

Supreme Court No. S209836
2nd Civil No. B235409
Los Angeles County Superior Court No. VC058225

SUPREME COURT
FILED

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Frank A. McGuire Clerk

Deputy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CATHERINE FLORES

Plaintiff and Appellant,

vs.

PRESBYTERIAN INTERCOMMUNITY HOSPITAL

Defendant and Respondent.

After a Decision by The Court Of Appeal, Second Appellate District,
Case No. B235409

OPPOSITION TO MOTION TO TAKE JUDICIAL NOTICE

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PRESBYTERIAN INTERCOMMUNITY HOSPITAL

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Petitioner, Presbyterian Intercommunity Hospital, hereby
supplies its Opposition to the Motion to Take Judicial Notice filed on
January 13, 2014 by plaintiff and appellant, Catherine Flores:

MEMORANDUM OF POINTS AND AUTHORITIES

1. ALTHOUGH PETITIONER HAS NO OBJECTION TO THE COURT TAKING JUDICIAL NOTICE OF THE LEGISLATIVE HISTORY OF THE MEDICAL INJURY COMPENSATION REFORM ACT, PETITIONER OBJECTS TO JUDICIAL NOTICE BEING TAKEN OF THE "COMPOSITE" ATTACHED AS EXHIBIT 1 TO THE MOTION. FLORES HAS NOT SHOWN THAT SUCH "COMPOSITE" IS A FULL, COMPLETE AND VERBATIM RECITATION OF THE FINAL VERSION OF THE ASSEMBLY BILL THAT WAS ACTUALLY "ENACTED INTO LAW SEPTEMBER 23, 1975" AS REPRESENTED BY FLORES.

Flores has not shown that the "composite of the Medical Malpractice Reform Legislation . . . and the Joint Underwriting Association Law" constitutes the public statutory law of California. Therefore it is not a proper subject of judicial notice pursuant to Evidence Code §451(a)(1).

2. FLORES HAS NOT SHOWN THAT THE MATTERS OF WHICH SHE REQUESTED TO TAKE JUDICIAL NOTICE WERE NOTICED BY THE TRIAL COURT, OR WERE MATTERS OF WHICH THE TRIAL COURT MAY HAVE TAKEN JUDICIAL NOTICE.

Evidence Code §459(a)(1).

3. FLORES HAS NOT SHOWN THAT THE TRIAL COURT WAS REQUIRED TO TAKE JUDICIAL NOTICE OF ITEMS NO. 2, 3, 4 OR 5 (EXHIBITS 2, 3, 4 AND 5) OF THE MOTION TO TAKE JUDICIAL NOTICE.

Items No. 2, 3, 4 and 5 which Flores characterizes as "Medical Malpractice Insurance Websites and Policies" are not matters of which the Supreme Court may take judicial notice pursuant to Evidence Code §452(h). Evidence Code §452(h) provides that judicial notice *may* be taken of:

"(h) facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

These items of which Flores requests the Court take judicial notice are not only hearsay, were not considered by the trial court or

the appellate court and have not been properly authenticated. Additionally Item No. 4 is simply an opinion of the authors and is not judicially noticeable pursuant to Evidence Code §454(a)(1).

Item No. 5 characterized as the "annual report of the California Department of Insurance" is similarly a hearsay document apparently compiling and summarizing information from an annual report by the California Department of Insurance but is actually authored by Presidio Insurance. It is simply a hearsay document, of questionable authenticity, and has no relevancy.

Item No. 2 is a specimen policy issued by NORCAL Insurance Company and is not a matter of which the court, pursuant to either Evidence Code §§451 or 452, may properly take judicial notice. (In fact, as attorney for Flores admits in his declaration, he has no information, whatsoever, as to the "type of insurance coverage and the policy to which Flores claim had been reported." (See Motion, p.13, ¶2.)

Item No. 3, as petitioner admits, is simply something taken from the "website of The Doctors Company Insurance Company." This item is not judicially noticeable under either Evidence Code §§451 or 452. Furthermore, factual allegations and materials prepared

by private parties (such as Presidio Insurance Company) even if on file with the Department of Insurance, are not judicially noticeable as "official acts" of the Department of Insurance pursuant to Evidence Code §452. (See *Stevens vs. Superior Court (API Ins. Services, Inc.)* (1999) 75 Cal.App.4th 594, 607-608.)

Item No. 3 appears to be some sort of advertisement by The Doctors Company soliciting physicians to apply for medical malpractice coverage. As such, it fails to qualify as a matter of which the court must or may take judicial notice pursuant to either Evidence Code §§451 or 452.

4. PETITIONER HAS FAILED TO PROVIDE THE COURT WITH SUFFICIENT INFORMATION TO ALLOW THE COURT TO DETERMINE THAT THE MATTERS ARE CAPABLE OF "IMMEDIATE AND ACCURATE DETERMINATION BY RESORT TO SOURCES OF REASONABLY INDISPUTABLE ACCURACY" AND ARE THEREFORE UNRELIABLE INFORMATION.

Judicial notice by an appellate court of general information on nursing posted on the California Board of Registered Nursing website is properly denied pursuant to Evidence Code §452. The court

reasoned that it is not a regulation or legislative enactment or a court record. (*Duronselt vs. Kamps* (2012) 203 Cal.App.4th 717, 737.) Furthermore, the appellate court denied the request for judicial notice pursuant to Evidence Code §452(h) as the court had not been provided with information sufficient to show that the matters were "not reasonably subject to dispute" and that it is "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (*Duronselt* at 737, citing *Leibert vs. Transworld Systems, Inc.* (1995) 32 Cal.App.3d 1693, 1700.)

5. PETITIONER ADMITS THAT THE MOTION TO TAKE JUDICIAL NOTICE IS OF MATTERS OF WHICH THE TRIAL COURT WERE NOT REQUESTED TO TAKE JUDICIAL NOTICE. THEREFORE SUCH MATTERS CONSTITUTE INFORMATION OR MATERIAL NOT IN THE RECORD ON APPEAL.

"Reviewing courts generally do not take judicial notice of evidence not presented to the trial court. Rather, normally 'when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which are part of the record at the time the judgment was entered.' No exceptional circumstances exist that would justify deviating from that rule." (*Duronselt* at 737, citing *Vons Companies, Inc. vs. Seabast Foods, Inc.* (1996) 14 Cal.4th 434, 444 Fn.3.)

Accordingly, the Motion to Take Judicial Notice should be denied on this ground as well.

6. PETITIONER HAS FAILED TO SHOW THE REQUISITE GOOD CAUSE WHY JUDICIAL NOTICE SHOULD BE TAKEN OF THE MATTERS SPECIFIED IN THE MOTION AND HAS FAILED TO SHOW EXCUSABLE NEGLIGENCE IN NOT SEEKING SUCH JUDICIAL NOTICE IN EITHER THE TRIAL COURT, OR THE APPELLATE COURT.

As such, the Motion to Take Judicial Notice should be denied.

Respectfully submitted,

FONDA, HESTER & ASSOCIATES, LLP



PETER M. FONDA, ESQ.

Attorneys for Defendant and Respondent
PRESBYTERIAN INTERCOMMUNITY HOSPITAL

PROOF OF SERVICE BY OVERNIGHT MAIL

Re: Catherine Flores VS Presbyterian Intercommunity Hospital
Case No. 209836

I, SHARLEEN INOUYE, declare that I am over 18 years of age, and not a party to the within cause; my business address is 1925 Century Park East, Suite 1360, Los Angeles, California 90067. I served a true copy of the attached

OPPOSITION TO MOTION TO TAKE JUDICIAL NOTICE

on the following, by placing a copy in an envelope addressed to the party listed below, by Federal Express overnight mail, which overnight envelope was then sealed by me at Los Angeles, California 90067, on January 28, 2014.

SUPREME COURT OF CALIFORNIA
Office of The Clerk - 1st Floor
350 McAllister Street
San Francisco, California 94102

Edward W. Lloyd, Esq.
LAW OFFICES OF EDWARD W. LLOYD Atty Plaintiff & Appellant
2900 Adams Street, Suite C130
Riverside, California 92504
T: (951) 656-1203
F: (951) 656-3103

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 28, 2014 at Los Angeles, California.


SHARLEEN INOUYE

PROOF OF SERVICE BY MAIL

Re: Catherine Flores VS Presbyterian Intercommunity Hospital

Case No. 209836

I, SHARLEEN INOUYE, declare that I am over 18 years of age, and not a party to the within cause; my business address is 1925 Century Park East, Suite 1360, Los Angeles, California 90067. I served a true copy of the attached

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on the following, by placing a copy in an envelope addressed to the party listed below, which envelope was then sealed by me and deposited in United States Mail, postage prepaid at Los Angeles, California 90067, on January 28, 2014.

Clerk of the Superior Court
for the Hon. Yvonne T. Sanchez
Southeast District - LASC
Dept. "C"
12720 Norwalk Boulevard
Norwalk, California 90650

California Court of Appeal
Second District, Division Two
300 S. Spring St.
Los Angeles California 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 28, 2014 at Los Angeles, California.



SHARLEEN INOUYE