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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| UNIVERSITY OF SOUTHERN CALIFORNIA,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>SANTA BARBARA SAN LUIS OBISPO REGIONAL HEALTH AUTHORITY,<br><br>Defendant and Respondent. | 2d Civil No. B271006<br>(Super. Ct. No. 1466905)<br>(Santa Barbara County) |

A hospital sued a county health system authority that provides managed care services to Medi-Cal beneficiaries. The hospital claimed the county health authority is liable for the full amount of the hospital's bills for the care of Medi-Cal beneficiaries because there was no contract limiting the amount it could charge for services. The trial court granted the health authority summary judgment. The court concluded the hospital's

fee for services is limited by Welfare and Institutions Code section 14499.6, subdivision (b).[1] We affirm.

FACTS

The University of Southern California owns and operates Keck Hospital (Keck). Keck provides advanced, experimental and uncommon diagnostic and surgical procedures. Keck is under contract with the State of California Department of Health Care Services (State) under the Selective Provider Contracting Program (SPCP). (§ 14165 et seq.) The SPCP is a fee for service Medi-Cal program. Under the SPCP, each hospital negotiates its fee contract with the State.

The Santa Barbara San Luis Obispo Regional Health Authority, known as CenCal, is a two-county health system created by statute to provide managed care services to Medi-Cal beneficiaries. (§§ 14087.5-14087.9; Health & Saf. Code, § 101675 et seq.) CenCal is authorized to arrange with out-of-county SPCP hospitals to provide specialized care not available within the county for Medi-Cal beneficiaries residing within the counties. (§ 14499.5, subd. (a); Health & Saf. Code, § 101675 et seq.)

Not all counties have health authorities such as CenCal. For counties without such authorities, the State Department of Health Care Services provides services to Medi-Cal beneficiaries.

CenCal arranged for Keck to provide service to three Medi-Cal beneficiaries, designated as patients 1, 2 and 4.[2] Keck obtained written authorization from CenCal prior to providing services.

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise stated.

[2] Charges for services to patient 3 are no longer part of this action.

Patient 1 is a resident of San Luis Obispo County. Keck billed CenCal over $2.1 million for services provided to patient 1. CenCal paid $74,466 and denied payment for the remaining amount.

Patient 2 is a resident of Santa Barbara County. Keck claims a balance of $64,102.32 is owing from CenCal for services provided to patient 2.

Patient 4 is also a resident of Santa Barbara County. Keck billed CenCal $23,986.03 for services provided to patient 4. CenCal reimbursed Keck $6,241.60 and denied payment for the remaining amount.

CenCal claimed its liability to Keck for services is limited by section 14087.9, subdivision (b) to the rates negotiated by Keck with the State under the SPCP contract. CenCal claimed the rates negotiated between the State and Keck are proprietary and not subject to discovery. Thus, it based reimbursement on an average of such rates published by the State.

Keck brought the instant action for damages alleging in its first amended complaint causes of action for breach of contract, quantum meruit and promissory estoppel. Keck's complaint alleged that it had an implied contract with CenCal to provide services to the patients, but the implied contract contained no limitation on the fees it could charge. Thus, CenCal was liable for the full amount of its fees. In addition, because patient 1 is a resident of San Luis Obispo, the fee limitation of section 14499.6, subdivision (b) does not apply. The quantum meruit cause of action is an alternative to the action based on contract. The promissory estoppel cause of action is based on CenCal's authorization of the services Keck provided.

CenCal moved for summary judgment. The trial court granted the motion. The court found the parties had an express contract, the fees charged for services to all patients are limited by section 14499.6, subdivision (b), and quantum meruit and promissory estoppel do not apply.

## DISCUSSION

### I

Summary judgment is properly granted only if all papers submitted show there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) The court must draw all reasonable inferences from the evidence set forth in the papers except where such references are contradicted by other inferences or evidence which raise a triable issue of fact. (*Ibid.*) In examining the supporting and opposing papers, the moving party's affidavits or declarations are strictly construed and those of his opponent liberally construed, and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. (*Szadolci v. Hollywood Park Operating Co.* (1993) 14 Cal.App.4th 16, 19.)

The moving party has the initial burden of showing that one or more elements of a cause of action cannot be established. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) Where the moving party has carried that burden, the burden shifts to the opposing party to show a triable issue of material fact. (*Ibid.*) Our review of the trial court's grant of the motion is de novo. (*Id.* at p 767.)

II

Keck contends the trial court erred in determining that CenCal had an express agreement with Keck for the services at issue.

Keck's contention is that because its contract with CenCal is implied, Keck can charge what it determines to be the full value of its services. This argument ignores section 14499.6.

Section 14499.6, subdivision (a) provides, in part: "The Santa Barbara Regional Health Authority may arrange with out-of-county Selective Provider Contracting Program hospitals that have negotiated hospital contracts and per diem rates [with the State] . . . to provide specialized hospital services not available within Santa Barbara County to Medi-Cal beneficiaries who reside in Santa Barbara County."

Subdivision (b) of the section provides, in part: "The out-of-county program hospitals shall not charge the authority more than their program negotiated rates when providing hospital services to authority patients under this section . . . ."

The material facts are undisputed. Keck is a hospital described in section 14499.6, subdivision (a), and CenCal arranged with Keck for specialized services for Medi-Cal beneficiaries residing within CenCal's jurisdiction. Whether the arrangement can be characterized as an express or implied contract is beside the point. The arrangement for Keck's services falls within subdivision (a). And subdivision (b) limits Keck's fees to those negotiated in its SPCP contract with the State.

Keck argues that CenCal is not a third party beneficiary of Keck's contract with the State. CenCal does not claim to be a third party beneficiary. The amount Keck can charge CenCal is

limited not because CenCal may be a third party beneficiary; the amount is limited because of section 14499.6, subdivision (b).

Keck's reliance on *California Medical Assn. v. Lackner* (1981) 117 Cal.App.3d 552 and *Children's Hospital Central California v. Blue Cross of California* (2014) 226 Cal.App.4th 1260 is misplaced. Keck cites those cases for the proposition that an implied contract may arise out of statutes and regulations. Undoubtedly Keck and CenCal had a contract. But because that contract arose in the context of section 14499.6, subdivision (a), Keck's compensation is limited by subdivision (b).

It follows that Keck cannot maintain causes of action based on quantum meruit or promissory estoppel. Its compensation for services is limited by statute.

III

Keck contends the trial court erred in ruling that section 14499.6 applies to patient 1, a resident of San Luis Obispo County.

Keck points out that section 14499.6, subdivision (a) by its terms applies to "Medi-Cal beneficiaries who reside in Santa Barbara County." Keck concludes the section does not apply to Medi-Cal beneficiaries who are residents of San Luis Obispo County.

Section 14499.6 was enacted in 1989. (Added by Stats. 1989, ch. 661, § 1.) At the time it was enacted, Santa Barbara County was part of a pilot program in which the County of San Luis Obispo did not participate. In 2007 the Legislature amended Health and Safety Code section 101675 et seq. to expand the Santa Barbara County health authority to include San Luis Obispo County. (Stats. 2007, ch. 266, § 2, eff. Jan. 1, 2008.) The amendment created the two-county health authority

as it exists today. The Legislature did not expressly amend section 14499.6 to add reference to San Luis Obispo County.

We apply the well-established rule of statutory construction that statues relating to the same subject matter are read together. (*Raynor v. City of Arcata* (1938) 11 Cal.2d 113, 120.) In addition, statutes must be given a fair and reasonable interpretation that will promote rather than defeat the general purpose and policy of the law. (*Stewart v. Board of Medical Quality Assurance* (1978) 80 Cal.App.3d 172, 179.)

Section 14499.6 unambiguously refers only to residents of Santa Barbara County when read in isolation. But when read together with Health and Safety Code section 101675 et seq., the section is intended to apply to residents of both Santa Barbara and San Luis Obispo Counties. The obvious purpose of section 14499.6, subdivision (b) is to prevent hospitals from charging regional agencies more for services to Medi-Cal beneficiaries than it could charge the State. Keck suggests no rational policy to conclude the Legislature intended to limit the fees charged for services to residents of Santa Barbara County but not for services to residents of San Luis Obispo County.

Keck argues that interpreting section 14499.6, subdivision (b) as applying to San Luis Obispo County residents violates the due process clauses of the federal and California Constitutions. (U.S. Const., 14th Amend.; Cal. Const., art I, § 7.)

Keck cites *Moss v. Superior Court* (1998) 17 Cal.4th 396, 428-430, and *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 829-830, for the proposition that a court violates due process by retroactively applying a new interpretation of an existing legal standard to a party's claim.

In *Moss*, our Supreme Court held that contempt sanctions can be imposed on a parent whose inability to pay child support is the result of a willful failure to seek employment. In so holding, the court disapproved precedent dating back a century. The court, however, determined its decision could not be applied retroactively stating, "[R]etroactive application of a decision disapproving prior authority on which a person may reasonably rely in determining what conduct will subject the person to penalties, denies due process." (*Moss v. Superior Court*, *supra*, 17 Cal.4th at p. 429.)

In *Olszewski*, plaintiff sued defendant for damages resulting from defendant's imposition of a lien on plaintiff's property. The defendants pointed out that the lien was authorized by state statutes. Our Supreme Court concluded the state statutes were void as preempted by federal law. But the court held its decision was not retroactive. (*Olszewski v. Scripps Health*, *supra*, 30 Cal.4th at p. 829.) Defendants could reasonably rely on the state statutes as a safe harbor from tort liability.

Here we are not reversing a century of settled precedent, as in *Moss*. Nor are we declaring a statute on which a defendant relied to avoid tort liability void, as in *Olszewski*. We are simply applying well-established rules of statutory construction to statutes that have never been construed before. Keck did not reasonably rely on well-established legal precedent construing the statutes in its favor. It simply relied on its own flawed interpretation of the statutes. That is not enough to implicate due process.

IV

Keck contends a question of material fact exists as to whether its claims fall within section 14499.6, subdivision (c).

Section 14499.6, subdivision (c) provides: "In cases where an out-of-county program hospital can demonstrate that the cost of the services it is rendering to authority patients was not contemplated in the case mix and acuity assumptions on which the program rates are based, the program hospital and the authority shall negotiate in good faith equitable rates for payment for the provision of hospital services to authority patients. The established program rate shall serve as the base for those negotiations."

But the undisputed evidence is that Keck never attempted to negotiate rates pursuant to section 14499.6, subdivision (c). Keck argues the subdivision does not require it to negotiate rates prior to providing services. But Keck never attempted to negotiate pursuant to subdivision (c) at any time. In fact, Keck's original complaint does not even mention subdivision (c).

Keck argues that it tried to negotiate a more appropriate rate in its appeal for patient 1. But the negotiation was based on Keck's "Interim Rate," which is a "calculation of the hospital's cost to charge ratio." Section 14499.6, subdivision (c) provides that the SPCP rate "shall serve as the base for those negotiations." The undisputed evidence shows Keck did not attempt to negotiate based on the hospital's SPCP rate. Its action was based on what it considered to be the value of its services. In doing so, Keck did not comply with section 14499.6, subdivision (c).

V

Keck contends there is a triable question of material fact as to whether CenCal reimbursed it at its SPCP rate.

Because CenCal claimed it was unable to discover Keck's actual SPCP rates, it used an average of such rates published by the State. Keck claims CenCal owes it a minimum of $341 per day additional compensation on each claim.

The trial court refused to consider the contention because it was not pleaded anywhere in the first amended complaint and was raised for the first time in response to CenCal's motion for summary judgment.

The trial court is correct. The first amended complaint alleges that Keck is entitled to be paid the full amount of its bill or at least an amount negotiated pursuant to section 14499.6, subdivision (c). It does not allege it is entitled to the difference between its actual SPCP rate and the average rate paid by CenCal.

A motion for summary judgment is determined on the issues raised by the pleadings. (6 Witkin, Cal.Procedure (5th ed. 2008) Proceedings Without Trial, § 212, pp. 650-651.) Because Keck's contention was not an issue raised by the pleadings, Keck is precluded from raising the issue. (*Ibid.*)

The judgment is affirmed. Costs on appeal are awarded to respondent.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J

Donna D. Geck, Judge

Superior Court County of Santa Barbara

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