

April 18, 2023

VIA TRUEFILING

The Honorable Mary J. Greenwood, Presiding Justice
The Honorable Adrienne M. Grover, Associate Justice
The Honorable Cynthia C. Lie, Associate Justice
California Court of Appeal, Sixth District
333 W. Santa Clara Street, Suite 1060
San Jose, CA 95113

**Re: *Taylor Capito v. San Jose Healthcare System LP*
 Case No. H049022, H049646, 2023 WL 2805481 (Cal. Ct. App. Apr. 6, 2023)
 Request for Publication**

Dear Honorable Justices:

This law firm represents the California Hospital Association (CHA), a nonprofit, member-driven corporation representing the interests of more than 400 hospital and health system members in California. CHA respectfully requests that the Court publish the opinion in the above-referenced matter (*Capito*).

For many reasons CHA's members and the public they serve have a compelling interest in seeing *Capito* published. First, the Court of Appeal's analysis of state and federal price disclosure laws adds helpfully to legal literature on the subject. Second, the holding preserves the legislative policy of providing emergency medical care to patients without delay, thus advancing an important legal issue of public interest. Third, *Capito* decides an issue of first impression in the Sixth District Court of Appeal regarding CHA members' legal obligations to disclose their emergency room visit fees (ER Fees). Finally, by deferring to the Legislature, *Capito* aligns with decisions by the First and Second District Courts of Appeal on the issue and declines to follow a recent Fifth District Court of Appeal opinion, thus addressing a conflict among the districts. For all these reasons, *Capito* meets the certification standards in California Rule of Court (CRC) 8.1105(c)(1), (2), (4), (5), (6), and (7).

I. The Court’s analysis of the robust scheme of state and federal price transparency and emergency care laws significantly contributes to legal literature.

At issue in *Capito* is whether California hospitals are obligated to notify emergency room patients that they charge ER Fees before those fees are incurred. In its analysis, the Court discusses the following price transparency and emergency care laws:

- a. The Payers’ Bill of Rights, which requires hospitals to make their “charge description master”¹ available at the hospital or online (Health and Safety Code § 1339.51(a));
- b. Federal regulations by the Centers for Medicaid and Medicare Services (CMS), which require hospitals to bill emergency visits using five levels of current procedural terminology (CPT) codes (77 Fed. Reg. 66581, 66789, 66790);
- c. Federal law, which requires that Medicare participating hospitals file a list of standard charges for specific items or services, in addition to their chargemaster (42 U.S.C. § 300gg-18(e); 45 C.F.R. § 180.60); and
- d. The Emergency Medical Treatment and Active Labor Act (EMTALA), which requires hospitals to furnish vital emergency medical services to millions of our state’s citizens without regard to their ability to pay.

Capito confirms that the existing statutory and regulatory foundation imposes no obligation on hospitals to notify patients about ER Fees before providing emergency treatment. Thus, *Capito*’s analysis, explanation, and clarification are grounds for publication under 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 ... the legislative or judicial history of a provision of a ... statute, or other written law”).

¹A “charge description master,” commonly referred to 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).)

II. The opinion preserves the legislative policy of providing immediate emergency care to patients, thus advancing a legal issue of vital public interest.

In its analysis, *Capito* acknowledges competing public interests in price transparency and immediate emergency care. The Court correctly defers to the balance that the Legislature struck in the laws discussed above, thus fostering the paramount legislative policy that patients receive emergency care immediately without interference from unnecessary billing disclosures. The opinion thus meets the certification standard of CRC 8.1105(c)(6) (involving “a legal issue of continuing public interest”).

III. If published, *Capito* would establish helpful precedent on an important issue of first impression in the Sixth District Court of Appeal.

Multiple lawsuits have been filed against California hospitals in the past several years seeking to impose a pre-treatment notification requirement for ER Fees.² *Capito*, however, is the first decision on the issue in the Sixth District Court of Appeal. If the *Capito* opinion is published, it would establish that the Sixth District Court of Appeal will not expand the Legislature’s pricing disclosure laws. This precedent would provide much-needed guidance to hospitals and litigants in the Sixth District and in other jurisdictions where cases involving similar issues are currently pending.³ The opinion thus meets CRC 8.1105(c)(1) (establishing “a new rule of law”) and CRC 8.1105(c)(2) (applying “an existing rule of law to a set of facts significantly different from those stated in published opinions”).

IV. *Capito* addresses a conflict in the Courts of Appeal that would provide clarity to litigants.

Capito correctly aligns with opinions in the First District Court of Appeal (*Gray v. Dignity Health* (2021) 70 Cal.App.5th 225 (*Gray*), and *Saini v. Sutter Health* (2022) 80

² See e.g., *infra* Section IV; *Sarun v. Dignity Health*, No. B311909, 2022 WL 2815569 (Cal. Ct. App. Jul. 19, 2022); *Yebba v. AHMC Healthcare Inc.*, No. G058817, 2021 WL 2657058 (Cal. Ct. App. Jun. 29, 2021).

³ E.g., *Fleschert v. Cedars-Sinai Medical Center*, No. 19STCV05681 (Cal. Super. Ct., filed Feb. 21, 2019); *Moran v. Prime Healthcare Management, Inc. et al.*, No. G060920 (4th Dist., Div. 3, filed Dec. 3, 2021).

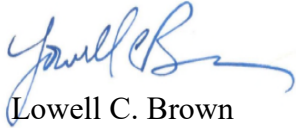
Cal.App.5th 1054 (*Saini*) and the Second District Court of Appeal (*Nolte v. Cedars-Sinai Medical Center* (2015) 236 Cal.App.4th 1401 (*Nolte*)) and declines to follow a Fifth District Court of Appeal opinion (*Torres v. Adventist Health System/West* (2022) 77 Cal.App.5th 500 (*Torres*)). Like *Capito*, in *Gray*, *Saini*, and *Nolte*, the First and Second District Courts of Appeal held that the law did not obligate hospitals to disclose the charges at issue to patients before providing treatment. However, in *Torres*, although the plaintiff's claim under the Consumers Legal Remedies Act (CLRA) failed on other grounds, the Fifth District Court of Appeal determined that the plaintiff showed that the hospital's ER Fees were not reasonably accessible under the CLRA, despite the ER Fees' presence in the chargemaster. *Torres* distinguished *Gray* and *Nolte*, explaining that those opinions did not address whether the fees were reasonably accessible under the CLRA. (*Torres, supra*, 77 Cal.App.5th at p. 513, emphasis added [*Gray* and *Nolte* "did not establish that a disclosure of the price charged for a service also discloses the *circumstances* in which the charge is imposed"].)

Torres leaves California hospitals open to continued judicial attempts to add billing disclosure obligations based on the circumstances of disclosure in each case. For example, the plaintiff in *Capito* asked this Court to follow *Torres* and accept her claim that the ER Fees were not reasonably accessible. The Court declined to do so. Instead, the *Capito* Court followed *Gray*, *Saini*, and *Nolte*, deferred to the Legislature, and concluded that the ER Fees were "disclosed and available to the public, including *Capito*, in accordance with the procedure mandated by the Legislature." (*Capito, supra*, 2023 WL 2805481, at p. 12.) If published, *Capito* would establish the Sixth District Court of Appeal's position on the issue that *Torres* left open and provide essential guidance to CHA member hospitals and litigants. The opinion thus meets the certification standard of CRC 8.1105(c)(5) (addressing "an apparent conflict in the law").

In light of the above analysis, CHA respectfully asks the Court to publish *Capito* to further the accurate interpretation of the Legislature's thorough and balanced price

disclosure laws, to protect the public interest in receiving emergency care without delay, and to provide clarity on hospital price disclosure obligations.

Respectfully submitted,



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Attorney for California Hospital Association

PROOF OF SERVICE

I am a citizen of the United States. My business address is ArentFox Schiff LLP, 555 West Fifth Street, 48th Floor, Los Angeles, California 90013. I am employed in the County of Los Angeles where this service occurs. I am over the age of 18 years, and not a party to the within cause.

On the date set forth below, according to ordinary business practice, I served the foregoing document(s) described as:

**LETTER TO JUSTICES REQUESTING CAPITO
OPINION TO BE PUBLISHED**

- (BY E-MAIL) On this date, I personally transmitted the foregoing document(s) via TrueFiling portal to the e-mail address(es) of the person(s) on the attached service list.
- (BY 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) on the attached service list and sealed and placed the envelopes for collection and mailing following ordinary business practices.
- (BY OVERNIGHT DELIVERY) On this date, I caused the documents to be placed in an envelope(s) addressed to the person(s) on the attached service list, and caused those envelopes to be delivered to an overnight delivery carrier, with delivery fees provided for, for next-business-day delivery to whom it is to be served.
- (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 18, 2023, in Orange County, California.



Katryn Smith

Document received by the CA 6th District Court of Appeal.

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