

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MAURA BYRNE, Individually and as
Successor in Interest, etc.,

Plaintiff and Respondent,

v.

P.T.C.H., INC.,

Defendant and Appellant.

E060396

(Super.Ct.No. RIC1300175)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,
Judge. Dismissed.

Giovanniello Law Group, Alexander F. Giovanniello, Phuong K. Nguyen, and
Danielle M. VandenBos for Defendant and Appellant.

Moran Law, Michael F. Moran, and Lisa Trinh Flint for Plaintiff and Respondent.

BraunHagey & Borden, Matthew Borden, and J. Noah Hagey for California
Advocates for Nursing Home Reform as Amicus Curiae on behalf of Plaintiff and
Respondent.

Plaintiff Maura Byrne (Byrne) alleges that her mother died as the result of a fall she suffered due to the negligence and willful misconduct of defendant P.T.C.H., Inc. (P.T.C.H.) while she was in a skilled nursing facility operated by P.T.C.H.

When Byrne's mother was admitted to the facility, Byrne signed two arbitration agreements on her behalf, one relating to medical malpractice disputes and one relating to all other disputes. Nevertheless, the trial court denied P.T.C.H.'s motion to compel arbitration. It ruled that the arbitration agreements were invalid because they did not comply with state statutory formatting and disclosure requirements. It also ruled, alternatively, that some of Byrne's causes of action were not arbitrable as a matter of state statutory law, and that arbitration of the remaining causes of action should be denied to avoid the possibility of conflicting rulings.

P.T.C.H. appeals,¹ arguing, among other things, that the trial court erred because the principles of state law on which it relied were preempted by the Federal Arbitration Act (9 U.S.C. § 1 et seq.) (FAA).

We would have concluded that — as Byrne argued below and argues again in this appeal — Byrne did not have the authority to bind her mother to the arbitration

¹ Byrne sued not only P.T.C.H. but also North American Health Care, Inc. (North American). For most purposes relevant to this appeal, North American is in the same position as P.T.C.H. — Byrne makes the same allegations against both of them, both of them moved to compel arbitration, and both of them have appealed. While this appeal was pending, however, North American filed a bankruptcy petition. Accordingly, we ordered the appeal by North American severed from the appeal by P.T.C.H. and stayed. (See *Cross v. Cooper* (2011) 197 Cal.App.4th 357, 365, fn. 2 [bankruptcy automatic stay generally does not apply to non-bankrupt codefendants].)

agreements, and moreover, Byrne was not bound with respect to her own personal claims. However, after the parties had fully briefed the issues, had received our tentative opinion, and had waived oral argument, they notified us that the case had been settled and requested dismissal of the appeal.

Dismissal is a matter of discretion, not of right. (Cal. Rules of Court, rule 8.244(c)(2).) Although we will grant the request for dismissal, in light of the tardiness of the request (see Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2014) ¶ 5:64) and the lack of merit of the appeal, we will also express our views on the issues in this opinion. (*Lara v. Cadag* (1993) 13 Cal.App.4th 1061, 1065-1066.)

I

FACTUAL BACKGROUND

The following facts are taken from the declarations in support of and in opposition to the motion to compel arbitration.

A. *Authorizing Documents.*

1. *Advance health care directive.*

In 2003, Byrne's mother signed an advance health care directive (Advance Directive), naming Byrne as her agent "to make health care decisions for me" The Advance Directive also stated: "My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions"

2. *General power of attorney.*

Also in 2003, Byrne's mother signed a general power of attorney (General Power) in favor of Byrne. It was effective immediately and unconditionally.

It gave Byrne "full power and authority to do and perform all and every act and thing whatsoever requisite, necessary or appropriate to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present"

However, it also provided: "THIS FORM IS NOT VALID FOR HEALTH CARE DECISIONS."

B. *Arbitration Agreements.*

In 2012, Byrne's mother was admitted to Palm Terrace Care Center, a skilled nursing facility operated by P.T.C.H. During the admission process, Byrne signed two separate one-page arbitration agreements (collectively Arbitration Agreements).

1. *The Medical Arbitration Agreement.*

The first arbitration agreement was entitled "Arbitration of Medical Malpractice Disputes" (Medical Arbitration Agreement). As relevant here, it provided:

"[A]ny dispute as to medical malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompetently rendered, will be determined by submission to arbitration"

“By signing this arbitration agreement below, Resident agrees to be bound by the for[e]going arbitration provisions. Resident acknowledges that he or she has the option of not signing this arbitration agreement and not being bound by the arbitration provisions contained herein. The execution of this arbitration agreement shall not be precondition to the furnishing of medical treatment or for admission to the Facility

“This arbitration agreement shall bind the parties hereto, including the heirs, representatives, executors, administrators, successors, and assigns of such parties.”

Byrne’s mother’s name was printed as “Resident.” Byrne signed on the line marked “Responsible Party.” A line marked “Agent” was left blank.

2. *The Nonmedical Arbitration Agreement.*

The second arbitration agreement was entitled “Arbitration of Other Disputes” (Nonmedical Arbitration Agreement). As relevant here, it provided:

“The Resident and the Facility further agree that any dispute arising between them from torts, contracts or otherwise, . . . including . . . any actions brought on behalf of the Resident by third-parties, . . . shall be submitted . . . to arbitration

“The Resident acknowledges that he or she has the option of not signing this arbitration agreement and not being bound by the arbitration provisions contained herein. The execution of this arbitration agreement shall not be a precondition to the furnishing of medical treatment or for admission to the Facility

“By signing this agreement below, the Resident, and/or Agent and/or Responsible party, if any, agrees to be bound by the foregoing arbitration provisions.”

Again, Byrne’s mother’s name was printed as “Resident.” This time, however, Byrne signed on the line marked “Agent,” and a line marked “Responsible Party” was left blank.

II

PROCEDURAL BACKGROUND

In her complaint in this action, Byrne asserted causes of action for elder abuse, negligence, damages under Health and Safety Code section 1430, subdivision (b) (section 1430(b)),² willful misconduct, and wrongful death. She brought the first four causes of action on behalf of her mother, as her mother’s successor-in-interest. She brought the fifth (wrongful death) cause of action in her own right.

P.T.C.H. filed a motion to compel arbitration. It argued that the FAA applied to the Arbitration Agreements and that the FAA preempted the state law that otherwise

² This subdivision, as relevant here, provides: “A current or former resident or patient of a skilled nursing facility . . . 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 in Section 72527 of Title 22 of the California Code of Regulations, or any other right provided for by federal or state law or regulation. . . . The 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. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.”

made a claim under section 1430(b) inarbitrable. It also argued that Byrne was bound by the Arbitration Agreements.

In her opposition, Byrne argued that:

1. Byrne lacked the authority to bind her mother to the Arbitration Agreements.
2. Byrne herself was not bound by the Arbitration Agreements.
3. The Arbitration Agreements were unenforceable because they did not comply with applicable statutory formatting and disclosure requirements. (See Health & Saf. Code, § 1599.81; 22 Cal. Code Regs. § 72516(d).)
4. The section 1430(b) and elder abuse causes of action were statutorily inarbitrable.
5. Because at least some causes of action were inarbitrable, the trial court should deny arbitration of the remaining causes of action to prevent conflicting rulings. (See Code Civ. Proc., § 1281.2, subd. (c).)
6. P.T.C.H. had waived the right to compel arbitration by delay.

The trial court declined to compel arbitration. It found that Byrne had executed the Arbitration Agreements as her mother's agent. However, it ruled that the Arbitration Agreements were invalid because they did not comply with formatting and disclosure requirements. It also ruled, alternatively, that the section 1430(b) and elder abuse claims were not arbitrable, and therefore there was a possibility of conflicting rulings on a common issue of law or fact. It did not expressly determine whether P.T.C.H. had

waived arbitration. It also did not expressly determine whether Byrne was personally bound by the Arbitration Agreements.

III

STANDARD OF REVIEW

“In reviewing an order denying a motion to compel arbitration, we review the trial court’s factual determinations under the substantial evidence standard, and we review issues of law de novo. [Citation.]” (*Duick v. Toyota Motor Sales, U.S.A., Inc.* (2011) 198 Cal.App.4th 1316, 1320.)

The interpretation of a written agreement presents an issue of law that we review de novo when, as here, no relevant extrinsic evidence was introduced below. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865-866.)

IV

BYRNE’S AUTHORITY TO BIND HER MOTHER

The trial court found that Byrne was acting as her mother’s agent when she executed the Arbitration Agreements. P.T.C.H. claims that, as a result of this ruling “[t]here is no dispute” that Byrne had the requisite authority. That is incorrect. Byrne explicitly contends, in her respondent’s brief, that she did not have her mother’s authority to execute the arbitration agreements.

We recognize that “[a]s a general rule, respondents who fail to file a cross-appeal cannot claim error in connection with the opposing party’s appeal. [Citation.]” (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1121.)

However, there is an exception to this rule: “The respondent . . . may, without appealing from [the order or] judgment, request the reviewing court to and it may review [it] for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification of the judgment from which the appeal is taken.” (Code Civ. Proc., § 906.) “““The purpose of the statutory exception is to allow a respondent to assert a legal theory which may result in affirmance of the judgment.” [Citation.]’ [Citation.]” (*Prakashpalan v. Engstrom, Lipscomb & Lack, supra*, 223 Cal.App.4th at p. 1121.) Here, if the trial court should have found that Byrne lacked authority, then it correctly denied arbitration (even if for the wrong reason); hence P.T.C.H. was not prejudiced and the order must be affirmed.

The trial court did not expressly determine whether the source of Byrne’s authority was the Advance Directive, the General Power, or both. However, if Byrne had such authority under either document, we would have to sustain the trial court’s ruling that Byrne was acting as her mother’s agent.

A. *The Advance Directive Included the Authority to Enter into the Arbitration Agreements, but It Never Went into Effect.*

First, we consider Byrne’s authority under the Advance Directive.

The Health Care Decisions Law, Probate Code section 4600 et seq., allows a person to make future health care decisions by executing an advance health care directive.

“Advance health care directive” is defined as either “an individual health care instruction” or “a power of attorney for health care.” (Prob. Code, § 4605.) An “individual health care instruction” is defined as “a patient’s written or oral direction concerning a *health care decision* for the patient.” (Prob. Code, § 4623, italics added.) Similarly, a “power of attorney for health care” is defined as “a written instrument designating an agent to make *health care decisions* for the principal.” (Prob. Code, § 4629, italics added.)

Probate Code section 4701 prescribes an optional form for an advance health care directive. (See also Prob. Code, § 4700.) That form — which was used in this case — gives an agent the authority “to make health care decisions”

In sum, then, we must determine whether entering into an arbitration agreement with a health care provider constitutes a “health care decision.”

There is a statutory definition of “health care decision,” but it does not conclusively answer this question. It defines “health care decision” as “a decision made by a patient or the patient’s agent, conservator, or surrogate, regarding the patient’s health care, including the following:

“(a) Selection and discharge of health care providers and institutions.

“(b) Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication.

“(c) Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.” (Prob. Code, § 4617.)

On one hand, it could be argued that a decision to require arbitration of a patient’s claims against a health care provider is a decision “regarding the patient’s health care.” On the other hand, it could be argued that under the principle of *ejusdem generis* (see generally *In re Corrine W.* (2009) 45 Cal.4th 522, 531), the apparent generality of a decision “regarding the patient’s health care” must be construed as narrowed by the statutory examples so as to mean a decision about how health care should be provided.

Thus, we turn to the case law. The leading relevant case is *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699. There, the California Supreme Court held “that an agent or other fiduciary who contracts for medical treatment on behalf of his beneficiary retains the authority to enter into an agreement providing for arbitration of claims for medical malpractice.” (*Id.* at p. 709, fn. omitted.) The plaintiff in *Madden* was a state employee. (*Id.* at p. 702.) The Board of Administration of the State Employees Retirement System (board) was statutorily authorized to negotiate contracts for group medical plans for state employees. (*Id.* at pp. 703-704.) The board entered into a contract with the defendant for the provision of health care to state employees; the contract included an arbitration provision. (*Id.* at p. 704.) When the plaintiff sued the defendant for malpractice, the defendant moved to compel arbitration. (*Id.* at p. 705.) The Supreme Court explained that the plaintiff was bound by the arbitration provision

because: “Civil Code section 2319 . . . authorizes a general agent ‘To do everything necessary or proper and usual . . . for effecting the purpose of his agency.’ . . . [W]e conclude that arbitration is a ‘proper and usual’ means of resolving malpractice disputes, and thus that an agent empowered to negotiate a group medical contract has the implied authority to agree to the inclusion of an arbitration provision.” (*Id.* at p. 706.)

Similarly, *Garrison v. Superior Court* (2005) 132 Cal.App.4th 253 held that an advance directive that confers the authority “to make health care decisions” (*id.* at p. 258) includes the authority to enter into an arbitration agreement with a health care provider. It explained:

“There are three provisions of the Health Care Decisions Law in Probate Code section 4600 et seq. that control the outcome of this case. First, Probate Code section 4683 . . . states: ‘Subject to any limitations in the power of attorney for health care: [¶] (a) An agent designated in the power of attorney may make health care decisions for the principal to the same extent the principal could make health care decisions if the principal had the capacity to do so. [¶] (b) The agent may also make decisions that may be effective after the principal’s death’ Second, Probate Code section 4684 states: ‘An agent shall make a health care decision in accordance with the principal’s individual health care instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent’s determination of the principal’s best interest. In determining the principal’s best interest, the agent shall consider the principal’s personal values to the extent known to the agent.’

Third, Probate Code section 4688 states, ‘Where this division does not provide a rule governing agents under powers of attorney, the law of agency applies.’

“Under the combined effect of these three provisions of the Health Care Decisions Law, [the agent] had the authority to enter into the two arbitration agreements on behalf of [the principal]. [The agent] executed the arbitration agreements while making health care decisions on behalf of [the principal]. Whether to admit an aging parent to a particular care facility is a health care decision. The revocable arbitration agreements were executed as part of the health care decisionmaking process. Moreover, the durable power of attorney expressly states, ‘[M]y agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest.’ [The agent] was granted the authority to choose a health care facility which: does not require arbitration; makes arbitration optional as to some possible disputes, as here, and includes a 30-day time period to cancel the agreements to arbitrate; or absolutely requires the use of arbitration to resolve disputes over care. In this case, [the agent] was authorized to act as [the principal]’s agent in making the decision to utilize a health care facility which included an optional revocable arbitration agreement. [The agent] was expressly authorized to even determine where [the principal] would live. Moreover, Probate Code section 4683, subdivision (b) allows the attorney in fact to ‘make decisions after the principal’s death’ which would include how to resolve disputes with the health care provider.” (*Garrison v. Superior Court, supra*, 132 Cal.App.4th at pp. 265-266.) Finally, the court noted that under general agency principles, as applied in *Madden*, “‘an agent or

fiduciary’ who makes medical care decisions retains the power to enter into an arbitration agreement. [Citations.]” (*Garrison v. Superior Court, supra*, at p. 267.)

For the sake of completeness, we note that in *Young v. Horizon West, Inc.* (2013) 220 Cal.App.4th 1122, the court held that a power of attorney for health care did *not* include the authority to enter into an arbitration agreement. It stated: “[T]he [power of attorney] contains no terms authorizing the patient’s agent to make any decisions other than ‘health care decisions’ for the patient. *Garrison* . . . is distinguishable for this reason as well. There the durable power of attorney included ‘the power to sign “[a]ny necessary waiver or release from liability required by a hospital, or physician.’” [Citation.] The reviewing court did, however, express the view that the term ‘health care decisions’ made by an agent encompasses the execution of arbitration agreements on behalf of the patient. So broad an interpretation of ‘health care decisions’ seems unnecessary to the result in *Garrison*, and to the extent that the court intended such a general application, we disagree with its conclusion.” (*Id.* at p. 1129.)

We find *Garrison* more persuasive than *Young*. *Young* ignored *Madden*, which it should have found controlling. Moreover, unlike *Garrison*, *Young* did not even mention Probate Code sections 4683, 4684, and 4688. *Young* relied almost exclusively on the fact that the power of attorney was limited to “health care decisions”; however, this term can reasonably be understood to encompass legal agreements with health care professionals that serve to implement health care decisions. Here, as in *Garrison*, the Advance Directive stated, “[M]y agent shall make health care decisions for me in accordance with

what my agent determines to be in my best interest.” It also gave the agent the power to “[s]elect . . . health care providers or institutions,” which necessarily included the power to select providers and institutions that require arbitration, that offer arbitration as an option, or that do not offer arbitration at all.³ As mentioned, *Young* attempted to distinguish *Garrison* on the ground that the power of attorney in *Garrison* included the authority to sign a waiver or release of liability. An arbitration agreement, however, is not a “waiver” or a “release.”

We also note that there is a pragmatic reason for an advance directive to include the authority to enter into an arbitration agreement: If one person is in charge of making health care decisions for another, it simply makes sense for that person to have the authority to deal with all of the paperwork that a visit to a doctor’s office or a hospital is likely to entail.

P.T.C.H. argues that entering into the Arbitration Agreements was not a health care decision because it was not a requirement for receiving health care. Both Arbitration Agreements stated, “The execution of this arbitration agreement shall not be a precondition to the furnishing of medical treatment or for admission to the Facility” “Health care decision,” however, is statutorily defined as “a decision . . . *regarding* the

³ Unlike the power of attorney in *Garrison*, the Advance Directive here did not give Byrne the power to decide where her mother would live. However, this is not particularly significant, as Byrne clearly had the power to choose a skilled nursing facility.

patient’s health care” (Prob. Code, § 4617, italics added.) It is not restricted to decisions *necessary* to obtain health care.

Thus, we conclude that the Advance Directive included the authority to enter into an arbitration agreement with a health care provider.

The Advance Directive, however, by its terms, did not take effect until Byrne’s mother’s primary physician determined that she was unable to make her own health care decisions. There was no evidence that this ever occurred. Thus, there was no evidence that Byrne had the authority, under the Advance Directive, to enter into the Arbitration Agreements. (See *Young v. Horizon West, Inc.*, *supra*, 220 Cal.App.4th at pp. 1128-1129.)

P.T.C.H. asserts that Byrne “ha[s] in [her] possession” medical records showing that her mother’s primary care physician had diagnosed her mother as having dementia. However, it does not cite the record in support of this assertion (see Cal. Rules of Court, rule 8.204(a)(1)(C)) — presumably because the record does not, in fact, support it.

P.T.C.H. filed the motion to compel arbitration; thus, it had the burden of proving the existence of an arbitration agreement (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (U.S.), LLC* (2012) 55 Cal.4th 223, 236), including the burden of proving that Byrne was acting as her mother’s agent (*Inglewood Teachers Assn. v. Public Employment Relations Bd.* (1991) 227 Cal.App.3d 767, 780). There was no evidence of dementia. Moreover, a person with dementia is not necessarily legally incapacitated. (*Holman v. Stockton Sav. & Loan Bk.* (1942) 49 Cal.App.2d 500, 508; see Rabins,

Dementia and Alzheimer’s Disease: An Overview (Winter 2001) 35 Ga. L.Rev. 451, 458 [“in slowly progressive dementias such as Alzheimer’s disease, decisional incapacity develops gradually and unpredictably, and depends not only on the specific patterns of cognitive impairment, but also on the specific decisions the person is facing”].) Hence, P.T.C.H. failed to carry its burden.

B. *The General Power of Attorney Went into Effect, but It Did Not Include the Authority to Enter into the Arbitration Agreements.*

Next, we consider Byrne’s authority under the General Power.

The General Power specifically provided that it was not valid for “health care decisions.” (Capitalization altered.) As we have already held, the authority to make “health care decisions” includes the authority to enter into an arbitration agreement with a health care provider. Thus, the General Power excluded this authority.

Certainly it could be argued that “health care decisions” as used in the General Power did not *have* to have the same meaning as “health care decisions” as used in the Advance Directive. Under the particular circumstances here, however, they were clearly intended to have the same meaning.

The Power of Attorney Law (Prob. Code, § 4000, et seq.) and the Health Care Decisions Law (Prob. Code, § 4600 et seq.) are designed to be mutually exclusive. The Power of Attorney Law by its terms does not apply to “powers of attorney for health care governed by Division 4.7 (commencing with Section 4600)” (Prob. Code, § 4050, subd. (a)(1).)

It is important to have as much of a bright-line distinction between the two as possible so that it will be clear which law applies when. For example, an agent under a general power of attorney is entitled to reasonable compensation (Prob. Code, § 4204); there is no similar provision for an agent under a power of attorney for health care. Certain persons are precluded from acting as agents under a power of attorney for health care (Prob. Code, § 4659) who are not precluded from acting as agents under a general power of attorney. An uncertified copy of a power of attorney for health care has the same effect as the original (Prob. Code, § 4660); an uncertified copy of a general power of attorney does not (Prob. Code, § 4307). Unless otherwise provided, a power of attorney for health care is effective only if it has been determined that the principal lacks capacity. (Prob. Code, § 4682.) The same is not necessarily true of a general power of attorney.

Here, by using two separate documents, one for “health care decisions” and one for everything other than “health care decisions,” Byrne’s mother manifested an intent to minimize any potential overlap. In light of that — and in light of the Supreme Court and other case law holding that the authority to contract with a health care provider includes the authority to enter into an arbitration agreement with the health care provider — we conclude that the General Power *excluded* the authority to enter into such an arbitration agreement.

In sum, then, we conclude that Byrne lacked the authority to enter into the Arbitration Agreements on behalf of her mother.

V

THE EFFECT OF THE ARBITRATION AGREEMENTS

ON BYRNE'S PERSONAL CLAIM

Byrne also contends that she is not a party to the Arbitration Agreements, and thus she never agreed to arbitrate her own personal claim for wrongful death.

“Arbitration is a matter of contract and therefore, ordinarily, someone not a party to the arbitration agreement cannot be compelled to arbitrate. [Citation.]” (Knight et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2014) ¶ 5:267, p. 5-258.)

In *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, however, the Supreme Court carved out an exception to this rule. There, a patient had entered into an arbitration agreement with a doctor. (*Id.* at p. 841.) The agreement provided that it was binding on “. . . all parties whose claims may arise out of or relate to treatment or service provided by the physician including any spouse or heirs of the patient” (*Id.* at pp. 841-842.) It also specifically provided for arbitration of wrongful death claims. (*Id.* at p. 842.)

The agreement was in conformity with Code of Civil Procedure section 1295 (*Ruiz v. Podolsky, supra*, 50 Cal.4th at p. 841), which prescribes certain wording and formatting requirements for any agreement to arbitrate a dispute as to the “professional negligence” of a “health care provider.” (See *id.* at p. 843, italics omitted.)

The court noted that “section 1295, subdivision (a) contemplates arbitration ‘of any dispute as to professional negligence of a health care provider.’ “Professional negligence” is defined in section 1295, subdivision (g)(2) as ‘a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death.’ (Italics omitted.)” (*Ruiz v. Podolsky, supra*, 50 Cal.4th at p. 849.)

The court then held that “section 1295, construed in light of its purpose, is designed to permit patients who sign arbitration agreements to bind their heirs in wrongful death actions.” (*Ruiz v. Podolsky, supra*, 50 Cal.4th at p. 849.) It concluded that “all wrongful death claimants are bound by arbitration agreements entered into pursuant to section 1295, at least when, as here, the language of the agreement manifests an intent to bind these claimants.” (*Id.* at p. 841.)

Ruiz, however, is not controlling here. As we held in part IV, *ante*, Byrne lacked the authority to enter into the Arbitration Agreements on behalf of her mother. Because Byrne’s mother was not bound, Byrne herself was not bound on the theory that she was her mother’s successor in interest under *Ruiz*. (See *Goldman v. SunBridge Healthcare, LLC* (2013) 220 Cal.App.4th 1160, 1177.)

At least with regard to the Medical Arbitration Agreement, Byrne also was not bound on the theory that she signed it in her individual capacity. The Medical Arbitration Agreement was between the “Resident” and the “Facility.” It stated, “*Both parties . . . are accepting the use of arbitration.*” (Italics added.) It also stated, “*Resident* agrees to

be bound by the for[e]going arbitration provisions.” (Italics added.) Byrne, however, signed on the line for “Responsible Party.”

Fitzhugh v. Granada Healthcare & Rehabilitation Center, LLC (2007) 150 Cal.App.4th 469 is on point. There, Ruth Fitzhugh was admitted to a health care facility. Her husband George Fitzhugh signed two arbitration agreements as her “Legal Representative/Agent.” (*Id.* at pp. 471-472.) Each of the agreements stated: “This arbitration agreement binds the parties hereto, including the heirs, representatives, executors, administrators, successors, and assigns of such parties.” (*Id.* at p. 472.) After Ruth died, George sued the facility for wrongful death (among other causes of action). (*Id.* at pp. 471-472.)

The court held that George was not required to arbitrate his wrongful death cause of action. It stated, “It is irrelevant to the wrongful death cause of action whether George Fitzhugh may have signed the arbitration agreements as the decedent’s ‘legal representative/agent.’ Because there is no evidence that George Fitzhugh signed the arbitration agreements in his personal capacity, . . . there is no basis to infer that [he] waived [his] personal right to jury trial on the wrongful death claim. [Citations.]” (*Fitzhugh v. Granada Healthcare & Rehabilitation Center, LLC, supra*, 150 Cal.App.4th at p. 474, fn. omitted.)

Here, identically, Byrne did not sign the Medical Arbitration Agreement in her personal capacity. “[A] responsible party in the health care context is a person who assumes personal liability for the patient's bills [citation].” (*Flores v. Evergreen at San*

Diego, LLC (2007) 148 Cal.App.4th 581, 593.) If the Medical Arbitration Agreement was binding on her at all — and it bears repeating that it did not contain any language obligating her — it was solely in her capacity as guarantor, and not in her capacity as wrongful death claimant in her own right.

By contrast, with regard to the Nonmedical Arbitration Agreement, it is at least arguable that Byrne was bound by it because she signed it. Again, the Nonmedical Arbitration Agreement was between the “Resident” and the “Facility.” Byrne signed on the line for “Agent.” However, the Nonmedical Arbitration Agreement also provided, “By signing this agreement below, the Resident, and/or Agent and/or Responsible Party, if any, agrees to be bound by the foregoing arbitration provisions.” Thus, unlike the Medical Arbitration Agreement, the Nonmedical Arbitration Agreement affirmatively indicated an intent that Byrne be bound in her personal capacity.

Byrne’s wrongful death claim in this action, however, is a medical malpractice claim, not an “[o]ther [d]ispute[.]” P.T.C.H. even affirmatively argues that “. . . Byrne’s claim for wrongful death is predicated upon alleged medical malpractice” Thus, it was not within the scope of the Nonmedical Arbitration Agreement.

We therefore conclude that Byrne’s personal wrongful death claim is not subject to the Arbitration Agreements at all.

VI

DISPOSITION

The appeal is dismissed. Each side shall bear its own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

CODRINGTON
J.