APPELLATE CASE SUMMARIES

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ISSUE CLASS COULD BE CERTIFIED TO ADDRESS HOSPITAL'S BILLING OF UNINSURED PATIENTS AT CHARGEMASTER RATES

Sarun v. Dignity Health (Nov. 12, 2019, B288062) __ Cal.App.5th __ [2019 WL 5883550]

Following an automobile accident, plaintiff Tony Sarun received emergency care at Northridge Hospital Medical Center. Sarun, who had no health insurance, signed an agreement requiring him to pay the hospital's "full charges, unless other discounts apply." "Full charges" were defined as "the Hospital's published rates (called the chargemaster), prior to any discounts or reductions." After receiving an invoice reflecting chargemaster rates and an "uninsured discount," Sarun filed a putative class action alleging unfair or deceptive business practices under the UCL and violations of the Consumers Legal Remedies Act. Sarun claimed that the hospital's billing practices and prices were not adequately disclosed or readily ascertainable, and that its admissions contract contained an "open price" term (see Civ. Code, § 1611), making self-pay patients liable only for the reasonable value of the services provided. Sarun moved to certify a class of individuals who had received treatment at the hospital and were billed at chargemaster rates (with or without an uninsured discount). The trial court denied certification, ruling that (1) the class was not ascertainable, (2) common issues of fact did not predominate, and (3) a class action was neither manageable nor a superior method for resolving the litigation. The trial court did not address Sarun's alternative request for certification of an issue class limited to whether the hospital's admissions contract included an "open price" term.

The Court of Appeal reversed in part. The court modified the class definition to cover uninsured individuals who received emergency care, signed the admissions contract, and were directly billed at chargemaster rates (with or without the uninsured discount). The court then directed the trial court to certify an issue class regarding whether the hospital's admissions contract contained an open price term. First, the Court of Appeal explained that the trial court had used an unduly restrictive standard in finding the class was not ascertainable. Here, the class was ascertainable because its members could ultimately be identified based on objective characteristics, even if their identities were unknown at the class certification stage. Second, there was no need for the trial court to determine whether the hospital's chargemaster rates were unreasonable; that issue could be litigated in follow-on damages litigation. And since all patients signed the identical admissions contract, the "open price" term issue was susceptible to class-wide adjudication. Finally, the Court of Appeal restricted the class to uninsured emergency care patients at the hospital, which cabined the trial court's manageability concerns.

THE "REASONABLE LICENSEE DEFENSE" EXCUSES A LICENSEE WHO VIOLATES (BUT ACTS REASONABLY TO COMPLY WITH) A REGULATION OR STATUTE

RSCR Inland, Inc. v. State Department of Public Health (Nov. 15, 2019, E067614) __ Cal.App.5th __ [2019 WL 6112497]

A resident at ResCare, a long-term health care facility, developed a history of maladaptive and self-injurious behavior. However, his physicians did not classify him as a suicide risk and did not order any special measures beyond medication. Although ResCare had nursing care and behavior plans in place and monitored the resident frequently, he choked to death on a small towel left within his reach. The Department of Public Health cited ResCare for violating two regulations (Cal. Code Regs., tit. 22, §§ 76918, subd. (a), 76875, subd. (a)(2)) by failing to ensure that the resident was free from neglect and protected from injuring himself. ResCare sued the Department to challenge the citation. The trial court ruled that the Department had proved the elements supporting the citation because the nursing care plan had not been followed in several respects. The trial court also rejected ResCare's argument that the Department had failed to comply with a statutory exit conference requirement. The trial court nevertheless dismissed the citation after finding that ResCare had established the "reasonable licensee defense"—it "did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation[s]" (see Health & Saf. Code, § 1424, subd. (c))—because it had been attentive to the resident and attempted to ensure his safety. The Department appealed.

The Court of Appeal affirmed, rejecting the Department's narrow construction of the "reasonable licensee defense" that would limit its application to noncompliance justified by an emergency or special circumstances beyond the licensee's control, or where compliance would create a greater risk of harm. As the court explained, the defense may be asserted when both the licensee and its agents act reasonably to comply with pertinent regulations or statutes. Here, substantial evidence supported the trial court's determination that ResCare and its agents acted reasonably, even though the direct care staff did not implement the nursing care plan perfectly and their efforts to eliminate all potential choking hazards were unsuccessful.

PRIVATE HOSPITALS MAY APPOINT PEER REVIEW HEARING OFFICERS FOR MULTIPLE MATTERS IF THEY LACK A DIRECT FINANCIAL INTEREST IN THE PROCEEDINGS

Natarajan v. Dignity Health (Oct. 22, 2019, C085906) __Cal.App.5th __ [2019 WL 5387284], ordered published Nov. 20, 2019

Dr. Sundar Natarajan, a hospitalist at St. Joseph's Medical Center of Stockton (a Dignity facility), had difficulty completing timely medical records. When the problems persisted despite a warning by the medical executive committee, a committee was assigned to investigate. The investigatory committee confirmed Dr. Natarajan's record keeping problems, identified additional problems regarding untimely responses while on call and the length of patients' stays, and recommended that that the medical executive committee revoke Dr. Natarajan's medical staff privileges. The executive committee adopted that recommendation and Dr. Natarajan appealed to the hospital's peer review committee.

The medical staff delegated the authority to appoint a peer review hearing officer to the hospital's president, who appointed Robert Singer—a semiretired attorney who worked exclusively as a medical peer review hearing officer at various hospitals. Singer required that his contract bar St. Joseph's from appointing him in another peer review proceeding for three years. Singer had served as the hearing officer in seven peer review proceedings at other Dignity Health hospitals and was appointed to two more after Dr. Natarajan's proceeding—however, none involved St. Joseph's. Singer denied Dr. Natarajan's request that he recuse himself. After a year of evidentiary hearings, the review committee adopted the executive committee's decision to revoke Dr. Natarajan's privileges. Dr. Natarajan appealed that decision to St. Joseph's governing board, which affirmed.

Dr. Natarajan filed a petition for a writ of administrative mandate, but his petition did not contest the sufficiency of the evidence. Dr. Natarajan argued only that he had been denied a fair proceeding because (1) Singer's relationship with Dignity created an unacceptable risk of bias based on his pecuniary interest in future employment, and (2) the decision to revoke his privileges was not based on objective standards. The trial court denied the petition and Dr. Natarajan appealed.

The Court of Appeal affirmed, rejecting Dr. Natarajan's contention that he was denied a fair procedure because Singer's relationship with Dignity hospitals created

an unacceptable risk of possible bias. The Court of Appeal explained that, while constitutional due process (which applies only to public entities) can be violated by the appearance of bias, fair procedure (which applies to private entities such as St. Joseph's) only forbids a direct financial interest in the outcome of the proceeding. (See Bus. & Proc. Code, § 809.2, subd. (b).) Because Dr. Natarajan failed to establish that Singer had a direct financial interest in the peer review proceeding, his fair procedure challenge failed. The Court further held that the hospital based its decision to revoke Dr. Natarajan's privileges on sufficiently objective criteria that were uniformly applied.

CALIFORNIA'S RIGHT TO PRIVACY MAY OVERRIDE SOME CANRA REPORTING DUTIES

Mathews v. Becerra (Dec. 26, 2019, S240156) __ Cal.5th __ [2019 WL 7176898]

The Child Abuse and Neglect Reporting Act (CANRA) requires mandated reporters (e.g., marriage and family therapists, psychologists, and drug and alcohol counselors) to report incidents of suspected "child abuse or neglect," including "sexual abuse" and "sexual exploitation." In 2014, Assembly Bill 1775 (AB1775) expanded the definition of "sexual exploitation" to include "[a] person who depicts a child in, or who knowingly develops, duplicates, prints, downloads, streams, accesses through any electronic or digital media, or exchanges, a film, photograph, videotape, video recording, negative, or slide in which a child is engaged in an act of obscene sexual conduct." Therapists filed suit alleging that AB1775 (particularly the highlighted portions) violates their patients' constitutional right to privacy. They alleged that statements by their sexual disorder patients during treatment about downloading and viewing child pornography are confidential, that maintaining confidentiality is essential to treatment, and that the patients pose no serious danger of engaging in "hands-on" sexual abuse or exploitation. The therapists alleged that requiring them to report their patients for possessing or viewing child pornography fails to further CANRA's purpose of identifying and protecting abused children and disincentivizes patients with sexual disorders or addictions from seeking treatment.

The trial court sustained without leave to amend the demurrers of the Attorney General and Los Angeles County District Attorney, ruling that there is neither a fundamental right to possess or view child pornography nor a reasonable expectation of absolute privacy in psychotherapeutic treatment, and that the reporting requirements do not amount to a serious invasion of privacy. The Court of Appeal affirmed, holding that the therapists had failed to state a valid privacy claim under the California Constitution.

The California Supreme Court reversed, holding that the state constitutional right to privacy might override the therapists' CANRA reporting duties in the limited circumstances of this case. While not making a final determination regarding the constitutionality of AB1775, the court held that the therapists' complaint survived the demurrers under the framework in Hill v. National Collegiate Athletic Assn. (1994) 7 Cal.4th 1. First, the court held the therapists asserted a cognizable privacy interest regarding their patients' disclosures during voluntary psychotherapy about downloading and electronically viewing child pornography, where the therapists had determined that their patients do not present a serious risk of sexual contact with children or active distribution of child pornography. Second, the patients have a reasonable expectation of privacy regarding communications to therapists about possessing or viewing child pornography. Third, the reporting requirement is a serious invasion of privacy due to the scope and potential impact of disclosing some of the most intimate aspects of human thought to various agencies, which necessarily triggers further investigations and possible criminal prosecution and sex offender registration.

The Court did not strike the ultimate balance to determine if the AB1775 reporting requirement was constitutionally justified. Instead, the Court remanded for further factual development designed to draw out whether the statute serves its intended purpose. In addition, "the parties may develop evidence on a variety of relevant issues, including but not limited to the number of reports that psychotherapists have made regarding the possession or viewing of child pornography since the 2014 amendment; whether the reports have facilitated criminal prosecutions, reduced the market for child pornography, aided the identification or rescue of exploited children, or otherwise prevented harm to children; . . . whether there are less

intrusive means to accomplish the statute's objectives . . . [and] the extent to which the reporting requirement deters psychotherapy patients from seeking treatment for sexual disorders, inhibits candid communication by such patients during treatment, or otherwise compromises the practical accessibility or efficacy of treatment."

STATE-SET RATES APPLY TO OUT-OF-NETWORK INPATIENT POSTSTABILIZATION CARE

Dignity Health v. Local Initiative Health Care Authority of Los Angeles County (Jan. 9, 2020, B288886) __ Cal.App.5th __ [2020 WL 103353]

Local Initiative Health Care Authority of Los Angeles County (LA Care) operates a managed care plan that provides health coverage under Medi-Cal, California's Medicaid program. Dignity Health operates Northridge Hospital, which did not have an inpatient service contract with LA Care during the relevant time period. Dignity provided inpatient poststabilization services to LA Care patients and sought reimbursement from LA Care at its full rates. LA Care paid Dignity at lower state-set rates known as "All Patient Refined Diagnosis Related Group"(APR-DRG). Dignity sued, alleging that LA Care's failure to pay its full rates breached an implied contract and violated Health and Safety Code sections 1262.8 and 1371.4. Dignity moved for summary judgment, arguing that the inpatient treatment constitutes"managed care inpatient days,"which is exempt from APR-DRG rates under Welfare and Institutions Code section 14105.28, subdivision (b)(1)(B) (section 14105.28). LA Care also moved for summary judgment, contending that federal law and section 14105.28, as construed by the Department Health Care Services (DHCS), require payment of APR-DRG rates for out-of-network poststabilization services to managed care patients.

The trial court granted summary judgment for LA Care. The court ruled that federal regulations require Medicaid managed care plans to pay state-set rates for out-of-network poststabilization services. The court also deferred to the DHCS interpretation of section 14105.28—that in-network services alone are excluded from APR-DRG rates—because in-network services already have contracted rates. Dignity appealed.

The Court of Appeal affirmed on a different basis. First, the court determined that the term"managed care inpatient days" in the section 14105.28 exemption from APR-DRG rates is ambiguous. That phrase reasonably could mean either (1) any inpatient services for which a managed care plan is financially responsible, as Dignity contended, or (2) care provided under a contract between a managed care plan and an in-network provider, as LA Care contended. However, the court concluded that the legislative history and text of section 14105.28 and former Welfare and Institutions Code section 14091.3 reveal the Legislature's intent that state-defined rates, which previously applied under former section 14091.3, now apply under the new APR-DRG methodology. Thus, the trial court correctly court determined that the"managed care inpatient days" exclusion in section 14105.28 applied only to in-network care, and therefore out-of-network inpatient poststabilization care is subject to APR-DRG rates. The court did not decide whether federal law requires the same outcome or whether DHCS's interpretation must be given deference.