medical and treatment decisions. Although APP retained the right to terminate Danek from participating in APP if she failed to meet the PPA's requirements, APP did not have the right to terminate Danek's right to practice medicine, to treat patients, to see patients in a particular insurance company network, or to admit patients to Advocate hospitals.

At trial, Allmon testified that Danek was professionally negligent in each of the four ways claimed by Anna. Allmon and Grothaus both testified that at Anna's initial visit, she presented with more than 50 moles, a finding that placed her at greater risk for melanoma. Allmon also opined that Danek's medical negligence proximately caused Anna's injuries.

Dr. Peter Schalock, the Chylinskis' dermatology expert witness, testified that had Danek not used cautery in April 2013, the dermatopathologist would have been able to examine the entire specimen and would have concluded that Anna had a dysplastic nevus or a thin melanoma. Further, had the lesion been completely excised at that time, there would have been a minimal risk of recurrence. Schalock also testified that had Anna been referred to a dermatologist after the April 2013 biopsy, a reasonably careful dermatologist would have conducted another excision to ensure that no cancerous cells had been missed.

Schalock also testified that Danek's May 19, 2016, re-excision was not conducted with adequate margins that would have completely removed the lesion. Schalock opined that had the lesion been removed with adequate margins in April or May 2016, the excision would have been curative and would have eliminated the need for additional treatment. Further, Schalock told the jury that had an adequate excision been performed in 2013 or 2016, Anna would not have needed to undergo either Baker's January 2021 surgery or subsequent immunotherapy. Finally, Schalock testified that had Anna been referred to a dermatologist in December 2018, a reasonably careful dermatologist would have performed a diagnostic biopsy before treating her lesion as a keloid and that the biopsy would have shown a dermal melanoma.

On December 15, 2025, after concluding its deliberations, the jury rendered a general verdict for APP and against the Chylinskis. The jury also answered four special interrogatories submitted by APP. In response to special interrogatory number one, the jury answered "No" to the question: "Do you find that Advocate Health Partners d/b/a Advocate Physician Partners controlled or had the right to control Dr. Danek's medical judgment?" In response to special interrogatory number two, the jury answered "No" to the question: "Do you find that the last date of Dr. Danek's allegedly negligent care to Anna Chylinski was on May 19, 2016?" In response to special interrogatory number three, the jury answered "Yes" to the question: "Do you find that Dr. Danek was engaged in a continuous course of negligent medical treatment of Anna Chylinski from April 2, 2013 to September 2020?" Finally, in response to special interrogatory number four, the jury answered "No" to the question: "Was the only cause of the delayed melanoma diagnosis some person or something other than the conduct of Dr. Danek?" This court entered judgment on the verdict the same day.

On February 13, 2026, the Chylinskis filed a post-trial motion seeking a new trial. On April 21, 2016, APP filed its response brief in opposition to the post-trial motion. On May 14, 2016, the Chylinskis filed their reply brief.

Analysis

This matter is before this court on the Chylinskis' post-trial motion in which they request a new trial. The party seeking a new trial has the burden of establishing "substantial prejudice" as well as that "the error affected the outcome." *Browning v. Advocate Health & Hosp. Corp.*, 2023 IL App (1st) 221430, ¶ 64. When presented with a motion for a new trial, the trial court may not simply reweigh the evidence and substitute its judgment for that of the jury. *Rhodes v. Illinois Cent. Gulf, R.R.*, 172 Ill. 2d 213, 242 (1996). Rather, after weighing all the evidence, a trial court is to set aside the jury's verdict and order a new trial if the verdict is contrary to the manifest weight of the evidence. *Lawlor v. North Am. Corp. of Ill.*,

2012 IL 112530, ¶ 38. A verdict is contrary to the manifest weight of the evidence if the opposite conclusion is “clearly evident” or if the jury’s findings are “unreasonable, arbitrary, and not based upon any of the evidence.” *Id.*; *Maple v. Gustafson*, 151 Ill. 2d 445, 454 (1992). A motion for a new trial requires the trial court to give “substantial deference” to the jury’s decision, *Redmond v. Socha*, 216 Ill. 2d 622, 652 (2005), because the jury weighed the evidence and the witnesses’ credibility. *Maple*, 151 Ill. 2d at 454. A court abuses its discretion by granting a new trial if there exists sufficient evidence to support the jury’s verdict. *Id.* at 456.

Agency and the General Verdict

The parties disputed and the jury considered whether an agency relationship existed between APP and Danek. As a general matter, the scope and extent of an agency relationship depends on the terms of the agreement between the principal and the agent as well as the parties’ intentions. *Schultz v. Illinois Farmers Ins. Co.*, 237 Ill. 2d 391, 400 (2010). The party claiming the existence of an agency relationship must prove it by a preponderance of the evidence. *Curto v. Illini Manors, Inc.*, 405 Ill. App. 3d 163, 172 (3d Dist. 2010).

In an agency relationship, a principal may be legally bound by an agent’s conduct if the principal has conferred actual authority on the agent. *Peterson v. Devita*, 2023 IL App (1st) 230356, ¶ 40. Actual authority may be express or implied. *Buckholtz v. MacNeal Hosp.*, 337 Ill. App. 3d 163, 172 (1st Dist. 2003). Express authority exists if the principal explicitly grants the agent the authority to perform a particular act. *C.A.M. Affiliates v. First Am. Title Ins. Co.*, 306 Ill. App. 3d 1015, 1021 (1st Dist. 1999). In contrast, implied authority is actual authority proven circumstantially. *Buckholtz*, 337 Ill. App. 3d at 172. Implied authority exists if the agent reasonably believes that the principal’s conduct shows that the principal wants the agent to act on the principal’s behalf. *See* Restatement (Second) of Agency § 26 (1958).¹

Irrespective of whether this case proceeded on an actual express or implied agency theory, or *respondeat superior*, the law requires the Chylinskis to have established that: (1) a principal-agent relationship existed between APP and Danek; (2) APP controlled or had the right to control Danek’s conduct; and (3) Danek’s alleged conduct fell within the scope of the agency. *See Wilson v. Edward Hosp.*, 2012 IL 112898, ¶ 18; *Magnini v. Centegra Health Sys.*, 2015 IL App (1st) 133451, ¶ 25. In general, “no vicarious liability exists for the actions of independent contractors.” *Petrovich v. Share Health Plan*, 188 Ill. 2d 17, 31 (1999). An exception

¹ The Chylinskis claim that their case is one of actual express agency, not actual implied agency. If so, they have failed to present any evidence of actual express agency, particularly in the face of the PPA that expressly identifies Danek as an independent contractor. This court proceeds to analyze the motion assuming that this was a case of contested actual implied agency.

exists, however, if the principal retains certain control over the work. As recognized by the Illinois Supreme Court:

[o]ne who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care.

Restatement (Second) of Torts § 414 (1965), *adopted in Larson v. Commonwealth Edison Co.*, 33 Ill. 2d 316, 325 (1965). In those instances in which an employer retains control over “the operative detail of doing any part of the work, he is subject to liability for the negligence of the employees of the contractor . . . under the rules of that part of the law of Agency which deals with the relation of master and servant.” Restatement (Second) of Torts § 414, cmt. a, at 387 (1965). Further:

for the rule stated in this Section to apply, the employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. Such a general right is usually reserved to employers, but it does not mean that the contractor is controlled as to his methods of work, or as to operative detail. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.

Restatement (Second) of Torts § 414 cmt. c, at 388 (1965).

In a medical negligence case such as this, agency law provides that a hospital’s non-employee physicians are generally independent contractors for whom the hospital is not liable for their conduct. *Hammer v. Barth*, 2016 IL App (1st Dist.) 143066, ¶ 15. The reason is that, as a general matter, hospitals do not control their physicians’ medical judgment. *Buckholtz*, 337 Ill. App. 3d at 172. An independent contractor is defined as “one who undertakes a specific job where the person who engages him does not have the right to discharge him or to direct and control the method and manner of doing the work.” Ill. Pattern Instr. (“IPI”) 50.10. To determine whether an agency or independent contractor relationship exists, a jury is permitted to consider various factors, including: the method of payment, the right to discharge, the skill required to do the work, who provides tools, materials, or equipment, whether the worker’s occupation is related to that of the employer, and other relevant factors. *Id.* Although no single factor is determinative, “[t]he cardinal consideration for determining the existence of implied authority is whether the alleged agent retains the right to control the manner of doing the work.”

Petrovich, 188 Ill. 2d at 42; *Magnini*, 2015 IL App (1st) 133451, ¶ 25 (“hallmark of agency’ is the principal’s right to control the manner in which the agent performs the work”). The particular focus driving the agency analysis in a medical negligence case is “whether the hospital has the right to control the physician’s exercise of medical judgment in delivering medical care to patients.” *Hammer*, 2016 IL App (1st) 143066, ¶ 16, *citing Petrovich*, 188 Ill. 2d at 45-46.

To prevail at trial, the Chylinskis had to establish that APP retained control over Danek’s work but failed to control it with reasonable care. *See Carney v. Union Pac. R.R.*, 2016 IL 118984, ¶ 32 (party controlling details and methods of work is proper party charged with responsibility). In this case, the jury answered the question of whether an agency relationship existed between APP and Danek by returning verdict form B: “We, the jury, find for Advocate Health Partners d/b/a Advocate Physician Partners and against Anna Chylinski and Bart Chylinski.” The jury’s finding constitutes a general verdict that is the jury’s ultimate decision as to which party prevails, the finality of which is authorized in the Code of Civil Procedure. *See* 735 ILCS 5/2-1108(d).

The general verdict rule is implicated if the jury renders a general verdict in a case involving multiple theories of liability or grounds of recovery, such as existed here. *See Watson v. Mead Johnson & Co.*, 2026 IL App (5th) 240936, ¶ 115. If a jury enters a general verdict for a defendant, a trial judge is not in a position to know the basis or bases for the jury’s finding. *Maple*, 151 Ill. 2d at 449. “When evaluating the propriety of given jury instructions, the reviewing court must view the instructions as a whole.” *Watson*, 2026 IL App (5th), ¶ 115, *quoting Solich v. George & Anna Portes Cancer Prevention Ctr. of Chicago, Inc.*, 273 Ill. App. 3d 977, 988 (1st Dist. 1995). As explained, “[w]hen there is a general verdict and more than one theory is presented, the verdict will be upheld if there was sufficient evidence to sustain either theory. . . .” *Dillon v. Evanston Hosp.*, 199 Ill. 2d 483, 492 (2002), *quoting Witherell v. Weimer*, 118 Ill. 2d 321, 329 (1987)). To justify a new trial based on evidentiary rulings, the error must have caused substantial prejudice and affected the outcome of the trial. *Browning*, 2023 IL App (1st) 221430, ¶ 49. The party seeking reversal has the burden to demonstrate prejudice. *Id.*

Despite the general verdict, the Chylinskis emphasized in their motion various requirements that the PPA imposed on Danek. For example, if Danek transferred a patient, the receiving hospital had to be another Advocate hospital. Similarly, if a patient needed to be referred to a specialist, the PPA required Danek to refer the patient to a specialist in the Advocate system. Danek acknowledged that the PPA required her to do certain things and that, if she did not do them, the PPA could be terminated. Danek explained how the PPA’s clinical integration program resulted in her receiving substantial incentive bonuses from 2013 to 2020. The PPA also required Danek, as a family practice physician, to be a member of the APP’s care organization, making her a participant in commercial and non-Medicare

shared savings contracts with insurance providers as negotiated by APP. The PPA also set requirements for same-day appointments, urgent and non-urgent appointments, office wait time, extended and weekend hours, and telephone responses. Finally, the PPA set a minimum score that Danek needed to achieve for the PPA to remain effective. If she failed to meet the required minimum score during a two-year period, the PPA would be terminated.

In contrast, the jury heard and saw ample evidence supporting its general verdict. The evidence presented established that APP is not a clinic, a hospital, a medical practice, or a physician employer. APP's witnesses unanimously stated that the PPA did not govern how Danek cared for or treated her patients and did not interfere with her practice of medicine. The prohibition included how Danek examined patients, performed biopsies, reviewed pathology reports, or made referrals. The PPA did not permit APP to supervise Danek's medical care and treatment. The PPA also did not vest APP with the right to invalidate Danek's license to practice medicine, interfere with her treatment decisions, or control the admission of patients into the Advocate network. Danek confirmed this evidence by testifying that she, and only she, used her medical judgment in the care and treatment of Anna, including when and how to remove a mole.

The fundamental issue as to the general verdict in this case is that Danek's "work" was to practice medicine by seeing patients and directing their medical care. The evidentiary record made plain that APP retained no control over "the work"—*i.e.*, the operative detail of what Danek did on a day-to-day basis—and certainly no evidence that APP controlled Danek's medical judgment. With reference to the Restatement, the evidence in this case supported the conclusion that APP retained no control to: (1) stop or resume Danek's work; (2) inspect her progress or receive reports about her work; (3) make suggestions or recommendations; or (4) prescribe alterations and deviations. In other words, the jury was free to conclude that Danek did not surrender her ability to practice medicine in her own way. Additionally, with reference to the jury instructions, the jury could reasonably conclude that APP did not hold itself out as a health care provider or Danek's supervisor. Indeed, the jury received IPI 50.10 that expressly permitted them to consider various factors related to agency, including: (1) the method of payment; (2) the right to discharge; (3) the skill required to do the work; (4) who provides tools, materials, or equipment; (5) whether the worker's occupation is related to that of the employer; and (6) other relevant factors. Given the evidentiary record, this court may safely conclude that the weight of the evidence supported the jury's general verdict and that the jury followed the law in reaching its verdict. *County of Cook v. Colonial Oil Corp.*, 15 Ill. 2d 67, 70 (1958).

Apart from evidentiary record supporting the general verdict, this court also takes into consideration the jury's answer to special interrogatory number one. Special interrogatories are authorized by the Code of Civil Procedure, 735 ILCS 5/2-

1008, and serve as the “guardian of the integrity of a general verdict in a civil jury trial.” *Givens v. City of Chicago*, 2023 IL 127837, ¶ 70 (quoting cases). A special interrogatory achieves its purpose by testing the validity of a jury’s general verdict against the jury’s answer to a question as to an issue of ultimate fact. *Id.* To that end, a special interrogatory must consist of a single, direct question that is independently dispositive of an issue in the case and would control over the general verdict. *Id.* (quoting cases).

The Chylinskis argue that the jury found in their favor on the issues of professional negligence and proximate cause, but that the jury signed verdict form B—for APP—only because the jury answered “No” to special interrogatory number one: “Do you find that Advocate Health Partners d/b/a Advocate Physician Partners controlled or had the right to control Dr. Danek’s medical judgment?” The plaintiffs’ conclusory argument presumes that the jury answered special interrogatory number one first, and then conformed its general verdict to the special interrogatory answer. This court is not in the position to know the jury’s deliberation process simply because the jury rendered a general verdict in APP’s favor and specifically found that APP did not control Danek’s medical judgment. All this court may conclude is that the jury’s general verdict and its answer to special interrogatory number one are consistent. In sum, the jury’s verdict was not contrary to the manifest weight of the evidence and does not justify a new trial.

Alleged Trial Errors

1. Issuance of Special Interrogatory Number One

The Code of Civil Procedure provides a trial court with the discretion to issue special interrogatories on “any material question or questions of fact submitted to the jury in writing.” 735 ILCS 5/2-1108. The section further provides that, “[i]f, in the discretion of the trial court, the jury is unable to render a general verdict consistent with any special finding, the trial court shall order a new trial.” *Id.* Given that language, the converse must also be true: if a special finding is consistent with the general verdict, the trial court should not order a new trial.

As noted above, a special interrogatory serves “as guardian of the integrity of a general verdict in a civil jury trial.” *Simmons v. Garces*, 198 Ill. 2d 541, 555 (2002), quoting *O’Connell v. City of Chicago*, 285 Ill. App. 3d 459, 460 (1st Dist. 1996). “The purpose of a special interrogatory is to test the general verdict against the jury’s special finding on an ultimate issue of fact.” *Id.* A special interrogatory must be a single, direct question that is dispositive of an issue such that the answer will control over the general verdict if the two are inconsistent. See *Givens*, 2023 IL 127837, ¶ 70. A special interrogatory answer is inconsistent with a general verdict if the answer is “clearly and absolutely irreconcilable with the general verdict.”

Simmons, 198 Ill. 2d at 555-56, quoting *Powell v. State Farm Fire & Casualty Co.*, 243 Ill. App. 3d 577, 581 (1st Dist. 1993).

The Chylinskis argue that this court's issuance of special interrogatory number one was error because it: (1) was a compound question; (2) failed to use the same language as in the other three special interrogatories; (3) was ambiguous and confusing; and (4) was misleading. The first claim of error is effectively waived because the Chylinskis fail to point out in any way how special interrogatory number one was a compound question. If the Chylinskis imply that the phrase "controlled or had the right to control" is compound, they are mistaken. The phrase is properly written in the disjunctive, such that the jury could have answered "No" if APP either controlled or had the right to control Danek's medical judgment; it made no difference which one. Further, the phrase is taken directly from *Magnini* in which the court indicated that an affirmative answer to that particular phrase would mean that an agency relationship existed. 2015 IL App (1st) 133451, ¶ 25.

The Chylinskis' second argument fares no better. The three other special interrogatories do not use the word "controlled" or the phrase "medical judgment" for the obvious reason that they were directed to other potentially dispositive issues that could displace an inconsistent general verdict. For example, the first special interrogatory goes to the issue of agency and focuses on APP's control or right to control Danek's medical judgment. The second and third special interrogatories are written to flesh out the jury's findings as to whether the statutes of limitation or repose cut off the Chylinskis' claims as a matter of law. The fourth special interrogatory is directed to test the jury's understanding of the sole proximate cause defense. In sum, each special interrogatory was in proper form because each answer could control over the general verdict.

Special interrogatory number one was neither ambiguous nor confusing nor misleading. Even if it were, a careful reading of the trial transcript indicates that the Chylinskis have forfeited these points of error by failing to object to the special interrogatory specifically because it was ambiguous, confusing, or misleading. Post-trial motions "must contain the points relied upon, *particularly specifying* the grounds in support thereof. . . ." 735 ILCS 5/2-1202(b) (emphasis added). As a general matter, failure to object at trial results in forfeiture of the issue on appeal. *Simmons*, 198 Ill. 2d at 569. More specifically, it is settled law that "a litigant waives the right to object on appeal to instructions or verdict forms that were given to a jury, when the party fails to make a specific objection during the jury instruction conference or when the form is read to the jury." *Baumrucker v. Express Cab Dispatch, Inc.*, 2017 IL App (1st) 161278, ¶ 63. To preserve the objection, the litigant also must provide a remedial instruction or verdict form. *Id.* "[Parties] should not benefit by their failure to object . . . and wait for a jury verdict, only to raise this issue in a post-trial motion and on appeal in hopes of a new trial." *Simmons v. University of Chicago Hosps. & Clinics*, 162 Ill. 2d 1, 13 (1994).

Additionally, special interrogatory number one was in proper form, unlike those at issue in the cases cited by the Chylinskis. *Cf. Jones v. DHR Cambridge Homes, Inc.*, 381 Ill. App. 3d 18, 39-40 (1st Dist. 2008) (special interrogatory inconsistent with other jury instructions); *Doe v. Alexian Bros. Behavioral Health Hosp.*, 2019 IL App (1st) 180955, ¶¶ 17-36 (special interrogatory answer inconsistent with general verdict); and *Stanphill v. Ortberg*, 2018 IL 122974, ¶¶ 27-42 (special interrogatory failed to apply objective standard to determine reasonable foreseeability). The Chylinskis also argue that the phrase “medical judgment” is misleading because APP controlled Danek in ways other than her medical judgment. The error in this argument is that the other ways in which APP provided services were purely administrative and managerial and did not intrude on Danek’s medical judgment or her work as a family medicine physician. The cases the Chylinskis cite do not reach a different conclusion. For example, in *Blue v. Environmental Eng’g, Inc.*, 215 Ill. 2d 78 (2005), the court correctly concluded that the tendered special interrogatory was improper because it concerned the purely legal question of duty. *Id.* ¶¶ 85, 112-13. In *Conrads v. Rush-Copley Med. Cntr., Inc.*, 2023 IL App (2d) 220455, the court concluded that the contract between a hospital and its exclusive radiology provider gave the provider powers to prohibit non-aligned physicians from practice privileges, to exercise a physician’s power of attorney, and to negate a physician’s rights to a hearing, review, or due process to which the physician might otherwise have been entitled through medical staff bylaws, hospital bylaws, and state or federal law. *Id.* ¶¶ 42-43. Also, in *First Midwest Bk. v. Ottawa Reg’l Hosp. & Healthcare Ctr.*, 2023 IL App (3d) 220008, the hospital prohibited the physician from performing conception and artificial fertilization, sterilization, abortions, and tightly controlled the administration of tocolytic therapy, vacuum-assisted birth, external fetal monitoring, the induction of labor, the timing of Cesarean sections, and provided for immediate discharge if the physician violated the hospital’s ethical directives. *Id.* ¶ 43. Given those restrictions, the court in *First Midwest* recognized that “[t]he presence of contractual provisions subjecting the person to control over the manner of doing the work is a traditional indicia [*sic*] that a person’s status as an independent contractor should be negated.” *Id.* quoting *Petrovich*, 188 Ill. 2d at 46-47. In contrast, the PPA between APP and Danek did not subject her to any similar restrictions. The cited cases on which the Chylinskis rely stand in stark contrast to the manifest weight of evidence in this trial with which the jury concluded that APP retained no power over how Danek examined patients, how she practiced medicine, her right to practice medicine, how she treated patients, whether she saw patients in a particular insurance company network, or admit patients to Advocate hospitals.

The Chylinskis further argue that special interrogatory number one is misleading because the word “controlled” and the phrase “medical judgment” are not legal terms defined in the jury instructions. Notably, the Chylinskis did not make these objections at trial and do not cite any authority holding that a word or

phrase left undefined in a jury instruction or special interrogatory is automatically misleading or that a jury is incapable of grasping obvious meanings. And despite the Chylinskis' argument to the contrary, it is quite apparent that the lack of definitions has certainly not prevented Illinois courts from using the word "control" or the phrase "medical judgment" in their jurisprudence in medical negligence cases. *See, e.g., Petrovich*, 188 Ill. 2d at 45 ([p]hysicians . . . of course, should not allow the exercise of their *medical judgment* to be corrupted or *controlled*) (emphasis added); *Neade v. Portes*, 193 Ill. 2d 433, 452 (same); *Martin v. Layman*, 2025 IL App (4th) 240278, ¶¶ 173-74 (implied agency non-existent because hospital did not "control" how physicians exercised their "*medical judgment*") (emphasis added); *Hammer*, 2016 IL App (1st) 143066, ¶ 16 (key issue is whether hospital has right to "control" physician's exercise of "*medical judgment*") (emphasis added); *Fese v. Presence Cent. & Suburban Hosps. Network*, 2023 IL App (2d) 220273, ¶ 94 (same); *Perez v. St. Alexius Med. Ctr.*, 2022 IL App (1st) 181887, ¶ 30 (hospital did not "control" physician's practice or "*medical judgment*") (emphasis added); *Eads v. Heritage Enters, Inc.*, 204 Ill. 2d 92, 100 (2003) (whether to restrain patient involves exercise of "*medical judgment*") (emphasis added); *Magnini*, 2015 IL App (1st) 133451, ¶ 41 (hospital's "control" over physician limited to contractual duties and does not extend to independent "*medical judgment*") (emphasis added); *Endencia v. Rush Behavioral Health*, 2014 IL App (1st) 132129-U, ¶ 20 (psychiatric evaluation, conclusions, and recommendations inherently ones of "*medical judgment*") (emphasis added).

Of course, the word "control" and the phrase "medical judgment" as used in special interrogatory number one must be read in conjunction with the full set of jury instructions. *Simmons*, 198 Ill. 2d at 563; *LaPook v. City of Chicago*, 211 Ill. App. 3d 856, 866 (1st Dist. 1991) ("special interrogatory should be read together with the jury instructions to determine how the interrogatory was understood by the jury and whether there was any confusion."). In this case, the jury received IPI 50.10 that told them to consider method of payment, right to discharge, skill required in the work to be done, who provides tools, materials, or equipment, whether the worker's occupation is related to that of the employer, whether the employer deducted for withholding tax, and other relevant factors. This court is plainly within its discretion to presume that the jury considered these factors in reaching its general verdict and in answering special interrogatory number one. *See County of Cook*, 15 Ill. 2d at 70. In sum, the jury's answer to interrogatory number one was not against manifest weight of the evidence.

2. Agency Testimony from Nelson, Gruca, and DuPont

The Chylinskis quote extensively from the trial transcript as the basis for their argument that APP's counsel impermissibly asked questions and elicited answers about agency from Dr. Carrie Nelson, Andrea Gruca and Dr. Michael DuPont. At first reading it must be noted that the Chylinskis objected to only a few

questions asked by APP's counsel; therefore, those objections are forfeited. Further, the questions posed to Nelson and Gruca and their answers focused on the scope of the PPA and similar agreements and whether it or they controlled a physician's practice of medicine—the central issue in this trial. To that extent, the questions asked by APP's attorneys and the answers given by the witnesses were wholly relevant and admissible. Ill. R. Evid. 401 & 402. There simply was no error but, if there were, the Chylinskis have failed to demonstrate how that error would have changed the jury's outcome.

The result is the same for questions asked of DuPont. He testified that he was a member of the University of Chicago's clinically integrated network and that "it's how we get our contracts." The definition and role of clinically integrated networks was highly relevant to this case and mirrored Danek's and other witnesses' testimony defining a clinically integrated network and explaining what services APP provided to its members. Those services included negotiating with insurance carriers as to coverage that physicians are otherwise not permitted to contract individually. DuPont's testimony was, therefore, relevant and admissible. Ill. R. Evid. 401 & 402. And, once again, even if the questions and answers were objectionable, any error was harmless and certainly did not mislead the jury or serve as the basis for a different result.

3. Danek and Jarzabek's Status as Employees or Independent Contractors

The Chylinskis argue that it was error for this court to have denied their motion *in limine* number five. That motion sought to bar APP from questioning, arguing, or referring to whether Danek and Jarzabek were APP employees. The Chylinskis suggest that although Danek was not an APP employee, she still could have been APP's agent; consequently, whether she was an APP employee was irrelevant. The Chylinskis' reliance on IPI 50.10 given as plaintiffs' instruction 23B is, therefore, misplaced. IPI 50.10 explicitly instructs jurors that the word "agent" is broader than the word "employee" and, more importantly, informs jurors what an employee may or may not be: "An employee is an agent, but one may be an agent although he is not an employee." *Id.* Given the distinction provided in the definition, it was perfectly relevant for the jury to hear testimony as to the factual question of whether Danek and Jarzabek were APP employees. Moreover, the question of whether an employer-employee relationship exists is a question of fact for the jury, not a question of law as the Chylinskis suggest; that is, in fact, the conclusion reached in a case on which the Chylinskis rely. *See Conrads*, 2023 IL App (2d) 220455, ¶ 39.

4. Quest Pathology Evidence and Argument

The Chylinskis argue that they were prejudiced by APP's attorneys violating motion *in limine* 43 regarding the alleged negligence of Quest's pathologists.² A plain reading of the trial transcript as quoted by the Chylinskis in their motion indicates multiple errors with their argument. First, the Chylinskis objected to the use of the word "negligence" only once during the various witness examinations. Second, the Chylinskis' sole objection on this subject was that the question was argumentative, not that it violated a motion *in limine*. One violation of this court's ruling on motion *in limine* 43 prohibiting the use of the word "negligence" is hardly sufficient to establish substantial prejudice warranting a new trial. Third, the questioning of witnesses about Quest's missed diagnoses based on misreadings of the 2013 and 2016 biopsies plainly went to APP's valid sole proximate cause defense. *Johnson v. Advocate Health & Hosp. Corp.*, 2025 IL App (1st) 230087, ¶ 47, quoting *Leonardi v. Loyola Univ. of Chicago*, 168 Ill. 2d 83, 101 (1995).

The Chylinskis argue relatedly that this court erred by denying their motions *in limine* one and 26 that would have permitted them to inform the jury that the statute of repose barred claims against Quest. This court indicated that it felt the issue of Quest's conduct was not important for the jury to know and that the jury could infer a variety of reasons why Quest was not a defendant. Once again, it was within this court's discretion to bar such evidence, *id.*, and granting the motions would have, once again, improperly limited APP's sole proximate cause defense. *Id.*

The Chylinskis argue that DuPont should not have been permitted to testify to his personal experience with Quest and that to do so was error. This argument is not developed, and it is unclear how the question and answer prejudiced the Chylinskis. Indeed, they do not suggest that this one question and answer changed the course of the trial or the jury's decision.

The Chylinskis also argue that it was error not to issue their jury instruction 15—IPI 30.23—despite the plain language in the instruction and the comments. IPI 30.23 states that: "*If a defendant negligently causes injury to the plaintiff, then the defendant is liable not only for the plaintiff's damages . . . but is also liable for any damages sustained . . . arising from the efforts of health care providers to treat the injury. . . .*" IPI 30.23 (emphasis added). The comment to the instruction clarifies that: "[n]o other instruction tells the jury that the defendant, *if culpable*, is liable for damages caused by the subsequent health care provider's conduct." *Id.* cmt. (emphasis added). The "if-then" clause and the "if culpable" explanation, plainly provide that APP could be liable for Quest's alleged negligence only if the jury first found APP negligent. Here, the jury found APP not negligent; consequently, the jury had no occasion to consider damages or whether APP or Quest caused the claimed injuries.

² Quest was not a defendant to this case because the statute of limitations and repose had expired.

5. Warren's Testimony as to Cautery Effect

The Chylinskis claim prejudice based on this court's ruling barring Warren from opining that cautery interfered with Anna's diagnosis, but allowing him to testify to the facts that: (1) Danek used cautery on the April 2013 specimen; and (2) Warren wrote "cautery +++" in his report. Yet the Chylinskis' counsel specifically asked Warren the meaning of "cautery +++" in his notes. He answered that the specimen had been obtained by cautery and that its artifact limited further evaluation. That is precisely the testimony that the Chylinskis wanted to elicit from Warren. They cannot now claim prejudice from asking a question about a subject they previously did not want to be asked.

6. Jarzabek's Licensure

The Chylinskis argue that APP's attorney improperly asked questions as to whether Jarzabek acted illegally by assessing or removing a mole or sending a specimen to a pathologist for examination. Illegality is certainly not the standard of care in a civil trial such that the questions asked by APP's counsel were improper. Yet it is also plain that the Chylinskis' counsel did not object to the questions when they were asked; consequently, the issue is forfeited. And while counsel interrupted a question with an objection based on the standard of care, once APP's counsel completed asking the improper question, the Chylinskis' attorney did not object. Again, the claim of prejudice has been forfeited.

7. Standard of Care

The Chylinskis argue that their motion *in limine* 42 barred APP's expert witnesses, Drs. Darius Mehregan, Scott Zahner, Bruce Brockstein, and Schalock, from testifying to the standard or care for a family practice physician or nurse practitioner. This argument is wholly misdirected. These witnesses did not testify to the standard of care for other medical specialties, rather they were merely asked whether it would be reasonable for a physician in one specialty to rely on a pathologist's report. Such a conclusion is so obvious that few Illinois decisions address the issue of whether a physician may rely on another physician's report. Yet there are examples.

Our Supreme Court has recognized that, in criminal cases, "[d]octors, nurses, and other medical personnel routinely rely on the results of chemical blood tests generated in the emergency room in making life and death decisions. The results of these tests are useless unless accurate, are unlikely to be falsified and, therefore, are deemed sufficiently trustworthy for use in courts." *People v. Deroo*, 2022 IL 126120, ¶ 27. The Supreme Court has taken the same position in civil cases. In the seminal case of *Gill v. Foster*, the court concluded that:

[t]he fact that the witness would rely on a radiologist's opinion does not indicate that [the witness] lacks the qualifications to testify. The fact that [a physician] relied on the opinion of radiologists in some cases goes only to the weight of his opinion, not to the admissibility of it. We note that even a physician specializing in radiology often relies on the opinion of other radiologists. Certainly, this fact alone would not prevent that physician from testifying as to radiologists' standard of care.

157 Ill. 2d 304, 317 (1993). Similarly, in *Ledingham v. Blue Cross Plan for Hosp. Care of Hosp. Serv. Corp.*, the court found that the defendant insurance carriers relied on a report of the plaintiff's physician concluding that it was unknown when the plaintiff's adenoma and leiomyomata tumors first presented. 64 Ill. 2d 338, 341-342 (1976). Also relevant is *Belknap v. Crawford*, in which the court concluded that it was difficult for the plaintiff's treating physicians to acquire all the plaintiff's relevant medical information from the electronic records system; consequently, the physicians relied on the nurses to personally deliver to them important information about the plaintiff's condition. 2024 IL App (4th) 230679, ¶ 34. *See also Petryshyn v. Slotky*, 387 Ill. App. 3d (4th Dist. 2008) (expert witness qualified to testify that surgical team physician conducting C-section relies on communication from nurse team members regarding patient care).

In sum, the Chylinskis argue far too much. The testimony they point out has nothing to do with physicians testifying as to the standard of care of a physician in another specialty. Rather, the testimony at issue is simply about the unsurprising and wholly reasonable expectation that physicians rely on other medical care providers' reports when making medical care decisions. The cases cited by the Chylinskis do not teach otherwise. Thus, in *Northern Trust Co. v. Upjohn Co.*, the court merely addressed the requirements necessary for an expert witness to offer an opinion. 213 Ill. App. 3d 390, 406-07 (1st Dist. 1991); *Alm v. Loyola Univ. Med. Cntr.*, 373 Ill. App. 3d (1st Dist. 2007) (same). That issue is irrelevant.

8. Vacating Motion Judge's Improper Orders

The Chylinskis argue that this court erred in vacating orders of the motions judge. As to this issue, a brief timeline of events is useful. On August 14, 2025, Law Division Presiding Judge Thomas Lyons assigned this case to this court for a trial to begin on November 24, 2025. On October 24, 2025, the Chylinskis filed a motion before Judge Kathy Flanagan seeking rulings on privilege logs that APP had produced in October 2024 and January and June 2025. On November 17, 2025, Judge Flanagan issued a broad discovery order and on November 24, 2025—the day this case went to trial—issued another order ruling that none of the documents produced by APP were privileged.

This court was wholly within its discretion to vacate the interlocutory orders because the documents produced could have been admitted in whole or in part as evidence. This court needed to consider that possibility. Further, this court was within its discretion to vacate Judge Flanagan’s order the day this case went to trial because by that time she lacked jurisdiction to issue any ruling on any subject related to this case. Indeed, the Supreme Court has made it quite clear that precedent recognizes a circuit court’s “inherent power to review, modify, or vacate interlocutory orders while the court retains jurisdiction over the entire controversy.” *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 42. Similarly, “[i]n a variety of contexts, this court has stated that an interlocutory order may be reviewed, modified or vacated at any time before final judgment, and it is of no consequence that the original order was entered by another circuit judge.” *Balciunas v. Duff*, 94 Ill. 2d 176, 185 (1983); *see also Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 121 (1978).

What the Chylinskis leave out of their argument is that this court expressly provided them with the opportunity to raise the same issues before this court. For whatever reason, the Chylinskis chose not to do so. They also failed to lodge a specific objection to this court’s ruling. In sum, the Chylinskis have forfeited the issue and cannot raise it now in their post-trial motion.

9. Affirmative Defense

The Chylinskis argue that this court erred by allowing APP to adopt Jarzabek’s affirmative defense once APP learned that the Chylinskis were settling their claims as to Jarzabek. Notably, the Chylinskis did not raise an objection but a “distinction” between Danek and Jarzabek, who filed an affirmative defense, and APP, that did not. A “distinction” is not an objection, but even if it were, the Chylinskis cannot claim surprise or prejudice to an affirmative defense that would have been an issue in the case had they not settled with Danek and Jarzabek.

10. Jury Instructions

The Chylinskis argue that this court erred by refusing their tendered instruction 19 that was a modified version of IPI B45.03. This court acknowledged that the Chylinskis’ instruction contained a proper statement of the law pursuant to *Galich v. Advocate Health & Hosp. Corp.*, 2024 IL App (1st) 230134, but rejected the instruction because the unmodified version of IPI B45.03 was also a correct statement of the law and approved for use. Unless an IPI misstates the law, a trial judge is to issue the approved IPI. Ill. S. Ct. R. 239(a). There can be no prejudice by issuing an approved instruction that correctly states the law.

The Chylinskis also argue that this court erred by modifying their instruction 11—IPI B21.02.01—by including language from APP’s tendered instruction one. The Chylinskis repeat their argument that APP’s adoption of Jarzabek’s statutory

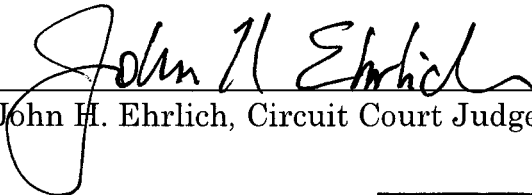
affirmative defense was untimely. Once again, there was no prejudice to the Chylinskis by incorporating language concerning an affirmative defense that would have been raised by Danek and Jarzabek had the Chylinskis not settled with them.

11. Closing Argument

The Chylinskis argue that they were prejudiced by APP commenting on the implications of special interrogatory number one. (“[I]f you agree with the evidence in this case that APP did not control or have the right to control Dr. Danek’s medical judgment . . . then your answer to the first question should be no, and I would submit that if your first question to this is no [sic], then you’re done deliberating.”). This argument is spurious because the Chylinskis did not object at any point during APP’s closing argument. Further, this argument is merely a repeat of the Chylinskis’ other arguments as to agency, special interrogatory number one, the word “control,” and the phrase “medical judgment.” The previous disposition of those arguments above applies equally here.

Conclusion

The Chylinskis had the burden to show that an error or cumulative errors established substantial prejudice and affected the outcome of the jury’s verdict. After reviewing all the evidence and considering each of the Chylinskis’ points of error, it is plain that the jury’s verdict was not contrary to the manifest weight of the evidence. In other words, the jury’s verdict was not unreasonable, arbitrary, or not based on any of the evidence. For those reasons and as explained above, the Chylinskis post-trial motion for a new trial must be denied.



John H. Ehrlich, Circuit Court Judge

