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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CATHERINE FLORES, Plaintiff and Appellant, v. PRESBYTERIAN INTERCOMMUNITY HOSPITAL, Defendant and Respondent.	B235409 (Los Angeles County Super. Ct. No. VC058225)

APPEAL from an order of the Superior Court of Los Angeles County, Yvonne T. Sanchez, Judge. Reversed with directions.

Edward W. Lloyd & Associates and Edward W. Lloyd for Plaintiff and Appellant.

Fonda & Fraser, Kristen J. Heim and Rachael Kogen for Defendant and Respondent.

Plaintiff and appellant Catherine Flores (Flores) appeals an order of dismissal following the sustaining without leave to amend of a demurrer interposed by defendant and respondent Presbyterian Intercommunity Hospital (Hospital) to Flores's original complaint.

Flores, a patient, sued the Hospital for general negligence and premises liability. Flores pled she injured her left knee and elbow when the bed rail collapsed, causing Flores to fall to the floor. The trial court held the action was time-barred.

For purposes of determining the applicable statute of limitations, the essential issue presented is whether Flores's lawsuit arose out of professional malpractice or ordinary negligence. The trial court ruled the action arose out of the alleged "professional negligence" of a health care provider, so as to be subject to the one-year statute of limitations (Code Civ. Proc., § 340.5) imposed by the Medical Injury Compensation Reform Act of 1975 (MICRA) (Stats. 1975, 2d Ex. Sess., ch. 1, § 25, pp. 3969-3970, ch. 2, § 1.192, pp. 3991-3992). [1]

Based on a survey of case law and statutory analysis, we conclude Flores's action sounded in ordinary negligence, so as to be governed by the two-year statute applicable to personal injury actions. (§ 335.1.) Therefore, Flores's lawsuit was filed timely. We reverse the order of dismissal with directions to reinstate the action.

FACTUAL AND PROCEDURAL BACKGROUND

On March 2, 2011, Flores filed suit against the Hospital, pleading causes of action for general negligence and premises liability.[2] Flores pled that nearly two years earlier, on March 5, 2009, she "sustained injuries and damages when the bed rail collapsed causing plaintiff to fall to the ground injuring her left knee and elbow."

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[1] All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

[2] Although the complaint did not allege that Flores was a patient at the time her injury occurred, Flores acknowledged that fact in her opposition papers.

The Hospital demurred, contending that although Flores labeled her causes of action as "general negligence" and "premises liability," the action sounded in "professional negligence" and therefore was barred by the one-year statute of limitations. (§ 340.5.) The Hospital reasoned, "the alleged negligence was an integral part of the professional services being rendered to plaintiff. Plaintiff was under the care of [the Hospital] and her alleged injuries occurring in the [H]ospital. Any purported claim is for medical negligence."

In her opposition papers, Flores asserted this was a case of ordinary negligence, not professional negligence. Here, "no negligence was committed in assessing the condition of Plaintiff and in failing to raise the siderails. That medical assessment had already been made and a medical decision to raise the siderails had been made. As such, . . . there was no professional negligence. It was only after the rendition of all professional services (i.e., the assessment of Plaintiff's condition and medical decision to employ siderails), and after the siderails had been negligently latched, that those siderails collapsed, injuring Plaintiff."

On May 13, 2011, the matter came on for hearing. The trial court sustained the Hospital's demurrer to the original complaint without leave to amend. The trial court reasoned: "To decide whether an action arises out of the professional negligence of a health care provider, the 'nature and cause of a plaintiff's injury must be examined to determine whether each is directly related to the manner in which professional services were provided.' [Citation.] The Court looks not at the degree of skill involved, but whether such skill is an integral part of the professional service being rendered. [Citations.] [¶] . . . [T]he hospital here has a duty 'to recognize the condition of patients under its care and to take appropriate measures for their safety.' [Citation.] Ensuring that bedrails, to the extent they are needed by a particular patient, are properly raised or lowered and properly latched is a duty that arises from the professional services being rendered. Plaintiff's claim is governed by section 340.5."

The trial court also denied Flores's request for leave to amend, stating she "had not met her burden of establishing an ability to amend the complaint to cure its untimeliness." Flores filed a timely notice of appeal from the order of dismissal.

CONTENTIONS

Flores contends her action is governed by the two-year statute of limitations applicable to personal injury actions, rather than the one-year statute of limitations applicable to medical malpractice actions. We agree.

DISCUSSION

1. *Standard of appellate review*.

In determining whether a plaintiff has properly stated a claim for relief, "our standard of review is clear: ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.' [Citations.]" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) Our review is de novo. (*Ibid*.)

2. *Overview*.

The "impetus for MICRA was the rapidly rising costs of medical malpractice insurance in the 1970's. 'The inability of doctors to obtain such insurance and reasonable rates is endangering the health of the people of this State, and threatens the closing of many hospitals.' (Governor's Proclamation to Leg. (May 16, 1975) Stats. 1975 (Second Ex. Sess. 1975-1976) p. 3947, and quoted in *American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, 363, fn. 1 [204 Cal.Rptr. 671, 683 P.2d 670, 41 A.L.R.4th

233].) The response was to pass the various statutes that comprise MICRA to limit damages for lawsuits against a health care provider based on professional negligence. (Civ. Code, §§ 3333.1, 3333.2; Code Civ. Proc., § 667; Bus. & Prof. Code, § 6146.)" (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33-34.)[3]

Section 340.5, MICRA's limitations provision, states in pertinent part: "*In an action for injury or death against a health care provider based upon such person's alleged professional negligence*, the time for the commencement of action shall be three years after the date of injury *or one year* after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, *whichever occurs first*." (§ 340.5, italics added.)

Section 340.5 neither deals with, nor defines, ordinary negligence. It defines "professional negligence" 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 . . . , provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital." (§ 340.5, subd. (2), italics added.)

Section 335.1, which is outside MICRA, is the statute on which Flores relies. Section 335.1 is the limitations period for personal injury actions, i.e., ordinary

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[3] For an extensive discussion of the topic, see generally Annotation, What Patient Claims Against Doctor, Hospital, or Similar Health Care Provider Are Not Subject to Statutes Specifically Governing Actions and Damages for Medical Malpractice (1991) 89 A.L.R.4th 887 (Annotation). The Annotation observes, "Because all of the legislative responses to the medical malpractice crisis were attempts to limit the health care provider's exposure to liability, disputes arose concerning whether certain types of claims against health care providers constituted malpractice actions; plaintiffs seeking to avoid the statutes argue that a particular claim falls outside the definition of medical malpractice, while defendants seek to bring almost every claim against a health care provider within the definition. The courts have struggled with proper categorization of patient claims which arise in connection, however slight, with health care. [¶] In defining the scope of the medical malpractice statutes as applied to tort claims, the courts have weighed various considerations, including the statutory language and legislative history, and the factual basis and context of a claim." (*Id*. at § 2[a], p. 898.)

negligence. It states: "*Within two years*: An action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another." (*Ibid.*, italics added.)[4]

Because the limitations period differs depending upon the characterization of the alleged negligence, the essential issue presented is whether Flores's fall from a hospital bed constituted professional negligence or ordinary negligence. If the complaint sounds in professional negligence, it would be barred by the one-year limitations period of section 340.5. Conversely, if the complaint sounds in ordinary negligence, this action would be governed by the two-year limitations period of section 335.1 and therefore would be timely.

3. *Survey of case law involving falls from hospital beds or gurneys.*

In order to determine whether the instant fact situation sounds in ordinary negligence or professional negligence, we set forth pertinent case law involving patient falls from beds or gurneys.

a. *Pre-MICRA cases.*

(1) *Gin*.

In the pre-MICRA case of *Gin Non Louie v. Chinese Hospital Assn.* (1967) 249 Cal.App.2d 774 (*Gin*), the plaintiff broke his hip when he fell out of bed while a patient at the defendant hospital. The evidence indicated that at the time of the fall, the sidedrails were raised and the plaintiff fell while attempting to climb out at the foot of the bed. (*Id*. at p. 779.) However, the evidence also showed the hospital staff knew the plaintiff was suffering from a progressive disease of the brain and nervous system and that he was restless and confused during the hours before his fall. Affirming a judgment for the plaintiff, the reviewing court held there was substantial evidence the hospital staff

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[4] Before section 335.1 extended the statute of limitations for personal injury actions to two years (Stats. 2002, ch. 488, § 2), the statute of limitations was one year (form. § 340, subd. (3)). (Sen. Bill No. 688, 2001-2002 Reg. Sess., Legislative Counsel's Digest.)

was negligent in failing to notify the plaintiff's physician of his deteriorating condition, and in failing to provide further supervision. (*Gin, supra,* 249 Cal.App.2d at p. 795.)

(2) *Gopaul.*

Gopaul v. Herrick Memorial Hosp. (1974) 38 Cal.App.3d 1002 (*Gopaul*) was decided shortly before the enactment of MICRA. There, a patient who was later diagnosed with bronchial pneumonia, went to the hospital for X-rays. Hospital employees placed her on a gurney and wheeled her to a room where the X-ray pictures were taken. She was then placed back on, but not strapped to, the gurney, after which she was left unattended while the hospital's technician developed the X-ray film. While so unattended, she developed a fit of coughing and fell to the floor, injuring her back. (*Id*., at p. 1004.)

In affirming a judgment of nonsuit in favor of defendant hospital, *Gopaul* stated: "It will be seen that 'professional malpractice' was not involved in the defendant hospital's tortious conduct, and that the reasons for the extended statute of limitations for such malpractice are wholly inapplicable here. *The need to strap plaintiff to the gurney while she was ill and unattended would have been obvious to all. The situation required no professional 'skill, prudence and diligence.'* It simply called for the exercise of ordinary care." (*Gopaul, supra*, 38 Cal.App.3d at p. 1007, italics added.)

Gopaul reasoned, "inherent in the concept of 'professional malpractice' is that it must have occurred in the 'performance of professional or fiduciary duties.' It follows that not every tortious injury inflicted upon one's client or patient or fiducial beneficiary amounts to such malpractice. No reasonable person would suggest that 'professional malpractice' was the cause of injury to a patient from a collapsing chair in a doctor's office, or to a client from his attorney's negligent driving en route to the court house, or to a hospital patient from a chandelier falling onto his bed. Such injuries would, no doubt, have proximately resulted from 'ordinary negligence,' but they would not be brought about from 'professional malpractice.' " (*Gopaul, supra,* 38 Cal.App.3d at pp. 1005-1006.)

b. *Post-MICRA cases; conflict as to whether patient injury arising from dangerous condition of hospital premises amounts to ordinary or professional negligence.*

(1) *Murillo.*

In *Murillo v. Good Samaritan Hospital* (1979) 99 Cal.App.3d 50 (*Murillo*), a patient was admitted to a hospital for treatment of shingles on her lower back. The condition caused severe pain and prevented the patient from lying on her back. She fell out of bed during the night and was injured. (*Id*. at p. 53.) The defendant hospital successfully moved for summary judgment on the ground the alleged negligent conduct, i.e., failure to raise the bedrails, was ordinary negligence rather than professional negligence. Accordingly, the hospital maintained the action was barred by the one-year limitations period of then section 340, subdivision (3). (*Murillo, supra*, 99 Cal.App.3d at p. 53.)

Murillo reversed, stating: "In the present case, the question whether it was negligent to leave the bedrails down during the night while plaintiff was asleep is a question involving hospital's duties to recognize the condition of patients under its care and to take appropriate measures for their safety. Thus, the question is squarely one of professional negligence [citation] and section 340.5 governs the running of the statute of limitations." (*Murillo, supra*, 99 Cal.App.3d at p. 56.)

Murillo disagreed with the pre-MICRA decision in *Gopaul*, explaining: "*Gopaul* was decided under the law existing before enactment of Code of Civil Procedure section 340.5. Whether the case was correctly decided under that law we need not decide. We do conclude, however, that the result reached in *Gopaul* is incompatible with the definition of professional negligence found in section 340.5. *Under that definition, the test is not whether the situation calls for a high or a low level of skill, or whether a high or low level of skill was actually employed, but rather the test is whether the negligent act occurred in the rendering of services for which the health care provider is licensed*. When a seriously ill person is left unattended and unrestrained on a bed or gurney, the negligent act is a breach of the hospital's duty as a hospital to provide

appropriate care and a safe environment for its patients." (*Murillo, supra,* 99 Cal.App.3d at p. 57.)

With respect to the various hypotheticals set forth in *Gopaul*, the *Murillo* court agreed that a patient who is injured by a collapsing chair in a waiting room, or a client who is injured by his attorney's negligent driving to the courthouse, would *not* be victims of *professional* negligence. (*Murillo, supra,* 99 Cal.App.3d at p. 56.)

However, with respect to *Gopaul*'s third example, i.e., injury to a hospital patient from a chandelier falling onto his bed (*Gopaul, supra,* 38 Cal.App.3d at p. 1006), *Murillo* viewed that situation as involving professional negligence, stating "we have difficulty with the third example because the professional duty of a hospital . . . is primarily to provide a safe environment within which diagnosis, treatment, and recovery can be carried out. Thus if an unsafe condition of the hospital's premises causes injury to a patient, as a result of the hospital's negligence, there is a breach of the hospital's duty *qua* hospital." (*Murillo, supra,* 99 Cal.App.3d at pp. 56-57.)

(2) *Flowers.*

In *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992 (*Flowers*), the plaintiff was admitted to a hospital emergency room complaining of bladder pain. She was assisted onto a gurney by a nurse to await further medical attention, at which time the nurse raised only the far side railing of the gurney. While awaiting treatment, plaintiff apparently fell asleep. When she awoke, she attempted to roll over but instead, fell off the gurney and sustained injury to her back and arm. (*Id.* at p. 995.)

The trial court granted summary judgment in favor of the hospital and the nurse on the emergency room patient's complaint for negligence. The defense expert declared the prevailing standard of care did not require emergency room personnel to raise gurney siderails for patients like the plaintiff, whose condition (bladder pain) did not appear to warrant this precaution. (*Flowers, supra,* 8 Cal.4th at p. 996.)

The Court of Appeal reversed. It concluded defendants had negated an action for professional negligence but determined the pleadings were broad enough to state a cause of action for ordinary negligence. (*Flowers, supra,* 8 Cal.4th at p. 996.)

The Supreme Court reversed and remanded, holding a plaintiff cannot, on the same facts, state causes of action for ordinary negligence as well as professional negligence, as a defendant has only one duty that can be measured by one standard of care under any given circumstances. (*Flowers, supra,* 8 Cal.4th at p. 1000.) Citing *Gopaul* and *Murillo*, the Supreme Court noted that "[t]wo decisions by Courts of Appeal have addressed the question of whether a patient's fall from a hospital bed or gurney constituted 'ordinary' or 'professional' negligence." (*Flowers, supra,* 8 Cal.4th at p. 999.) However, "[b]ecause the question [was] not squarely presented [*in Flowers*], [the Supreme Court] decline[d] to resolve the conflict between *Murillo v. Good Samaritan Hospital, supra,* 99 Cal.App.3d 50, and *Gopaul v. Herrick Memorial Hosp., supra*, 38 Cal.App.3d 1002, on the question of whether a patient's fall from a hospital bed or gurney implicates 'professional' or 'ordinary' negligence in a statutory context." (*Flowers, supra,* 8 Cal.4th at p. 1002, fn. 6.)

(3) *Bellamy*.

We conclude our California survey with *Bellamy* v. *Appellate Department* (1996) 50 Cal.App.4th 797 (*Bellamy*). There, plaintiff sued a hospital, alleging causes of action for general negligence and premises liability. She pled she was injured at the hospital " 'when she fell off a rolling X-ray table onto her head. Plaintiff was left unattended and said X-ray table was not secured.' " (*Id.* at p. 799.)

The hospital demurred to the complaint on the sole ground the action was barred by the one-year statute of limitations for personal injury actions. (Form. § 340, subd. (3).) The plaintiff opposed the demurrer, arguing she was subject to the notice requirement for professional negligence actions against health care providers, that she served the required notice within 90 days of expiration of the limitations period, that her time for filing suit was thus extended 90 days after service of notice, and that her complaint was timely filed under section 364, subdivision (d). The trial court sustained

the hospital's demurrer without leave to amend and dismissed the action. (*Bellamy, supra,* at pp. 799-800.)

Bellamy reversed, concluding the complaint sufficiently alleged facts amounting to professional negligence, bringing it within section 364, making the complaint timely. (*Bellamy, supra,* 50 Cal.App.4th at p. 809.) *Bellamy* reasoned that the plaintiff was injured "either in preparation for, during, or after an X-ray exam or treatment," and that section 340.5 defines professional negligence as " 'a negligent action or omission . . . in the rendering of professional services.' " (*Bellamy, supra,* at p. 805.) Under "the facts alleged, the hospital was rendering professional services to Bellamy in taking X-rays and she would not have been injured by falling off the X-ray table but for receiving those services. Consequently, under a broad reading of the statute any negligence in allowing her to fall off the X-ray table arose 'in the rendering of professional services.' " (*Id*. at pp. 805-806.) Further, "[t]his result is consistent with *Murillo*: '[T]he test is whether the negligent act occurred in the rendering of services for which the health care provider is licensed.' (*Murillo v. Good Samaritan Hospital, supra,* 99 Cal.App.3d at p. 57.)" (*Bellamy, supra,* 50 Cal.App.4th at p. 806.)

The defendant hospital urged the *Bellamy* court to reject the *Murillo* test on the ground said test "is overbroad and 'would make *any* act inside a hospital which causes any harm to a patient or to any person inside a hospital an act of "professional negligence." ' The hospital criticize[d] the *Murillo* court's dictum that a negligently maintained, unsafe condition of a hospital's premises which causes injury to a patient falls within professional negligence. According to the hospital, this rationale 'obliterates' the word 'professional' from the statutory definition, making any negligence by an agent or employee of a health care facility professional negligence." (*Bellamy, supra,* 50 Cal.App.4th at p. 806.)

Bellamy stated: "We do not need to agree with the *Murillo* dictum to apply that court's actual holding in this case. *Murillo's* facts showed that a patient hospitalized for treatment of shingles on her lower back was placed on a hospital bed and given sedatives and tranquilizers. The alleged negligence was failure of the hospital staff to raise bedrails

designed to prevent the patient's falling while she was asleep. On these facts we agree with the court's holding that the case fell within the statutory definition of professional negligence. *That holding does not necessarily lead to the further conclusion that any negligent act or omission by a hospital causing a patient injury is professional negligence*." (*Bellamy, supra,* 50 Cal.App.4th at p. 806, italics added.)

In sum, *Bellamy* agreed with *Murillo* to the extent *Murillo* held the issue is controlled by the statutory definition of professional negligence in section 340.5, "*which focuses on whether the negligence occurs in the rendering of professional services, rather than whether a high or low level of skill is required*. (*Murillo v. Good Samaritan Hospital, supra*, 99 Cal.App.3d at p. 57.)" (*Bellamy, supra,* 50 Cal.App.4th at pp. 806-807, italics added.)

Bellamy added, "That the alleged negligent omission was simply the failure to set a brake on the rolling X-ray table or the failure to hold the table in place, neither of which requires any particular skill, training, experience or exercise of professional judgment, does not affect our decision. We presume that during the course of administering an examination or therapy like that which Bellamy underwent, an X-ray technician may perform a variety of tasks, such as assisting the patient onto the table, manipulating the table into one or more desired positions, instructing the patient to move from one position to another, activating the X-ray machine, removing the photographic plates, assisting the patient from the table, etc. *Some of those tasks may require a high degree of skill and judgment, but others do not. Each, however, is an integral part of the professional service being rendered*. Trying to categorize each individual act or omission, all of which may occur within a space of a few minutes, into 'ordinary' or 'professional' would add confusion in determining what legal procedures apply if the patient seeks damages for injuries suffered at some point during the course of the examination or therapy. We do not see any need for such confusion or any indication the Legislature intended MICRA's applicability to depend on such fine distinctions." (*Bellamy, supra,* 50 Cal.App.4th at p. 808.)

c. *Other jurisdictions*.

In discussing whether particular patient tort claims are subject to medical malpractice statutes, the Annotation observes that "[p]atient claims based on the negligent maintenance of a health care provider's premises or equipment failure are the *least likely* to be found subject to the medical malpractice statutes." (Annotation, *supra*, 89 A.L.R. 4th at § 2[a], p. 901, italics added.) The Annotation differentiates between: (1) patient injuries arising out of the failure to provide a safe hospital bed (*id*. at § 31, p. 981); (2) patient claims alleging that a health care provider failed to adequately observe or supervise a patient in order to prevent a fall from bed, where the condition of the bed is not an issue (*id*. at § 31, p. 981, fn. 88); and claims alleging the bed rails should have been raised, without reference to the condition of the rails. (*Ibid*.)

Guided by the above, we turn to the case at bench.

4. *Based on the aforesaid summary of case law, we conclude Flores sufficiently pled facts amounting to ordinary negligence, bringing her action within the two-year limitations period of section 335.1.*

"[I]t is recognized that the dividing line between 'ordinary negligence' and 'professional malpractice' may at times be difficult to place . . . ." (*Gopaul, supra*, 38 Cal.App.3d at p. 1007.)

Nonetheless, the instant fact situation is easily distinguished from the five California cases discussed above, arising out of patient falls from beds or gurneys. All those cases involve injury to a patient resulting from the failure to properly secure or supervise the patient while on a hospital bed or gurney. In *Gin*, although the siderails were raised, a confused patient who was not properly medicated and was unsupervised, fell while attempting to climb out at the foot of the bed. (*Gin, supra,* 249 Cal.App.2d at p. 779.) In *Gopaul*, a patient fell after being left unattended on a gurney, to which she had not been strapped. (*Gopaul, supra,* 39 Cal.App.3d at p. at p. 1004.) In *Murillo,* the bedrails were left down during the night and the patient fell out of bed. (*Murillo, supra,* 99 Cal.App.3d at pp. 53, 56.) In *Flowers*, the nurse raised only the far side railing of the gurney and the patient fell off the gurney. (*Flowers, supra*, 8 Cal.4th at p. 995.) Finally,

in *Bellamy*, the patient fell after being left unattended on a rolling X-ray table which had not been secured. (*Bellamy, supra*, 50 Cal.App.4th at p. 799.)

Here, in contrast, as alleged in the complaint, the patient was injured "when the bed rail *collapsed* causing plaintiff to fall to the ground injuring her left knee and elbow." (Italics added.) *Thus, Flores does not allege the Hospital was negligent in failing to elevate the bed rails or in otherwise failing to supervise or secure her*. Rather, Flores alleges she was injured by an *equipment failure*, i.e., a collapsed bed rail. The alleged negligence is the Hospital's failure "to use reasonable care in maintaining [its] premises and fail[ing] to make a reasonable inspection of the equipment and premises, which were open to Plaintiff and the public, and fail[ing] to take reasonable precautions to discover and make safe a dangerous condition on the premises." As set forth *ante*, the discrete issue presented is whether these allegations by Flores, involving a collapsed bed rail, sound in ordinary negligence or professional negligence.

In the era of MICRA, the controlling language is found in the statutory definition of professional negligence, which focuses on whether the negligence occurred in the rendering of *professional services*. To reiterate, for purposes of section 340.5,"professional negligence" is defined as "a negligent act or omission to act by a health care provider *in the rendering of professional services* . . . ." (§ 340.5, subd. (2), italics added.)[5]

Clearly, there is a dichotomy between ordinary negligence and professional negligence, with MICRA only governing the latter type of negligence. However, the statutory definition of professional negligence is less than clear. Therefore, the courts

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[5] "The definition of 'professional negligence' was included in the following [MICRA] provisions: Business and Professions Code section 6146 (limitation on attorney contingency fees); Civil Code section 3333.1 (admissibility of evidence of recovery from collateral sources); section 3333.2 (limitation on noneconomic damages); Code of Civil Procedure sections 340.5, 364 (notice of intent to file action); section 667.7 (periodic payment of damage award); section 1295 (notice regarding arbitration provision in contract)." (*Hedlund v. Superior Court* (1983) 34 Cal.3d 695, 701, fn. 5 (*Hedlund*).)

have grappled with whether a given fact situation constitutes ordinary negligence or professional malpractice.

We conclude the instant fact situation, consisting of a collapsed bed rail, does not constitute professional negligence. The test under section 340.5 is whether " 'the negligent act occurred in the rendering of services for which the health care provider is licensed.' " (*Bellamy, supra,* 50 Cal.App.4th at p. 806.) For example, in *Bellamy*, the patient "was injured either in preparation for, during, or after an X-ray exam or treatment." (*Id*. at p. 805.)

Case law recognizes that "not every tortious injury inflicted upon one's client or patient or fiducial beneficiary amounts to [professional] malpractice." (*Gopaul, supra*, 38 Cal.App.3d at p. 1006; accord, *Murillo, supra*, 99 Cal.App.3d at p. 56; *Bellamy, supra*, 50 Cal.App.4th at p. 803.) The case at bench is most analogous to *Gopaul*'s hypothetical examples of *ordinary* negligence involving a collapsed chair and a fallen chandelier. *Gopaul* observed, "No reasonable person would suggest that 'professional malpractice' was the cause of injury to a patient from a collapsing chair in a doctor's office, or to a client from his attorney's negligent driving en route to the court house, or to a hospital patient from a chandelier falling onto his bed." (*Gopaul, supra*, 38 Cal.App.3d at p. 1006.)

Murillo agreed with the first two hypothetical examples of *ordinary* negligence given in *Gopaul* (38 Cal.App.3d at p. 1006), i.e., injury to a patient from a collapsing chair in a doctor's office, and injury to a client from his attorney's negligent driving en route to the courthouse. (*Murillo, supra,* 99 Cal.App.3d at p. 56.) But, as *Bellamy* noted, "*Murillo* had difficulty with the third example found in *Gopaul*--injury to a hospital patient from a chandelier falling onto his bed. '[T]he professional duty of a hospital, as we have seen, is primarily to provide a safe environment within which diagnosis, treatment, and recovery can be carried out. *Thus if an unsafe condition of the hospital's premises causes injury to a patient, as a result of the hospital's negligence, there is a breach of the hospital's duty qua hospital*.' ([*Murillo, supra,*] 99 Cal.App.3d at pp. 56-57.)" (*Bellamy, supra*, 50 Cal.App.4th at p. 803, italics added.)

We disagree with *Murillo* in this regard. We reject *Murillo*'s dictum that a negligently maintained, unsafe condition of a hospital's premises which causes injury to a patient falls within professional negligence. Injury to a patient from a fallen chandelier, or from a negligently maintained bed rail which collapses, does not amount to professional negligence within the meaning of section 340.5. To reiterate, "not every tortious injury inflicted upon one's client or patient or fiducial beneficiary amounts to [professional] malpractice." (*Gopaul*, *supra*, 38 Cal.App.3d at p. 1006; accord, *Murillo*, *supra*, 99 Cal.App.3d at p. 56; *Bellamy*, *supra*, 50 Cal.App.4th at p. 803.) The critical inquiry is whether the negligence occurred in the rendering of professional services. (§ 340.5, subd. (2); *Bellamy*, *supra*, 50 Cal.App.4th at pp. 805-806.)

We conclude Flores's complaint, which alleged she was injured "when the bed rail collapsed causing plaintiff to fall to the ground," sounds in ordinary negligence because the negligence did not occur in the rendering of professional services. As pled in the operative complaint, the alleged negligence was the Hospital's failure "to use reasonable care in maintaining [its] premises and fail[ing] to make a reasonable inspection of the equipment and premises, which were open to Plaintiff and the public, and fail[ing] to take reasonable precautions to discover and make safe a dangerous condition on the premises." Therefore, the action is governed by the two-year statute of limitations (§ 335.1), making the lawsuit timely.[6]

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[6] In her opposition to the *demurrer*, Flores theorized the bed rail collapsed either due to "neglectful latching" by an employee of the Hospital, or because the Hospital "negligently maintained" the locking mechanism on the bed rail. However, Flores's complaint did not plead "neglectful latching" of the bed rail as an alternative theory. Had "neglectful latching" been pled in the complaint, that theory would be time-barred. Neglectful latching of the bed rail would constitute a negligent act or omission in the rendering of professional services, so as to be subject to the one-year statute for professional negligence. (§ 340.5, subd. (2).)

DISPOSITION

The order of dismissal is reversed with directions to overrule the demurrer and to reinstate the original complaint. Flores shall recover her costs on appeal.

CERTIFIED FOR PUBLICATION

KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.