

December 10, 2021

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VIA TRUEFILING

The Honorable Tani Cantil-Sakauye, Chief Justice
The Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, California 94102

Re: ***Gray v. Dignity Health (2021) 70 Cal.App.5th 225***
Supreme Court Case No. S271918
Court of Appeal Case No. A158648
Letter Opposing Petitioner's Depublication Request

Dear Honorable Justices:

This law firm represents the California Hospital Association (CHA). CHA respectfully requests that the Court deny Plaintiff/Appellant/Petitioner's (Petitioner's) request to depublish the opinion in the above-referenced matter (*Gray*). The Court should order that *Gray* remain published because the opinion meets the Court's certification standards set forth in California Rule of Court (CRC) 8.1105(c).

In summary, *Gray* would set important precedent for other courts because it explains and clarifies that a hospital is not required, prior to providing emergency medical care to a patient, to disclose than an emergency room visit fee (ER Charge) will be included in its billing; thus the opinion meets the certification standards set forth in CRC 8.1105(c)(3), CRC 8.1105(c)(4), and CRC 8.1105(c)(7). Next, the opinion not only reaffirms a 2015 Court of Appeal decision, but also applies it in a significantly different context—the hospital emergency room—thereby meeting the publication criteria set forth in CRC 8.1105(c)(2) and CRC 8.1105(c)(8). In addition, *Gray* presents a legal issue of continuing public interest (CRC 8.1105(c)(6)): the extent of a hospital's obligation to disclose its prices, which is particularly crucial when patients present to the emergency room in need of life-saving care.

Document received by the CA Supreme Court.

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 to support and assist California hospitals in meeting their legal and fiduciary responsibilities; to improve health care quality, access, and coverage; to promote health care reform and integration of services; to achieve adequate health care funding; to improve and update laws and regulations; and to maintain the public trust in healthcare.

CHA members have a strong interest in seeing *Gray*’s certification preserved, and therefore citable as precedent, because *Gray* is one of multiple lawsuits filed against CHA-member hospitals seeking to impose hospital pricing disclosure obligations beyond what the law currently requires. The Court of Appeal’s opinion resolves an important question regarding CHA members’ legal obligations to disclose their ER Charge, correctly balancing such disclosure obligations with the “paramount objective” of providing emergency services “*immediately* to those who need it.” (*Gray* at 241.)

CHA therefore submits this letter to assist the Court in its analysis of Petitioner’s request to decertify *Gray*.

II. *Gray* significantly adds to legal literature by thoughtfully analyzing existing statutes and regulations to conclude that hospitals are not required to disclose their ER Charge before treating patients.

At issue in *Gray* is whether California hospitals are obligated to disclose their ER Charge before providing emergency services to patients. To answer this question, *Gray* analyzes the intersection of federal and state statutes and regulations regarding hospital price transparency, on the one hand, and the provision of emergency care, on the other. It is the first published decision to do so. The following are among the important laws on this subject addressed in *Gray*: (1) the Payers’ Bill of Rights (Health and Safety Code §§ 1339.50-1339.59), which requires California hospitals to make a copy of their “charge description master”¹ available either on their websites or at the hospital location

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).)

(Health and Safety Code § 1339.51(a)); (2) Health and Safety Code § 1317, which requires hospitals to provide emergency services to individuals presenting at the emergency department, regardless of their ability to pay; and (3) the new federal price transparency law, effective January 2, 2021, which requires Medicare participating hospitals to make a list of their standard charges² publicly accessible, in addition to their chargemasters (42 U.S.C. § 300gg-18(e); 45 C.F.R. § 180.60).³

Gray's comprehensive analysis explains that no statute or regulation requires hospitals to notify patients that they will be billed for an ER Charge before providing emergency care. This is significant precedent because “[t]ogether, this multi-faceted statutory and regulatory scheme reflects a strong legislative policy to ensure that emergency medical care is *provided immediately* to those who need it, and that billing disclosure requirements are not to stand in the way of this paramount objective.” (*Gray* at 241.) Thus, *Gray*'s analysis, explanation, and clarification are grounds for publication, under CRC 8.1105(c)(3) (explaining “with reasons given, an existing rule of law”), CRC 8.1105(c)(4) (advancing a “clarification . . . of a provision of a . . . statute”), and CRC 8.1105(c)(7) (making “a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a . . . statute, or other written law”).

III. *Gray* reaffirms the Court of Appeal’s holding in a 2015 case and applies that holding to the hospital emergency room setting.

In *Nolte v. Cedars–Sinai Medical Center* (2015) 236 Cal.App.4th 1401, 1408 (*Nolte*), the Court of Appeal, Second District, held that statutory and regulatory requirements do not obligate hospitals to disclose each individual charge before receiving care from a physician at a hospital medical facility. *Gray* applies this rule to the hospital emergency room setting, where such principle has even greater importance. As stated in *Gray*, “the circumstances in the instant case are even more compelling than those in *Nolte*” because “requiring individualized disclosure that the hospital will include an ER Charge in its emergency room billing, prior to providing any emergency

²A “standard charge” is the hospital’s regular charge “for an item or service provided to a specific group of paying patients.” (45 C.F.R. § 180.20.)

³*Gray* is the first published California opinion to address the new federal price transparency mandate. The parties even submitted briefs regarding its impact. (*Gray* at 232 n.6.)

medical services, is at odds with the spirit, if not the letter, of the hospital’s statutory and regulatory obligations with respect to providing emergency medical care.” (*Gray* at 240.) This is a ground for publication, under CRC 8.1105(c)(2) (applying “an existing rule of law to a set of facts significantly different from those stated in published opinions,” as is CRC 8.1105(c)(8) (reaffirming “a principle of law not applied in a recently reported decision”).

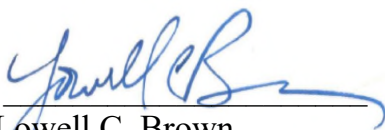
IV. Hospital pricing transparency is an issue of continuing public interest.

During the past several years CHA members have seen serial class action lawsuits filed against them involving hospital pricing disclosure obligations. As stated above, the holding in *Gray* strikes a balance between hospital obligations to disclose their ER Charge, on the one hand, and their obligations to provide life-saving emergency services, on the other. As stated in *Gray*, “no one in need of emergency care should be deterred from receiving it because of its cost.” (*Gray* at 242.) Thus *Gray* meets the certification standard of CRC 8.1105(c)(6) (involving “a legal issue of continuing public interest”).

Therefore, CHA respectfully asks the Court to deny Petitioner’s request to depublish *Gray* to further accurate interpretation of hospitals’ price disclosure obligations and to protect the public interest in making informed patient care decisions while not delaying or discouraging necessary care.

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 katryn.smith@arentfox.com.

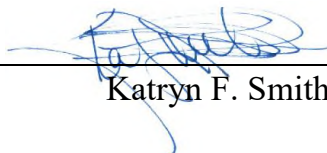
I hereby certify that on December 10, 2021, I caused to be electronically filed the foregoing **LETTER TO THE CALIFORNIA SUPREME COURT OPPOSING PETITIONER'S DEPUBLICATION REQUEST** using the TrueFiling system.

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:

- x (By Electronic Service through TrueFiling) By emailing true and correct copies to the person(s) at the electronic notification address(es) shown on the accompanying service list. The document was/were served electronically and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 10, 2021, at Garden Grove, California.



Katryn F. Smith

SERVICE LIST

Gray v. Dignity Health
Court of Appeal, First Appellate District, State of California
Case No. A158648

San Francisco Superior Court Case No.: CGC-19-574074

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