



California Medical Association
Physicians dedicated to the health of Californians

LEGAL AFFAIRS CASE LIST

CMA's Legal Affairs Case List provides a summary and current status of pending litigation filed to influence health policy in which the California Medical Association was a party or filed a brief as *amicus curiae*, or "friend of the court." Cases marked with an asterisk (*) were filed on behalf of the California Medical Association, California Hospital Association and California Dental Association pursuant to the direction of the CMA-CHA-CDA Amicus Curiae Committee. The Case List is circulated regularly on a monthly basis. For more information on a specific case, please contact the appropriate staff member identified at the end of each litigation summary by e-mail or by calling (916) 444-5532.

FEBRUARY 2011

CMA Lawsuits		
Pending cases in which CMA is a named plaintiff	Status	Staff
<p>INGENIX PRICE FIXING SCHEME: <u>AMA, CMA et al. v. Wellpoint/Anthem Blue Cross</u> (U.S. District Court, Central Dist. of California, filed 3/25/09, CV 09-2039, Master Consolidated Case File 2:09-ml-02074); <u>AMA, CMA et al. v. Aetna Health Inc.</u> (Dist. of New Jersey, filed 2/9/09, Master File 2:07-CV-3541); <u>AMA, CMA et al. v. Cigna Health Corp.</u> (Dist. of New Jersey, filed 2/9/09, 09-578) In three separate lawsuits filed in federal courts, the CMA, American Medical Association (AMA), other state medical societies and Individual physicians challenged the use of Ingenix by Aetna, Cigna and Blue Cross in a price-fixing scheme to set artificially low reimbursement rates for out-of-network services to their enrollees. The lawsuits seek to collect past underpayments by the defendants on behalf of a nationwide class of physicians and change the way defendants determine out-of-network reimbursements. These lawsuits remain in the early stages of litigation, although Aetna and Cigna have participated in early mediation (settlement) negotiations. Furthermore, all three insurer defendants are trying to block the lawsuits from moving forward, arguing they are barred by previous class action settlements benefiting providers.</p>	<p>The litigation is in the discovery stage. (The discovery stage is the pre-trial phase in a lawsuit in which each party through the law of civil procedure can request documents and other evidence from other parties and can compel the production of evidence.)</p> <p>The parties are also litigating whether the cases are barred by previous class action settlements benefiting providers.</p>	<p><u>Francisco Silva</u></p> <p><u>Long Do</u></p>
<p>MEDI-CAL LITIGATION: <u>CMA et al. v. Shewry</u> (Los Angeles Superior Court, BC390126); <u>ILCS v. Shewry</u> (Ninth Circuit Court of Appeals, 08-56061, 08-56422, 08-56551, 08-56554, 09-55892); <u>CPA, CMA et al. v. Maxwell-Jolly</u> (09-55532) In 2008, a coalition of health care providers led by CMA sued the state of California to stop a 10% cut in Medi-Cal reimbursements. A federal appeals court ruled that Medi-Cal providers have standing to challenge the state's rate cut and upheld the merits of the 2008 preliminary injunction that forced the state to immediately reverse the cut. The court held that the district court properly issued the injunction "because the Director [of DHCS] failed to rely on responsible cost studies, its own and others . . . in determining the effect of the rate cuts . . . on the statutory factors of efficiency, economy, quality, and access to care before implementing those cuts." In 2009, CMA also filed a lawsuit seeking to stop a second round of Medi-Cal cuts by the State (commonly referred to as the 5% cuts). The courts enjoined these cuts and the State filed certiorari (cert) petitions asking the Supreme Court to review the lower court decisions. The Supreme Court denied the first petition and in December 2010, the U.S. Solicitor General filed a brief recommending that the Court should deny the State's cert petitions. Despite this recommendation, the Supreme Court consolidated the remaining cert petitions and granted review on January 18, 2011. The Supreme Court will hear the case in October 2011. Regardless, the injunctions to reverse the cuts are currently in place as a result of the lower court decisions in these cases. Additionally, in November 2010, the Department of Health and Human Services rejected the State's attempt to amend the state plan, which approved, would have allowed the State to implement the rate cuts.</p>	<p>Petition for Review In U.S. Supreme Court filed: 2/16/10 (09-958) 3/24/10 (09-1158)</p> <p>CMA Opposition to Petition for Review filed: 5/27/10 (09-1158)</p> <p>Petition for Review In U.S. Supreme Court granted: 1/18/11</p> <p>Update: The U.S. Supreme Court consolidated the cert petitions and granted review. Briefing will begin on this case this summer. The Supreme Court will hear oral arguments in October 2011.</p>	<p><u>Francisco Silva</u></p>

CMA Lawsuits

Pending cases in which CMA is a named plaintiff

Status

Staff

MEDICAL BOARD BUDGET TRANSFER: CMA v. Arnold Schwarzenegger, et al. (Court of Appeal, First District, A128172) On October 14, 2009, CMA filed a writ petition in San Francisco Superior Court to enjoin Governor Schwarzenegger's furlough of the Medical Board of California (MBC) and to reverse a provision of the State Budget Act of 2008 that took \$6 million away from the MBC's Contingent Fund to aid the state's General Fund. On March 4, 2010, the San Francisco Superior Court denied CMA's petition. CMA appealed the judgment and filed its Opening Brief on July 30, 2010. On appeal, CMA challenged the \$6 million transfer arguing that it violated state laws (i.e., the Medical Practice Act) mandating that physician license fees be deposited only with the MBC and spent only by the MBC to carry out the requirements of the Medical Practice Act. CMA's brief also argued that depleting \$6 million from the Contingent Fund disrupts the statutory balance that must be maintained in the fund and violates the right of physicians to lower fees. This appeal is currently in the briefing stage before the California Court of Appeal. The State Controller has indicated he will not file an opposition brief in the appeal. Briefing in this case is now complete and oral arguments are scheduled for March 2, 2011.

Opening Brief on Appeal filed: 7/30/10

Long Do

Update: Briefing in this case is now complete and oral arguments are scheduled for March 2, 2011. A decision should be rendered by the California Court of Appeal in summer 2011.

SCOPE OF PRACTICE: California Society of Anesthesiologists (CSA) and California Medical Association (CMA) v. Arnold Schwarzenegger et al. (Court of Appeal, First District, A131049) On February 2, 2010, CMA and CSA filed a writ petition to require that the Governor withdraw his letter dated June 10, 2009 to the Centers for Medicare and Medicaid Services (CMS) where he purported to exercise the option to exempt the State of California from the requirement that certified registered nurse anesthetists (CRNAs) be supervised by a physician. The lawsuit contends that physician supervision of CRNAs who are administering anesthesia is required under California law and that the Governor's request for exemption ("opt-out") was therefore improper and must be withdrawn. The California Nurse Anesthetists Association (CANA) has intervened in the case to side with the Governor. The parties on both sides filed dispositive motions for summary judgment. Following a hearing on the motions on October 8, 2010, the trial court sided with the Governor's opt-out decision that effectively allows Medicare participating hospitals to let nurse anesthetists administer anesthesia without physician supervision. The court filed its final order on December 27, 2010. CMA and CSA appealed and the case is currently before the California Court of Appeal.

Trial Court's Final Order Summary Judgment: 12/27/10

Francisco Silva

Long Do

Notice of Appeal filed: 1/31/11

The San Francisco superior court ruled against CMA on the summary judgment motions. CMA and CSA appealed the decision and the case is now before the Court of Appeal.

Briefing on the appeal is expected to be done in late summer 2011.

SCOPE OF PRACTICE: California Medical Association (CMA) and California Academy of Eye Physicians & Surgeons (CAEPS) v. State Board of Optometry (San Francisco Superior Court, 11-507241) On January 11, 2011, CMA and CAEPS filed a writ petition and complaint for declaratory and injunctive relief to challenge a recently-promulgated regulation that lowers existing certification requirements to allow optometrists to treat glaucoma. Existing law requires both a class component and clinical training to become certified. Regulation 1571 (16 C.C.R. §1571), which took effect on January 8, 2011, all but eliminates the clinical training component. The State Board of Optometry promulgated Regulation 1571 under the purported authority of Business & Professions Code section 3041.10. That statute establishes detailed procedural requirements and deadlines for the study and recommendation of appropriate revised certification requirements. In several respects the Board of Optometry failed to substantially meet the requirements of Bus. & Prof. Code section 3041.10. CMA and CAEPS filed the action to invalidate Regulation 1571 and to prevent the Board of Optometry from certifying optometrists to treat glaucoma under it.

CMA and CAEPS Action filed: 1/11/11

Francisco Silva

Long Do

CMA Lawsuits

Pending cases in which CMA is a named plaintiff

Status

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PHYSICIAN RATINGS: California Medical Association (CMA) v. Blue Shield of California (Alameda County Superior Court, 10-535619) On September 9, 2010, CMA filed a class action lawsuit against Blue Shield of California for its inaccurate physician rating program, which is potentially harming doctors and their patients by spreading misinformation and failing to accurately assess patient care. The complaint, filed in Alameda County Superior Court, alleges that Blue Shield's Blue Ribbon Recognition Program fails to accurately rate the quality of care provided by its network physicians because the underlying ratings are deeply flawed. Furthermore, CMA alleges Blue Shield did not provide adequate explanations and disclosures regarding the basis for its ratings or the fact that not all physicians are eligible to receive a blue ribbon. The lawsuit also alleges that Blue Shield went public with the program in June despite being aware of certain material fundamental flaws in its evaluation process. The lawsuit seeks to take down the rating program and other monetary relief. On November 24, 2010, Blue Shield filed a motion to dismiss the lawsuit under the Strategic Litigation Against Public Policy Act ("SLAPP"). Blue Shield claims the lawsuit violates its First Amendment rights. The motion was heard on January 19, 2011.

CMA Complaint filed: 9/9/10

Long Do

Update: Blue Shield has filed a motion to dismiss the lawsuit. The motion was heard on January 19, 2011, and a decision is pending.

CMA Amicus Curiae Briefs

Pending cases in which CMA filed an amicus brief or letter

Status

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BUSINESS PROHIBITIONS: National Association of Optometrists & Opticians; Lenscrafters, Inc. v. Lockyer (Ninth Circuit Court of Appeals, 07-15050, 10-16233) In this case, CMA filed an amicus brief at the trial level in support of the state's motion for summary judgment. The trial court ruled in favor of Lenscrafters, invalidating state laws that govern relationships between ophthalmologists, optometrists, and opticians on the grounds they violated the United States Commerce Clause. The state filed an appeal with the Ninth Circuit Court of Appeals. CMA filed an amicus brief on the merits in the Ninth Circuit supporting the state on appeal. In September 2009, the Ninth Circuit reversed and remanded the case back to the District Court. On April 28, 2010, the District Court upheld the constitutionality of the statutes, finding that they serve a legitimate government purpose and that the burdens they impose do not outweigh their benefit. Plaintiffs have appealed the decision with the Ninth Circuit Court of Appeals and the Opening Brief is due February 11, 2011.

CMA Amicus Brief in district court filed: 1/21/04

Astrid Meahrigian

Application to file amicus granted: 1/22/04

CMA Amicus Brief in Ninth Circuit filed: 7/2/07

The District Court upheld the constitutionality of the statutes, consistent with CMA's position. The case is currently on appeal before the Ninth Circuit.

CORPORATE BAR: California Cancer Specialists v. City of Hope (Court of Appeal, Second District, B228784, B228892) CMA filed an amicus letter brief in support of a group of physicians in their lawsuit against the City of Hope National Medical Center Corporation ("City of Hope"). The physicians filed suit against City of Hope last spring alleging that City of Hope's scheme to set up "captive" professional corporations circumvented the corporate practice of medicine bar by taking over physician oversight of care, ending important research and establishing a model of care that would allow City of Hope to charge the government and patients more for outpatient services. In its amicus letter brief, CMA urged the court to issue a writ and opine on whether a captive corporation complies with the corporate bar and provide a check against unlawful attempts to control physicians and their treatment decisions. The plaintiff's writ petition was denied on December 2, 2010 but the case is ongoing and CMA will continue to monitor this case.

CMA Amicus Brief filed: 11/19/2010

Francisco Silva

Writ Petition denied: 12/2/2010

CMA will continue to monitor this case.

DAMAGES: Howell v. Hamilton Meats (California Supreme Court, S179115) This case involves the appropriate measure of damages in a personal injury case and the proper interpretation of "benefits" under the collateral source rule. In a published opinion, the Fourth Appellate District Court ruled that economic damages

CMA Amicus Letter received: 3/5/10

Alicia Wagnon

CMA Amicus Brief filed:

CMA Amicus Curiae Briefs

Pending cases in which CMA filed an amicus brief or letter	Status	Staff
<p>awarded to a personal injury plaintiff should reflect the full amount of her health care provider's bills, not the rate the provider accepted as payment in full for the services rendered. Accordingly, CMA's AC Committee filed a letter in support of the Petition for Review and Request for Depublication of the Court of Appeal's opinion. On March 10, 2010 the Supreme Court granted review of the Court of Appeal decision. CMA's AC Committee filed an amicus brief on the merits on July 21, 2010. Plaintiff filed her response to CMA's amicus brief on October 25, 2010.</p>	<p>7/21/10</p> <p>This case is fully briefed and currently pending before the California Supreme Court.</p>	
<p>HEALTH PLAN REGULATION: <u>California Department of Insurance v. Pacificare Life & Health Insurance Co. (California State Insurance Commissioner)</u> CMA has provided significant assistance to the Department of Insurance (DOI) in its unprecedented prosecution of Pacificare. In 2006, CMA presented a lengthy complaint to the DOI from 40 physician members concerning a variety of problems they encountered with Pacificare. As a result, the DOI conducted a year-long investigation that resulted in findings of hundreds of thousands of violations of the Insurance Code by Pacificare. Pacificare refused to settle and the DOI has been forced to take formal administrative action and seek the full extent of punishment allowable under the Insurance Code. In late May 2010, the DOI supplemented its complaint based on evidence developed through the administrative hearing. The DOI now alleges that Pacificare committed approximately 993,000 violations of the Insurance laws and regulations. In November 2010, the Administrative Law Judge ("ALJ") requested that CMA produce a modest set of documents pursuant to a subpoena issued by Pacificare. The ALJ, however, sided with CMA and significantly limited Pacificare's overly broad document requests. The DOI also filed a brief in support of CMA explaining that it relies on complainants such as CMA to blow the whistle on insurer wrongdoing, and that CMA should not be subjected to overly burdensome discovery requests simply for having stepped forward.</p>	<p>Trial commenced in early December 2009 and is expected to go into 2011.</p> <p>CMA continues to cooperate with the parties in this case, including making available two witnesses for testimony.</p>	<p><u>Long Do</u></p>
<p>MEDICARE: <u>Palomar Center v. Sebellus</u> (U.S. Ninth Circuit Court of Appeals, 10-56529) CMA and the American Medical Association (AMA) jointly filed an amicus curiae brief to challenge a Medicare regulation that permits CMS and its Recovery Audit Contractors (RACs) to reopen and audit paid claims that are older than one year if there is "good cause." In this case, the federal district court held that the Medicare regulations make a RAC's decision to reopen an old claim unreviewable and providers could not challenge whether a RAC had "good cause" to reopen an old claim. In filing an amicus brief in this case, CMA and AMA seek to protect those physicians who participate in Medicare from arbitrary and unreasonable efforts to recover payments for services rendered long prior to the initiation of the recovery action. Recovery actions can be particularly burdensome to physician practices and divert physician and staff time from patient care. The amicus brief argues that Medicare regulations at issue are arbitrary and capricious and infringe upon the Congressionally created right of judicial review. This case is currently pending before the U.S. Ninth Circuit Court of Appeals.</p>	<p>CMA Amicus Brief filed: 1/26/11</p> <p>This case is currently pending before the U.S. Ninth Circuit Court of Appeals.</p>	<p><u>Long Do</u></p>
<p>MICRA: <u>Stinnett v. Tam*</u> (Court of Appeal, Fifth District, F057784) In this case, the plaintiff challenges the constitutionality of MICRA's cap on non-economic damages. At trial, the jury awarded Plaintiff, the widow of Stanley Stinnett who died due to alleged malpractice by Dr. Tam, \$6,000,000 in non-economic damages. Upon a post-trial motion, the trial court reduced the award to \$250,000 in accordance with MICRA. (Civil Code section 3333.2). Plaintiff appealed, asserting that MICRA's cap on non-economic damages violates the Equal Protection clause of the Constitution and denies her right to a jury trial. Plaintiff argues that MICRA's cap discriminates against severely injured medical malpractice plaintiffs and no longer bears a rational relationship to the legislative</p>	<p>CMA Amicus Brief filed: 10/28/10</p> <p>This case is fully briefed and currently pending before the California Court of Appeal.</p>	<p><u>Alicia Wagnon</u></p>

CMA Amicus Curiae Briefs

Pending cases in which CMA filed an amicus brief or letter

Status

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purpose of the statute. CMA, together with other amici, filed an amicus brief arguing the constitutionality and importance of MICRA's cap on non-economic damages. This case is fully briefed. The Court of Appeal is expected to set the case for oral argument in early to mid 2011.

PEER REVIEW: El-Attar, M.D. v. Hollywood Presbyterian Medical Center (Court of Appeal, Second District, B209056) In this case, Dr. El-Attar's medical staff privileges were not renewed by the hospital's governing Board. Following a finding by the Medical Executive Committee (MEC) that there was no basis for the hospital to deny Dr. El-Attar's reappointment to the medical staff, the hospital bypassed the MEC and picked its own panel and hearing officer over Dr. El-Attar's objections. CMA filed an amicus brief in support of Dr. El-Attar arguing that medical staffs are required to abide by their bylaws and cannot designate their governing body to act on its behalf, except in rare circumstances.

CMA Amicus Brief filed:
5/19/09

Astrid
Mehrigian

Application to file amicus
granted: 6/9/09

This case is currently pending
before the California Court of
Appeal.

REPRODUCTIVE ISSUES: Hoye v. City of Oakland (Ninth Circuit Court of Appeals, 09-16753) CMA and Alameda-Contra Costa Medical Association joined Planned Parenthood Affiliates of California and Planned Parenthood affiliates in the East Bay on an amicus brief to support the City of Oakland's ordinance creating an eight foot buffer zone or "bubble" around people seeking access to reproductive healthcare centers within 100 feet of such a center. This case is currently pending before the U.S. Ninth Circuit Court of Appeals and oral arguments were heard on October 8, 2010.

CMA and ACCMA Amicus
Brief filed: 2/23/10

Lisa
Matsubara

This case is currently
pending before the U.S. Ninth
Circuit Court of Appeals.

Recently Resolved CMA Cases

CMA cases which have been resolved within the past year

Outcome

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ARBITRATION: Ruilz v. Podolsky* (California Supreme Court, S175204) In this case, the Appellate Court held that decedent's adult children could not be compelled to arbitrate their wrongful death claims pursuant to the arbitration agreement their father signed at the request of Dr. Podolsky, his orthopedic surgeon. On August 24, 2009, CMA filed a letter requesting depublication of the Appellate Court's decision and a separate letter in support of the petition for review. CMA, together with other amici, filed an amicus brief on the merits in February 2010. On August 23, 2010, in a 6 to 1 decision, the California Supreme Court definitively held that all wrongful death claimants are bound by arbitration agreements entered into pursuant to MICRA's arbitration provision. Agreeing with the patient confidentiality and privacy concerns raised in CMA's amicus brief, the Court upheld the legislature's clear intention to include wrongful death actions in MICRA's arbitration provision and rejected the impractical position that a patient's heirs could only be required to arbitrate if they sign the arbitration agreement.

Request for depublication
filed: 8/24/09

Alicia Wagnon

CMA Amicus Brief filed:
2/9/10

Opinion filed: 8/23/10
The California Supreme
Court agreed with CMA's
position and reversed the
Court of Appeal decision.

ARBITRATION: Haworth v. Superior Court (Ossakow)* (California Supreme Court, S165906) This case involves a challenge to a published opinion of the California Court of Appeal vacating an arbitration award in a medical malpractice case based on a post-arbitration claim that the neutral party arbitrator failed to disclose an unrelated censure from the Supreme Court that occurred more than ten years prior to the arbitration. CMA, together with other amici, filed an Amicus Letter urging the Supreme Court to grant the Petition for Review. The California Supreme Court granted the Petition for Review, and on August 2, 2010, published its opinion agreeing with CMA's position and reversing the Court of Appeal decision and holding that the arbitrator was not required to disclose the public censure. The Court held that a broad interpretation of the standard of appearance of partiality

CMA Amicus Letter filed:
11/13/08

Alicia Wagnon

Application to file amicus
granted: 12/01/08

Opinion filed: 8/2/10
The California Supreme
Court agreed with CMA's
position and reversed the
Court of Appeal decision.

Recently Resolved CMA Cases

CMA cases which have been resolved within the past year

Outcome

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rule set forth by the patient would place an unreasonable burden on the neutral arbitrator, undermine the finality of arbitrations and subject arbitration awards to after-the-fact attacks by losing parties.

CORPORATE PRACTICE OF MEDICINE & 1206(l) MEDICAL FOUNDATIONS: The Patient-Physician Alliance, Inc., v. The Hospital Committee for the Livermore Pleasanton Area, Inc., et al. (Alameda Superior Court, RG09471909) One of the issues raised by this case is whether the defendant medical foundation is properly constituted pursuant to Health & Safety Code §1206(l). The plaintiff in this case alleges, among other things, that the defendant medical foundation fails to meet the requirements of that statute and is practicing medicine illegally, in violation of California law, including the corporate practice of medicine bar set forth in Business & Professions Code § 2400. In its letter brief, CMA offered the court guidance regarding the corporate bar and the 1206(l) law.

CMA Amicus Letter received: 9/17/09

Astrid Meghrigian

Resolved: The case was dismissed voluntarily by the plaintiff.

CORPORATE PRACTICE OF MEDICINE BAR: U.S. ex rel. Ebeid v. Lungwitz (Ninth Circuit Court of Appeals, 09-16122) CMA filed an amicus brief in support of Plaintiff who brought a whistleblower lawsuit under the Federal False Claims Act. The lawsuit alleged Medicare fraud whereby Medicare was billed by a health care enterprise owned and operated by defendant, an unlicensed lay person. The defendant operated a health facility and employed physicians, set the physician hours, and handled all billing and collections on behalf of physicians in violation of the corporate practice of medicine bar under Arizona law as well as California's corporate practice of medicine bar. The federal district court in Arizona dismissed the case holding that the plaintiff failed to allege specific facts and the plaintiff appealed to the U.S. Ninth Circuit. While the case arises out of Arizona law, CMA filed as an amicus in support of the plaintiff since the Ninth Circuit's ruling on whether the federal False Claims Act can remedy corporate practice of medicine violations would impact the practice of medicine in California. CMA's amicus brief also argued that the California corporate practice of medicine bar serves to insure against the division of a physician's loyalty to patients and protects against the provision of unnecessary, potentially costly, and even harmful medical services.

CMA Amicus Brief filed: 10/23/09

Astrid Meghrigian

Application to file amicus granted: 1/22/10

Ninth Circuit Opinion filed: 8/9/10

The Ninth Circuit Court of Appeals affirmed the district court's dismissal of the case on the grounds that the Plaintiff did not sufficiently plead facts to state a claim.

HEALTH CARE REFORM & ERISA: Golden Gate Restaurant Association (GGRA) v. City & County of San Francisco (Ninth Circuit Court of Appeals, 07-17370, 07-17372) CMA and the San Francisco Medical Society filed an amicus brief opposing the petition for en banc review. In this case, the local restaurant association challenged the City's recently created health care program for uninsured residents. The restaurants argued that the City's program is preempted under ERISA. The Ninth Circuit held that ERISA does not preempt the San Francisco health care ordinance. GGRA filed a petition for en banc review. CMA's amicus brief argued that ERISA should not stand in the way of efforts to reform the health care system at the state and local level. On March 9, 2009, the Ninth Circuit ruled on the petition for en banc review, in favor of CMA's side. GGRA filed a cert petition before the U.S. Supreme Court on June 5, 2009 (08-1515). Upon invitation of the Supreme Court, the U.S. Solicitor General filed a brief recommending that the Court deny GGRA's cert petition in June 2010. The Solicitor General believes that San Francisco's program is not preempted by ERISA and should stand. Accordingly, the U.S. Supreme Court denied the petition for review.

CMA and SFMS Amicus Brief filed: 12/15/2008

Long Do

Case Resolved: 6/28/10

The U.S. Supreme Court denied the petition for review.

HEALTH PLAN RESCISSION: Nieto v. Blue Shield (Court of Appeal, Second District, B214669) CMA filed an amicus letter brief in the California Supreme Court supporting review or depublication of the Court of Appeal decision to educate the court about harms to providers and patients from retroactive rescission practices and encourage the court to adopt uniform standards for allowing plans to rescind based upon post-claims underwriting practices. The California Supreme

CMA Amicus Letter sent: 4/1/10

Long Do

Case Resolved: 4/28/10

The California Supreme Court denied the petition for

Recently Resolved CMA Cases

CMA cases which have been resolved within the past year

Outcome

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<p>Court denied the petition for review and request for depublication.</p>	<p>review.</p>	
<p>HEALTH PLAN RESCISSION: <u>People of the State of California v. Anthem Blue Cross of California</u> (Court of Appeal, Second District, B215035) CMA and the Los Angeles County Medical Association jointly submitted an amicus brief in support of a lawsuit filed against Blue Cross for illegally canceling patients' health insurance policies. The suit, filed by the Los Angeles City Attorney, alleged that Blue Cross sold people false promises of coverage, while systematically canceling policies after policyholders got sick and filed expensive claims. Blue Cross asked for the case to be dismissed, arguing that the Department of Managed Health Care (DMHC) had exclusive jurisdiction to enforce violations of the Knox-Keene Act. CMA and others in organized medicine strongly reject this argument. On December 15, 2009, the Court of Appeal, in a published opinion (essentially siding with CMA's legal arguments), rejected Blue Cross and DMHC's jurisdictional arguments and held that DMHC does not enjoy exclusive jurisdiction to enforce the Knox-Keene Act and Unfair Competition Laws. Blue Cross filed a petition to the California Supreme Court to review the case which was denied.</p>	<p>CMA Amicus Brief filed: 7/17/09</p> <p>Application to file amicus granted: 7/28/09</p> <p>Case Resolved: 3/10/10 The Court of Appeal agreed with CMA and Blue Cross's petition to the California Supreme Court was denied.</p>	<p><u>Long Do</u></p>
<p>MEDI-CAL REIMBURSEMENT: <u>Yoo v. Shewry</u> (California Supreme Court S184877) CMA filed an amicus letter brief in support of a petition for review of a California appellate court decision. The decision holds that the state Department of Health Care Services (which administers the Medi-Cal program) does not have to pay interest to a provider when it withholds lawfully earned reimbursement fees pending an audit of the provider. CMA believes that the applicable laws require the state to pay interest when it holds providers' earned fees while the state investigates or audits the provider and later finds no wrongdoing. CMA's amicus letter brief warned the Supreme Court that to hold otherwise would impose additional burdens and risk on Medi-Cal providers and could drive providers out of participation in Medi-Cal.</p>	<p>CMA Amicus Letter received: 8/13/10</p> <p>Case Resolved: 9/22/10 The California Supreme Court denied the petition for review.</p>	<p><u>Long Do</u></p>
<p>MEDICAL BOARD: <u>Brennan v. Superior Court of San Francisco</u> (Court of Appeal, First District, A128689) CMA filed an amicus brief in support of petitioner H. G. Brennan M.D. urging the court to accept review of Dr. Brennan's Petition for an Extraordinary Writ and ensure that he is subject to a fair disciplinary process. CMA's principle concern is whether Dr. Brennan was precluded from meaningful judicial review due to the Medical Board's failure to include the credibility assessment statement mandated by Government Code §11425.50(b) in its disciplinary decision against him. CMA's brief argued that this failure rendered the administrative decision defective because it (1) deprived the trial court of an adequate record upon which to base its independent judgment as to whether the weight of the evidence supported the Medical Board's findings, and (2) impairs the appellate court's ability to determine whether competent evidence supports the trial court's judgment. On July 19, 2010, the Court of Appeal denied Dr. Brennan's petition for an Extraordinary Writ.</p>	<p>CMA Amicus Brief filed: 6/9/10</p> <p>Application to file amicus granted: 6/9/10</p> <p>Case Resolved: 7/19/10 The Court of Appeal denied the Petition for Extraordinary Writ.</p>	<p><u>Astrid Meqhrigian</u></p>
<p>MEDICAL MALPRACTICE CLASS ACTION: <u>Bomersheim v. Los Angeles Gay and Lesbian Center</u> (California Supreme Court, S184174) In this case, a free clinic offered retesting and retreatment to 600 patients after discovering that an incorrect form of medication had been used previously, although with no resulting harm. A trial court denied plaintiffs' motion for class certification but, in a published opinion, the Second Appellate District Court reversed, holding that the trial court was required to certify a medical malpractice class action and could presume causation. On August 2, 2010, the CMA Amicus Committee submitted a letter urging the Supreme Court to grant review to clarify that class treatment is inappropriate in medical malpractice actions which require patient-specific inquiries related to causation and damages and that medical causation must be proven, not</p>	<p>CMA Amicus Letter received by Court: 8/3/10</p> <p>Case Resolved: 9/1/10 The California Supreme Court denied the petition for review.</p>	<p><u>Alicia Wagnon</u></p>

Recently Resolved CMA Cases

CMA cases which have been resolved within the past year

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presumed. The Committee's letter also urged the Court to consider the negative implications on patient safety and access to care if the appellate opinion is allowed to stand. The Supreme Court denied review on September 1, 2010.

MEDICAL RECORDS, PRIVACY & CONFIDENTIALITY: McKnight v. Children's Hospital of Oakland (Court of Appeal, First District, A127580) CMA and the California Hospital Association filed an amicus brief in support of petitioner Children's Hospital of Oakland. The Children's Hospital seeks to prohibit the State of California Workers' Compensation Appeals Board (WCAB) from proceeding with a discovery order requiring the Hospital to review medical records and disclose information about HIV infected children who were a part of a physical and occupational therapy program where McKnight worked for almost 18 years. The Court of Appeal granted the petition for review on May 5, 2010. On October 8, 2010, the Court of Appeal ruled in favor of CMA's position and annulled the WCAB's discovery order concluding that the order violated Health & Safety Code §120975, which provides that no person may be compelled in any legal proceeding to "identify or provide identifying characteristics that would identify any individual who is the subject of" an HIV test. This case is now remanded back to the WCAB for further proceedings.

CMA Amicus Brief filed:
3/19/10 (Application to file
amicus granted: 4/16/10)

Lisa
Matsubara

Opinion Filed: 10/8/10
The Court of Appeal ruled in
favor of CMA's position and
annulled the WCAB's
discovery order.

**Peremptory Writ of
Mandate Issued: 12/14/2010**
Final order of the court to the
WCAB to perform its official
duty required by law.

PEER REVIEW: Ellison v. Sequoia Health Services (Court of Appeal, First District, A124408) In this case, Dr. Ellison challenged the propriety of the revocation of his medical staff privileges by the Board of Trustees of Sequoia Hospital. In a published April 22, 2010 opinion, the Court of Appeal ruled that in light of the medical staff bylaws at issue, non-physicians, such as the governing board of the hospital, could completely displace a medical staff's recommended disposition of a peer review medical disciplinary matter and exercise its independent judgment as to the appropriate disposition in the case. CMA filed a letter with the California Supreme Court requesting depublication of the Court of Appeal opinion arguing that the court's opinion potentially permitting unfettered power to a hospital board by virtue of confusing and inconsistent medical staff bylaws contravenes laws in place to support the medical staff as a self-governing entity within the hospital responsible for the quality of care delivered by its members, and increases the likelihood that financial concerns that dominate a hospital's board of directors can influence that board to terminate a physician for reasons unrelated to quality of care issues. On July 28, 2010, the California Supreme Court denied the petition for review and CMA's request for depublication.

**CMA Letter requesting
depublishment filed: 6/17/10**

Astrid
Meghrigian

Case Resolved: 7/28/10
The California Supreme
Court denied the plaintiff's
petition for review and CMA's
request for depublishment.

TOBACCO CONTROL: Walgreen Co. v. San Francisco (Court of Appeal, First District, A123891) The drug store chain Walgreens challenged San Francisco's ordinance banning tobacco sales in pharmacies. Walgreens claimed the ordinance violates equal protection laws because the ban exempts supermarkets and "big box" retail stores like Costco. CMA and the San Francisco Medical Society filed an amicus brief defending the exemption, telling the court that pharmacies, which market themselves as institutions where customers can receive trustworthy health care advice, should not implicitly endorse cigarette smoking. Oral arguments were held before the Court of Appeal on March 10, 2010. The Court of Appeal ruled that Walgreens had a cognizable claim and should be permitted to litigate the case at trial. The Court of Appeal reversed the trial court's dismissal of the complaint and remanded the case to the trial court to proceed towards trial. On September 21, 2010, the San Francisco Board of Supervisors voted to extend its anti-tobacco ordinance to all stores that contain a pharmacy (including big box and grocery stores such as Safeway and Costco). This amendment to the ordinance makes Walgreen's equal protection moot because San Francisco no longer arbitrarily distinguishes between Walgreens and grocery stores or big box stores.

**CMA and SFMS Amicus
Brief filed: 7/16/09**

Long Do

Opinion filed: 6/8/10
The Court of Appeal reversed
the trial court's dismissal of
the complaint and remanded
the case to the trial court.
Case Resolved: 9/21/10
The City took legislative
action that rendered
Walgreens' equal protection
claim moot, while saving its
ordinance banning the sale of
tobacco in any retail
establishment with a
pharmacy.

Recently Resolved CMA Cases

CMA cases which have been resolved within the past year	Outcome	Staff
<p>VICARIOUS LIABILITY: <u>Allen v. Superior Court (St. Joseph's Hospital)* (Court of Appeal, Fourth District Third Division, G042458)</u> In this case, the trial court granted summary judgment in favor of St. Joseph's Hospital on plaintiff's claim that the hospital was vicariously liable for damages stemming from an x-ray technician's alleged sexual molestation of the patient. CMA, along with other amici, filed an amicus brief supporting the hospital's position that a professional health service provider cannot be held vicariously liable for an employee's alleged sexual misconduct under Civil Code section 51.9. On March 8, 2010, the Court of Appeal issued its unpublished opinion granting the relief requested by plaintiff, made a limited ruling regarding corporate liability, and declined to address the issue of vicarious liability. The petition for review filed by St. Joseph's Hospital before the California Supreme Court (S181899) was denied on May 20, 2010.</p>	<p>CMA Amicus Brief filed: 11/23/09</p> <p>Application to file amicus granted: 11/25/09</p> <p>Case Resolved: 5/20/10 The California Supreme Court declined to review the case.</p>	<p><u>Alicia Wagnon</u></p>