CASE SUMMARIES

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Arbitration properly denied to avoid conflicting results in survivor and wrongful death actions alleging elder abuse.

Hearden v. Windsor Redding Care Center, LLC (June 28, 2024, C098736) _ Cal.Rptr.3d _ [2024 WL 3506986]

After residents died from coronavirus infections at Windsor Redding Care Center, their families filed wrongful death and survivor lawsuits against Windsor, alleging fraud, negligence, elder abuse, and unfair competition causes of action. Windsor moved to compel arbitration pursuant to the arbitration agreements executed by family members when admitting their deceased relatives. The trial court denied Windsor's motion, finding there was no evidence that three of the agreements were authorized by the patient, none of the agreements applied to the plaintiff's wrongful death claims, and exercising its discretion to deny arbitration of one of the lawsuits to avoid the possibility of conflicting results. Windsor appealed.

The Court of Appeal affirmed, holding the trial court properly denied Windsor's motion to compel arbitration to avoid conflicting results. The court explained that the MICRA arbitration statute (Code Civ. Proc., § 1295) does not apply to the elder abuse claims, which was the primary basis of the lawsuit. Therefore, the court had discretion to deny arbitration to avoid conflicting results between the survivor and wrongful death claims. The court also held that Windsor had failed to present evidence that the signatories of the other three agreements had the authority to sign on behalf of their decedents or that the decedents mislead Windsor into reasonably believing such authority existed.

In Harrod v. Country Oaks Partners, LLC (2024) 15 Cal.5th 939, 962, fn. 12, the Supreme Court left open the question "whether any particular familial relationship would itself convey authority to agree to arbitration with a skilled nursing facility." The Hearden court did not cite Harrod or address this open question.

Hospitals have no duty to disclose emergency room fees beyond listing them in their published chargemaster as required by statute.

Salami v. Los Robles Regional Medical Center (July 1, 2024, B327348) __ Cal.App.5th __ [2024 WL 3506696]

Farzam Salami received emergency services at Los Robles Regional Medical Center.Before receiving those services, he executed a conditions of admission contract, which made him liable for the cost of services "actually rendered" pursuant to the hospital's chargemaster.After discharge, Los Robles wrote off 90 percent of Salami's bill, and Salami paid some portion of the remaining ten percent. Salami later received additional emergency services from Los Robles, and then sued Los Robles for breach of contract and declaratory relief, alleging that its emergency medical services (EMS) fees were not for services "actually rendered." The trial court sustained Los Robles's demurrer with leave to amend. In his amended complaint, Salami challenged the same fees on the grounds they violated the Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 et seq.) and the Consumers Legal Remedies Act (CLRA) (Civ. Code, § 1750 et seq.). The trial court sustained Los Robles's demurrer without leave to amend. Salami appealed. The Court of Appeal affirmed, adopting the reasoning and holding in the Moran v. Prime Healthcare Management, Inc. (2023) 94 Cal.App.5th 166, review granted Nov. 1, 2023 (S281746), line of authority, and expressly disagreeing with the contrary Naranjo v. Doctors Medical Center of Modesto (2023) 90 Cal.App.5th 1193, review granted July 26, 2023 (S280374), line of authority.

The court explained hospitals are required by statute to make a written or electronic copy of their chargemaster available and post a notice in their emergency departments that this chargemaster is available. Additionally, federal law mandates that hospitals participating in Medicare may not delay treatment of an emergency patient to inquire about insurance coverage or payment or otherwise discourage patients from seeking emergency care. None of these laws require hospitals to post signs in the emergency room regarding the cost of emergency care. The court reasoned that these laws " 'reflect[ ] a careful balancing of [cost] transparency" against "not discouraging uninsured patients from seeking necessary emergency care.' " The court explained it was "not up to [the] court to disturb the balance rulemakers have struck."

Issues concerning the application of the UCL and the CLRA to the evaluation and management services fees charged by hospitals are presented in Capito v. San Jose Health System (April 6, 2023, H049022 & H049646), unpublished, review granted July 26, 2023 (S280018), which was fully briefed in the Supreme Court as of April 24, 2024, but has not been set for argument.The Supreme Court also granted review in Naranjo and Moran, but stayed briefing in those matters pending its decision in Capito. A decision in Capito will likely issue by the end of 2024.

Physicians owe no duty of care to patients with whom they have no physician-patient relationship.

McCurry v. Singh (Aug. 26, 2024, C098433) _ Cal.App.5th _ [2024 WL 4141976], ordered published Sept. 10, 2024

The children of deceased patient Carol McCurry sued Dr. Inder Singh, an on-call interventional cardiologist at Mercy General Hospital, for wrongful death. McCurry was treated at Methodist Hospital for an aortic dissection when her treating physician, Dr. Michael Brandon, determined that she needed a cardiac catheterization, a procedure that Methodist Hospital did not have the capability to perform. Dr. Brandon spoke with Mercy General's Dr. Singh, who concluded McCurry was not a candidate for the procedure, but offered to consult on her case if a Mercy General ICU doctor accepted her transfer and she was admitted. After some delay, a Mercy General ICU doctor accepted McCurry's transfer, but she died before that transfer took place. Plaintiffs alleged that Dr. Singh negligently declined to accept McCurry's transfer to Mercy General, causing her death. The trial court granted Dr. Singh's motion for summary judgment, ruling that he owed McCurry no duty of care because he was never in a physician-patient relationship with her. Plaintiffs appealed.

The Court of Appeal affirmed. Rejecting contrary Arizona authority, the court explained that, under California law, a physician's duty of care does not arise until a physician-patient relationship is formed by express or implied contract. The relationship requires the physician's assent to treating or directly advising the patient, and physicians have no obligation to enter such agreements. In a hospital, such a relationship exists between patients and those physicians who examine, diagnose, or treat them. But absent that sort of inpatient relationship, or another recognized form of physician-patient relationship, physicians have no duty to take affirmative action to help patients. Here, Dr. Singh's initial consultation with Dr. Brandon did not create a physician-patient relationship because Dr. Singh did not affirmatively accept responsibility for McCurry's care. Nor did he take charge of her treatment, examine her, furnish her treatment, or advise her or her physicians. Accordingly, Dr. Singh's decision not to treat McCurry breached no duty of care.

Litigation and common interest privileges defeat statutory retaliation claims against a medical entity based on peer review proceedings.

Dignity Health v. Mounts (Sept. 17, 2024, B325563) _ Cal.App.5th _ [2024 WL 4210763]

A Dignity Health hospital recruited Dr. Troy Mounts, an orthopedic surgeon, to work in the hospital's spine surgery practice.

A dispute arose as to Mounts' competence and Dignity's support of Mounts' operations. Dignity asked Mounts to refrain from operating until Dignity completed a Focused Professional Practitioner Review (FPPE). Mounts agreed. Dignity then informed Mounts it would submit a Business and Professions Code section 805 report regarding Mounts' voluntary restriction on practice if it lasted longer than 30 days. Dignity further stated Mounts' privileges could be summarily suspended if he rescinded his voluntary restriction. When Mounts attempted to rescind his voluntary restriction after 30 days, Dignity filed an 805 report with the medical board as well as a report with the National Practitioner Data Bank (NPDB). Later, after Dignity informed Mounts the FPPE determination would likely be unfavorable, Mounts resigned and sought work at two other hospitals. Dignity declined to provide records of the FPPE to either hospital, and Mounts was not hired.

Dignity sued Mounts to recover the recruiting bonus it paid him. Mounts cross-complained, alleging retaliation under Health and Safety Code section 1278.5, intentional interference with prospective economic advantage, and unfair competition. Mounts' claims rested on Dignity's alleged lack of operational support, procedural defects regarding the FPPE process, and refusal to disclose FPPE information to potential employers. The trial court granted Dignity's anti-SLAPP motion and struck the cross-complaint, ruling that Mounts' claims were based on privileged conduct. Mounts appealed.

The Court of Appeal affirmed, holding that Mounts failed to show a probability of prevailing. The court explained that each retaliatory act alleged by Mounts (including restricting his operating room time, proctoring, referring patients to other surgeons, failing to follow hospital bylaws, failing to explain how privilege restrictions triggered 805 and NPDB reports, failing to allow him to rescind his voluntary restriction without issuing an 805 or NPDB report, and filing the 805 and NPDB reports) was subject either to the litigation privilege or the common interest privilege, or both. The litigation privilege confers an absolute privilege on communications pertaining to a medical peer review proceeding. The common interest privilege applies to certain "communications made in a commercial setting relating to the conduct of an employee." The court found that these privileges embraced each category of alleged retaliatory conduct.

Conservator lacks agency authority to bind a conservatee and her heirs to arbitration

Enmark v. KC Community Care, LLC (Sept. 25, 2024, B333022) _ Cal.App.5th _ [2014 WL 4290290]

The Lanterman-Petris-Short Act (LPS) authorizes a conservator to be appointed "for up to one year for a person [who is] gravely disabled as a result of a mental disorder and unable or unwilling to accept voluntary treatment." Lisa Enmark's father was appointed as her conservator. When Lisa moved into a nursing facility, her father signed two arbitration agreements with the facility as her representative.

After Lisa died, her parents sued the facility's owners and operators, asserting both successor and individual claims. The trial court denied the facility's petition to compel arbitration, finding no evidence of the father's authority to bind Lisa and her heirs to arbitration. The facility appealed.

The Court of Appeal affirmed. The court applied general contract principles to determine whether an agency relationship existed between Lisa and her father, and concluded that Lisa's father lacked both actual and ostensible authority to sign arbitration agreements on her behalf. Actual agency was lacking because Lisa never authorized her father to act as her agent, and she had no ability to control him. Regarding ostensible agency, the court held that, although the conservatorship agreement gave Lisa's father apparent authority to place her in the nursing facility and to make "health care decisions" on her behalf, his execution of the arbitration agreements was not a "health care decision" that bound Lisa, her heirs, or his successor claims to arbitration. The court reasoned that the agreements neither accomplished health care objectives nor empowered Lisa's father to enter into arbitration contracts on Lisa's behalf. The court further held that Lisa's parents had never agreed to arbitrate their wrongful death claims. Finally, the court rejected the facility's estoppel theory, explaining that the "law places the risk on persons who deal with agents to ' "ascertain[ ] the scope of [the agent's] powers" ' [citation]; thus, any unfairness in the arbitration agreement being unenforceable against plaintiff[s] lies at defendants' own doorstep."

A trial court may not abstain from adjudicating Unfair Competition Law and False Advertising Act claims alleging a healthcare provider violated statutory requirements regarding provider directory accuracy.

People v. Kaiser Foundation Health Plan, Inc. (Sept. 30, 2024, D081262) _ Cal.App.5th _, 2024 WL 4351122, ordered published Oct. 22, 2024

The People (acting through the San Diego City Attorney) filed a complaint against Kaiser Foundation Health Plan alleging it violated the unfair competition law (UCL) and false advertising law (FAL) by failing to maintain and update accurate provider directories (PDs) as required by Health and Safety Code section 1367.27. The People sought civil penalties, restitution, and provisional and final remedies against Kaiser, including an injunction prohibiting further unlawful activities. The trial court found that, in enacting section 1367.27, "the Legislature opted not to impose accuracy requirements," but instead established a procedure for ensuring accurate and up-to-date PDs. The court therefore abstained from adjudicating the People's claims and granted Kaiser's motion for summary judgment. The People appealed.

The Court of Appeal reversed, holding that the trial court erred in abstaining. The appellate court explained that section 1367.27 contains clear statutory requirements regarding PD accuracy, in addition to the process requirements cited by the trial court, and that trial courts have authority to adjudicate UCL claims based on alleged violations of these accuracy requirements. Evaluating the factors for judicial abstention, the court found the People's enforcement action would complement, not assume or interfere with, the regulatory functions of the California Department of Managed Health Care. The court then found that adjudicating the UCL claim did not require the trial court to evaluate and determine complex economic policy best left to the Legislature. The trial court simply had to enforce clear statutory provisions reflecting policy decisions the Legislature had already made. Finally, the court concluded that the requested relief would not unnecessarily burden the trial court since it did not require continuous monitoring, and there was no other effective means of redress. The abstention decision on the FAL cause of action was based on the same faulty premise as the UCL abstention decision, and was therefore reversed as well.