ASCDC
ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL

NewsFlash

May 25, 2016

Last week in *Winn v. Pioneer Medical Group* (May 19, 2016, S211793) the California Supreme Court announced its unanimous opinion (authored by Justice Cuellar) holding that: "Plaintiffs cannot bring a claim of neglect [against doctors and health care facilities] under the Elder Abuse Act unless the defendant health care provider has a caretaking or custodial relationship with the elder or dependent adult."
Link: http://www.courts.ca.gov/opinions/documents/S211793.PDF

Winn rejected the attempt to circumvent MICRA protections in lawsuits against medical providers, reasoning that a plaintiff may not simply "label" a cause of action for garden-variety medical negligence as "elder abuse." In so doing, the Supreme Court emphasized that the enhanced remedies (including attorney fees, survivor and unlimited general damages), and longer statute of limitations, provided by the Elder Abuse Act requires heightened proof of reckless and egregious mistreatment of elder and dependent adults occurring in a *custodial* setting. As Justice Cuellar wrote for the court,

> [The Elder Abuse Act is] premised on the idea that certain situations place elders and dependent adults at heightened risk of harm, and heightened remedies relative to conventional tort remedies are appropriate as a consequence …. Blurring the distinction between neglect under the Act and conduct actionable under ordinary tort remedies — even in the absence of a care or custody relationship — risks undermining the Act's central premise. Accordingly, plaintiffs alleging professional negligence may seek certain tort remedies, though not the heightened remedies available under the Elder Abuse Act. (See, e.g., Code Civ. Proc., § 377.34 [generally limiting recovery of predeath pain and suffering damages].)

This is another significant recent victory for ASCDC members and our Amicus Committee. Cole Pedroza LLP and Carroll Kelly Franzen McKenna & Peabody represented Pioneer and its medical providers in the trial court and on appeal. ASCDC's Amicus Committee supported the defense team's successful petition for review in 2013, and Harry Chamberlain of Buchalter Nemer wrote ASCDC's amicus brief urging the interpretation adopted by the Court once review was granted. *Winn* gives great deference to the plain meaning of statutory language; making clear that judicial legislation or regulation are not allowed where the Legislature has spoken.

ASCDC and our members are at the leading edge of the most important developments in the California courts and the Legislature. Whether your case involves the proper interpretation of the statute of limitation for actions against attorneys (*Lee v. Hanley* (2015) 61 Cal.4th 1225); the definition of "professional negligence" in lawsuits against medical providers (*Flores v. Presbyterian Intercommunity Hospital* (May 5, 2016, No. S209836)); proof of "economic damages" (*Howell v. Hamilton Meats* (2011) 52 Cal.4th 541) or the scope of privileged "attorney work-product" (*Fireman's Fund Ins. Co. v. Superior Court* (2011) 196 Cal.App.4th 1263)—ASCDC's Amicus Committee is there to support our membership and your clients in shaping California law.

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