

California Court of Appeal Limits Scope of Patient Rights Claims in Elder Abuse Cases

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In recent years, elder abuse cases have become more dangerous and costly. It is not unusual for juries to return verdicts against skilled nursing homes (“SNFs”) for millions of dollars. A new decision from the California Court of Appeal is a positive development for SNFs and their defense attorneys as it may eliminate the use of certain theories and tactics historically utilized in prosecuting elder abuse and negligence cases.

In the recently-published case of *Samuel Nevarrez v. San Marino*

Skilled Nursing and Wellness Centre, et al., involving a former resident’s claims for elder abuse, negligence, and violation of Patient’s Bill of Rights against SNF operators, a California Court of Appeal held that the statutory remedy against a SNF for violations of the patient bill of rights is capped at a maximum of \$500, *regardless* of the *number* of rights violated and the *number of times* violations occurred. Also, the Court of Appeal held that the trial court abused its discretion in admitting a class “A” citation into evidence. The Court of

Appeal upheld its ruling even after it reheard the matter on November 4, 2013 and the California Supreme Court has denied review.

The factual background of the *San Marino* case is representative of a typical elder abuse case. Nevarrez was an elderly patient who had a high risk for falls. While at the SNF, Nevarrez fell over 10 times. In his most serious fall, Nevarrez hit his head on a wall, underwent brain surgery for a subdural hematoma, and later had a stroke. Subsequently, the SNF self-reported the incident to the California Department of Public Health (“CDPH”), which investigated and issued a class “A” citation to the facility for failing to prevent Nevarrez’s fall. Nevarrez died during the litigation and his wife substituted in as the plaintiff.

The \$500 Cap on Health and Safety Code Section 1430(b) Violations

Background

Section 1430(b) provides that a resident or former resident of a SNF “may bring a civil action against the licensee of a facility who violates any rights of the resident or patient

as set forth in the Patient's Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations, or any other right provided for by federal or state law or regulation." The statute goes on to provide that, "[t]he licensee shall be liable for up to five hundred dollars (\$500), and for costs and attorney fees, and may be enjoined from permitting the violation to continue." Although Section 72527 specifically identifies only 23 "rights," the number of rights are far more numerous than that given that other rights provided by other laws and regulations may also be actionable.

Case

The trial court had awarded the *San Marino* plaintiff \$7,000 in civil penalties for each of the 14 violations of the Patient's Bill of Rights that the jury had found. The Court of Appeal reversed the entire award finding it excessive and not in accordance with the statute. The Court, applying a plain reading of the statute, stated that the "statutory language indicates \$500 is the maximum that can be recovered in a civil action under this provision, regardless of how many rights are violated or whether such rights are violated repeatedly. The statutory language also indicates that \$500 is not intended to be a flat penalty, but rather the maximum amount in a range of possible penalties" (emphasis added).

Significance

For years, section 1430(b) has been used by plaintiffs' attorneys as a powerful sword in elder abuse and

negligence cases. Plaintiffs' lawyers have long taken the position that plaintiffs were entitled to \$500 for each and every occurrence of a violation, along with attorney fees. Courts, juries, and nursing home advocates throughout California have historically been receptive to this interpretation and plaintiffs have been awarded significant amounts under the statute.

The *San Marino* case is significant because the Court of Appeal interpreted the statute to cap a plaintiff's recovery at \$500 maximum. While the Court of Appeal did not place an explicit cap on the recovery of attorney fees under the statute, in light of the ruling, it seems clear that recoverable attorney fees will now be based on the court's interpretation of the statute, which will limit recovery to proving the violation of patient rights without regard to numerosity.

Prejudicial Error in Admitting Citation

Background

CDPH has the authority to issue citations to SNFs that are determined to have violated state or federal laws or regulations. Citations are administrative penalties and monetary fines that become part of the facility's public record. Various citation classes can be issued depending on the severity of the violation.

Case

In *San Marino*, the Court of Appeal held that the trial court abused its

discretion in admitting the class "A" citation and that the citation was improperly used to taint the jury's finding of elder abuse and negligence where the "citation was offered essentially as an endorsement by the government of Nevarrez's case against [the nursing home]" and where it was used to "predetermine the case and confuse the jury." The Court of Appeal also confirmed that plans of correction are inadmissible under Health and Safety Code section 1280(f) and Evidence Code section 1151.

Significance

A universal tactic by plaintiff's attorneys is to seek admission of citations in elder abuse and negligence cases. Often, the plaintiff's lawyer would orchestrate the citation's issuance in the first place, by initiating a complaint with CDPH, which would result in the citation actually being issued. In reversing the jury's finding of elder abuse and negligence, the *San Marino* decision hampers the ability of plaintiff lawyers to use citations to prove liability.

Conclusion

The *San Marino* case constitutes a positive development for the California nursing home industry because its holdings undermine the continued use of certain aggressive tactics by plaintiffs and will help limit recovery in elder abuse cases.

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