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Supreme Court Invalidates Hospital Liens Not Supported by an Underlying Debt — *Parnell v. Adventist Health System*

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On April 4, 2005, the Supreme Court issued its long awaited decision in *Parnell v. Adventist Health System/West*, 2005 Cal. LEXIS 3487 (Docket No. S114888). The Court affirmed the court of appeal's ruling that the hospital could not properly assert a hospital lien after agreeing with the patient's insurance provider to accept its contractual obligation as payment in full. As is typical in these cases, the hospital had agreed to accept a reduced payment from the insurance plan as payment in full of the insured patient's bill in return for the insurance plan's business.

In deciding the case, the Supreme Court focused on the **absolute necessity of an underlying debt to support the claim of a hospital lien**. The hospital contested this on the basis that the Hospital Lien Act ("HLA") allows recovery against only the tortfeasor rather than the patient/victim and that, therefore, no debt is required. The hospital relied on *Swanson v. St. John's Regional Medical Center* (2002) 97 Cal.App.4th 245 in support of its theory. The Court rejected the hospital's assertion as follows:

> **By using the term "lien," the Legislature arguably intended to give a lien under the HLA the same characteristics as a typical lien. Under this construction, a lien under the HLA may not attach absent an underlying debt.**

Parnell v. Adventist Health System/West, supra, 2005 Cal. LEXIS 3487 at *14 (note: all citations are to sections of the opinion as published in Lexis since the official report is not yet available).

The Supreme Court expressly disapproved *Swanson v. St. John's Regional Medical Center, supra,* to the extent it conflicts with the Court's decision in *Parnell*. *Parnell v. Adventist Health System/West, supra,* 2005 Cal. LEXIS 3487 at *8.

The *Parnell* Court relied upon the express language of Civil Code §3045.4 in reaching its conclusion, reasoning:

> **The language of §3045.4—which limits the hospital to recovery of the "amount" it "was entitled to receives as payment for the medical care and services rendered to the" patient if the tortfeasor fails to pay the lien before paying the patient—also**

> **supports such a construction. (See *Nishihama v. City & County of San Francisco* (2001) 93 Cal.App.4th 298, 308 (112 Cal. Rptr. 2d 861) ("The amount that a hospital is entitled to receive as payment necessarily turns on any agreement it has with the injured person or the injured person's insurer").)**

Parnell v. Adventist Health System/West, supra, 2005 Cal. LEXIS 3487 at *15.

The *Parnell* Court reviewed the legislative history of the HLA, noting that in both 1961 and when it was amended in 1992, the Legislature in the HLA was concerned with "uninsured" accident victims who recovered against third parties but failed to pay their debt to the hospital. The Supreme Court held that, "This history strongly suggests that a lien under the HLA requires an underlying debt owed by the patient to the hospital." *Parnell v. Adventist Health System/West, supra,* 2005 Cal. LEXIS 3487 at *16.

The Court analogized the HLA statute to CMS type liens under Government Code §23001.4. Because of the existence of an underlying debt in Government Code liens, the Court had previously held that the governmental entity asserting the lien under Government Code §23004.1 was a creditor and, therefore, the common fund discount did not apply. See, *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105. The Court noted that the HLA remedy was not exclusive and therefore the hospital could proceed directly against the patient for any unpaid balance. *Parnell v. Adventist Health System/West, supra,* 2005 Cal. LEXIS 3487 at *24, citing *Mercy Hospital v. Farmers* (1997) 15 Cal.4th 213. Because of the necessary debtor-creditor relationship and the consequent need for an underlying debt to support a hospital lien, the Court held that no common fund reduction for attorney's fees was warranted in HLA cases. *Parnell v. Adventist Health System/West, supra,* 2005 Cal. LEXIS 3487 at *25.

The *Parnell* Court held that because the patient's underlying debt had been extinguished by contractual agreement, there was no obligation surviving that could support the claim of lien, reasoning:

> **Under the CNN and provider agreements, the Community Hospital agreed to accept this amount as "payment in full." As conceded by the Community Hospital, Parnell's entire debt to the hospital has therefore been extinguished. Indeed, the bill sent by the Community Hospital to Parnell noted the hospital's usual and customary charges and stated that the difference between these charges and the amount owed under the insurance contract "is the CCN discount received for using a CCN facility" and will be "written off" by the hospital. Because Parnell no longer owes a debt to the hospital for its services, we conclude that the hospital may not assert a lien under the HLA against Parnell's recovery from the third party tortfeasor**.

Parnell v. Adventist Health System/West, supra, 2005 Cal. LEXIS 3487 at *30 (emphasis added).

Discussion

This case has enormous significance because of the extent of balance billing and liening being done by hospitals under the HLA. Currently, most of the contracts between hospitals and insurance plans (with notable exceptions like PacifiCare) provide that the provider accepts the plan payment as payment in full and prohibit the hospital from billing the balance to the insured.

This practice of balance billing should cease immediately when the contract documents provide that the plan payments constitute full payment. Clearly, practitioners should routinely request the relevant contract provisions from the insurance plans when hospital liens are being pursued despite insurance payments.

Unfortunately, the Supreme Court in the *Parnell* decision engaged in clear dicta to give express instructions to the hospital on how to circumvent this balance billing prohibition, as follows:

> **If hospitals wish to preserve their right to recover the difference between usual and customary charges and the negotiated rate through a lien under the HLA, they are free to contract for this right. Our decision today does not preclude hospitals from doing so.**

Parnell v. Adventist Health System/West, supra, 2005 Cal. LEXIS 3487 at *35.

This departure into gratuitous dicta is troublesome in light of the fact that the Court declined to rule on two equally (or more) pressing issues presented by the CAOC Amicus brief—the *Hanif* decision and collateral source dilemma and the lack of due process in the HLA (no provision for notice or hearing to owner of property before state-aided seizure). In fact, the Court summarily dismissed consideration of these two issues in footnote 16 as follows:

> **Because our holding relies solely on the absence of a debt underlying the lien, we do not reach, and express no opinion on, the following issues: (1) whether *Olszewski v. Scripps Health*, (2003) 30 Cal.4th 798 and *Hanif v. Housing Authority* (1988) 200 Cal.App.3d 635, apply outside the Medicaid context and limit a patient's tort recovery for medical expenses to the amount actually paid by the patient notwithstanding the collateral source rule; (2) whether the HLA violates due process…**

Parnell v. Adventist Health System/West, supra, 2005 Cal. LEXIS 3487 at *36, fn. 16.

Clearly, hospitals familiar with the ruling will attempt to renew their contracts with insurance plans with the right to balance bill. However, this may be harder to accomplish than it would seem. Insurance companies and HMO's have far more economic clout than hospitals. They are also bound by either the Knox Keene Act (Health & Safety Code §1379) or the covenant of good faith and fair dealing. If insurance plans represent the type of comprehensive coverage understood by most insureds to include everything but deductibles and co-payments, and then exclude coverage through a balance billing provision, that exclusion must be conspicuous, plain and clear in order to be enforceable. Hopefully, the insurance industry will understand that to allow hospitals to balance bill their insureds will bring pressure back on the insurance companies in the form of lawsuits and unhappy customers and it will decline to consent to permit hospitals to balance bill.

Aside from the direct benefit of prohibiting balance billing by hospitals under the most common insurance arrangement, there is another considerable advantage to be derived from the *Parnell* decision. There are many forms of public benefit plans that require the provider to accept the benefit payment as payment in full, thereby extinguishing the patient's debt.

Examples are Medi-Care, Social Security, Champus, Medi-Cal and prepaid health plans funded by Medi-Cal. Yet personal injury attorneys have all seen many cases in which hospitals have liened such patients' injury cases because the HLA purported to allow it. In each of those cases, one can now cite to the federal or state prohibition, coupled with the *Parnell* decision. Because most of those balance billing prohibitions extinguish the underlying debt necessary to support a hospital lien under *Parnell*, they cannot be pursued. Thus, in these types of cases, one will typically have a federal prohibition against balance billing, coupled with the California Supreme Court decision in *Parnell* holding that the satisfaction of the underlying debt eliminates the right to file a hospital lien. This should make it much easier to deal with the medical collection agencies and attorneys on these cases.

There is another significant obstacle for hospitals which succeed in amending their contracts to allow balance billing to overcome. Typically, the carrier has the obligation to satisfy the patient's entire bill and has a concurrent right of reimbursement. In the usual case, the insurance carrier (or union, employer, or self-funded plan) is an ERISA fiduciary subject to the general prohibition on enforcement of reimbursement provisions under ERISA. Because the ERISA fiduciary (or any assignor) cannot contractually assign any greater rights than it has, it would likely transfer its rights to reimbursement subject to ERISA limitations. If so, then the hospital assignee could subject itself to the federal prohibition against reimbursement under ERISA.