

MEDICAL DEFENSE AND HEALTH LAW

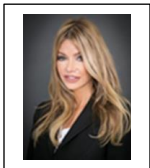
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IN THIS ISSUE

In a long-awaited California Supreme Court decision, the high court found in favor of skilled nursing facilities on an issue that would have resulted in a devastating blow to the industry by dramatically increasing potential damages and ultimately, increasing claims.

Industry Under Attack Scores Important Win in California Supreme Court

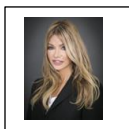
ABOUT THE AUTHOR



Constance A. Endelicato is an accomplished trial lawyer with over 30 years of litigation experience in defending professional liability claims. She defends physicians, hospitals, and skilled nursing facilities, as well as legal and accounting professionals, among other service providers. She also defends physicians in Medical Board of California licensure matters and hospital and long-term care employers in wrongful termination and discrimination actions. She is experienced in handling class actions, mass tort litigation, appellate and federal matters. She is admitted to practice in the United States District Court, Central, Northern, and Southern Districts of California. She is an active member of the IADC Medical Defense and Health Law Committee and acts as Vice Chair of Newsletters. She can be reached at cendelicato@wshblaw.com.

ABOUT THE COMMITTEE

The Medical Defense and Health Law Committee serves all members who represent physicians, hospitals and other healthcare providers and entities in medical malpractice actions. The Committee added a subcommittee for nursing home defense. Committee members publish monthly newsletters and *Journal* articles and present educational seminars for the IADC membership at large. Members also regularly present committee meeting seminars on matters of current interest, which includes open discussion and input from members at the meeting. Committee members share and exchange information regarding experts, new plaintiff theories, discovery issues and strategy at meetings and via newsletters and e-mail. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article contact:



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Jarman v. HCR ManorCare, Inc.

In a much anticipated decision, California's highest court held this week that a statutory penalty of \$500 for Patients' Bill of Rights violation claims brought by residents of skilled nursing and intermediate care facilities will be capped at \$500 per cause of action, rather than by each individual regulatory violation. In doing so, the High Court reversed the underlying decision which involved an award of the statutory penalty to each of 382 alleged separate violations. This decision is highly favorable to the skilled nursing industry given that an affirmative ruling would have likely resulted in a new influx of litigation and would have increased the potential exposure.

Why This Case is Important

The impact of this long-awaited decision in *Jarman v. HCR ManorCare, Inc* is critical in preventing what would have been a foreseeable influx of suits against these facilities had the high court ruled to uphold the decision. The ability to establish a violation of a patient's right is readily achievable due to its simplicity in comparison to the more esoteric abuse or neglect claim. In this regard, it is relatively akin to strict liability and the added benefit of attorneys' fees would have resulted in allegations of multiple violations. As it now stands, the facilities can immediately move to resolve the Cause of Action by payment of the \$500 penalty and prevent the accumulation of attorneys' fees.

Understanding the Statute: Single Versus Multiple Penalties for Violations

Health and Safety Code Section 1430(b) was first enacted in 1982 and amended in 2004. The statute affords residents of skilled nursing and intermediate care facilities the right to bring legal action for violations of their "patient rights." These rights are enumerated in California Code of Regulations, Title 22, Section 72527, and elsewhere at Health and Safety Code Section 1599.1; and Welfare and Institutions Code, Sections 4502, 4503, 4505, 5325, 5325.1. These rights include the right of the resident to be fully informed as to his or her health status, to consent to or refuse treatment, to be free from discrimination, to be free from abuse or neglect, to have established daily visiting hours, and to have reasonable access to telephones to make or receive confidential calls, to name just a few.

Under the statute, if a resident establishes that one or more of his or her rights were violated during admission to the facility, the resident can obtain up to \$500 in statutory damages, in addition to costs and "reasonable" attorney's fees. However, due to the vague language of this statute, we have seen a vast discrepancy in awards obtained by plaintiffs in trial courts across California, ranging from \$500 to hundreds of thousands of dollars for the single cause of action for Violation of Patients' Bill of Rights. The discrepancy has resulted from the lack of clarity regarding whether the legislature

intended there to be a \$500 monetary penalty for each violation or one penalty awarded for the cause of action.

For years, Plaintiffs' attorneys had been arguing that multiple \$500 awards were available under the statute, either by identifying numerous separate and distinct patient rights that were violated, or by multiplying the \$500 penalty by the number of days the patient had been residing in the facility. This "multiplier" approach resulted in damages awards far higher than what appeared to be available on the face of the statute.

The state's Supreme Court was tasked with determining whether the California Court of Appeal, Fourth District, was correct in upholding a jury award that included \$95,500 in penalties for multiple violations of the Patient's Bill of Rights, awarding \$250 for each individual violation.

Supreme Court Resolves Issue: \$500 Single Cap Versus Multipliers

On August 17, 2020, the California Supreme Court rendered its decision of the case of *Jarman v. HCR ManorCare, Inc.* and concluded that only a single \$500 penalty award is available per resident under the statute. The Court acknowledged that 1430(b) provides little guidance and fails to distinguish the manner in which to determine the monetary recovery for a wide range of patients' rights. The majority

argued that there is a clear difference in severity between violations such as prohibiting private phone calls and subjecting a patient to physical abuse. Yet, many other rights would not be readily distinguishable. The Court further found that statutory construction and legislative history support the notion that the legislature intended to establish a single \$500 capped award per action, rather than per violation.

Additionally, the Court pointed out that Section 1430(b) was never intended to be the exclusive mechanism for compensating residents who were subject to untoward care and treatment at these facilities. Other statutory remedial provisions, such as the Elder and Dependent Adult Civil Protection Act, are specifically designed to address neglect or abuse against elderly individuals. The court reasoned that the "per violation" approach proposed by Plaintiff presents additional difficulties in determining the number of violations a care facility committed, especially when juries, like the one in *Jarman*, fail to elaborate upon which specific right or rights were violated and the actual number of occurrences.

With the many additional challenges that our skilled and intermediate care providers are currently faced with during this time of pandemic crisis, this decision provides a brief moment for sigh of relief.

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Constance A. Endelicato

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Erik W. Legg