No. C100351

IN THE

Court of Appeal of the State of California

THIRD APPELLATE DISTRICT

REGENTS OF UNIVERSITY OF CALIFORNIA DBA RESNICK NEUROPSYCHIATRIC HOSPITAL AT UCLA,

Petitioner / Plaintiff and Respondent,

v.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH,

Respondent / Defendant and Appellant.

Appeal from the Sacramento County Superior Court
Case No. 34-2022-80004049
Honorable Stephen P. Acquisto

APPLICATION OF THE CALIFORNIA HOSPITAL ASS'N FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF/RESPONDENT; PROPOSED AMICUS CURIAE BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Rule 8.208(e)(3) of the California Rules of Court, the undersigned certifies that it knows of no entity or person, other than the parties themselves, that either has a financial interest in the subject matter in controversy or in a party to the proceeding, or has a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of the proceeding.

Dated: March 27, 2025.

By: */s/ Long X. Do*
LONG X. DO

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE CALIFORNIA HOSPITAL ASSOCIATION

TO THE PRESIDING JUSTICE OF THE CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT:

Pursuant to California Rules of Court, rule 8.200(c), the California Hospital Association ("CHA") respectfully requests permission to file the accompanying amicus curiae brief in support of Plaintiff and Respondent Regents of University of California DBA Resnick Neuropsychiatric Hospital at UCLA.

INTEREST OF AMICUS CURIAE: HOW THE AMICUS CURIAE BRIEF WILL ASSIST THE COURT

CHA is a non-profit association dedicated to representing the interests of California's hospitals. It is one of the nation's largest hospital trade associations, serving more than 400 hospitals and health systems and 97 percent of the patient beds in California. CHA's members include general acute care hospitals, acute psychiatric hospitals, academic medical centers, county hospitals, and multi-hospital health systems. These hospitals furnish vital health care services to millions of the State's residents every year, including Medi-Cal beneficiaries and patients who require free or discounted care.

CHA is the largest advocacy organization for hospitals in California and provides its members with state and federal representation in the legislative, judicial, and regulatory arenas in its continuing efforts to improve healthcare quality, access, and coverage. In order to help establish and maintain a financial and regulatory environment in which hospitals and health systems can continue to provide high-quality care to their patients, CHA participates regularly

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as an amicus curiae in appeals that may have a substantial impact on hospitals and health systems. *See, e.g.*, *County of Santa Clara v. Superior Court* (2023) 14 Cal. 5th 1034; *American Hospital Association v. Becerra* (2022) 142 S. Ct. 1896; *Gerard v. Orange Coast Mem'l Med. Ctr.* (2018) 6 Cal. 5th 443; *Rashidi v. Moser* (2014) 60 Cal. 4th 718; *Fahlen v. Sutter Cent. Valley Hosps.* (2014) 58 Cal. 4th 655; *UFCW & Emp'rs Benefit Tr. v. Sutter Health* (2015) 241 Cal. App. 4th 909; and *Sutter Health v. Superior Court* (2014) 227 Cal. App. 4th 1546.

The interpretation of Health and Safety Code section 1280.15 in this case has potential to significantly impact hospital operations and policies throughout California. Hospitals have and always will maintain the privacy and confidentiality of patient information as a top priority. However, the position taken by the California Department of Public Health ("Department") in this case – interpreting section 1280.15 as an absolute strict liability statute – could unfairly penalize hospitals while doing little to effectively enhance protection of patient medical information.

CHA seeks to file a brief in this appeal to elaborate for the Court the profound issue this case presents regarding the proper interpretation of section 1280.15 and the applicability of strict liability principles. CHA was a key stakeholder and deeply involved in the debates and discussions around passage of Senate Bill no. 541 in 2008, which enacted section 1280.15. CHA's brief can bring broader context and a deeper understanding of the public policy concerns and implications that arise from imposing a strict liability regime onto section 1280.15 enforcement. The amicus brief thus could assist the Court in its understanding of the consequences of the Department's

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heavy reliance on strict liability principles to support its interpretation of section 1280.15.

No party or counsel for any party in this appeal authored the proposed amicus curiae brief, in whole or in part, and no party or counsel for any party in this appeal made a monetary contribution intended to fund the preparation or submission of the brief. Furthermore, no persons or entities who are not members of CHA (or its counsel on appeal) contributed money intended to fund the preparation or submission of this amicus curiae brief.

CONCLUSION

For the foregoing reasons, the California Hospital Association requests leave of the Presiding Justice to file the accompanying Amicus Curiae Brief of the California Hospital Association in support of Plaintiff and Respondent Regents of University of California DBA Resnick Neuropsychiatric Hospital at UCLA.

Dated: March 27, 2025.

Respectfully submitted,

ATHENE LAW, LLP

By: *\/s/ Long X. Do*
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INTRODUCTION

The statutes at issue in this appeal – Health & Safety Code sections 1280.15 and 1280.18[1] – utilize clear and unambiguous words to establish the standards intended to protect patients from unauthorized breaches of their private medical information. Healthcare facilities, among others, are subject to administrative penalties if their failure to establish reasonable and appropriate measures and safeguards results in unauthorized access or disclosure of confidential patient medical information. *See* Health & Safety Code §1280.15(a). The superior court applied well established rules of statutory interpretation to reach this conclusion in assessing, and rejecting, the propriety of assessing penalties under section 1280.15 against appellant Resnick Neuropsychiatric Hospital at UCLA ("Resnick"), when a rogue employee willfully breached confidential patient information despite and contrary to the hospital's employee training, education, policies, and security protocols. In other words, under a plain-meaning reading of section 1280.15, the superior court ruled that Resnick cannot be held to violate the statute because the breach of patient information here was not the result of Resnick's failure to implement reasonable measures to protect and safeguard the confidentiality of patient medical information, consistent with section 1280.18.

Resolution of this case should start and end with application of the principal rule of statutory interpretation that

[1] Unless otherwise noted, all statutory references herein are to the California Health and Safety Code.

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courts must interpret all terms of a statute by their plain meaning. Yet, respondent the California Department of Public Health (the "Department") eschews such a straightforward analysis. It instead distorts the plain meaning of "consistent with" to suggest that sections 1280.15 and 1280.18 are not intertwined and, more to the point, that Resnick should be viewed to have violated section 1280.15 regardless of its strong and proactive efforts to protect patient information. The Department does not dispute that Resnick took reasonable measures consistent with section 1280.18 to protect patient information. Nevertheless, it attempts to bolster its position by labeling section 1280.15 a "strict liability" statute and invoking public policies to justify an overly rigid, absolutist enforcement scheme.

While the Department's arguments concerning statutory interpretation are well covered and completely refuted by Resnick and the superior court, amicus curiae the California Hospital Association ("CHA" or "Amicus") is compelled to address the Department's policy-based arguments centered on strict liability principles. As shown below, the Department presents an oversimplified application of strict liability. It fails to understand that the concept of strict liability, from its inception to its modern incarnations, has always been able to accommodate a reasonableness standard. It is in the commercial product defects context where absolute strict liability has been deployed. The situation here is different and instead is more consistent with other forms of strict liability that eliminate the need to prove a

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defendant's willful or knowing mental state in committing a wrong but recognize that the reasonableness of actions or circumstances is relevant and can repel liability. Public policy considerations that differentiate the absolutist form of strict liability vis-à-vis a more nuanced form of strict liability show that the latter should apply here, if at all.

Accordingly, while a plain-meaning interpretation of section 1280.15 alone compels the conclusion that the reasonableness of Resnick's safeguards is highly relevant, if not dispositive as in this case, consideration of public policy for strict liability principles yields the same result. The Department's suggestion that the statute is a strict liability statute does not undercut the superior court's correct ruling. CHA thus urges the Court to affirm.

ARGUMENT

I. Health & Safety Code Section 1280.15 Does Not Require Knowing or Willful Misconduct but Includes a Reasonableness Standard.

The express terms of section 1280.15 incorporate the reasonableness standard that is explicitly spelled out in section 1280.18. Section 1280.15 mandates that a " health facility . . . shall prevent unlawful or unauthorized access to, and use or disclosure of, patients' medical information . . . <u>consistent with Section 1280.18</u>." Health & Safety Code §1280.15(a) (emphasis added). Section 1280.18, in turn, expresses a clear reasonableness standard to require that "[e]very provider of health care shall establish and implement <u>appropriate</u> administrative, technical,

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and physical safeguards to protect the privacy of a patient's medical information." *Id.* §1280.18(a) (emphasis added). Furthermore, "[e]very provider of health care shall reasonably safeguard confidential medical information from any unauthorized access or unlawful access, use, or disclosure." *Id.* (emphasis added).

The superior court was correct in finding "section 1280.15 is unambiguous, and there is only one reasonable interpretation . . . . that a violation of section 1280.15 cannot occur without a concurrent violation of section 1280.18." Clerk's Transcript ("CT") 84. Section 1280.15 subjects a health facility to liability when patients' medical information is improperly disclosed due to a failure to reasonably safeguard such medical information. As the superior court put it, "finding of violation of section 1280.15 (i.e., an unauthorized release of information) where the facility had implemented appropriate safeguards in compliance with section 1280.18 would not be 'consistent with' section 1280.18." CT 84. There can be no other result from a straightforward application of the fundamental rules of statutory interpretation.[2]

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[2] When interpreting a statute, courts start with its terms. "If the terms of the statute are unambiguous," courts must "presume the lawmakers meant what they said, and the plain meaning of the language governs." *Estate of Griswold* (2001) 25 Cal. 4th 904, 911. Additionally, courts must "give significance and effect to each word and phrase and [] avoid a construction that makes any part of the statute superfluous or meaningless." *Shaw v. People ex rel. Chiang* (2009) 175 Cal. App. 4th 577, 600.

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Under the superior court's correct interpretation, a healthcare facility does not escape liability under section 1280.15 by claiming it did not recklessly or knowingly allow a breach of patient medical information. Section 1280.15 does not require proof of a guilty mental state, but it does explicitly include an element that the healthcare facility failed to establish "reasonable" and "appropriate" measures and safeguards that resulted in a breach of patient medical information.

The legislative history of section 1280.15 confirms the superior court's interpretation. *See Jackpot Harvesting, Co. v. Superior Ct.* (2018) 26 Cal. App. 5th 125, 143 n.6 ("Even where, as here, the plain language of the statutes dictates the result, legislative history may be considered to provide additional authority to confirm the court's statutory interpretation") (citing *Barratt American, Inc. v. City of Rancho Cucamonga* (2005) 37 Cal. 4th 685, 697).

Sections 1280.15 and 1280.18 were enacted at the same time, albeit under separate bills. *See* Stats. 2008, ch. 605 §2 (S.B. 541) (enacting section 1280.15); Stats. 2008, ch. 602 §2 (A.B. 211) (enacting section 1280.18). The bill analysis for S.B. 541 explains the purpose of section 1280.15 in specific reference to section 1280.18:

> [This bill] [r]equires a licensed clinic, health facility, home health agency, or hospice (collectively, health facility) to prevent unlawful or unauthorized access to, and use or disclosure of, patients' medical information consistent with a provision added to existing law by AB 211 (Jones) [enacting section 1280.18] that, as proposed to be amended, requires every provider of health care to establish and

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> implement appropriate administrative, technical, and physical safeguards to protect the privacy of a patient's medical information, and that requires every provider of health care to reasonably safeguard confidential medical information from any unauthorized access or unlawful access, use, or disclosure.

Senate Floor Analysis of S.B. 541 (Aug. 26, 2008)[3] at p. 3 (emphasis added). Another bill analysis explains that section 1280.15 requires hospitals to prevent disclosure of medical information "as specified in" section 1280.18. *See* Senate Approps. Comm. Analysis of S.B. 541 (Aug. 20, 2008) at p. 1. The Legislature thus envisioned the two statutes to be linked, and it used clear statutory language to carry out this vision.

II. Section 1280.15 As Interpreted by the Superior Court Is Compatible With a Strict Liability Scheme that Prioritizes the Protection of Medical Information.

The Department betrays the clear statutory language of section 1280.15 in branding it an absolute "strict liability" statute that does not depend on the reasonableness of a healthcare facility's efforts to safeguard patient information. *See, e.g.*, Appellant's Opening Brief at 17. Both the superior court and Resnick explained convincingly why the Department's interpretation of the statute fails. *See* CT 84; Respondent's Brief at 15-20. Amicus need not repeat that analysis here, but it suffices to say that the Department violates fundamental rules of

[3] While the relevant legislative history of SB 541 is part of the administrative record here, all committee reports are posted online at the Legislature's "Legislative Information" website at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200720080SB541.

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statutory interpretation in asserting that the “shall” term in section 1280.15 alone requires mandatory and absolute (i.e., “strict liability”) enforcement of the statute. *See* Appellant’s Reply Brief at 7.

As the superior court noted, the Department’s interpretation ignores the remainder of the sentence in which section 1280.15 specifies that health facilities “shall prevent unlawful or unauthorized access to, and use or disclosure of, patients’ medical information . . . consistent with Section 1280.18.” Health & Safety Code §1280.15(a). Of course, courts must “give significance and effect to each word and phrase [in a statute] and [] avoid a construction that makes any part of the statute superfluous or meaningless.” *Shaw*, 175 Cal. App. 4th at 600. The Department fails to fully and properly acknowledge and incorporate the “consistent with Section 1280.18” language.

While the statutory language of section 1280.15 repels the Department’s “strict liability” label, the principles underlying strict liability also prove to be ill-fitting, at least to the extent the Department advocates for an <u>absolute</u> strict liability regime.

A. Strict Liability Removes the Element of a Guilty Mind but Can Accommodate a Reasonableness Standard.

The Department advocates for strict liability without a careful examination of the nature and nuances of the principle. It fails to recognize that strict liability in most of its forms can allow for a reasonableness standard, such as section 1280.15.

The United States Supreme Court closely examined strict liability in *Morissette v. United States* (1952) 342 U.S. 246.

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Although it focused on a criminal statute, its discussion of the history and nature of strict liability is instructive for this case. According to the Court, the genesis of strict liability began with a law that held tavernkeepers liable for selling liquor to a "habitual drunkard" <u>even if they did not know the buyer to be such</u>. *Id.* at 256 (citing *Barnes v. State* (1849) 19 Conn. 398). A similar law from Massachusetts prohibited the selling of adulterated milk regardless whether the defendant knew of the adulteration. *Id.* (citing *Commonwealth v. Farren* (1864) 9 Allen 489).

These statutes, according to the Court, represented a departure from the common-law tradition of requiring a *mens rea* to hold a defendant liable for prohibited conduct. As the Court observed, while a defendant need not have a "guilty" mind, there was nevertheless an element of unreasonableness in their actions to give rise to strict liability:

> "I agree that as a rule there can be no crime without a criminal intent; but this is not by any means a universal rule. . . . Many statutes which are in the nature of police regulations, as this is, impose criminal penalties irrespective of any intent to violate them; <u>the purpose being to require a degree of diligence for the protection of the public which shall render violation impossible</u>."

Id. (*quoting* People v. Roby (1884) 52 Mich. 577, 579) (emphasis added).

The *Morissette* court traced the expansion of strict liability from the criminal context into the regulatory context throughout many facets of daily life in the industrial revolution. "The

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industrial revolution multiplied the number of workmen exposed to injury from increasingly powerful and complex mechanisms, driven by freshly discovered sources of energy, requiring higher precautions by employers." *Morisette*, 342 U.S. at 253-54. Furthermore, "[c]ongestion of cities and crowding of quarters called for health and welfare regulations undreamed of in simpler times." *Id.* Finally, "[w]ide distribution of goods became an instrument of wide distribution of harm when those who dispersed food, drink, drugs, and even securities, did not comply with <u>reasonable</u> standards of quality, integrity, disclosure and care." *Id.* (emphasis added). Strict liability laws were thus necessary to "heighten the duties of those in control of particular industries, trades, properties or activities that affect public health, safety or welfare." *Id.*

In tracing the expansion of strict liability, the Court noted the targeted offenses were "not in the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes a duty." *Id.* Moreover, "violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize." *Id.* "While such offenses do not threaten the security of the state in the manner of treason, they may be regarded as offenses against its authority, for their occurrence impairs the efficiency of controls deemed essential to the social order as presently constituted." *Id.* at 256.

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Critically, the Court observed that a strict liability regime, "as a matter of policy, does not specify intent as a necessary element" but rather is centered around a defendant who "is in a position to prevent [harm] with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities." *Id.* (emphasis added). In other words, strict liability dispensed with the need to have a "guilty mind," but it also is founded on showing that reasonable safeguards were not followed resulting in harm to the public or the vulnerable.

This strand of reasonableness survives today in statutes recognized to impose strict liability – whereby, the intent or knowledge of improper action is not an element of a violation. The California Supreme Court "has incorporated a number of principles of the law of negligence into strict liability doctrine." *Anderson v. Owens-Corning Fiberglas Corp.* (1991) 53 Cal. 3d 987, 1006. To be sure, in *Luque* v. *McLean* (1972) 8 Cal. 3d 136, 145, the Court noted that "[t]he only form of plaintiff's negligence that is a defense to strict liability is that which consists in voluntarily and unreasonably proceeding to encounter a known danger." (quoting *Barth v B.F. Goodrich Tire Co.* (1968) 265 Cal. App. 2d 228, 243) (emphasis added).

In *Daly* v. *General Motors Corp.* (1978) 20 Cal. 3d 725, 736-737, the Court noted that strict liability is intended to "relieve injured consumers 'from problems of proof inherent in pursuing negligence' . . . ." (citations omitted). Strict liability presumes that defendants should bear the burden of proof vis-à-vis injured

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persons “who are powerless.” *Id.* In light of these public policy concerns, the Court held that negligence and reasonableness standards are not incompatible with the need to protect the vulnerable. The Court explained that a “[d]efendant’s liability for injuries caused by a defective product remains strict. . . . However, we do not permit plaintiff’s own conduct relative to the product to escape unexamined.” *Id.*

The California Supreme Court’s recognition of reasonableness principles in strict liability is not limited to the concept of contributory negligence by plaintiffs. In *Canifax v. Hercules Powder Co.* (1965) 237 Cal. App. 2d 44, 53, the court declared that a product may be defective “"and subject the supplier thereof to strict liability if <u>it is unreasonably dangerous</u> to place the product in the hands of a user without a <u>suitable</u> warning and the product is supplied and no warning is given.” (emphasis added.) Likewise, in *Barth* v. *B. F. Goodrich Tire Co.* (1968) 265 Cal. App. 2d 228, 244, the court held that in cases in which there is evidence that the defendant knew of a danger but failed to warn, “[a] manufacturer, as well as a dealer, must give <u>adequate</u> warning to the ultimate users of the product of any dangerous propensity which it knows or should have known would result in the type of accident that occurred.” (emphasis added).

The foregoing discussion demonstrates that an interpretation of section 1280.15 that includes the reasonableness standard of section 1280.18, as the statutory text unambiguously mandates, is consistent with the consumer

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protection goals and public policy underlying strict liability. That is, section 1280.15 protects patients by imposing administrative fines on a healthcare facility whenever improper access or disclosure of medical information arises, regardless of whether the health facility knew or should have known of such improper disclosures. The "strict liability" aspect of section 1280.15 is directed to the health facility's knowledge of the particular disclosure or access at issue.

But section 1280.15 also reflects and is consistent with the historical underpinnings of strict liability principles when it recognizes that healthcare facilities should only be put into this position of responsibility and liability vis-à-vis patients when they have failed to take reasonable safeguards and measures to protect patient medical information. Just as the U.S. Supreme Court recognized, a healthcare facility should be held strictly liable unless it takes "no more care than society might reasonably expect" to safeguard and protect against unauthorized access or disclosure of patient medical information *Morissette*, 342 U.S. at 256.

The Legislature has imported a reasonableness standard into what otherwise may be characterized as a strict liability scheme in nursing home regulations. It enacted Health and Safety Code section 1424 to establish a "reasonable licensee" defense that can serve as a complete defense to citations against a long-term care facility when the facility demonstrates it "did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply

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with the regulation." *See* Health & Safety Code §1424. Such a reasonableness standard was enacted even though, as the California Supreme Court observed, the regulatory scheme and section 1424 were "designed to protect one of the most vulnerable segments of our population, 'nursing care patients . . . who are already disabled by age and infirmity,' and hence in need of the safeguards provided by state enforcement of patient care standards." *California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal. 4th 284, 295.

The Department relied on *California Assn. of Health Facilities* (see Appellant's Reply Brief at 17), but the case does not suggest or hold that strict liability under a health care regulatory scheme must exclude a reasonableness standard. On the contrary, the Court found that section 1424 "replaces strict liability essentially with a negligence standard of liability" whereby liability can be avoided if "the licensee *and* its agents acted reasonably under the circumstances, despite the fact that regulations were violated." *Id.* at 299. That is what the Legislature intended and in fact accomplished with its unambiguous terms in section 1280.15, absolving a healthcare facility from violating section 1280.15 if it has established reasonable and appropriate measures "consistent with Section 1280.18."

B. Absolute Strict Liability Is Not Warranted.

The Department essentially is advocating for the most absolute form of strict liability for the enforcement of section 1280.15, in which no knowledge, guilty mind, or reasonable

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precaution taken by a facility is relevant. As the Department would have it, any effort undertaken by Resnick (regardless how expensive, expansive, or protective) would have no bearing if, as a matter of fact, an employee or some third party has somehow accessed or disclosed patient medical information in an unauthorized manner. This most extreme form of strict liability may exist today but only in the context of commercial defective products. It cannot be applied here, and the Legislature never intended so with its use of clear and unambiguous statutory language incorporating the requirements of section 1280.18.

In its most absolute form, "strict liability doctrine derives from judicially perceived public policy considerations, i.e., enhancing product safety, maximizing protection to the injured plaintiff, and apportioning costs among the defendants." *Arriaga v. CitiCapital Commercial Corp.* (2008) 167 Cal. App. 4th 1527, 1537. In assessing the propriety of imposing absolute strict liability under section 1280.15, it is necessary to consider how a breach occurs (which is the point of incorporating a reasonableness standard). Unauthorized access or disclosure could be the result of a breakdown in inadequate electronic or physical systems to maintain confidentiality and restrict access or it could have been due to human intervention, as in the case with Resnick's rogue employee. When human intervention is at issue, there should be a higher degree of allowance for a reasonableness standard.

In *Jansen v. Packaging Corp. of Am.* (7th Cir. 1997) 123 F.3d 490, 544-45, Judge Coffey (dissenting) aptly explained why a

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reasonableness standard is necessary in situations where harm is caused by an employee's willful misconduct. At issue was the question whether an employer who has undertaken reasonable efforts to train employees should be held liable for sexual harassment committed by a rogue employee. Judge Coffey distinguished this situation from strict liability for defective products. He noted that "[m]anufactured products can be measured, analyzed, and tested by the manufacturer, and when a defect is identified, it can be remedied by replacing a dangerous machine or part with an improved or new design that is safer, in an attempt to avert liability." *Id.* at 544. "[H]uman 'defects' in employees, by contrast, are largely hidden, elusive, and lie beyond the effective control of the employer. Only with great difficulty (if at all) can an employer measure and detect the human element that is '"defective,' i.e., the thoughts, feelings, and behavior of its employees or potential employees." *Id.* Unlike product defects, furthermore, "these 'defects' are less susceptible to correction or 'fixing' by the employer." *Id.* Arguing for the incorporation of a reasonableness test in imposing strict liability on employers, Judge Coffey concluded, "[w]ithout prying deeply into the personal lives of its employees or potential employees, how is an employer supposed to have knowledge of, much less remedy, all of the factors that could possibly contribute to an employee's decision to engage in sexual harassment?"

The same can be said of imposing strict liability for breaches of patient medical information by rogue hospital employees. It is virtually impossible for healthcare facilities, or

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anyone else whose business includes handling sensitive medical information, to decipher and identify an individual employee's propensity to abuse their position and utilize or access medical information in unauthorized ways. There are some measures that a facility may take (e.g., more stringent background checks, stricter protocols on physical and electronic access) to prevent breaches, and such measures can be tested under a reasonableness standard. However, it is not feasible to categorically prevent unauthorized access or disclosure of medical information from all employees whose jobs necessarily involve access to and handling of such information. Nor, in today's prevalently online world, would it be feasible to absolutely prevent unauthorized access by sophisticated and highly skilled online hackers. An enforcement scheme over human-controlled activities that punishes with zero tolerance does not reflect the practical and logistical realities of modern human affairs.

If no amount of effort to safeguard patient medical information matters to comply with section 1280.15, as the Department would have it, it becomes not a question of whether but when a healthcare facility will become liable. Such a fateful enforcement regime disserves the Department's own expressed purpose in sponsoring S.B. 541 to enact section 1280.15. As the Department admits, the purpose of section 1280.15 is to "encourage health facilities to employ policies and technologies that better protect the medical privacy of patients, and to adopt better policies and procedures to protect patients from harm." Sen. Health Comm. Analysis of S.B. 541 (Aug. 28, 2008) at p. 4

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(emphasis added). The Department did not expect that healthcare facilities would or could implement absolutely fail-proof systems. Some hospital employees necessarily must be given access to patient medical information to deliver care. Certainly, the Department does not deny (nor could it) the reality that an employee can abuse such access if they have bad motives, or a sophisticated cyber-hacking group could trespass over the most advanced systems safeguards. The Department should not expect that a regime where all healthcare facilities will be subject to administrative enforcement regardless of what they do could effectively encourage better efforts to protect patients.

Section 1280.15 as interpreted by the superior court is consistent with California's statutory framework for protection of private medical information, which reflects a deliberate and nuanced understanding that privacy compliance must be tailored to the particular operational realities of each provider. Section 1280.18 requires the Department to assess a facility's administrative, technical, and physical safeguards <u>in light of</u> its "capability, complexity, [and] size," as well as other contextual factors such as its compliance history and the presence of forces beyond its control. This legislative direction makes clear that uniform or rigid expectations are not only inappropriate but legally impermissible.

Indeed, California hospitals operate in complex, high-risk environments where employees are expected to perform under time-sensitive, emotionally charged, and often unpredictable conditions. These demands are heightened by staffing

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constraints, physical layout considerations, and the realities of providing 24/7 care across multiple departments, all of which vary dramatically from facility to facility. For instance, a large academic medical center in an urban setting may have access to dedicated full-time privacy and security officers, sophisticated IT infrastructure, and redundant security monitoring, while a smaller rural hospital may rely on cross-trained personnel and more limited technology platforms. Both institutions must safeguard patient information, but the mechanisms by which they do so—and the resources available to support those mechanisms—necessarily differ. Furthermore, psychiatric hospitals may have different concerns and challenges over patient confidentiality than a critical access hospital or a general acute care hospital. There is no one-size-fits-all approach to effectively safeguarding patient information. An absolutist approach that does not differentiate the specific circumstances of a hospital makes no sense in this context.

The law expressly anticipates and permits variation in hospital compliance. Federal HIPAA regulations, for example, require providers to implement safeguards that are reasonable and appropriate to the "size, complexity, and capabilities" of the covered entity. *See* 45 C.F.R. §164.306(b)(2). Context matters — not only under federal law but also under California's regulatory scheme. Enforcement must be guided by an evaluation of the facility's overall compliance program, including its training, policies, safeguards, and post-incident actions. Construing section 1280.15 as imposing strict liability would disregard the statutory

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text, undermine the framework established by section 1280.18, and disincentivize the kind of thoughtful, tailored compliance strategies the law is designed to promote.

As further discussed below, Resnick undertook reasonable measures to train its employees, instituted appropriate policies and protocols, and established preventative mechanisms to protect patient privacy and confidentiality over medical information. It is hard to imagine any further steps that could guarantee against the type of breach that arose from a rogue employee. The principles of strict liability and its underlying policy rationale do not compel punishing or holding Resnick liable for what occurred here.

III. Resnick Took Appropriate and Reasonable Compliance Measures.

Across the healthcare sector, clear and consistent safeguards have emerged to define what constitutes effective privacy protection. In this case, Resnick's privacy training, internal policies, and enforcement mechanisms are not only consistent with, but in many respects surpass, the norms and best practices recognized across the health care industry — including guidance from federal regulators, national accreditation organizations, and leading hospital associations.

A. Legal and Accreditation Frameworks Establish Privacy Safeguards for Hospitals.

Under both federal and California law, healthcare providers are required to implement technical, physical and administrative safeguards to protect patient privacy. Although

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section 1280.18 does not list specific safeguards, providers operate within a regulatory and professional environment where those expectations are well understood. The HIPAA Privacy Rule, for instance, mandates that covered entities adopt a set of core protections, including the adoption of policies and procedures (45 C.F.R. §164.530(i)), workforce training (*id.* at §164.530(b)), access controls (*id.* at §164.312(a)), and audit mechanisms (*id.* at §164.312(b)). Similarly, California's Confidentiality of Medical Information Act requires providers to take proactive steps to guard against unauthorized disclosures of PHI and build systems for prevention, detection, and mitigation. *See* Cal. Civ. Code §56.101. These requirements form the legal baseline for what constitutes a compliant privacy program.

Beyond statutory text, the U.S. Department of Health and Human Services' Office for Civil Rights, which implements and enforces HIPAA, has emphasized through guidance that effective compliance programs should include comprehensive workforce training, written privacy and security policies, robust access controls, and regular ongoing monitoring of workforce activity. Accreditation bodies such as The Joint Commission likewise mandate periodic training and reinforcement of privacy obligations as part of their human resources and information management standards.

These standards collectively define the essential components of legally compliant and operationally sound compliance programs. They underscore that protecting patient information requires more than adopting policies in name; it

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requires active implementation through education, technical controls, monitoring, and enforcement. CHA believes Resnick met these requirements through a comprehensive and well-executed compliance program that satisfied both applicable legal standards and widely recognized industry norms. The Department does not suggest otherwise.

B. Resnick Maintained a Legally Compliant and Actively Enforced Privacy Program.

Resnick's internal policies, access controls and workforce training reflected a mature compliance program grounded in both legal mandates and operational best practices.

First, Resnick implemented privacy policies that addressed key risks such as mobile device usage, access to electronic health records, and social media. Second, Resnick's workforce training program fully complied with HIPAA's requirement that covered entities provide privacy education "as necessary and appropriate" for employees to perform their duties. 45 C.F.R. §164.530(b). Resnick appeared to have exceeded these requirements by utilizing a structured, multi-phase training program that integrates digital, written, and live instruction early in employment.

This approach was reflected in the rogue employee's onboarding process in this case. On the first day of employment, he completed online HIPAA privacy and security training that expressly prohibited storing PHI on personal devices — the exact conduct later at issue. He also signed a confidentiality agreement affirming his understanding of access restrictions, personal

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credential use, and monitoring protocols. Five weeks later, he attended an in-person orientation reinforcing key privacy principles, including HIPAA compliance, electronic system access, and social media risks. This structured, repeated instruction went beyond the baseline legal standard and followed best practices recognized by The Joint Commission, which promotes periodic and role-specific training.

Third, access to Resnick's electronic systems was tightly controlled. Employees received individualized login credentials, access was limited based on job roles, and all activity was logged and subject to audit. In addition, Resnick conducted periodic internal monitoring and issued post-incident communications reinforcing compliance obligations — demonstrating not just adherence to formal standards, but active oversight.

C. The Breach Resulted from Willful Misconduct and Was Met with an Effective Response.

Finally, the breach here was not caused by unclear policies, inadequate training, or systemic failure. It was the result of a deliberate violation by a rogue employee who had recently completed privacy training, signed a confidentiality agreement, and understood the consequences of noncompliance. His actions were intentional and calculated, outside the scope of what even the most robust compliance program can prevent.

It also is noteworthy that Resnick responded promptly and appropriately upon discovering the breach. It conducted an internal investigation, took swift disciplinary action against the employee, and fulfilled all applicable reporting obligations to the

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Department and affected patients. As federal sentencing guidelines have long recognized, no compliance program can prevent all instances of employee misconduct. The relevant question is not whether a breach occurred, but whether the institution had effective safeguards in place and took appropriate corrective action in response. *See* U.S. Sentencing Guidelines §82B2.1(a).

In sum, Resnick did everything the law requires, and more, to prevent, detect, and respond to privacy violations. Penalizing a provider that meets these standards under the Department's version of absolute strict liability would not serve the purpose of section 1280.15. CHA believes imposing absolute strict liability could undermine a reliable and effective enforcement scheme.

CONCLUSION

For the foregoing reasons as well as the reasons stated by Resnick in its briefing, CHA urges the Court to affirm the superior court.

Dated: March 27, 2025. Respectfully submitted,

ATHENE LAW, LLP

By: */s/ Long X. Do*
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CERTIFICATION OF WORD COUNT

I, Long X. Do, hereby certify in accordance with California Rules of Court, rule 8.204(d)(1), that this brief contains 5,459 words as calculated by Microsoft Word.

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

Dated: March 27, 2025.

By: *[/s/ Long X. Do]*
LONG X. DO

Attorney for Amicus Curiae
California Hospital Association

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PROOF OF SERVICE

Regents of University of California vs. California Department of Public Health, et al., No. C100351

I, Kimberly Parke, hereby declare:

I am employed in San Francisco, California. I am over the age of eighteen years and am not a party to the above-entitled action. My business address is 5432 Geary Ave.#200, San Francisco, California 94121.

On March 27, 2025, the below document(s) were served as indicated below:

APPLICATION OF THE CALIFORNIA HOSPITAL ASS'N FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF/RESPONDENT; PROPOSED AMICUS CURIAE BRIEF

U.S. Mail: By mailing a true copy thereof via first-class postage through the United States Postal Service to the following recipient(s):

The Honorable Stephen P. Acquisto
Sacramento County Superior Court
Department 36, 5th Floor
720 9th Street
Sacramento, CA 95814

To all counsel of record: All counsel of record in this matter have been concurrently served with the foregoing via the True Filing service as required by this Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed March 27, 2025, at Kimberly, Idaho.

/s/ Kimberly K. Parke

Kimberly K. Parke, CCLS

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