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California Supreme Court Opinion Clarifies $500 Monetary Cap for Certain SNF Violations

The California Supreme Court has clarified how to calculate civil penalties assessed against skilled nursing facilities (SNFs) under a California statute commonly known as the "Long-Term Care Act" (the "Act"), in an opinion that may rein-in potential penalties against SNFs and other health facilities.

In Jarman v. HCR ManorCare, Inc., published in August 2020, the State's highest court held that the five-hundred dollar ($500) monetary cap mentioned in the Act applied to each action (or lawsuit) against a SNF, as opposed to each alleged regulatory violation.

The case stemmed from a 2010 action by plaintiff John Jarman and later his daughter as his successor-in-interest (together hereafter "Jarman"), who alleged three causes of action relating to his stay at HCR ManorCare, Inc. ("HCR"), where he was admitted for care following a hip fracture: (1) violations of the "Patients Bill of Rights" (based in California statutes and regulations discussed below); (2) elder abuse and neglect; and (3) negligence.

The trial court entered judgment against HCR in the amount of $195,500 – specifically, $100,000 in damages and $95,500 in statutory damages, calculated based on $250 for each of the 382 regulatory violations relating to the Patients Bill of Rights.

Both Jarman and HCR appealed, and the appellate court rejected HCR's argument that Jarman was limited to $500 in statutory damages in total, reasoning instead that the $500 cap applied to each cause of action. The appellate court remanded the case to the trial court to determine the amount of punitive damages Jarman was entitled to based on the 382 regulatory violations, at which point the California Supreme Court granted review.

At issue before the California Supreme Court was ambiguous language in the Act codified in Section 1430(b) of California's Health and Safety Code, which provides in relevant part that:

- A current or former resident of a SNF "may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights […] or any other right provided for by federal or state law or regulation"; and that
- **"The [SNF] licensee shall be liable for up to five hundred dollars ($500), and for costs and attorney fees**, and may be enjoined from permitting the violation to continue."

See Cal. Health & Safety Code § 1430(b).

HCR contended that Health & Safety Code Section 1430(b) authorizes a maximum award of statutory damages of $500 in each action (or lawsuit) brought, whereas Jarman asserted that the Act should be liberally construed to allow up to $500 per regulatory violation. The Court considered these interpretations (but notably did not reach the question of whether Jarman was entitled to punitive damages, nor did it address how the $500 cap would apply to lawsuits involving multiple plaintiff patients).

The Court acknowledged that the $500 cap language was "far from clear," but ultimately resolved the ambiguity in favor of applying the cap to each action (or lawsuit) rather than to each regulatory violation, based on statutory analyses and the legislative intent underlying the Act.

The Long-Term Care, Health, Safety, and Security Act of 1973 (its full name) is codified in Section 1417 *et seq.* of the Health and Safety Code and aims to regulate the standard of care provided by SNFs to their patients. It established systems of citations, inspection, reporting, and provisional licensing to be administered by the California Department of Public Health (CDPH), which classifies citations "according to the nature of the violation." While the Act does provide for civil penalties, the Court determined that the Act's primary intent is deterrent and preventative.

In 1982, the legislature added subsection (b) to Section 1430 as an additional enforcement mechanism, allowing SNF residents themselves to bring actions to remedy violations of their rights rather than rely on CDPH action. Specifically, subsection (b) cross-referenced the Patients Bill of Rights found in the California Code of Regulations, which in turn incorporated Section 1599.1 of the Health and Safety Code, enumerating further patients' rights. Broadly, these rights include the right "[t]o be free from discrimination," the right "[t]o be free from mental and physical abuse," and the right to a SNF that is clean and with quality food and activities, proper staffing, etc.

In addition to noting the Act's preventative purpose, the Court observed that elsewhere in the Act, the legislature clearly specified when penalties were to be assessed per violation (often via clause "for each and every violation"), whereas 1430(b) merely states "up to $500" in isolation, with no unit of measurement to which the $500 cap applies. The Court further observed the practical difficulty of determining what constitutes a distinct violation, given both the substantial overlap of many of the rights in the Patients Bill of Rights and the difficulty of distinguishing a single continuing violation from a series of separate violations. Further review of 1430(b)'s legislative history indicated that the legislature originally (and thereafter) intended the penalty to apply per lawsuit. Lastly, to address the concern that a $500 per lawsuit limit would render the statute toothless, the Court observed that injunctive relief and attorneys' fees were also available in addition to the statutory penalty, and further noted that Section 1430(b) does not preclude individuals seeking redress for harms suffered in SNFs from also seeking redress through traditional tort law causes of action.

The dissent—which observed "the pain of the COVID-19 virus" on California's nursing homes—argued that a per-violation approach was not impractical and could further the deterrent effect of the Patients Bill of Rights. The dissent also suggested that the majority's opinion "may prompt the Legislature to repair the [Act's] scheme and restore its more robust deterrent effect," along with greater clarity about defining violations when certain rights appear to overlap.

Notably, Section 1430 references intermediate care facilities in addition to SNFs.

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