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HON. HALIM DHANIDINA CASE LIST

PROFESSIONAL LIABILITY/MALPRACTICE

Batchelder v. Smith

8/20/2018

2018 WL 3968888

Plaintiff appealed summary judgment in favor of defendants in medical malpractice action. Court affirmed summary judgment, finding that plaintiff's Doe amendments were invalid because he knew the identity of defendants at the time he filed his action, and was aware of his potential claim against them for failing to diagnose a kidney stone which was the cause of his back pain.

Ting v. Chang

11/13/2018

2018 WL 5918943

Plaintiff appealed from judgment entered in favor of her former attorney, challenging the trial court's pretrial finding that the attorney could not have raised a usury defense on plaintiff's behalf in a prior lawsuit against plaintiff's former client. Court affirmed the judgment, finding that plaintiff provided an inadequate record on appeal, including the basic pleadings of the lawsuit.

Stokes v. Baker

5/30/2019

35 Cal.App.5th 946

Patient brought action against emergency room physician, alleging negligent failure to diagnose a subarachnoid hemorrhage. The trial court granted summary judgment in favor of physician and plaintiff appealed. Court reversed judgment, holding Health and Safety Code section 1799.110(c) providing that, in negligence action against emergency room physician, court could only admit expert medical testimony from physicians with substantial professional experience within the last five years with emergency medical coverage, does not require every expert who provides medical testimony in the action to have such experience; rather, it applies only to those medical experts who testify as to emergency room physician's standard of care.

Evans v. Ivie

7/25/2019

2019 WL 3335169

Plaintiff sued her prior attorneys for breach of contract and malpractice after they dismissed plaintiff's cross-complaint without her authorization. The trial court dismissed plaintiff's claims on timeliness grounds and plaintiff appealed. Court reversed dismissal, holding that the untimeliness of plaintiff's claims was not clearly apparent on the face of her complaint or

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matters judicially noticed given that the statute of limitations period was tolled during the period when her attorneys continued to represent her under Code of Civil Procedure section 340.6, and the complaint did not clearly show when the representation ended.

Berlin v. Johnson

10/16/2019

2019 WL 5204252

Plaintiff sued defendant for medical malpractice after plaintiff was injured after a back surgery performed by defendant. The trial court granted summary judgment in favor of the defendant, finding that plaintiff failed to raise a triable issue of fact about whether the defendant exercised reasonable care in performing the surgery. Court affirmed the judgment, finding plaintiff failed to proffer any expert opinion that defendant's surgical performance fell below the community standard of care as both experts merely testified the specific surgery may not have been not performed (it was undisputed that it had been) and that the operation was not successful.

3123 SMB LLC v. Horn

11/22/2019

2019 WL 6242511

Plaintiff appealed an order dismissing its legal malpractice action against defendant following the sustaining of a demurrer on statute of limitations ground. Court affirmed the dismissal, holding that plaintiff's action was time-barred because the statute of limitations was not tolled while plaintiff's action against defendant in federal court under Code of Civil Procedure section 340.6.

Kolodny v. Wondries

11/25/2019

2019 WL 6271229

Defendant appealed from judgments confirming an arbitration award entered against her in a dispute over the amount of attorneys' fees and costs two law firms, charged her in a marital dissolution action. Defendant argued the trial court erred when it ordered the parties' claims involving the second law firm, which was formed after the first law firm dissolved, to be resolved through arbitration because defendant never signed an arbitration agreement governing disputes between herself and the second law firm and defendant refused to sign an acknowledgment that the second law firm would represent her under the same terms as her retainer with the first law firm. Court affirmed the order and arbitration award, holding the court trial properly ordered defendant to arbitrate the claims because, even though defendant refused to sign the acknowledgment, her claims still arose out of the underlying retainer and arbitration agreements she signed.

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Berlin v. Johnson II

12/10/2019

2019 WL 6711407

Plaintiff sued doctor for professional negligence related to a spinal surgery. The trial court granted summary judgment in favor of spine center, finding that plaintiff improperly added the spine center as a Doe defendant even though he knew of the spine center's existence when he filed his complaint. The trial court also awarded the doctor's costs for retrieval of plaintiff's medical records. Court reversed, holding that a triable issue of fact existed as to whether plaintiff knew about the spine center when he filed his complaint given there was evidence that plaintiff believed the spine center was the same entity as the hospital that he did name as a defendant. Further, the trial court improperly awarded the doctor his costs for retrieving plaintiff's medical record because those costs were essentially photocopying costs, which are generally not recoverable under Code of Civil Procedure section 1033.5(b)(3).

Pezeshki v. Sheahan

2/5/2020

2020 WL 563339

Plaintiff appealed a judgment of dismissal of his complaint that alleged his former criminal defense attorney violated his professional duties and committed fraud by keeping \$100,000 advance payment after his discharge, despite performing only minimal work and misrepresenting that the payment constituted a nonrefundable retainer. Court affirmed the dismissal, holding that the statute of limitations on plaintiff's claims had run and that the delayed discovery rule did not toll plaintiff's claims because he was aware of the facts essential to his claim when he sent the attorney a letter demanding return of the unearned fees, even if he was unaware of the legal remedy or legal theories underlying his causes of action.

California Lawyers Group LLP v. McNulty

2/27/2020

2020 WL 948342

Defendant retained plaintiffs to represent him in a lawsuit related to an automobile accident. Defendant later terminated plaintiffs and retained a new law firm, who subsequently negotiated \$575,000 settlement with the insurer. Plaintiffs asserted a lien on the funds and sued defendant, the new law firm, and the insurer on a variety of torts, asserting that the disbursement of the settlement funds interfered with his lien. The trial court dismissed the lawsuit on statute of limitations grounds. Court affirmed the dismissal, holding that plaintiff's claims were barred under Code of Civil Procedure section 340.6, which provides that a wrongful act or omission arising in the performance of professional services is subject to a one-year statute of limitations, because all of plaintiff's claims arose out the payment and distribution of the settlement funds, which are governed by the California Rules of Professional Conduct.

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Ramirez v. Javahery

5/15/2020

2020 WL 2505702

Mother sued physicians after her son died from a malignant brain tumor. Physicians had treated son for many years for brain tumors and seizures. The trial court granted summary judgment in favor of physicians, finding physicians' conduct did not fall below standard of care and mother could not establish causation. Court affirmed judgment, holding plaintiff could not allege that physicians failed to obtain informed consent for the treatment plan pursued, only that physicians failed to adequately advise plaintiff of surgical alternatives to the plan, and it was within the standard of care not recommend the surgical option.

Bechard v. Broidy

6/24/2020

2020 WL 3459390

Cross-defendant appealed order denying his motions to compel arbitration of his breach of contract and declaratory relief causes of action arising from a breach of a settlement agreement. The breach included acknowledging the breach's existence in a national newspaper and legal malpractice. Court affirmed the order, holding that compelling some claims to arbitration while not others would create the risk of conflicting rulings on the primary issue of who was responsible for publicly disclosing the existence of, and details about, the settlement agreement.

Mireskandari v. Marks & Sokolov

8/24/2020

2020 WL 4932206

Plaintiffs sued three law firms that had represented them in other lawsuits for legal malpractice. The trial court dismissed plaintiffs' claims against defendants after plaintiffs twice failed to appear at scheduled hearings of which they had notice. Six months later, plaintiffs moved to vacate the dismissal under Code of Civil Procedure section 473(b) and (d), which was denied. Court affirmed the order, holding the trial court correctly found the order could not be vacated because the dismissal order was voidable because it may have been entered without proper notice to plaintiffs. However, the dismissal was not void because the trial court indisputably had jurisdiction over the parties and the subject matter. Therefore, plaintiffs were not entitled to relief under section 473(d), which requires a finding that the dismissal order is void. Likewise, the trial court did not abuse its discretion in denying relief under section 473(b) because there was evidence that the plaintiffs were aware of the dismissal and waited almost six months before seeking relief.