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6 **IN THE UNITED STATES DISTRICT COURT**
 7 **FOR THE DISTRICT OF ARIZONA**

9 JARROD and MELISSA MORELAND,
 husband and wife,

11 Plaintiffs,

12 -vs-

13 RONALD J. BARRETTE, D.O., and JANE
 DOE BARRETTE, husband and wife;
 14 SPECTRUM HEALTHCARE
 NATIONWIDE, INC., a Delaware
 15 corporation; COMPHEALTH ASSOCIATES,
 16 INC., a Utah corporation;

17 Defendants.

Cause No. 4:05-CV-480-DCB

**PLAINTIFFS' MOTION TO COMPEL
 DEFENDANT COMPHEALTH, INC. TO
 PRODUCE DEFENDANT BARRETTE'S
 COMPHEALTH APPLICATION
 MATERIALS**

Hon. David Bury

18 **INTRODUCTION**

19
 20 In its 4/25/07 Order, the Court granted Plaintiffs leave to respond to two issues
 21 raised by Defendants in their respective motions to reconsider the Court's 3/26/07
 22 Order, specifically: (1) whether Dr. Barrette was entitled to immunity under the
 23 Gonzalez Act, 10 U.S.C. §1089, *et. seq.*, and (2) whether the "lent" or "borrowed"
 24 servant doctrine immunized Defendant(s) CompHealth and/or Spectrum from vicarious
 25 liability for Dr. Barrette's negligence.
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Defendants’ motions for reconsideration should be denied because:

- Dr. Barrette was not acting within the scope of his military service or pursuant to a “personal services contract” with the government; therefore, he is not entitled to immunity under the Gonzalez Act; and
- CompHealth and Spectrum retained the right to control Dr. Barrette’s provision of medical services at Bliss Army Health Center, justifying vicarious liability under a theory of either *respondeat superior* or the borrowed/lent servant doctrine. The fact that the government, Army and/or Bliss Army Health Center staff may also have had the right to control Dr. Barrette does not extinguish CompHealth’s and Spectrum’s liability for Dr. Barrette’s negligence.

The Court’s 3/26/07 Order should be affirmed and this action set for trial.

1 **ARGUMENT**

2 **I. DR. BARRETTE IS NOT ENTITLED TO IMMUNITY UNDER THE**
3 **GONZALEZ ACT.**

4 All Defendants seek reconsideration claiming that Dr. Barrette is entitled to
5 immunity under the Gonzalez Act, 10 U.S.C. §1089 *et. seq.* The Gonzalez Act provides
6 immunity to two classes of people: (1) military physicians acting within the scope of
7 their employment and (2) physicians providing medical services “under a personal
8 services contract entered into under section 1091 of this title.” 10 U.S.C. §1089(a). A
9 §1091 personal services contract is a contract between the government and an
10 individual medical provider that “by its express terms or as administered, makes the
11 contractor personnel appear, in effect, to be government employees.” 10 U.S.C.
12 §1091(a); 37 C.F.R. §107.3(a).

13 The Gonzalez Act does not apply to Dr. Barrette. As the Court has already
14 determined, and as Dr. Barrette admits, he was not acting within the scope of his
15 military service when he was providing medical services at Bliss Army Health Center.
16 Therefore, he does not qualify in the first category of individuals immunized under the
17 Act.

18 Nor was Dr. Barrette acting pursuant to a §1091 personal services contract
19 personal services contract. As a threshold issue, the government is not a party to any
20 of the contracts at issue. This precludes a finding that any of the contracts are personal
21 services contracts.

22 In addition, none of the contracts create an employment relationship between Dr.
23 Barrette and the government. In fact, all of the contracts by their terms state that Dr.
24 Barrette will be providing services as an independent contractor. Dckt. #99, Ex. A, at
25 1; Ex. F, ¶4; Dckt. #101, Ex A at 7. The contract between CompHealth and Spectrum
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1 is explicit on this point, stating that the physicians provided pursuant to the contract are
2 “not employees of ... MTF [military treatment facility] for any purpose.” Dckt. #99, Ex.
3 F, ¶4. These contract terms are consistent with Spectrum’s practice of requiring its
4 medical providers to identify themselves as Spectrum employees on medical records
5 and other documents. See Dckt. #99, Ex. J. (Maj. Moreland’s medical records
6 identifying Dr. Barrette as a Spectrum employee). Without creating an employment
7 relationship with the government, none of the contracts are §1091 personal services
8 contracts.

9 The contracts lack other characteristics required of §1091 personal services
10 contracts. Regulations require that a §1091 personal services contract contain language
11 specifically identifying the contract as a personal services contract and acknowledging
12 “the individual as a personal services contractor whose performance is subject to
13 supervision and direction by designated officials of the Department of Defense.” 37
14 C.F.R. 107.5(a). None of the contracts at issue in this case include any of the required
15 language or identify either the contract as a §1091 personal services contract or the
16 personnel provided by the contract as personal services contractors. The lack of such
17 language is a telltale sign that these contracts are not §1091 personal services contracts.

18 In addition, the contracts contain provisions that are inconsistent with §1091
19 personal services contracts. A physician practicing pursuant to a §1091 personal
20 services contract does not have to maintain professional liability insurance for its acts
21 and omissions within the scope of the contract. See “*Are Contractor Health Care*
22 *Providers ‘Employees of the Government’?*,” *Army Lawyer*, 26 (2005) (describing
23 Department of Defense policy exempting personal service contract physicians from
24 carrying malpractice insurance). In contrast to this policy, all of the contracts at issue
25 require the respective parties to maintain professional liability insurance for themselves
26

1 and any staff provided pursuant to the agreements, including Dr. Barrette. Dckt. # 99,
2 Ex. A, at 1-2; Ex. F, ¶3.2; Dckt. #101, Ex. A Sec VII at 8. The requirement for
3 professional liability insurance is inconsistent with both the terms and purpose of the
4 Gonzalez Act, and is further evidence that these contracts are not, and the parties did
5 not intend them to be, §1091 personal services contracts.

6 Moreover, under a §1091 personal services contract, the Department of Defense
7 sets the contract physicians rate of pay. 37 C.F.R. §107, Encl. 1. In this case, Dr.
8 Barrette and CompHealth admit that CompHealth both set the rate of pay and in fact
9 paid Dr. Barrette. Dckt. #99, Ex. B; Dckt. #100, Ex. A, 38:25-43:4. Dr. Barrette's
10 CompHealth contract is further evidence that CompHealth set Dr. Barrette's rate of pay.
11 Dckt. #99, Ex. A at 1. The fact that CompHealth set Dr. Barrette's rate of pay is further
12 evidence that Dr. Barrette was not functioning under a §1091 personal services
13 contracts.

14 Defendants carry the burden of proving Dr. Barrette's immunity under the
15 Gonzalez Act. The chain of contracts before the Court originates with a contract
16 between Tri-West and the government. In order to establish Dr. Barrette's immunity,
17 Defendants would have to prove that this contract was a §1091 personal services
18 contract. Despite having months and months to obtain such evidence, they have failed
19 to do so, presumably because that contract is not a §1091 personal services contract.
20 *See "Are Contractor Health Care Providers 'Employees of the Government'?", Army*
21 *Lawyer*, at n.1 (TRICARE partnership providers are not typically under §1091 personal
22 services contract).

23 Without such evidence, there is no basis to conclude that any of the contracts
24 at issue are personal services contracts, or that Dr. Barrette is entitled to immunity
25 under the Gonzalez Act. Defendants' motions on this basis should be denied, and the
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1 Court's 3/26/07 Order upheld.

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3 **II. SPECTRUM AND COMPHEALTH ARE VICARIOUSLY LIABLE**
4 **FOR DR. BARRETTE'S NEGLIGENCE UNDER A THEORY OF**
5 **RESPONDEAT SUPERIOR OR THE BORROWED/LENT**
6 **SERVANT DOCTRINE.**

7 CompHealth and Spectrum seek reconsideration of their vicarious liability
8 on two related basis. First, CompHealth claims that the facts do not support finding
9 that it was Dr. Barrette's master for the purposes of vicarious liability. In addition,
10 both CompHealth and Spectrum claim that under the "borrowed" or "lent" servant
11 doctrine the U.S. Army is solely liable for Dr. Barrette negligence. Both of these
12 positions rest on Spectrum's and CompHealth's assertions that they did not
13 exercise the requisite amount of control over Dr. Barrette to justify vicarious
14 liability.

15 Defendants' positions are not consistent with either the facts or the law.

16 **A. BOTH COMPHEALTH AND SPECTRUM HAD THE RIGHT TO**
17 **CONTROL DR. BARRETTE PROVISION OF MEDICAL**
18 **SERVICES.**

19 For the purposes of vicarious liability under either *respondeat superior*
20 or the borrowed servant doctrine the dispositive issue is "control or the right to
21 control" the employee's performance. *Ruelas v. Staff Builders Personnel Services,*
22 *Inc.*, 199 Ariz. 344, 346, 18 P.3d 138, 140 (App. 2001) *citing* *McDaniel v. Troy*
23 *Design Services Co.*, 186 Ariz. 552, 553, 925 P.2d 693, 694 (1996). A party with
24 the right to control an employee's performance may not escape liability by failing
25 to exercise the control they retained. *Id.*

26 The multiple contracts before the Court establish that both CompHealth and
Spectrum retained the right to control Dr. Barrette's performance. Under its

1 contract with Dr. Barrette, CompHealth required Dr. Barrette to “observe written
2 standards for the medical profession and specialty, the medical staff by-laws and
3 rules of our clients, and any state and federal requirements”. Dckt. #99, Ex. A, at
4 3. This contract provision provides CompHealth with broad authority to control to
5 the manner in which Dr. Barrette practiced medicine while on assignment.

6 A simple hypothetical demonstrates the control this contract provision
7 provided CompHealth. Say that Dr. Barrette planned to perform the type of partial
8 birth abortion that is barred under federal law. This provision would provide
9 CompHealth with the right to either prohibit Dr. Barrette from performing the
10 procedure, or remove Dr. Barrette from his position to prevent him from doing so.
11 The same result would obtain if Dr. Barrette planned to perform a medical
12 procedure in a manner that fell outside the written standards of the profession, such
13 as performing Capt. Moreland’s surgery without using anesthesia. Relying on Dr.
14 Barrette’s contract, CompHealth would be entitled to require Dr. Barrette to use
15 anesthesia, prohibit him from performing the surgical procedure, or remove him
16 from his position at Bliss. This is the type of control that justifies vicarious
17 liability.

18 CompHealth claims that it could not have exercised any control over Dr.
19 Barrette because Dr. Barrette’s CompHealth contract required him to “exercise
20 independent professional judgment.” As pointed out by Spectrum, however, the
21 exercise of independent professional judgment will not in and of itself preclude an
22 agency relationship for purposes of vicarious liability. Spectrum Motion at 6 *citing*
23 *Lindquist v. Scott Radiological Group, Inc.*, 168 S.W.3d 635, 656 (Mo. Ct. App.
24 2005) *and Hohenleitner v. Quorum Health Res.* 758 N.E.2d 616, 623 (Mass. 2001).
25 Here the fact that CompHealth required Dr. Barrette to exercise independent
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1 professional judgment is another indicia of CompHealth's right to control Dr.
2 Barrette - Comphealth could have required Dr. Barrette to exercise independent
3 judgment even if ordered by Bliss staff to perform an unreasonable or dangerous
4 procedure. Moreover, CompHealth ignores the remainder of the contract
5 provision, cited above, which plainly grants it the right to control the manner in
6 which Dr. Barrette provides medical services. Read as a whole, the complete
7 provision plainly granted CompHealth broad authority to control the manner in
8 which Dr. Barrette provided medical services at Bliss.

9 Spectrum also had the right to control Dr. Barrette. Under its contract with
10 Tri-West, Spectrum was responsible for supervising and controlling all of the
11 physicians it placed in military facilities:

12 SHR [Spectrum Healthcare Resources] shall provide and
13 maintain a quality control system acceptable to the
14 Government and Tri-West for the services and supplies
15 covered by this Subcontract...[Spectrum] shall similarly
16 require its Lower Tier subcontractors to provide and
maintain a quality control assurance system

17 . . .

18 SHR is solely responsible for professional liability of the
personnel placed in the MTF [military treatment facility]...

19 SHR shall be solely liable for the negligent acts or
20 omissions of its agents or contractors and shall ensure that
SHR providers maintain full professional liability insurance

21 . . .

22 SHR will supervise and control SHR personnel placed in the
23 MTF for purposes of directing the terms and conditions or
24 employment SHR providers, clinical and administrative
25 support staff are supervised by other SHR providers within
26 the MTF. The SHR site medical director has ultimate
responsibility for the resource sharing staff on a daily basis.

1 Dckt. # 101, § 3.1; Ex. A, § VII, at 8; § VIII, 9-10.

2 Under these provisions, Spectrum had the right to control, and was responsible
3 for, Dr. Barrette’s clinical practice on a daily basis. These contract provisions also
4 specifically refute Spectrum’s conclusory assertion that “as a staffing agency, [it]
5 could not oversee, or more importantly control the details of Dr. Barrette treatment
6 of patients .” Motion at 6. Spectrum not only could oversee and control Dr. Barrette
7 provision of medical services at Bliss, it was required to do so by contract.
8

9 These contract provisions are undisputed and establish CompHealth’s and
10 Spectrum’s vicarious liability under the theory of *respondeat superior* or the
11 borrowed servant doctrine. They also distinguish this case from *Ruelas v. Staff*
12 *Builders Personnel Services, Inc.*, *supra*, relied on by both CompHealth and
13 Spectrum. That case involved contract nurses provided to a medical facility by a
14 staffing agency. *Ruelas*, 199 Ariz. at 346, 18 P.3d at 140. The court affirmed the trial
15 court grant of summary judgment holding that the staffing agency could not be held
16 vicariously liable for the nurses negligence because the plaintiff failed to introduce
17 any evidence that the staffing agency had any right to control the manner in which the
18 nurses provided medical services. *Id.* The contract at issue in *Ruelas* did not have a
19 provisions similar to those in Defendants’ respective contracts. *Id.* These contract
20 provisions gave CompHealth and Spectrum control over the specific injury producing
21 activity that goes beyond the merely administrative control the plaintiff relied in
22 *Ruelas*.

23 There is other evidence in the record establishing both CompHealth’s and
24 Spectrum’s right to control Dr. Barrette. First, both Spectrum and CompHealth were
25 required to carry professional liability insurance insuring themselves against Dr.
26 Barrette’s negligence. *See* Dckt. # 99, Ex. A, N (CompHealth) ; Dckt. #101, at 16

1 (Spectrum). The fact that both CompHealth and Spectrum were required by contract
2 to obtain liability insurance protecting themselves against liability for Dr. Barrette’s
3 negligence is an admission that Defendants intended and accepted vicarious liability
4 for Dr. Barrette’s negligence.¹

5 In addition, both Spectrum and CompHealth were required to maintain a quality
6 assurance program “for the services and supplies” covered by Spectrum’s Tri-West
7 contract. Dckt. #101, ¶3.1 at 6. Also, Dr. Barrette’s CompHealth contract indicates
8 that “CompHealth routinely reviews *the performance* of our contract physicians” and
9 requires Dr. Barrette to participate in these reviews and other quality assurance
10 processes. Dckt. #99, Ex. A at 3 (emphasis added). These quality assurance processes
11 were intended to provide both Spectrum and CompHealth with additional control over
12 Dr. Barrette’s provision of medical services at Bliss or on any other assignment.

13 Moreover, there is evidence that Spectrum exercised actual control over Dr.
14 Barrette’s treatment of Maj. Moreland. Dr. Barrette is identified in Maj. Moreland
15 medical records as a Spectrum employee. Dckt. #101, Ex. J. Additionally, Dr. Barrette
16 copied Maj. Moreland medical records to Spectrum Healthcare during the course of
17 Maj. Moreland’s medical care. *Id.* From this evidence a jury could reasonably
18 conclude that Spectrum was monitoring the medical services that Dr. Barrette was
19 providing to Maj. Moreland. (This evidence also further refutes Spectrum specious
20 claim that it could not and did not oversee Dr. Barrette’s care of Maj. Moreland.)

21
22 ¹ CompHealth claims that the provision of professional liability insurance should not be
23 considered by the Court because it was provided to its locum tenans physicians as a matter
24 of convenience. CompHealth only discusses the professional liability insurance it was
25 required to provide Dr. Barrette. CompHealth ignores that its contract with Dr. Barrette
26 required it to obtain professional liability insurance covering both CompHealth and Dr.
Barrette, a fact that is clearly relevant to demonstrate CompHealth’s intent and knowledge
that it was vicariously liable for Dr. Barrette’s negligence while on assignment.

1 At very least all of this evidence - as well as the other indicia of control noted
2 in Plaintiffs' response to the Defendants' respective motions for summary judgment
3 and the Court's 3/26/07 Order - creates a disputed issue of fact as to whether
4 CompHealth and/or Spectrum had the right to control Dr. Barrette provision of
5 medical services. *Ruelas*, 199 Ariz. at 346, 18 P.3d at 140 (whether employer had right
6 to control employee performance is an issue of fact for the jury). Either way, neither
7 CompHealth nor Spectrum are entitled to summary judgment on the issue.

8
9 **B. EVIDENCE OF THE GOVERNMENT'S CONCURRENT
10 CONTROL OF DR. BARRETTE DOES NOT EXTINGUISH
11 COMPHEALTH'S OR SPECTRUM'S VICARIOUS LIABILITY.**

12 Both Comphealth and Spectrum claim that only the government is vicariously
13 liable for Dr. Barrette's negligence because the government was the only entity that
14 controlled Dr. Barrette's provision of medical services at Bliss. This position is
15 also not supported by either the facts or the law.

16 Neither Spectrum nor CompHealth has provided the Court (or Plaintiffs) with
17 any contract, rule, regulation or government, Army, or Bliss policy that grants the
18 government, Army, or Bliss the right to control the manner in which Dr. Barrette
19 provided medical services. Nor have they produced any evidence that the
20 government, the Army, or anyone employed at Bliss Army Health Center exercised
21 any actual control over the manner in which Dr. Barrette provided medical services
22 there.

23 In fact, Dr. Barrette admits that neither the government, Army nor Bliss
24 exercised any control over the manner in which he practiced medicine at Bliss. In
25 deposition, Dr. Barrette testified that he relied on his own training education and
26 experience in determining Maj. Moreland diagnosis and treatment and that no
government physician participated in diagnosing and treating Maj. Moreland. Dckt.

1 #101, Ex. B, 135:4-10. Dr. Barrette also testified that military doctors were not
2 present in his operating room nor did a military doctor dictate the manner in which
3 he performed surgical procedures. Dckt. #101, Ex. B, 191:1-16. There is simply no
4 evidence in the record that the government, Army or Bliss had the right to control the
5 manner in which Dr. Barrette provided medical services at Bliss, or exercised any
6 actual control.

7 Even if Defendants could produce evidence that government controlled or had
8 the right to control Dr. Barrette's provision of medical services, CompHealth and
9 Spectrum would still be vicariously liable. The borrowed/lent servant doctrine
10 specifically recognizes that when two or more employers exercise (or have the right
11 to exercise) concurrent control both are jointly liable for an employee's negligence.
12 *See McDaniel*, 186 Ariz. at 555-56, 925 P.2d at 696-97 (servant can have two masters
13 and that each of them may be vicariously liable for his actions) ; *Ruelas*, 199 Ariz.
14 344, 348, 18 P.3d 138, 142 (two employers can be vicariously liable for an
15 employee's actions if they both have joint control over performance of the employee's
16 specific activities). The fact that the Bliss may have had the right to control Dr.
17 Barrette provision of medical services does negate either Spectrum's or
18 CompHealth's vicarious liability.

19 In order to extinguish Spectrum's and CompHealth's vicarious liability,
20 Defendants must have completely surrendered control over Dr. Barrette to the
21 government. Put another way, the government must have had exclusive control over
22 the manner in which Dr. Barrette provided medical services.² *McDaniel*, 186 Ariz.

23 ² Spectrum argues that *Ruelas* abandoned the exclusive control test established in *McDaniel*.
24 Spectrum misquotes and misinterprets *Ruelas*. There, the court stated that control over *all*
25 *aspects of the employment relationship* is not required the focus is on which employer had the
26 right to control the specific injury-causing activity. *Ruelas*, 199 Ariz. at 347, 18 P.3d at 141
(emphasis added). This dicta does not displace the requirement established in *McDaniel* that a

1 at 553, 925 P.2d at 694. The contract provisions discussed above establish that the
2 opposite was true in this case. Both Spectrum and CompHealth retained - and were
3 required by contract to retain - the right to control Dr. Barrette provision of medical
4 services. Neither Defendant can make the showing required to off-load vicarious
5 liability on to the government.

6
7 **B. SPECTRUM'S HYPOTHETICAL ILLUSTRATES THE FLAWS**
8 **IN THE DEFENDANTS' ARGUMENTS.**

9 In its motion, Spectrum uses a hypothetical to illustrate its position that for all
10 practical purposes the government, not it or CompHealth, controlled Dr. Barrette.
11 The hypothetical asks what a Bliss staff member would likely do upon discovering
12 that Dr, Barrette planned to perform an unrecognized or unacceptable surgical
13 technique. Spectrum argues that the Bliss staff member would likely report the
14 problem to a base commander, who would then intercede with Dr. Barrette. Spectrum
15 claims it is highly unlikely that the staff member would have even heard of Spectrum,
16 let alone who know how to contact a Spectrum representative. Spectrum claims it
17 would not hear about the incident until weeks later. With this hypothetical Spectrum
18 seeks to establish that it could not have possibly exercised any control over Dr.
19 Barrette.

20 This hypothetical is not consistent with the facts in this case. Spectrum was
21 required under its Tri-West contract to provide on-site management and supervision
22 of the personnel it placed at military treatment facilities, including a medical director.
23 Dckt. #101, Ex. A, Sec. II, at 3-4; Sec VIII, at 10. Dr. Barrette testified at deposition
24 that after just a few months he knew of other Spectrum personnel at Bliss. Dckt. #101,

25 _____
26 general employer is generally liable unless a special employer has exclusive control over the
injury-causing activity.

1 Ex. B. Spectrum personnel would be easy to identify as they did not wear Army
2 uniforms and stamped medical records identifying themselves as Spectrum
3 employees. Dckt. 101, Ex. K, 159:20-22; Dckt. 101, Ex. J. The assertion that a
4 Spectrum supervisor or other representative were thousands of miles away, and would
5 not be known by staff members at Bliss is not supported by the facts.

6 In addition, Spectrum's TriWest contract dictates a very specific conflict
7 resolution process that requires Spectrum to be involved in any situation like that
8 posed in the hypothetical:

9
10 SHR shall immediately notify TriWest when allegations of
11 alleged wrongdoing by SHR resource sharing personnel are
12 received from an MTF, citing all facts and circumstances.
13 SHR shall inform TriWest of the actions to be taken by
14 SHR to resolve the matter. SHR shall also inform TriWest
15 whether the action plan has received the concurrence of the
16 MTF Commander. When the MTF Commander disagrees
17 with the action to be taken by SHR to resolve the issue
18 with the resource sharing personnel, an SHR representative
19 shall meet (at SHR's expense) with the MRF Commander
20 and resolve the issue.

21 Dckt. #101, Ex. A at 16. This provision clearly gives Spectrum control over the
22 manner in which to deal with questionable conduct by its contract physicians and
23 makes it likely that Spectrum would be notified promptly, and not "weeks after" as
24 Spectrum claims.

25 The bigger problem with Spectrum's hypothetical is that it simply misses the
26 point. The dispositive factual issue is whether Spectrum (or CompHealth) had the
right to control Dr. Barrette provision of medical services, regardless of whether: (1)
they exercised actual control (or were likely to), and (2) the government also had the
right to control Dr. Barrette. Spectrum's hypothetical has nothing to say on these

1 issues.

2 Flipping the hypothetical, however, illustrates the dispositive issues and proves
3 Defendants' vicarious liability. Say, for example, that the Bliss surgical staff
4 discovered that Dr. Barrette planned to perform an unrecognized or unacceptable
5 surgical procedure and called both Spectrum and CompHealth to report it. Would
6 Spectrum and CompHealth have the ability to force Dr. Barrette to perform the
7 procedure safely or to prevent Dr. Barrette from performing the procedure at all? The
8 answer under the various contracts before the Court is an unequivocal yes.

9 There is no basis to extinguish Spectrum or CompHealth vicarious liability.
10 Defendants' respective motions to reconsider on this issue should be denied.

11 12 **III. CONCLUSION**

13 Defendants' respective motions to reconsider should be denied on all grounds,
14 and the Court's 3/26/07 Order affirmed.

15
16 RESPECTFULLY SUBMITTED this 8th day of 2007.

17 HARALSON, MILLER, PITT,
18 FELDMAN & McANALLY, P.L.C.

19
20 By: /s/Melissa L. English
21 Thomas G. Cotter
22 Stanley Feldman
23 Melissa L. English
24 Attorney for Plaintiffs

25 I hereby certify that on the 8th
26 day of June, 2007, I electronically
transmitted the foregoing document to
the U.S. District Court Clerk's Office
by using the ECT System for filing and

1 transmittal of the foregoing to the
2 following ECF Registrants:

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