



November 27, 2006

## WHITE PAPER ALERT

**Torts – Standard of Care  
Elder and Dependant Adult Abuse**

**Prout • LeVangie**

2150 River Plaza Drive, Suite 420

Sacramento, California 95833

t. 916.443.4849

f. 916.923.2151

e. michael.levangie@proutlaw.com

www.proutlaw.com

**CONFIDENTIAL COMMUNICATION  
NOT FOR DISSEMINATION**

Sababin v. Superior Court

**Court of Appeal, Second District – October 25, 2006**

The California Elder Abuse and Dependent Adult Civil Protection Act (Act), California Welfare and Institutions Code section 15657, et seq., provides heightened remedies to plaintiffs who successfully sue for elder or dependant adult abuse. In order to recover the heightened remedies, attorney fees and costs, plaintiff must prove, by clear and convincing evidence, that a defendant is liable for neglect or physical abuse, and that the defendant acted with recklessness, oppression, fraud or malice. California courts have struggled to define the level of neglect required to subject a defendant to heightened remedies under California's Elder Abuse Act.

In this case, Arlene Renteria was a dependant adult suffering from Huntington's Chorea, a genetic disorder resulting in progressive physical, cognitive and psychological problems. The disease placed Renteria at an increased risk of infection and weight loss. In 2000, Renteria was transferred from a hospital in Southern California to the Defendant Covina Rehabilitation Center. Renteria remained at Covina until 2003 when she was transferred to an acute care hospital where she was diagnosed with sores, ulcers and other medical issues. Renteria died two months later at the age of 38.

Renteria's successors in interest sued Covina, alleging in part, that Covina was liable for dependant adult abuse, because Covina did not follow a care plan set up by her doctors. Covina moved for summary adjudication of the dependant adult abuse cause of action on the ground that there was no evidence that Covina was guilty of something more than simple professional negligence. The trial court granted the motion and Renteria's successors filed a petition for writ of mandate, contending that there were triable issues as to whether Covina acted with recklessness, oppression or malice. The Second District Court of Appeal agreed and issued a peremptory writ.

The Court of Appeal reiterated that the Elder Abuse Act excludes liability for acts of mere professional negligence. Neither simple nor gross negligence is sufficient to warrant heightened remedies under the Elder Abuse Act. A plaintiff must prove something more than negligence; they must show reckless, oppressive, fraudulent or malicious conduct. In other words, the conduct must include a deliberate disregard for the care of the patient, or intentional or conscious wrongdoing. The Court of Appeal clarified that the definition of "neglect" speaks not to the undertaking of medical services, but to the failure to provide medical services.

The Second District found it significant Covina was to follow a care plan calling for daily skin monitoring for sores and to keep her physicians informed of any problems. When Renteria was transferred to an acute care hospital from Covina, she was found to have lacerations and sores on various areas of her body.

**Covina had no documentation of Renteria's skin condition.** No one at Covina notified a physician of the need for a treatment order. The Court of Appeal found that a trier of fact could determine that Covina's conduct showed a deliberate disregard for Renteria's care and that there was a high probability that such disregard could lead to injury. The Court also rejected Covina's argument that a care facility cannot be liable under the Act unless there is a total absence of care. The Court of Appeal held that a care facility may be liable under the Act if there is a significant pattern of withholding portions or types of care. For these reasons, the Court remanded the case to the trial court for further review.

#### COMMENT

This case provides some guidance on the standard of care for long term care facilities for claims brought under the Elder Abuse and Dependant Adult Civil Protection Act. The question of whether care in a given case constitutes neglect or simple professional negligence, however, will continue to be difficult for all parties.

#### Disclaimer

©2006 Prout • LeVangie. These publications are intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. An attorney-client relationship is not created or continued by sending and receiving these publications. Members of Prout • LeVangie will be pleased to provide further information regarding the matters discussed in these publications.

Michael J. LeVangie  
**Prout • LeVangie**  
2150 River Plaza Drive, Suite 420  
Sacramento, California 95833  
t. 916.443.4849  
f. 916.923.2151  
e. [michael.levangie@proutlaw.com](mailto:michael.levangie@proutlaw.com)  
[www.proutlaw.com](http://www.proutlaw.com)