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AT LAST GUIDANCE ON WHEN THE STATUTE OF LIMITATIONS EMBODIED IN MICRA IS APPLICABLE

by Larry T. Pleiss

The courts in California regulate lawsuits brought against health care providers, such as acute care hospitals, skilled nursing facilities, and general psychiatric hospitals in the provision of health care services under the Medical Injury Compensation Reform Act of 1975, commonly known as MICRA. Lawsuits brought under the umbrella of MICRA are subject to a number of restrictions including the amount of non-economic damages that can be recovered ($250,000) and the amount of time a potential plaintiff has to file his or her lawsuit.

Previously, the California Supreme Court has addressed the satellite of claims that can accompany a lawsuit for professional negligence, such as elder abuse or intentional torts, to work to resolve the question of whether the restrictions of MICRA extend to these related, but separate claims.[i]

More recently, the Supreme Court has taken a particular interest in the question raised in cases such as *Pouzbaris v. Prime Health Care Services-Anaheim LLP*[ii] and *Flores v. Presbyterian Intercommunity Hospital*[iii]. In the latter case, which just came down from the California Supreme Court, the issue was whether MICRA applied to claims based on accidents or incidents (e.g., in *Pouzbaris*, the plaintiff slipped and fell on a freshly mopped floor and in *Flores*, the plaintiff's bed rail malfunctioned and she fell out) that happen to take place in a hospital but do not appear to have any direct relation to the provision of medical services. The Court held that the limitations period for professional[iv] not ordinary[v] negligence applied to an injury resulting from equipment used to implement physician orders.

Plaintiff, Catherine Flores, sued Presbyterian Intercommunity Hospital for premises liability and negligence, seeking damages for injuries she sustained (more than one year before filing suit) when a side rail on her hospital bed collapsed and she fell to the floor. The hospital demurred, arguing that MICRA's one year statute of limitations for professional negligence barred the action. The trial court sustained the hospital's demurrer without leave to amend. Plaintiff appealed, arguing that the accident amounted to general (not professional) negligence, which is subject to the two-year statute of limitations. The Court of Appeal reversed, holding that the action sounded in general negligence because the bed rail did not collapse while the hospital was rendering professional services.

The Supreme Court reversed the Court of Appeal and reinstated the trial court's order sustaining the demurrer. Each party had proposed a test for distinguishing ordinary from professional negligence based on prior case law, but the Supreme Court rejected the proposals. Instead, the Court focused on distinguishing the professional obligations of hospitals in rendering medical care to patients from their obligations (by virtue of operating public facilities) to maintaining a safe premises for all users. The Court held that, "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." Under this test, the Supreme Court indicated that the professional negligence statute of limitations would not apply if a person was injured when a chair collapsed in a hospital waiting room. But the Court held that the bed rail that collapsed in this case was different because a doctor had assessed plaintiff's condition and made a medical decision ordering the rails on her bed raised. Accordingly, the Court applied the professional negligence statute of limitations, which barred plaintiff's claim. The broad new test adopted by the Supreme Court can be seen as likely to expand MICRA's applicability.

Justice Leondra R. Kruger, writing for the Supreme Court in *Flores,* rejected the hospital's argument that any allegation of violation of the medical licensing requirement, such as the requirement that a medical facility maintain its premises "in good repair," would render the special statute of limitations applicable. The hospital cited *Murillo v. Good Samaritan Hospital*[vi] , in which the court held the one year statute applicable to a fall from bed by a patient who was unable to lie on her back because of the pain of shingles and alleged that the injury was caused by a failure to raise the bed rails.

But while saying the hospital's proposed rule was too broad, Justice Kruger also rejected the plaintiff's argument that Section 340.5 only applies to decisions requiring "a high level of skill."

Justice Kruger cited the history of MICRA with the intent of bringing down malpractice insurance costs by limiting damages in suits over medical negligence. "The text and purposes underlying [MICRA] . . . require us 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 which are open to the public, to maintain their premises in a manner that preserves the well-being and safety of all users." The distinction, Justice Kruger went on to say, renders Flores' complaint untimely.

The plaintiff's briefs, Justice Kruger noted, acknowledged that raising the rails was "a medical decision" made by a treating physician. Flores' "injuries therefore resulted from [the hospital's] alleged negligence in the use or maintenance of equipment integrally related to her medical diagnosis and treatment," Kruger wrote. "When a doctor or other health care professional makes a judgment to order that a hospital bed's rails be raised in order to accommodate a patient's physical condition and the patient is injured as a result of the negligent use or maintenance of the rails, the negligence occurs "in the rendering of professional services" and therefore is professional negligence for purposes of [MICRA]"

In all probability the Supreme Court's new test would support the thesis that janitorial neglect, as ostensibly is at issue in *Pouzbaris,* is not professional negligence. To date the Supreme Court has not issued any orders in *Pouzbaris* in light of its holding in *Flores.* Notwithstanding, for all future cases, in determining whether to apply the one year MICRA statute of limitations for professional negligence or the two-year limitations period for ordinary negligence, the courts will undertake a fact-based view of the alleged negligent acts to distinguish ordinary negligence, such as falling chandeliers or mopping floors, from negligence committed in the rendering of professional services. This additional guidance should provide needed predictably for not only the plaintiff's bar but also the defense bar as well.

About the Author:

A Shareholder at Wroten & Associates, Larry T. Pleiss previously served as the Managing Partner at Madory, Zell, Pleiss, McGrath, APC. Mr. Pleiss has almost 37 years of experience defending healthcare professionals and governmental entities and has argued cases before the United States and California Supreme Courts. He has achieved the rank of Diplomat, the highest ranking of the American Board of Trial Advocates, which he has been a member of since 1987 and has tried and arbitrated disputes as lead counsel in over 130 cases.

Mr. Pleiss has been called on to speak on such topics as trial skill and defense strategies with the California Continuing Education of the Bar, University of California, Orange County Bar Association, Orange County College of Trial Advocacy, American Board of Trial Advocates, and The Rutter Group. Mr. Pleiss also serves on numerous hospital ethics and

quality of care improvement committees in the Southern California community. In 2004 he received the National Business Advisory Council's Ronald Reagan Gold Medal and National Leadership Awards. For over 20 years he has held AV rating of preeminent AV® in Martindale-Hubbell, which ranks him at the highest level of legal ability and ethical standards.

He was admitted to the California State Bar in 1979, United States District Court for the Central District of California and United States Court of Appeals for the Ninth Circuit in 1980, United States Supreme Court in 1985, United States District Court of Appeals for the Southern District of California in 1988, the United States District Court of Appeals for the Northern District of California in 1989, and the United States District Court for the Eastern and Southern Districts of California in 2013.

Mr. Pleiss concentrated his undergraduate and graduate studies in economics and marketing, and was a member of Alpha Gamma Sigma and Beta Gamma Sigma Honor Societies. At Pepperdine University School of Law, Mr. Pleiss was a member of Law Review and Moot Court Honor Board. He received American Jurisprudence awards in Torts, Evidence, and Civil Procedure. He was published in Law Review ["Deceptive Advertising and the FTC: A Perspective," Pepperdine Law Review (1979); "Beyond Kent and Gault: Consensual Searches and Juveniles," Pepperdine Law Review (1979)] and taught legal research and writing. Mr. Pleiss participated in both the prestigious Roger J. Traynor California State Moot Court competition in 1978 and 1979 and the Vincent S. Dalsimer Pepperdine University School of Law Moot Court competitions, winning best appellate brief awards in each competition and best advocate in the latter competition. He was also a member of Phi Alpha Delta Law Fraternity.

In addition to the professional memberships mentioned above Mr. Pleiss is affiliated with the following: American Bar Association; State Bar of California; Orange County Bar Association; Orange County Trial Lawyers Association; Association of Trial Lawyers of America; Cambridge Who's Who in America; Who's Who in American Law; Who's Who in Practicing Attorneys; Southern California Defense Counsel; Southern California Association for Healthcare Risk Management; American Society for HealthCare Risk Management; Phi Alpha Delta Law Fraternity; American Hospital Association; California Association for Health Care Attorneys; Board of Trustees, and Business Advisory Council.

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[i] See, e.g., *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291; see also *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771; *Delaney v. Baker* (1999) 20 Cal.4th 23

[ii] 351 P.3d 325 (July 8, 2015, No. S226846), review granted, pending further orders

[iii] ____ Cal.4th ____ (May 5, 2016, No. S20983) 2016 WL 2586110

[iv] Cal. Civ. Proc. Code, § 340.5

[v] Cal. Civ. Proc. Code § 335.1

[vi] 99 Cal.App.3d 50 (1979)