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RESOLUTION

HON. TRICIA BIGELOW CASE LIST

Professional Liability/Malpractice

Grafilo v. Cohanshoet

1/22/2019

32 Cal.App.5th 428

State medical board petitioned to compel production of medical records from patients who were prescribed dosages of opioids by physician that were possibly in excess of the recommended amount. The trial court granted the petition. Physician appealed, arguing consultant's declaration was insufficient to show good cause to compel compliance with board's subpoenas for medical records because: there was no suggestion physician was negligent in treating his patients or that he prescribed controlled substances without meeting the standard of care, there was insufficient evidence of how often similarly-situated physicians who specialized in pain treatment might prescribe the drugs or the likelihood that the prescriptions could have been properly issued, and physician's expert identified instances where physician's prescribing patterns would have been appropriate.

Nemecek & Cole v. Horn

7/23/2012

208 Cal.App.4th 641

Law firm petitioned to confirm arbitration award in its favor on claim against former client for fees after law firm represented client in a lot line dispute with his neighbor. The trial court confirmed the award and awarded attorney's fees. Client appealed, arguing arbitrator was required to disclose: his involvement with 186-member bar association committee, his alleged relationship with person who served as an expert witness, his employment at private firm that had represented certain clients in the area of legal malpractice defense, and that law firm's attorneys previously appeared before him in one case while he was a judge.

Vafi v. McCloskey

3/22/2011

193 Cal.App.4th 874

Former boyfriend sued former girlfriend and her attorneys who represented her in the prior litigation. The trial court granted defendants' anti-strategic lawsuit against public participation (SLAPP) motion and dismissed boyfriend's complaint with prejudice. Boyfriend appealed, arguing the general statute of limitations applicable to actions for malicious prosecution under Code of Civil Procedure section 335.1 applied to his claims against the attorneys rather than the statute of limitations for general actions against attorneys under Code of Civil Procedure section 340.6.

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Gerbosi v. Gaims, Weil, West & Epstein, LLP

3/9/2011

193 Cal.App.4th 435

Ex-girlfriend sued ex-boyfriend and ex-boyfriend's attorneys for invasion of privacy, intentional infliction of emotional distress, unlawful eavesdropping, unfair competition, negligence, malicious prosecution, and abuse of process. Ex-girlfriend's neighbor also sued ex-boyfriend and ex-boyfriend's attorneys for unlawful wiretapping, unlawful eavesdropping, common law intrusion, invasion of privacy, intentional infliction of emotional distress, negligence, and negligent supervision. The trial court denied defendants' anti-strategic lawsuit against public participation (SLAPP) motions. Attorneys appealed, arguing its conduct fell under the protective umbrella for acts in furtherance of protected "petitioning" activity, and attorneys' status as members of the bar automatically conferred the protections of the anti-SLAPP statute.

Porter v. Wyner

4/8/2010

107 Cal.Rptr.3d 653

Former clients sued their attorneys, alleging that attorneys breached fee agreement. After a jury trial, the trial court entered judgment in favor of clients, but then granted attorneys' motion for new trial. Parties appealed and cross-appealed. Former clients argued the trial court erred in granting the new trial because the communications between an attorney and its client were not subject to mediation confidentiality. Attorneys argued the trial court properly granted their motion for a new trial because the jury's consideration of confidential mediation communications created an irregularity in the proceedings that required a new trial, however, the trial court erred in ruling their motion for a judgment notwithstanding the verdict was moot.