CASE SUMMARIES
H. Thomas Watson, Lacey L. Estudillo and Peder K. Batalden
Horvitz & Levy, LLP

Separate MICRA caps are available for survivor and wrongful death claims stemming from the same medical malpractice.

Ng v. Superior Court (Jan. 29, 2025, G064257) __ Cal.App.5th __, 2025 WL 323098

Joely Ng's husband died from sepsis after doctors at Los Alamitos Medical Center improperly placed his feeding tube. Ng sued the doctors and the Medical Center for (1) wrongful death in her individual capacity, and (2) medical malpractice as her husband's successor-in-interest (a survival claim). She sought economic damages and noneconomic damages up to the relevant statutory caps. (See Civ. Code, § 3333.2, subd. (b) & (c) [capping noneconomic damages in medical malpractice actions]; see also Code Civ. Proc., § 377.34, subd. (b) [allowing recovery of noneconomic damages in survival actions].)

The Medical Center conceded that Ng could recover noneconomic damages for both wrongful death and survival claims, but moved to strike portions of her complaint alleging that a separate MICRA cap applied to each claim. The trial court granted the motion, reasoning that " 'the wrongful death claim is not separate and distinct from a medical negligence claim, it cannot be . . . subject to a separate MICRA cap.' " Ng sought writ relief.

The Court of Appeal granted Ng's writ petition, holding that plaintiffs who bring both wrongful death and survival claims may recover non-economic damages up to the MICRA cap for each claim. The court explained that recent amendments to Code of Civil Procedure section 377.34, subdivision (b), now "allow for the recovery of damages for a decedent's 'pain, suffering, or disfigurement' in survival actions 'filed on or after January 1, 2022, and before January 1, 2026.' " The court further explained that separate MICRA caps are allowed for separate injuries, and the survival and wrongful death claims seek compensation for separate injuries. The survival claim seeks compensation for damages to the decedent, while the wrongful death claim seeks compensation for damages to the heirs of the decedent " ' "based upon their own independent pecuniary injury suffered by loss of a relative." ' " Since the survival and wrongful death claims remedy distinct injuries suffered by distinct persons separate MICRA damages caps apply, and Ng was therefore entitled to writ relief.

Health insurers regulated by the California Department of Insurance are not subject to the Knox-Keene Act.

Nissanoff v. UnitedHealthcare Ins. Co (2024) 108 Cal.App.5th Supp. 1

Dr. Jonathan Nissanoff sued UnitedHealthcare Insurance Company (UHC) under the Knox-Keene Act, seeking to recover the difference between his "usual and customary" fee and the much lower amount UHC paid Dr. Nissanoff to provide emergent medical care to UHC policyholders. The trial court sustained UHC's demurrer without leave to amend, ruling that UHC was not subject to Knox-Keene Act claims because it was regulated by the California Department of Insurance (CDI), not the Department of Managed Healthcare (DMHC). Dr. Nissanoff appealed from the ensuing judgment of dismissal.

The Court of Appeal affirmed, explaining that managed health care service plans are regulated by the DMHC and are therefore subject to the Knox-Keene Act provision compelling them to reimburse emergency healthcare providers at the "reasonable and customary value" for their services. However, insurance companies are regulated by the CDI, and are subject to the Knox-Keene Act only if they directly provide health care services through entity-owned or contracting health facilities and providers. Because UHC was regulated by the CDI, and because Dr. Nissanoff's complaint failed to allege that UHC directly provided health services, Dr. Nissanoff could not recover damages based on UHC's failure to pay fees required by the Knox-Keene Act.

Non-licentiate directors of a private corporation lack statutory authority to perform medical peer review.

Lin v. Board of Directors of PrimeCare Medical Network, Inc. (Feb. 19, 2025, D084821) _ Cal.App.5th _ [2025 WL 544022]

PrimeCare, a private corporation licensed as a healthcare service plan under the Knox-Keene Act, contracts with full-service health plans (such as Blue Shield and Blue Cross) to provide medical care to health plan enrollees. It also contracted to conduct peer review for the medical group that employed Dr. Jason Lin. After a patient and her son complained to the medical group about Lin grabbing and hitting the patient's wrist during an argument, PrimeCare's chief medical officer summarily suspended Dr. Lin's privileges pending an investigation. He specified that the suspension took effect immediately under the statutory exception to the notice requirement for situations where the failure to take immediate action may result in " 'imminent danger to the health of any individual.' " When Dr. Lin was informed of the suspension, he stated he would have "slapped [the patient] across the face" if he could have. PrimeCare maintained Dr. Lin's suspension pending completion of an anger management course and specified that he would be chaperoned for six months when he returned to work. Dr. Lin requested that a judicial hearing committee (JHC) review the disciplinary action.

The JHC found PrimeCare failed to prove the immediate summary suspension was justified. But PrimeCare's board of directors

(the Board) reversed the JHC pursuant to a Fair Hearing Plan provision that allowed the Board to make the final disciplinary decision when the JHC's decision was inconsistent with the applicable burden of proof, which the Board construed as authorizing its independent review. Dr. Lin filed a petition for writ of administrative mandamus seeking reinstatement of his credentials and privileges. The trial court granted the petition, finding the Board did not have authority to independently review the JHC's decision. The Board appealed.

The Court of Appeal affirmed. It explained that, as an entity licensed under the Knox-Keene Act, PrimeCare is a peer review body and its chief medical officer had authority to suspend Dr. Lin. However, the court construed the Fair Hearing Plan as limiting the Board's authority to decide whether the JHC had identified and applied the applicable burden of proof. Construing the Fair Hearing Plan to authorize the Board, whose members included non-licentiates, to perform medical peer review itself was inconsistent with the statutory requirement that peer review be conducted by licentiates. The only exception to that requirement did not apply to PrimeCare because it is not an acute care hospital. Accordingly, the Board exceeded its authority when it reversed the JHC's peer review decision.

Zaragoza v. Adam (Jan. 31, 2025, A168100) __ Cal.App.5th __ [2025 WL 630923], ordered published Feb. 27, 2025

Sabrina Zaragoza was admitted to Mercy Medical Center Merced with abdominal pain and later diagnosed with a bile leak. Dr. Nadir Adam performed surgery to remove her gall bladder. Following complications, including a bile leak and additional surgeries, Zaragoza sued Dr. Adam for medical malpractice. Dr. Adam filed a motion for summary judgment, which was supported by a medical expert declaration stating that Dr. Adam performed the surgery within the standard of care and that Zaragoza's complications were caused by a subsequent surgery performed by another doctor. Zaragoza did not file an opposing medical expert declaration but argued that Dr. Adam's supporting declaration was inadequate. The trial court granted summary judgment for Dr. Adam, and Zaragoza appealed.
The Court of Appeal reversed, holding that Dr. Adam failed to meet his initial burden of showing the absence of a triable issue of fact and directed the trial court to deny the summary judgment motion. The court found that the medical expert's declaration was too conclusory because it lacked factual details and a reasoned explanation for his opinions.

For example, the medical expert failed to explain what acts constitute due care when performing gallbladder removal surgery, how they are related to preventing a bile leak, or how he determined that the bile leak was not due to surgical error. The court also rejected Dr. Adam's argument that the expert declaration was adequate in light of Zaragoza's failure to articulate any specific factual basis for her claim that Dr. Adams was negligent, explaining that plaintiffs need not allege negligence claims with particularity.

Court of Appeal Upholds Dismissal of Fairchild Medical Center's Suit Against Siskiyou County Over 5150 Patients

Siskiyou Hospital, Inc. v. County of Siskiyou (Feb. 25, 2025, C097671, C098311) __ Cal.App.5th __ [2025 WL 601168]

Siskiyou Hospital, Inc., doing business as Fairchild Medical Center (Fairchild), sued the County of Siskiyou, challenging the County's practice of bringing individuals with psychiatric emergencies to its emergency department under section 5150 of the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, § 5000 et seq.). Section 5150 provides that persons who pose a danger to themselves or others because of a mental disorder may be taken to "a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services" or an acute care hospital. Fairchild sought an order preventing the County from bringing 5150 patients to its emergency department and requiring those persons to be held for up to 72 hours when they require specialty mental health services and treatment but not any emergency care for a physical ailment. Fairchild also sought damages for breach of an implied contract to pay Fairchild's full billed charges for its services to the 5150 patients and a traditional writ of mandate, alleging violations of the LPS Act, section 17000 of the Welfare and Institutions Code, Medicaid laws, disability discrimination laws, and mental health parity laws. The trial court sustained the County's demurrers without leave to amend and denied Fairchild's motion for a preliminary injunction. Fairchild appealed.

The Court of Appeal affirmed the trial court's judgment of dismissal. The court held that, because Fairchild's complaint identified no mandatory or ministerial duty that the County had failed to perform, a writ of mandate was unavailable; and no alleged fact supported an implied agreement that the County would pay Fairchild's full billed charges.

The court dismissed as moot Fairchild's appeal from the denial of injunctive relief because no viable cause of action supported its request for a preliminary injunction.

Department of Health Care Services' Medi-Cal overpayment formula may be void as an unlawful underground regulation.

California Healthcare & Rehabilitation Center v. Baass (Feb. 11, 2025, C098043) _ Cal.App.5th _ [2025 WL 751429]

A group of skilled nursing facilities challenged the Department of Health Care Services' (DHCS) formula for calculating Medi-Cal reimbursement overpayments. Some patients who are covered by both Medi-Cal and Medicare may receive both general subacute services and ancillary services. Medi-Cal pays facilities an all-inclusive per-diem rate while Medicare pays on a per-item basis, which may result in duplicate payments. The facilities filed a petition for traditional (as opposed to administrative) writ of mandate and a complaint for declaratory relief, arguing that DHCS violated a ministerial duty and adopted a reimbursement regulation in violation of the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) by utilizing an overpayment formula based on the amount Medicare paid for ancillary services instead of the amount Medi-Cal overpaid for those services. They asserted that DHCS's formula was an unlawful underground regulation because it was adopted in violation of APA requirements. The trial court sustained DHCS's demurrer without leave to amend, ruling the plaintiffs' claim was not cognizable in a writ of mandate proceeding and that plaintiffs failed to state a claim that DHCS adopted an underground regulation.

The Court of Appeal reversed and remanded for further proceedings. The court explained that a writ of mandate applies to challenge an agency's quasi-legislative decision to formulate a rule that applies to all future cases, holding that agencies are required to follow the APA when adopting regulations. An agency policy is a regulation subject to the APA if (1) the agency intends its rule to apply generally, such that it declares how a certain class of cases will be decided; and (2) the rule implements, interprets, or makes specific the law enforced or administered by the agency, or governs the agency's procedure. Here, plaintiffs adequately alleged that the DHCS reimbursement rule applied generally to calculate Medi-Cal reimbursement overpayments for all ancillary services using the entirety of the Medicare reimbursement as the Medi-Cal reimbursement overpayment regardless whether the contracted Medi-Cal per diem rate fully compensated the facilities for the actual cost of the services provided to particular patients. Plaintiffs also adequately alleged that the challenged rule implemented overpayment laws that the DHCS administers. And plaintiffs had sufficiently pleaded that the overpayment formula constitutes an underground regulation because the DHCS had not complied with the APA before utilizing the overpayment formula. Finally, the court held that the facilities did not need to exhaust any administrative remedies before challenging the DHCS overpayment formula as an unlawful underground regulation.

The California False Claims Act's retaliation provision does not apply to public entities, but Health and Safety Code section 1278.5 does.

Ryan v. County of Los Angeles (Feb. 28, 2025, B320677) __ Cal.App.5th __ [2025 WL 653610]

Dr. Timothy Ryan was a vascular surgeon on the Harbor-UCLA Medical Center's medical staff. In late 2013, he treated a patient with medication, believing surgery was unnecessary. He was then copied on an email suggesting the patient was coached to return to the emergency room feigning chest pain. The patient did so and underwent surgery, during which she suffered a stroke. Dr. Ryan believed that the Chief of Vascular Surgery had encouraged the surgery because he received financial incentives from a stent manufacturer, and that he falsified the patient's medical records to justify the surgery. Dr. Ryan reported his concerns to several County of Los Angeles officials. More than a year later, the vascular surgery chief sent a letter to the medical center's Professional Staff Association (PSA) asking it to take action against Dr. Ryan for engaging in unprofessional, disruptive conduct that was deleterious to Medical Center operations, including improperly seeking confidential medical records of the chief's patients, attempting to read the chief's files, and engaging in a "continuing pattern of harassment." During the ensuing investigation, Dr. Ryan's staff privileges came up for renewal, but he refused to reapply because the application included release-of-liability provisions. After several extensions of the application deadline, the medical center terminated Dr. Ryan because his staff privileges had lapsed and were not renewed.

Dr. Ryan sued the County for retaliation in violation of Health and Safety Code section 1278.5, Labor Code section 1102.5, and the California False Claims Act (CFCA; Gov. Code, § 12650 et seq.). After the trial court sustained the County's demurrer to the Health and Safety Code claim, a jury found for the County on Dr. Ryan's Labor Code claim and for Dr. Ryan on his CFCA claim, awarding him $2.1 million. The trial court awarded Dr. Ryan costs and attorney fees totaling more than $3.2 million. Both Dr. Ryan and the County appealed.

The Court of Appeal affirmed in part and reversed in part. The court held the County was entitled to judgment on Dr. Ryan's CFCA anti-retaliation claim (Gov. Code, § 12653). The court explained that, under Wells v. One2One Learning Foundation (2006) 39 Cal.4th 1164, public entities may not be sued under the CFCA for submitting false claims. It followed that a section 12653 claim for retaliation based on false claims actionable under the CFCA likewise cannot be pursued against public entities. Because the CFCA claim was the only cause of action Ryan prevailed on, the Court of Appeal also reversed the award of attorney fees and costs.

The court then held that the trial court erred by sustaining the County's demurrer to Dr. Ryan's Health and Safety Code section 1278.5 claim. Section 1278.5 prohibits discrimination and retaliation against a whistleblower by a health facility. The statutory definition of "health facilities" includes some public entities while excluding others. These provisions would have been unnecessary if the Legislature had intended to exclude all publicly owned hospitals from section 1278.5 claims, as the trial court ruled. The court therefore remanded for further proceedings on Dr. Ryan's section 1278.5 claim.

Indictment for violation of the anti-kickback statute need not negate the "bona fide employment" safe harbor affirmative defense.

United States v. Enriquez, __ F.4th __, No. 23-4424, 2025 WL 838279 (9th Cir. March 18, 2025).

Pharmacy technician Juan Enriquez was indicted by federal prosecutors for receiving, and conspiring with his employer to receive, kickbacks in exchange for referring Medicare and Medi-Cal beneficiaries to his employer's pharmacies in violation of the anti-kickback statute (AKS), 18 U.S.C. § 371. He moved to dismiss the indictment for lack of specificity and failure to state an offense because it did not negate the AKS safe harbor exception for a bona fide employment relationship. 42 U.S.C. § 1320a-7b(b)(3)(B). After the district court denied the motion, Enriquez pleaded guilty while reserving his right to appeal and appealed to the Ninth Circuit.

The Ninth Circuit affirmed, rejecting Enriquez's reliance on Ruan v. United States, 597 U.S. 450 (2022). The court distinguished Ruan because it concerned a safe harbor provision in the Controlled Substances Act (CSA). The CSA prohibits the knowing or intentional manufacture, distribution, or dispensing of controlled substances, "except as authorized," a clause that protects doctors who lawfully prescribe them for medical purposes. Thus, the CSA includes its authorization exception, mens rea clause, and prohibited act in a single provision, while the AKS has a separate subsection listing numerous safe harbor provisions distinct from the prohibited conduct. Therefore, while the CSA exception functions as an element that the government must prove beyond a reasonable doubt, the AKS exceptions are affirmative defenses that need not be pleaded in an indictment.

Thus, the government was not required to disprove, at the indictment stage, the bona fide employment relationship exception to the AKS offense that was adequately charged against Enriquez.

The burden of proving causation may shift to a physician whose alleged medical malpractice is responsible for the absence of evidence proving causation.

Montoya v. Superior Court (Feb. 28, 2025, G064459) __ Cal. App.5th __, 2025 WL 654642, ordered published March 21, 2025

Kimberly Montoya filed a medical malpractice lawsuit against Dr. Aaron Fowler, alleging that he negligently failed to order a CT scan, despite observing signs of potential stroke, at a time when she might have been a candidate for treatment to reduce the long-term damage from her stroke. Shortly before trial, the trial court denied Montoya's request for a burden-shifting jury instruction on the issue of causation, and Montoya sought writ relief.

The Court of Appeal stayed the trial and issued a writ of mandate directing the trial court to vacate its order denying Montoya's proposed instruction and to reconsider whether to give such an instruction based on the evidence introduced at trial. The court explained that the burden of proving causation may shift to the defendant when evidence establishes that the defendant's alleged negligence makes it practically impossible for plaintiff to prove causation due to a lack of critical evidence. In such circumstances, " 'it is more appropriate to hold the defendant liable than to deny an innocent plaintiff recovery, unless the defendant can prove that his negligence was not a cause of the injury.' " Shifting the burden of proof on causation prevents a negligent defendant from taking advantage of the lack of proof resulting from his own negligence.