



# Appellate Reports

## *Flores v. Presbyterian – Negligent use/maintenance of certain medical equipment is subject to MICRA limitations*

BY JEFFREY I. EHRLICH

### ***Flores v. Presbyterian Intercommunity Hospital***

(2016) \_\_ Cal.4th \_\_ (Cal. Supreme)

**Who needs to know about this case:**

Lawyers bringing personal-injury claims against health-care providers subject to MICRA.

**Why it's important:** Holds that negligence in the use and maintenance of equipment used to implement a doctor's order concerning medical treatment constitutes "professional negligence" under MICRA and is therefore subject to the MICRA statute of limitations (and all other MICRA provisions).

**Synopsis:** Flores was a patient at Presbyterian Intercommunity Hospital (PIH Health). While attempting to get up from her hospital bed, the latch on the bedrail failed and the rail collapsed, causing her to fall to the floor. Just under two years later, she filed suit against PIH Health, alleging claims for general negligence and premises liability. She alleged that defendant had "failed to use reasonable care in maintaining [its] premises," "failed to take reasonable precautions to discover and make safe a dangerous condition on the premises," and "failed to give Plaintiff a reasonable and adequate warning of a dangerous condition so Plaintiff could have avoided foreseeable harm." Flores claimed she suffered injury as a result. The trial court sustained PIH Health's demurrer without leave to amend, as barred by the one-year MICRA statute of limitations, Code Civ. Proc., § 340.5. The Court of Appeal reversed, holding that PIH Health's alleged failure to use reasonable care in maintaining its premises and its alleged failure to take reasonable precautions to make a dangerous condition safe "sounds

in ordinary negligence because the negligence did not occur in the rendering of professional services." The Supreme Court granted review and reversed.

The Court acknowledged that, "our courts have long recognized the dividing line between ordinary negligence and professional malpractice may at times be difficult to place," and that the Courts of Appeal had drawn it differently in cases involving in cases involving alleged negligence in the use or maintenance of hospital equipment or premises.

The Court noted that section 340.5 is not limited to cases involving "those specific tasks that require advanced medical skills and training." It observed that a medical professional or other hospital staff member may commit a negligent act in rendering medical care, thereby causing a patient's injury, even where no particular medical skills were required to complete the task at hand. For example, a hospital's negligent failure to prevent a patient from becoming separated from an oxygen ventilator, for example, occurs in the "rendering of professional services," regardless of whether it becomes disconnected because of an ill-considered decision by a doctor or being bumped by a janitor's broom.

The Court rejected, however, the hospital's proposed rule that "professional negligence" occurs whenever the negligent act violates a state licensing requirement (such as the requirement to keep a hospital premises in good repair.) This approach would transform section 340.5's special rule for professional negligence – i.e., negligence in the rendering of medical care to patients – into an all-purpose rule covering essentially every form of ordinary negligence that happens to occur on hospital property.

The text and purposes underlying section 340.5 instead required the Court to

draw a distinction between the professional obligations of hospitals in the rendering of medical care to their patients and the obligations hospitals have, simply by virtue of operating facilities open to the public, to maintain their premises in a manner that preserves the well-being and safety of all users. The Court adopted the following rule:

Whether negligence in maintaining hospital equipment or premises qualifies as professional negligence depends on the nature of the relationship between the equipment or premises in question and the provision of medical care to the plaintiff. A hospital's negligent failure to maintain equipment that is necessary or otherwise integrally related to the medical treatment and diagnosis of the patient implicates a duty that the hospital owes to a patient by virtue of being a health-care provider. Thus, if the act or omission that led to the plaintiff's injuries was negligence in the maintenance of equipment that, under the prevailing standard of care, was reasonably required to treat or accommodate a physical or mental condition of the patient, the plaintiff's claim is one of professional negligence under section 340.5.

The Court limited its holding to a degree, by noting, "But section 340.5 does not extend to negligence in the maintenance of equipment and premises that are merely convenient for, or incidental to, the provision of medical care to a patient." Examples could include "numerous items of furniture and equipment – tables, televisions, toilets, and so on – that are provided primarily for the comfort and convenience of patients and visitors, but generally play no part in the patient's medical diagnosis or treatment."



## Short(er) takes:

**Specific enforcement of settlement agreements under Code Civ. Proc., § 664.4; conditions precedent; Medicare liens:** *Karpinski v. Smitty's Bar, Inc.* (2016) 246 Cal.App.4th 456 (1st Dist., Div. 2.)

Karpinski sued Smitty's Bar for negligently allowing two intoxicated patrons to stay in the bar and assault him. During a mediation, Karpinski and Smitty's agreed to settle his claim for \$40,000. Karpinski later signed a formal written settlement agreement, which provided that Karpinski would satisfy any outstanding liens. Smitty's refused to pay until Karpinski actually satisfied the liens. He filed a motion to enforce the agreement under section 664.4, which the trial court granted. Affirmed.

Nothing in the settlement agreement demonstrates the existence of a condition precedent to payment of the \$40,000 to Karpinski. Rather, the agreement states that Karpinski will satisfy all liens and indemnify Smitty's, its attorneys, and its insurer with respect to any claim arising under a lien or other obligation. There is no provision that either expressly states or implies that Karpinski must satisfy the liens *before* receipt of the settlement proceeds. The Court held that "public policy does not preclude a court from enforcing a settlement that does not include Medicare as a co-payee on a settlement check where the plaintiff signed a release acknowledging his responsibility to pay any Medicare claim and/or agreeing to indemnify the released parties." If Smitty's and its insurer were so concerned about their potential

liability to Medicare, they could have negotiated for inclusion of terms in the settlement agreement requiring either Karpinski's payment of these obligations as a precondition to receipt of the settlement proceeds or inclusion of Medicare as a payee on the settlement check. Smitty's and its insurer did neither of these things, and must therefore comply with the terms of the agreement as written.

**Attorney's fee applications; in camera inspection of timesheets; due process:** *Yamada v. Nobel Biocare* (9th Cir. 2016) \_\_ F.3d \_\_.

Yamada, a dentist, filed a class action against Nobel alleging that its dental implants were defective. The case settled, and Yamada's counsel filed a motion for attorney's fees, which was granted, awarding \$4.1 million in fees. At the hearing, the district judge noted that the time records provided by counsel were not sufficient to allow the court to make an award. The court allowed counsel to submit unredacted timesheets for *in camera* review, finding that this would be more efficient than hearing disputes over what material was privileged and should be redacted. Reversed.

A party opposing an attorney's fee request has a due process right to see the timesheets on which the court relies in making a fee award. The district court's failure to make the timesheets available to Nobel was an abuse of discretion.

**Code Civ. Proc. § 998; valid and invalid § 998 demands:** *Sanford v. Rasnick* (2016) \_\_ Cal.App.4th \_\_ (1st Dist., Div. 2.)

Sanford was injured in a motorcycle collision with a car driven by Rasnick. Before trial, Rasnick made a \$ 998 offer for \$130,000. The offer included a requirement that Sanford execute and transmit "a written settlement agreement and general release." Sanford declined the offer, went to trial and recovered less than \$130,000. The trial court held that the \$ 998 offer was valid, and awarded expert fees as part of Rasnick's costs. Sanford appealed. Reversed.

None of the terms of the required "settlement agreement" were set forth in the offer, or ever communicated to Sanford while the offer was open. While the law allows a defendant to require a settling plaintiff to execute a "release," a release is not the same as a "settlement agreement." The terms of a settlement agreement can require considerable negotiation. Because the offer required Sanford to agree to a "settlement agreement" without knowing what terms it would include, it was not a valid offer for the purposes of shifting costs under § 998.



Ehrlich

*Jeffrey I. Ehrlich is the principal of the Ehrlich Law Firm, with offices in Encino and Claremont, California. He is a cum laude graduate of the Harvard Law School, a certified appellate specialist by the California Board of Legal Specialization, and a member of the CAALA Board of Governors. He is the editor-in-chief of Advocate magazine and a two-time winner of the CAALA Appellate Lawyer of the Year award.*