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VIA TRUEFILING

The Honorable William W. Bedsworth, Presiding Judge
The Honorable Eileen C. Moore, Associate Justice
The Honorable David A. Thompson, Associate Justice
California Court of Appeal, Fourth Appellate District, Division Three
601 W. Santa Ana Blvd.
Santa Ana, California 92701

Re: ***Joshua Yebba v. AHMC Healthcare Inc., et al.***
Case No. G058817, 2021 WL 2657058 (Cal. Ct. App. June 29, 2021)
Request for Publication

Dear Honorable Justices:

This law firm represents the California Hospital Association (“CHA”). Pursuant to California Rule of Court (CRC) 8.1120(a), CHA respectfully requests that the Court publish its opinion in the above-referenced matter (“*Yebba*”). The *Yebba* decision clearly meets the standards for certification set forth in CRC Rule 8.1105.

In summary, if certified for publication, *Yebba* will provide needed guidance to lower courts on an issue of important public interest: hospital pricing transparency. Thus the opinion meets the standard in CRC 8.1105(c)(6). *Yebba* would provide the Court an opportunity to clarify hospital pricing disclosure requirements, particularly in the high stakes emergency medicine setting, thereby meeting the standard in CRC 8.1105(c)(4). The decision also reviews relevant legislative history and gives effect to legislative intent, thus satisfying CRC 8.1105(c)(7). Finally, if published, *Yebba* will promote judicial economy.

I. Interest of California Hospital Association

CHA is a nonprofit membership corporation representing the interests of more than 400 hospital and health system members in California. CHA’s members furnish vital health care services to millions of our state’s citizens. CHA provides its members

with state and federal representation in the legislative, judicial, and regulatory arenas, in an effort to: support and assist California hospitals in meeting their legal and fiduciary responsibilities; improve health care quality, access, and coverage; promote health care reform and integration of services; achieve adequate health care funding; improve and update laws and regulations; and maintain the public trust in healthcare.

CHA members have an ongoing interest in the certification of this case because *Yebba* is one of multiple lawsuits filed against CHA-member hospitals challenging chargemaster-based billing of hospital patients. The Court of Appeal's opinion resolves an important question regarding CHA members' legal obligations to disclose their emergency room visit fees.

CHA therefore submits this letter to assist the Court in its analysis of the important issues raised in *Yebba*.

II. The Court of Appeal's opinion clarifies that the Payers' Bill of Rights does not require hospitals to disclose emergency room visit fees personally to patients before treating them in addition to making them available as required by Health and Safety Code Section 1339.51(a).

At issue in *Yebba* is the provision under the Payers' Bill of Rights, codified at Health and Safety Code §§ 1339.50-1339.59, that California hospitals make their "charge description master"¹ available by either: (1) posting an electronic copy on their websites, or (2) making a written or electronic copy available at the hospital location. (Health and Safety Code § 1339.51(a).) Although the matter of average charge lists is not at issue in *Yebba*, the Court also notes that the bill requires hospitals to provide such lists for 25 common outpatient procedures annually to anyone on request. (Health and Safety Code § 1339.56.) Neither the Payers' Bill of Rights nor any other statute requires anything more to make patients aware of hospital charges.

Yebba confirms that the same rules apply in emergency settings. To hold otherwise would subject hospitals to an impossible standard which defies the realities of emergency treatment and the related payment structures. As described in the opinion, numerous factors unique to healthcare, particularly in the emergency medicine context,

¹A "charge description master" referred to herein as a chargemaster, is a "uniform schedule of charges represented by the hospital as its gross billed charge for a given service or item, regardless of payer type." (Health and Safety Code § 1339.51(b)(1).)

render hospitals unable to determine emergency room fees before treating individuals. For example, which treatment is necessary for a particular patient depends on the severity of the patient's condition, and neither the patient nor the hospital can possibly know this in advance. Moreover, each patient's financial responsibility depends on his or her insurance status. Even assuming a patient has insurance, the hospital cannot determine whether, and the extent to which, the insurer will provide coverage for the services ultimately provided at the moment the patient presents at the hospital. It would defy logic and reason to hold hospitals responsible for knowing these factors in advance; the Court correctly declined to do so in *Yebba*. This clarification of the statute is a ground for publication, under Rule of Court 8.1105(c)(4).

III. Hospital pricing transparency is a significant issue of public interest.

A fundamental policy underlying the Payers' Bill of Rights is the public's need for access to hospital pricing information, enabling individuals to make informed decisions about where they seek hospital care. As noted below, the Legislature thoroughly considered these factors in designing the current statutory requirements, which seek to achieve a balance between making hospital pricing information available, on the one hand, and avoiding unnecessary burdens on hospitals, on the other. Thus the *Yebba* opinion meets yet another certification standard: the opinion "[i]nvolves a legal issue of continuing public interest." CRC Rule 8.1105(c)(6).

IV. *Yebba* contributes significant legislative history analysis.

In its thoughtful analysis of the legislative process surrounding the Payer's Bill of Rights in 2003, the Court's *Yebba* opinion carefully reviews and explains the Legislature's intent. Under Rule of Court 8.1105(c)(7) this aspect of the opinion also qualifies it for publication, as it "[m]akes a significant contribution to legal literature by reviewing the development of . . . the legislative or judicial history of a provision of a . . . statute." Notably, the bill's legislative history shows that in 2003, the Legislature carefully considered and rejected a version that would have required hospitals to provide copies of their chargemasters when requested by any individual. As stated in the opinion, the Legislature recognized that such a requirement would require both "tremendous" hospital resources and "substantial" costs. (*Yebba v. AHMC Healthcare Inc., et al.*, No. G058817, 2021 WL 2657058, at 5 (Cal. Ct. App. June 29, 2021), quoting Sen. Health and Human Services Com., Analysis of Assem. Bill No. 1627 (2003-2004 Reg. Sess.) as amended July 9, 2003, p. 5.) After considering several versions of the bill as outlined in

Yebba, the Legislature passed the bill in its current version in September 2003. Stating that it “cannot add to these requirements” without engaging in “judicial legislating,” the Court correctly declined to undermine the balance the Legislature struck. (*Yebba v. AHMC Healthcare Inc., et al.*, No. G058817, slip op. at 2 and 5 (Cal Ct. App. June 29, 2021).)

V. Publishing the Court’s decision will promote judicial economy by providing persuasive precedent for use in ongoing, similar cases seeking to impose charges notification requirements in excess of those required by statute.

Numerous California hospitals have been, and continue to be, subject to similar lawsuits brought by the attorneys for the plaintiff in this action: class actions based on the hospital not providing personal notice to patients of an emergency room visit fee in excess of the notice required by Health and Safety Code § 1339.51(a). Certification of this opinion will establish precedent relevant to such claims, potentially preventing yet more expensive and meritless litigation seeking to impose unnecessary obligations on hospitals through the California judiciary. CHA is aware of eleven similar California lawsuits,² ten of which have been filed since 2012, with four (in addition to *Yebba*) still pending. The Court’s *Yebba* decision will assist lower courts and foster judicial efficiency by providing clear guidelines for judging the merit of such lawsuits.

² *Sarun v. Dignity Health*, 41 Cal. App. 5th 1119 (2019), *rev’d and remanded*, No. BC438764 (Cal. Super. Ct. filed May 2, 2012); *Hefczyk v. Rady Children’s Hosp.-San Diego*, 17 Cal. App. 5th 518 (2017); *Kendall v. Scripps Health*, 16 Cal. App. 5th 553 (2017); *Moran v. Prime Healthcare Mgmt., Inc., et al.*, 3 Cal. App. 5th 1131 (2016); *Hale v. Sharp Healthcare*, 232 Cal. App. 4th 50 (2014); *Yebba v. AHMC Healthcare Inc., et al.*, No. G058817, 2021 WL 2657058 (Cal. Ct. App. June 29, 2021); *Solorio v. Fresno Cmty. Hosp. & Med. Ctr.*, No. F073953, 2018 WL 3373411 (Cal. Ct. App. July 11, 2018), *as modified on denial of reh’g* (July 31, 2018); *Doster v. Pomona Valley Hosp. Med. Ctr.*, No. B280005, 2018 WL 2382150 (Cal. Ct. App. May 25, 2018); *Caudle v. Northbay Healthcare Grp.*, No. A148912, 2017 WL 6546377 (Cal. Ct. App. Dec. 22, 2017); *Fleschert v. Cedars-Sinai Med. Ctr.*, No. 19STCV05681 (Cal. Super. Ct. Feb 21, 2019); *Thomas v. Daughters of Charity Health System, et al.*, No. BC528457 (Cal. Super. Ct. Nov. 22, 2013).

Therefore, CHA respectfully asks the Court to certify its opinion in *Yebba* to protect the Payers' Bill of Rights and further its accurate interpretation and application, to contribute to the important public interest issue of transparent hospital pricing, and to promote judicial economy.

Respectfully submitted,

ARENT FOX LLP

By: 

Lowell C. Brown

Attorney for California Hospital Association

cc: See attached proof of service

CERTIFICATE OF SERVICE

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 West Fifth Street, 48th Floor, Los Angeles, California 90013-1065. My email address is angelica.anderson@arentfox.com.

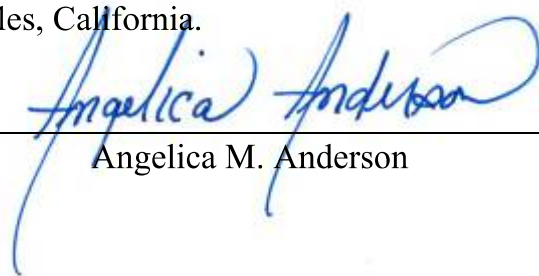
I hereby certify that on July 19, 2021, I caused to be electronically filed the foregoing **LETTER TO THE CALIFORNIA COURT OF APPEAL RE REQUEST FOR PUBLICATION** using the TrueFiling system.

I certify that, except as noted, and on information and belief, all participants in this action are registered to use TrueFiling and that service will be accomplished by TrueFiling. All other parties will be served as indicated on the service list by either:

- (U.S. Mail) I am readily familiar with my employer’s business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business. On this date, I placed the document(s) in envelopes addressed to the person(s) as indicated on the attached service list and sealed and placed the envelopes for collection and mailing following ordinary business practices.
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 19, 2021, at Los Angeles, California.



Angelica M. Anderson

SERVICE LIST

Yebba v. AHMC Healthcare Inc., et al.
Court of Appeal, Fourth Appellate District, State of California
Case No. G058817

Orange County Superior Court, Case No. 30-2018-01024090

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