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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

ARVIN TARVERDI et al., Plaintiffs and Appellants, v. SOUTHERN CALIFORNIA HEALTHCARE SYSTEM INC. et al., Defendants and Respondents.	B281974 (Los Angeles County Super. Ct. No. BC594692)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert Leslie Hess, Judge. Reversed in part, affirmed in part.

Farrah Mirabel and Law Offices of Farrah Mirabel; Vicki for Plaintiffs and Appellants.

McGuireWoods, John A. VanHook; Lewis Brisbois Bisgaard & Smith and Judith M. Tishkoff for Defendants and Respondents Southern California Healthcare System; Natalie Tinio, Violet Mayers, Joseph Ogbonnaya and Lady Manaog.

Cole Pedroza Kenneth R. Pedroza and Matthew S. Levinson; Doyle Schafer McMahon, Terrence J. Schafer and Nazanin Houshyar for Defendant and Respondent Dale Brent.

INTRODUCTION

Plaintiffs alleged that their elderly father and husband suffered injuries and neglect while in the care of defendants, which eventually led to his death. Defendants—a hospital, doctor, and nurses—demurred to the complaint, asserting that the allegations were uncertain and that the complaint failed to state a cause of action. After successive complaints and demurrers, the trial court sustained defendants' demurrers to the third amended complaint without leave to amend.

We reverse. Although the third amended complaint was verbose, the trial court erred by sustaining the demurrers on uncertainty grounds. In addition, the third amended complaint stated viable causes of action against the defendants, and the allegations do not warrant a finding that certain claims are time-barred.

FACTUAL AND PROCEDURAL BACKGROUND

A. Original complaint

Plaintiffs filed their original complaint on September 28, 2015. Plaintiffs are Arvin Tarverdi, decedent's son, individually and as personal representative of the estate of decedent Tatavoss Tarverdi; Parkouhi Malaki, decedent's spouse, and Artin

Tarverdi, decedent's other son.[1] The sole defendant was Southern California Healthcare System, Inc., dba Southern California Hospital at Culver City (the Hospital).[2] The complaint also included Doe defendants 1 through 100.

Only the third amended complaint is at issue in this appeal, and therefore we will discuss the facts alleged therein in more detail below. Here, we offer a brief summary of the facts alleged in the original complaint. Plaintiffs alleged that decedent was admitted to Southern California Hospital on October 7, 2014. On October 24, decedent was placed in the hospital's lockdown unit, and while there he was "unlawfully restrained." Also while there, decedent was placed next to a younger patient that defendants knew had displayed dangerous and violent behavior. This younger patient "attacked and battered" decedent, including punching decedent's left eye and causing "serious physical and emotional injuries." Following the battery, decedent was "ill and bed-ridden"; although he had been able to walk and socialize previously, "after this incident, he would not talk or walk at all."

In a separate incident in October 2014, "Decedent suffered an injury to his leg and received a severe bruise." The origin of the injury was listed as "unknown" in the medical records and attributed to a possible fall. Plaintiffs alleged that "Defendants left Decedent unattended and immobilized for a prolonged period

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[1]Because two of the plaintiffs share a last name, at times we refer to them by first name. We adopt the parties' usage and refer to Tatavoss Tarverdi as "decedent." We intend no disrespect.

[2] The complaint named as the sole defendant "Prospect Medical Holdings, Inc., . . . dba Southern California Hospital, at Culver City." The Hospital later filed a notice of errata correcting the party name.

of time" after this injury. Plaintiffs alleged that defendants concealed this information from them.

Plaintiffs alleged 11 causes of action: negligence, elder abuse, fraudulent concealment, constructive fraud, breach of fiduciary duty, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent hiring, willful misconduct, battery, and wrongful death. Plaintiffs alleged that the Hospital breached various duties of care to decedent, concealed information about decedent's medical issues, caused decedent to suffer emotional distress, hired unfit employees to care for decedent, caused decedent to be battered and injured, and caused a decline that led to decedent's death. Plaintiffs requested general and special damages, punitive damages, attorney fees, and costs.

The Hospital demurred, asserting that each of the 11 causes of action failed to state facts sufficient to constitute a cause of action and was uncertain. (Code Civ. Proc, § 430.10, subds. (e) & (f).) The Hospital argued, in part, that because none of the causes of action specified which plaintiff was asserting it, the claims were uncertain. The Hospital also moved to strike portions of the damages claims in the complaint.

Plaintiffs opposed the demurrer and motion to strike, and the Hospital filed replies. At the hearing, the court expressed concern with some of the causes of action, stating, for example, "[T]here's a wrongful death cause of action in here, but unless I simply flat-out missed it, I didn't see any allegations relating to the date or the cause of death." The court noted that the complaint did not differentiate among survivors' claims versus estate claims. The court also said that the complaint lacked clarity as to what conduct was wrongful, and suggested that

plaintiffs consult decedent's medical records to determine relevant details. The court sustained the demurrer and granted plaintiffs 30 days' leave to amend.

B. First amended complaint

Plaintiffs filed a first amended complaint (FAC) on March 9, 2016, naming the following defendants: the Hospital; the Hospital's parent companies, Alta Hospitals System, LLC, and Prospect Medical Holdings, Inc.[3]; Violet Mayers, RN; Joseph Ogbonnaya, RN; Natalie Tinio, RN; Lady Manaog, RN (collectively, the nurses or the nurse defendants); doctors Jory Goodman, M.D. and Dale Brent, M.D.; and Does 1-100. The FAC alleged that Goodman and Brent were physicians, and Mayers, Ogbonnaya, Tinio, and Manaog were nurses who rendered medical care to decedent. The hospital defendants and nurse defendants shared the same counsel and filed joint documents, so at times we reference them together.

The FAC asserted five causes of action against all defendants: negligence, elder abuse, wrongful death, breach of fiduciary duty, and willful misconduct. The Hospital and Goodman demurred and moved to strike portions of the FAC. The remaining defendants had not yet been served.

At the hearing, the trial court held that the FAC stated facts sufficient to constitute certain causes of action. However, the judge said, "I'm sustaining the demurrer as a whole on the grounds of uncertainty." Plaintiffs' counsel asked for clarification, stating, "[W]hile the demurrer was being sustained for uncertainty as a whole, it was overruled on those two causes of action [wrongful death and willful misconduct] otherwise." The

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[3] We refer to the Hospital, Alta, and Prospect collectively as the hospital defendants.

court responded, "The other specific arguments were overruled, but there are various grounds that the demurrer is sustained." The court gave plaintiffs 20 days to amend the complaint.

C. Second amended complaint

The second amended complaint (SAC) included the same plaintiffs and defendants, and listed the same five causes of action except that the negligence cause of action was changed to professional negligence. The SAC included facts similar to the FAC, but with many more details and notes from the medical records. It appears that all defendants filed demurrers and motions to strike, but the hospital and nurse defendants' demurrer is not included in the record on appeal.

The court again sustained the demurrers on the basis of uncertainty, allowed plaintiffs 27 days to amend, and stated, "[T]his is your last opportunity to amend."

D. Third amended complaint

1. *Allegations*

Because the third amended complaint (TAC) is at issue on appeal, we include a more detailed summary of the factual allegations here. The TAC included the same five causes of action as the SAC—professional negligence, elder abuse, wrongful death, breach of fiduciary duty, and willful misconduct. The TAC stated that at the time the lawsuit was filed, plaintiffs knew only the identity of Southern California Hospital. Upon receipt of the medical records, plaintiffs discovered the identities of the two doctor and four nurse defendants, and therefore named them in the FAC. Thus, "the discovery date of the wrongdoing of these newly added Defendants was February 5, 2016, nonetheless, pursuant to CCP 474, all Defendant Doctors and Defendant Nurses are added as Doe Defendants 2 to 7." Dr. Goodman and

his medical corporation were named as Does 1 and 3, Dr. Brent was named as Doe 2, and Nurses Mayers, Ogbonnaya, Tinio, and Manaog were named as Does 4 through 7 respectively.

The TAC stated that "Defendant Hospital" included Southern California Hospital, which is a "wholly owned subsidiary of Alta Hospital System, LLC. Alta is a wholly owned subsidiary of Prospect Medical Holdings, Inc." It also alleged that all defendants, including the Doe defendants, were "agents, employees, employers, joint venturers, representatives, alter egos, subsidiaries, and/or partners" of the other defendants.

The basic facts plaintiffs alleged in the 54-page TAC were as follows. Decedent was admitted to Southern California Hospital on October 7, 2014. He was 75 years old and suffering from Alzheimer's disease. Upon admission, Nurse Ogbonnaya noted that decedent had an abnormal gait. Decedent was given a yellow band, denoting that he was at risk of falling, and his mobility status was listed as "moves with assistance." Dr. Goodman examined decedent upon admission and "was on notice that Decedent needed seclusion and a sitter [i.e., a person to monitor him], yet failed to provide either." Non-defendant Dr. Markie also ordered "1:1 Observation." According to Hospital policy, this means that the patient was supposed to be continually monitored face-to-face by a staff member. However, a monitor or "sitter" was not initially assigned to decedent. Decedent was placed in a non-geriatric unit, double-occupancy room with a "much younger violent patient."

Plaintiffs alleged that Dr. Goodman was the attending physician, Dr. Brent was the general care internist, and they had "day-to-day supervisory responsibility for Decedent's care." The nurse defendants "were entrusted with rendering medical care to

Decedent and had direct immediate supervisory responsibility for administering and monitoring the care rendered to Decedent." In addition, Nurse Ogbonnaya was "in charge of Decedent's psychiatric and ambulation care assessment and placement."

The medical records following admission show that decedent had mental issues and was a danger to himself and others. Decedent was confused and disoriented; he wandered into other patients' rooms while yelling and screaming; he was agitated; he banged on the walls and hit staff members. Dr. Goodman noted that when he entered decedent's room on October 9, 2014, decedent was sitting on the floor and unable to get up.

On October 11, "Decedent suffered an injury to his right upper thigh/hamstring and left lower buttocks and sustained severe bruises." Nurse Tinio, the attending nurse at the time, noted this injury in the medical records, but Dr. Brent's notes did not address it until four days later. Plaintiffs alleged that "Defendant Hospital listed the origin of the injury as 'unknown,'" showing that although decedent required supervision to avoid injury, the hospital failed to provide it. "Defendant Hospital, Defendant Doctors and Defendant Nurses should have monitored Decedent's walking," and because they did not, decedent fell and was injured.

On October 13, Dr. Goodman ordered an "emergency im cocktail," an intra-muscular injection. Also on October 13, "Decedent was elbowed in the right rib by another patient." Nurse Manaog, who had various duties regarding decedent, "was the attending nurse" at the time. Medical record entries by Nurse Manaog at 1:04 p.m. on October 13, and then at 5:26 p.m. after decedent had been elbowed, suggest that decedent had not been supervised in the intervening time period.

On October 16, Dr. Brent noted that decedent required close monitoring. On October 19, Dr. Goodman noted that decedent should have been placed in the geriatric unit, Unit D, rather than where he was placed, Unit C, "which is for mentally unstable, very violent and aggressive patients of any age with any mental disorder."

On October 24, Dr. Goodman "began a 30-day hold, per California Welfare and Institutions Code Section 5150 and/or 5250, and based thereon Decedent should have been placed in seclusion as he presented a danger to himself and/or be with a sitter all the time." Later that day, however, the other patient in decedent's room "attacked and battered him," by "severely" hitting decedent, including punching decedent in the left eye. Decedent suffered physical and emotional injuries as a result, including "left periorbital ecchymosed [*sic*]," pain, and suffering. Nurses Ogbonnaya and Mayers were in charge of decedent on the day of the battery.

Plaintiffs alleged that had a sitter been provided, "none of the damages alleged herein—the fall, the elbow assault, the assault and battery and punch in the eye, and resulting deterioration and accelerated death, would have occurred." Decedent was assigned a sitter immediately after being hit in the face by the other patient, suggesting that sitters were available. In addition, after the October 24 attack decedent was placed in Unit D, suggesting that space had been available there.

Although medical records showed that decedent was initially ambulating and socializing with others, after the October 24 battery he was no longer capable of walking and socializing. After the attack, "a rapid period of decline then set in." On October 29, Dr. Brent noted that decedent was "spending most of

time in bed." As of November 3, medical records note that decedent "remains almost 100% of the time now, unfortunately, in bed." On November 2, Dr. Brent stated that decedent had "dementia-associated weight loss/cachexia in addition to immobility." On November 10, Dr. Brent noted that decedent was still not ambulating. On November 17, Dr. Brent noted that decedent was in a wheelchair during the day. The TAC alleged that "Defendant Hospital and Dr. Brent knew per the medical notes that . . . Decedent [was in] a bed-ridden state but failed to come up with a care plan and left Decedent largely abandoned and rendered him little remedial or rehabilitation efforts."

Decedent also suffered psychological effects from the attack, but "Defendant Hospital and Dr. Goodman did not provide any meaningful psychiatric consultation or treatment to Decedent. Nor did the Defendant Nurses, either collectively or individually, request any such psychiatric care." Medical notes on October 19 state that decedent was morbidly obese, but later notes stated that decedent was underweight, indicating that decedent was not being fed properly.

On November 21, decedent was discharged and sent to a nursing home. He continued to suffer muscle weakness and atrophy. He died on August 9, 2015 from cardiovascular arrest, pneumonia, and Alzheimer's dementia, and plaintiffs alleged that "the physical attack and separate fall" at the hospital "were a cause and substantial factor of Decedent's death."

Plaintiffs alleged that while decedent was at the Hospital, Dr. Brent was "the doctor responsible primarily for the medical care of Decedent." He knew the hospital lacked the capacity to care for decedent appropriately, but "did not reveal, and in fact concealed" this fact. Nurses Ogbonnaya and Tinio "assisted Dr.

Brent and witnessed firsthand the bed-ridden status of Decedent and the want of care. . . . Yet, these Defendant Nurses did nothing." Nurses Ogbonnaya and Tinio knew that decedent was a fall risk but could not be adequately monitored, and they concealed this information from decedent's family members. Nurses Manaog and Mayers recognized that decedent was "unstable and combative" and was not receiving the care he needed, yet they "knew of and participated in the improper and unsafe placement of Decedent." Nurses Manaog and Mayers concealed that decedent's placement "violated the industry and hospital standards of care and the admitting doctor's requirements for this patient."

The TAC alleged that there was a "fundamental failure to provide care and as a result, Defendant Hospital, Defendant Doctors and Defendant Nurses, and each of them, failed to meet the physical, psychological, and safety needs of the Decedent." "Defendant Hospital, Defendant Doctors and Defendant Nurses, and each of them, knew, and should have known, that the practices alleged gave rise to a substantial risk of injury to the Decedent, but disregarded the risk for reasons of convenience." In addition, "Defendant Hospital and Defendant Doctors made minimally trifling efforts to restore function despite known propensity of bed-ridden patients (elderly) to lose all functions and become immobile and failed to disclose the situation to the relatives who are plaintiffs here."

As of 2013, Defendant Hospital managers were aware of "problems and issues with understaffing and lack of nurses' attention and availability to serve patients." Defendant Hospital "failed to ensure that patients entrusted to its care, including

Decedent, would not be subjected to acts of mistreatment, neglect and/or abandonment."

"The Defendant Hospital, Defendant Nurses and Doctors . . . concealed from the Decedent's relatives" that the hospital lacked sufficient staffing and failed to properly care for decedent. During plaintiffs' regular visits to decedent, "[e]very single one of the Defendants concealed and withheld this critical information from Plaintiffs." All of these allegations were incorporated into the following five causes of action.

The first cause of action for professional negligence was asserted by Arvin as personal representative of decedent's estate against all defendants. He alleged that each of the defendants were health care providers, and their errors and omissions resulted in decedent's injuries and death. Defendants breached their duties to decedent by failing to assign a sitter, placing decedent in a shared room with a combative and violent patient, failing to place decedent in the geriatric unit, and failing to disclose inadequate staffing issues to decedent's family members. Defendants knew or should have known that the roommate was "predisposed to violent or confrontational behavior." "[E]ach of the Defendants breached the duty of care owed." Defendants' failures caused decedent to be neglected for extended periods, leading to the fall, the elbowing incident, and the battery. Defendants also failed to provide decedent adequate psychological and physical care after the battery.

The second cause of action for elder abuse was asserted by Arvin as personal representative of decedent's estate against all defendants. He alleged that decedent was an elder as defined by Welfare and Institutions Code section 15610.27, and was within the custodial care of each of the defendants. Each of the

defendants committed neglect as defined in Welfare and Institutions Code section 15610.57 by failing to provide care to meet decedent's health and safety needs. Their acts and omissions included creating a safety hazard through decedent's room and unit placement; failing to assign a sitter or monitor; failing to prevent the October 24 battery; and leaving decedent unattended for extended periods of time, including after he fell and when he was elbowed. The endangerment was "purposeful." After the battery, "Defendant Hospital and Dr. Goodman failed to provide any psychiatric care . . . and substantially stopped and abandoned psychological care. . . . Defendant Hospital and Dr. Brent failed to provide restorative care or therapy to the Decedent permitting him to become bedridden and vegetative after the fall and the battery; physical therapy, care and treatment was [*sic*] inadequate and then abandoned despite Decedent's physical and mental health needs. . . ." The abandonment of treatment "ultimately caused his death." This cause of action also alleged that "Defendant Hospital," Dr. Goodman, Dr. Brent, Nurse Tinio, Nurse Ogbonnaya, and "Defendant Nurses" acted recklessly.

The third cause of action for wrongful death was asserted by all plaintiffs against all defendants. It alleged that after the October 24 battery, decedent "ceased eating properly, walking, and interacting with others." Decedent's immobility led to pulmonary congestion and pneumonia, and pneumonia was listed as a cause of decedent's death. The "incidents in question cut years off of the Decedent's life; they shortened his life substantially." Specific allegations were included in this cause of action relating to defendant Hospital, Dr. Goodman, Dr. Brent, Nurse Manaog, Nurse Ogbonnaya, and Nurse Tinio.

The fourth cause of action for breach of fiduciary duty was asserted by Arvin as personal representative of decedent's estate against all defendants. It alleged that due to the healthcare provider/patient relationship, each of the defendants owed a fiduciary duty to decedent. Each of the defendants breached that duty by failing to provide adequate care, including "not supervising him and . . . not rendering proper care to him." As a result of the breach, decedent was injured.

The fifth cause of action for willful misconduct was asserted by Arvin as personal representative of decedent's estate against all defendants. It alleged that each of the defendants "knew or should have known [of] the perils posed to Decedent from Defendants' failures to comply with their duties to provide care." This cause of action included allegations specific to Dr. Goodman, Dr. Brent, and "Defendant Nurses." It stated that each of the defendants "knowingly disregarded the aforesaid perils and high probability of injury to Decedent, and in fact placed him directly in harm's way." Each of the defendants "acted in conscious disregard of the probability and indeed likelihood of Decedent's injury," and interfered with decedent's ability to protect himself by refusing to communicate with decedent's family members.

Plaintiffs prayed for general and special damages, damages relating to decedent's pain and suffering, punitive damages, attorney fees, and costs.

2. *Demurrers*

The hospital and nurse defendants demurred to the TAC, asserting that each cause of action failed to state facts sufficient to constitute a cause of action (§ 430.10, subd. (e)), and each was uncertain (*id*., subd. (f).). They contended that the TAC was uncertain because "[m]ost of the same general allegations are

repeated against each group of defendants without differentiation or appreciation for the differing duties applicable to the hospital versus physicians versus nurses versus parent corporations." Therefore, the defendants "are left to guess and speculate as to what they specifically did that constitutes each cause of action."

The hospital and nurse defendants also asserted that the first cause of action for professional negligence and the third cause of action for wrongful death were time-barred as to the nurse defendants. They argued that plaintiffs knew the nurses' names months before the original complaint was filed. They also asserted that because plaintiffs named the nurses as individual defendants in the FAC and SAC, and only added them as Doe defendants in the TAC, "They cannot be retroactively named as Doe defendants in an attempt to artfully plead around the statute of limitations."

Regarding the second cause of action for elder abuse, the hospital and nurse defendants' demurrer said, "[N]owhere in Plaintiffs' TAC is it alleged that the [hospital or nurse defendants'] conduct constituted 'neglect' or 'abuse' as set forth in" the Elder Abuse Act. They also contended that decedent's estate could not be a plaintiff in the wrongful death cause of action. As to the fourth cause of action for breach of fiduciary duty, defendants argued that they did not owe a fiduciary duty "to any plaintiff." They argued that while physicians may have fiduciary duties to their patients, no such duty exists with respect to hospitals or nurses. In addition, the hospital and nurse defendants asserted that willful misconduct was not a legitimate

cause of action, and plaintiffs' claims were subsumed within the negligence cause of action.[4]

Dr. Brent demurred separately to the TAC.[5] He demurred to the entirety of the TAC as uncertain, and also asserted that each cause of action failed to state sufficient facts. He asserted that the TAC had "references to defendants without [*sic*] little to no differentiation rendering it impossible for [Dr. Brent] to determine what is specifically alleged against him."

Dr. Brent also argued that the first cause of action for professional negligence failed to allege facts sufficient to establish breach of duty or causation. Although he acknowledged that the TAC alleged that the defendant doctors had specific duties, Dr. Brent argued that the TAC did not specifically allege "any specific duty owed by" him. He also asserted that decedent died nine months after the alleged negligent acts in the TAC of conditions relating to his pre-existing Alzheimer's disease, so plaintiffs had not adequately alleged causation.

Regarding the second cause of action for elder abuse, Dr. Brent acknowledged that plaintiffs alleged he had failed to provide restorative care or therapy to prevent decedent from becoming bedridden, but he asserted that these allegations were insufficient to "meet the level of egregious conduct necessary to support a claim for Elder Abuse." He also argued that the third cause of action for wrongful death failed to allege a nexus

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[4] The hospital and nurse defendants and Dr. Brent also filed motions to strike portions of the TAC. We do not address those motions here, because they are not at issue on appeal.

[5] Dr. Goodman and his medical corporation also demurred to the TAC and the demurrer was sustained, but the appeal was dismissed as to them. Thus, we do not include a summary of his arguments here.

between Dr. Brent and decedent's cause of death. For the fourth cause of action for breach of fiduciary duty, Dr. Brent argued that the TAC did not include facts indicating that he had failed to disclose information to decedent. For the fifth cause of action, Dr. Brent asserted that plaintiffs had not alleged facts establishing a causal link between willful conduct and any alleged injuries, and that the allegations were subsumed into the professional negligence cause of action.

Both demurrers requested that the court deny leave to amend, as this was the fourth version of the complaint. Plaintiffs opposed both demurrers, and the defendants filed replies. ~

3. *Hearing*

The hearing on the hospital and nurse defendants' demurrer occurred first; the hearing on Dr. Brent's demurrer was held about a week later. At the hearing on the hospital and nursing defendants' demurrer, the court began by noting that "this is the fourth attempt to plead these claims," and "as we have gone through these complaints, they get more and more verbose, more and more confusing. We get a lot more rhetoric. And unfortunately, this has been at the sacrifice, I think, of better definition of the claims." After stating a tentative decision to sustain the demurrers and hearing counsel's arguments, the court ruled as follows.

On the first cause of action for professional negligence, the court held that the demurrer was overruled on statute of limitation grounds, noting that the TAC included allegations that the doctors' and nurse defendants' identities were not known until after the statute of limitations had expired.

On the second cause of action for elder abuse, the court held that it was "properly pleaded against" the Hospital, but not

the other defendants. The court said, "[T]here are no facts alleged to show recklessness, oppression, fraud, or malice as to the nursing defendants." As to Alta and Prospect, the Hospital's parent companies, the court held that plaintiffs had failed to allege facts sufficient to support an alter ego theory of liability. Thus, "the demurrer [was] sustained without leave to amend as to the second cause of action, as to the nursing defendants . . ., Alta and Prospect, and overruled as to" the Hospital.

On the third cause of action for wrongful death, the court sustained the demurrer without leave to amend as to decedent's estate. The court noted, "I have previously ruled that the three [individual plaintiffs] can bring the wrongful death claim."

On the fourth cause of action for breach of fiduciary duty, the court stated that "the hospital has a duty of a fiduciary nature to its patients and the public to deliver safe and competent medical services." However, for the individual defendants such as Dr. Goodman,[6] "the duty he owes the decedent is subsumed in the normal patient-physician relationship and is covered by the cause of action for professional negligence." Thus, "there is no support for the contention that Goodman had a separate duty to disclose information to the plaintiffs." Then, even though the court had stated that the hospital *did* have a fiduciary duty, the court said, "So as to the fourth cause of action, that would be sustained without leave as to all moving defendants."

On the fifth cause of action for willful misconduct, the court rejected defendants' argument that it could not be a cause of action separate from professional negligence. The court

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[6] The court was also considering Dr. Goodman's demurrer at this hearing.

apparently overruled the demurrer as to that cause of action, stating, "I think that paragraphs 106, 111, and 112 are sufficient there."

After stating each of these rulings, the court said, "But my fundamental problem here, the overarching problem is that I think that this is – has been made pretty much as uncertain as you can. You have got scores of paragraphs of unrelated stuff that is incorporated by reference wholesale into these various causes of action and carries from cause of action to cause of action." The court pointed out that the first cause of action began on page 33 of the TAC, and said, "When you have these wholesale incorporations by reference, paragraph after paragraph after paragraph of stuff that doesn't relate to it, and you jumble all these claims against everybody in, I think that is fatally uncertain. [¶] So the demurrer for uncertainty will be sustained without leave to amend and in the alternative, the other demurrers that I identified as being sustained will also be sustained on the various grounds that I identified."

The hearing on Dr. Brent's demurrer occurred a week later. The court said, "Plaintiff, the fundamental problem is I don't see what Dr. Brent did wrong. While uncertainty is a disfavored ground for demurrer . . . I'm not sure what you think he did wrong." Plaintiffs' counsel pointed out some of the specific allegations against Dr. Brent in the TAC, and the court said that "those assertions are, to some extent, controverted by the specific pleadings." The court and plaintiffs' counsel discussed Dr. Brent's duty to reveal information to decedent's family, and the court said plaintiffs' allegations on that issue were vague. The court concluded, "The demurrer is going to be sustained without leave as to Dr. Brent." The court did not discuss demurrer

rulings for any individual cause of action. The court's written ruling, on a form submitted by Dr. Brent, states that the demurrer was sustained to the TAC as a whole and to each cause of action individually, but does not include any statements regarding the court's reasoning.

Judgment was entered in favor of defendants. Plaintiffs appealed.

DISCUSSION

Plaintiffs assert that the trial court erred by sustaining the demurrers. "The standard by which we review an order sustaining a demurrer without leave to amend is well established. We review the order de novo, exercising our independent judgment on whether the complaint states a cause of action as a matter of law." (*Lo v. Lee* (2018) 24 Cal.App.5th 1065, 1070.) "'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.'" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

A. Uncertainty

The trial court sustained both demurrers on the basis that the TAC was "uncertain." A party may demur where "[t]he pleading is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." (§ 430.10, subd. (f).) The parties acknowledge that "demurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (See *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) "A complaint, with certain exceptions, need only contain a 'statement of the facts constituting the cause of action, in ordinary and concise language' (Code Civ. Proc., § 425.10, subd. (a)(1)) and will be upheld '"so

long as [it] gives notice of the issues sufficient to enable preparation of a defense."'" (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848 fn. 3.)

Here, the trial court's ruling that the TAC was uncertain directly conflicted with its rulings on the individual causes of action. The court's finding that the complaint adequately alleged certain causes of action, but that it was nonetheless uncertain as a whole, was error.

Moreover, as we discuss with respect to each cause of action below, upon independent review we find that the allegations are not ambiguous and unintelligible. According to plaintiffs, decedent was admitted to the defendant Hospital; the defendant doctors and nurses were responsible for his care; while under defendants' care, decedent fell, was elbowed and was punched; defendants' care was lacking in that it failed to prevent these instances and failed to adequately treat decedent's resulting problems; decedent eventually died as a result of defendants' actions. The facts alleged are not particularly complicated. Defendants' complaints that they are unable to understand the allegations against them are unconvincing.

There is no question that the prolixity and disorganization of the TAC rendered it more far opaque than necessary. But verbosity alone is not grounds to sustain a demurrer on the basis of uncertainty. "'The fact that a party has alleged more than is required to justify his right does not obligate him to prove more than is essential, and the unnecessary allegations will be treated as surplusage unless the opposing party would be prejudiced.'" (*Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 945.) Here, the hospital and nurse defendants complain that they had to "sift through 54 pages to decipher which allegations were made

against" which defendant. Given that the hospital and nurse defendants were able to "sift through" the allegations to bring four separate demurrers, it does not appear that reading the extensive complaint prevented defendants from mounting a vigorous defense.

The trial court disapproved of plaintiffs' incorporation of previous paragraphs into each cause of action. Although this is a common pleading practice, some courts have criticized it as creating "ambiguity" and "redundancy." (See, e.g., *Uhrich v. State Farm Fire & Cas. Co.* (2003) 109 Cal.App.4th 598, 605; *Kelly v. General Telephone Co.* (1982) 136 Cal.App.3d 278, 285.) However, no case cited by the parties, nor any that we have found, supports the conclusion that incorporating verbose pleadings into different causes of action justifies sustaining a demurrer on the basis of uncertainty.

"It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct." (*Committee On Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213.) Nevertheless, many of defendants' arguments center on the accuracy with which plaintiffs have described defendants' conduct. For example, Dr. Brent argues in his respondent's brief that the TAC includes "no distinction as to what duty of care was owed by each defendant," and "refers to defendants with no differentiation among the duties owed by each defendant." He cites no authority requiring duties to be particularly alleged regarding individual defendants within a cause of action, and we are aware of no such requirement. In addition, given the detailed allegations in the complaint about the role of Dr. Brent in

decedent's health care, this assertion is not supported by the record.

Thus, the trial court erred by sustaining defendants' demurrers on the basis of uncertainty. To the extent the judgment rests upon this ruling, it is reversed.

B. First cause of action for professional negligence

1. *The nurse defendants' statute of limitations defense*

The nurse defendants assert that the professional negligence cause of action against them is time-barred, and as such the demurrer to that cause of action should have been sustained on statute of limitations grounds.[7] They assert that "Plaintiffs clearly added the Nurses to this lawsuit . . . after the expiration of [the] one-year" statute of limitations under section 340.5.

According to the TAC, decedent was admitted to the Hospital on October 7, 2014, and discharged on November 21, 2014. Decedent died on August 9, 2015, allegedly from complications relating to defendants' care. The original complaint, which did not name the nurses as defendants, was

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[7] The hospital and nurse defendants' assertions that their demurrers to certain causes of action should have been sustained for failure to state a claim raises a question as to the appropriate scope of our review. We sent a focus letter asking the parties to address the appropriate scope of review at oral argument. "As a general matter, 'a respondent who has not appealed from the judgment may not urge error on appeal.'" [Citations.] "[S]ection 906 provides a limited exception 'to allow a respondent to assert a legal theory which may result in affirmance of the judgment.'" (*In re Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) Although these authorities limit the allowable scope of the hospital and nurse defendants' assertions of error, ultimately these limitations do not affect our holdings.

filed on September 28, 2015; the FAC, which added the nurses as defendants but not as Doe defendants, was filed on March 9, 2016; and the TAC, which included allegations against the nurses as Doe defendants for the first time, was filed on September 6, 2016.[8]

"In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury." (Code Civ. Proc., § 340.5.) The parties do not discuss when the statute of limitations began to run in this case, except that the nurses state that "the allegations against the Nurses occurred during Decedent's admission in October and November 2014." We therefore assume, as it appears the parties did, that the statute of limitations began to run by the end of November 2014. We also assume, as it appears the parties did, that plaintiffs were aware of the injuries on that date, rendering the one-year statute of limitations applicable. Thus, the plaintiffs' claims against the nurses were timely if they were brought before November 2015.

By this measure, the original complaint, filed in September 2015, was timely. The nurses were added to the action with the FAC on March 9, 2016, which was outside the statute of limitations. Plaintiffs assert that the inclusion of the nurses relates back to the filing of the original complaint under section 474, which states in part, "When the plaintiff is ignorant of the

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[8]The actual Doe amendment forms substituting nurse defendants for particular Doe defendants do not appear to be in the record on appeal.

name of a defendant, he must state that fact in the complaint . . . and when his true name is discovered, the pleading or proceeding must be amended accordingly."

"[S]ection 474 allows a plaintiff to name fictitious defendants, or 'Does.' The complaint must state a cause of action against each Doe defendant. [Citations.] It must allege that the plaintiff is ignorant of the Doe defendant's name. [Citations.] Moreover, the plaintiff must actually be ignorant of the Doe defendant's name, i.e., 'ignorant of the facts giving rise to a cause of action against that defendant.' [Citation.] When the plaintiff discovers a Doe defendant's true name, he or she must amend the complaint accordingly. [Citations.] Provided these requirements are satisfied, the amendment is deemed to 'relate[ ] back' to the filing date of the original complaint for purposes of the statute of limitations." (*Fireman's Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1143.)

Here, plaintiffs assert that their allegations were sufficient to meet the section 474 standards. The trial court expressed some skepticism about plaintiffs' ability to show that they were actually ignorant of the nurses' identities until after the statute of limitations ran, but held that the allegations of ignorance in the TAC were sufficient. We agree. The TAC alleges that when the original complaint was filed, plaintiffs knew only of the hospital's identity, and it did not learn of the nurses' identity until the hospital defendants produced decedent's medical records on February 5, 2016.

The nurse defendants assert that the trial court erred, because when plaintiffs filed the FAC and SAC naming the nurses as new defendants rather than Doe defendants, the causes of action against the nurses "were already time-barred," and

plaintiffs could not "retroactively revive a time-barred claim." The nurses cite no authority, and we have found none, holding that once a plaintiff names a party as a defendant, the plaintiff cannot file an amended complaint that names that party as a Doe defendant with appropriate allegations as to the late discovery of the defendant's identity.

Here, at the hearing on the demurrers to the SAC, the court discussed the nurse defendants' arguments that certain causes of action were time-barred as to them, and plaintiffs' response that the inclusion of the nurses related back to the original complaint. The court rejected plaintiffs' argument, stating, "The nursing defendants were added to this case outside the statute of limitations. And the argument that it relates back to the original complaint does not seem to me to be meritorious. And the reason is that they were not Doed in but rather were added as new defendants after – in a prior amendment to the complaint. And that's a problem here." The court granted plaintiffs leave to amend, and plaintiffs added Doe defendant allegations. This seems to be an entirely appropriate application of section 474—if a plaintiff erroneously names a defendant without using the "Doe defendant" procedure, and the court finds the action time barred against the new defendants because the section 474 requirements were not met, the amended complaint should include the section 474 requirements. Such a ruling is in accordance with the "policy of great liberality in permitting amendments to the pleadings at any stage of the proceeding." (*Fogel v. Farmers Group, Inc.* (2008) 160 Cal.App.4th 1403, 1423.)

The nurse defendants also ask that plaintiffs' inclusion of them "as non-Doe defendants should be deemed a judicial admission that Plaintiffs knew [the nurses'] identities at the time

of the Complaint." They argue that plaintiffs should have known the nurses' identities from visiting decedent in the hospital, and cite a case stating that "[i]gnorance of the true name of the defendant should not be feigned." (*Scherer v. Mark* (1976) 64 Cal.App.3d 834, 840.) However, even though it is possible plaintiffs met the nurses when visiting decedent, the TAC does not include facts suggesting that plaintiffs knew the nurse defendants' full names or their impact on decedent's care at the time the complaint was filed. To the contrary, the TAC alleges that plaintiffs were *not* aware of the nurse defendants' identity at that time, and for purposes of a demurrer, we assume that the facts alleged in the TAC are true.

We are therefore unpersuaded that the demurrer as to the nurse defendants should have been sustained because plaintiffs' cause of action for professional negligence was time-barred as to them.

2. *Cause of action for professional negligence against Dr. Brent*

Dr. Brent asserts that "the negligence cause of action" asserted by Arvin Tarverdi is insufficient to state a cause of action. We note at the outset that the cause of action is for professional negligence, i.e., medical malpractice, and it is asserted by the decedent's estate, not Arvin Tarverdi individually.

"The elements of a cause of action for medical malpractice are: (1) a duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a breach of the duty; (3) a proximate causal connection between the negligent conduct and the injury; and (4) resulting loss or

damage." (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.)

As with each of the five causes of action in the TAC, plaintiffs incorporated the extensive fact section into the cause of action for professional negligence. Within this cause of action, plaintiffs specifically alleged that Dr. Brent was a medical care provider who had a duty "to use the degree of care and skill that a reasonable prudent similarly situated professional person would use." Dr. Brent and the other defendants breached this duty of care as stated in the factual allegations. Plaintiffs alleged these breaches "caus[ed] Decedent physical and emotional harm." These statements, along with the extensive factual allegations relating to decedent's experiences while hospitalized, are sufficient to state a cause of action for professional negligence against Dr. Brent.

Dr. Brent asserts that various individual allegations are not sufficient to demonstrate these elements. For example, Dr. Brent contends that plaintiffs' allegation that he failed to come up with an adequate care plan "is merely a conclusion, not a statement of allegations of fact." He asserts that plaintiffs' allegation that he failed to arrange for adequate care for decedent is insufficient, because "there is no allegation that he had such a duty." He also contends that plaintiffs' allegations of concealment are insufficient, because there are no specific allegations as to what Dr. Brent concealed.

Dr. Brent's focus on particular allegations within the cause of action does not support a finding that the demurrer should have been sustained. "A demurrer does not lie to a portion of a cause of action." (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682.) Because plaintiffs have alleged the

requisite elements of a professional negligence cause of action, supported by the extensive fact section incorporated into that cause of action, the trial court erred in sustaining Dr. Brent's demurrer to the professional negligence cause of action.

C. Second cause of action for elder abuse

The trial court held that the TAC adequately alleged a cause of action for elder abuse against the Hospital, but failed to allege a cause of action against the doctors and nurse defendants.[9] Plaintiffs assert that the trial court erred in sustaining the demurrer as to the nurse and doctor defendants, because the cause of action was adequately alleged.

To state a cause of action under the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst.Code § 15600 et seq.)[10] (the Act), a plaintiff must plead "that a defendant is liable for either physical abuse under section 15610.63 or neglect under section 15610.57, and that the defendant committed the abuse with 'recklessness, oppression, fraud, or malice.' (§ 15657.)" (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 156 (*Winn*).) Neglect under the Act "include[s] failures 'to assist in personal hygiene' or to provide 'food, clothing, or shelter' (§ 15610.57, subd. (b)(1)); 'to provide medical care for physical and mental health needs' (*id.*, subd. (b)(2)); 'to protect from health and safety hazards' (*id.*, subd. (b)(3))." (*Winn, supra*, 63 Cal.4th at p. 156.)

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[9]The court also held that the elder abuse cause of action was inadequate as to the Hospital's parent entities, Alta and Prospect. Plaintiffs do not challenge any of the trial court's findings as to Alta and Prospect.

[10]Statutory references within this paragraph are to the Welfare & Institutions Code.

Here, plaintiffs alleged each element. The TAC alleged that each of the doctors and nurse defendants were in charge of some aspect of decedent's care. It further alleged that these defendants failed to protect decedent from health and safety hazards, because defendants knew or should have known that decedent needed supervision but did not provide adequate supervision. The TAC alleged that decedent was placed in a room, unsupervised, with a dangerous patient, and suffered injuries as a result of this lack of supervision, including from the fall, being elbowed by another patient, and the battery.

The TAC also alleged that the doctor and nurse defendants failed to provide medical care for decedent's physical and mental health needs. Plaintiffs alleged that although decedent was walking around the hospital unit yelling at people, the nurse and doctor defendants did nothing to address his mental health needs. Plaintiffs also alleged that after the battery, decedent became bedridden and his mental health requirements arising from the assault were never properly addressed. The hospital and nurse defendants argue that "the TAC does not adequately plead physical abuse or neglect by any of the Nurses," but such facts are alleged.

Defendants also assert that the TAC fails to allege a custodial relationship between Dr. Brent or the nurse defendants and decedent. In fact, the TAC alleges that "Each of the above named Defendants, and all of the employees of Defendant Hospital, were care custodians as defined by Welfare and Institutions Code section 15610.17." Moreover, the TAC alleges that decedent was admitted to the Hospital and while there he was under the doctors' and nurse defendants' care. Decedent was unable to care for himself, could not walk without being at risk of

falling, was bedridden at times, and needed constant supervision. Thus plaintiffs have alleged that defendants had "a significant measure of responsibility for attending to one or more of [decedent's] basic needs" (*Winn, supra*, 63 Cal.4th at p. 158), and therefore defendants had a caretaking or custodial relationship with decedent.

The trial court held that "there are no facts alleged to show recklessness, oppression, fraud, or malice as to the nursing defendants . . . . We have the mere restatement of the statutory language without any supporting facts." To the contrary, the TAC specifically alleges that the nurse defendants acted recklessly. It alleges that "Defendant Nurses acted recklessly and with neglect and abandonment in permitting the Decedent to be endangered" by the improper room placement and lack of supervision, and "the Defendant Nurses did nothing to deal with the abandonment of proper care after the assault." The TAC also states that Nurse Tinio "acted recklessly and with neglect and abandonment in letting the Decedent, a known fall risk, amble around all day on the day of his fall, unattended," and Nurse Ogbonnaya "acted recklessly and neglectfully and with abandonment by permitting the Decedent to be placed in a non-geriatric ward, substantially unsupervised, with a dangerous roommate and without any monitoring." The TAC alleges that Dr. Brent also "acted recklessly and with neglect in abandoning meaningful physical therapy or restorative treatment," failing to ensure decedent had proper supervision, and concealing information from decedent's family members.

Dr. Brent also asserts that the TAC fails to state a cause of action for elder abuse as to him, because although plaintiffs alleged neglect via the lack of medical treatment, they alleged

that Dr. Brent *did* treat decedent, thereby negating the cause of action. Dr. Brent points out that the TAC states that Dr. Brent ordered decedent to be monitored, ordered that decedent be urged to get up so he would not remain bedridden, and ordered that decedent be provided with appetite stimulants to increase his food intake. However, plaintiffs have alleged that these directives were not followed or completed, which constituted neglect and an abandonment of care. Whether the care Dr. Brent provided was appropriate for decedent's needs or was so wholly inadequate that it constituted elder abuse is a question of fact to be determined at a later stage of the proceedings. For purposes of the demurrer, we assume the facts alleged—that such care was insufficient to meet decedent's needs—are true. (*Shine v. Williams-Sonoma, Inc.* (2018) 23 Cal.App.5th 1070, 1076 ["To determine whether the complaint states a cause of action as a matter of law, we give it a reasonable interpretation and accept the truth of all properly pleaded material facts."].)

Thus, the second cause of action for elder abuse alleged facts sufficient to state a cause of action against the nurse defendants and Dr. Brent. The trial court erred in holding otherwise.

D. Third cause of action for wrongful death

The trial court overruled the hospital and nurse defendants' demurrer to the wrongful death cause of action.[11] For reasons not stated in the record, the trial court sustained Dr. Brent's demurrer to this cause of action. On appeal, defendants

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[11]All parties appear to agree that decedent's estate does not have standing to bring a wrongful death cause of action. Thus, the individual plaintiffs are the only plaintiffs to this cause of action.

assert that the wrongful death cause of action failed to allege adequate facts, and therefore the demurrers should have been overruled.

The hospital and nurse defendants assert that "Decedent did not . . . die while admitted to the Hospital. Nor did he even die shortly after leaving the Hospital." Because decedent died nine months after leaving defendants' care, and "plaintiffs plead very little" about what occurred in those intervening nine months, the TAC includes only "conclusory allegations" that defendants' care caused decedent's death. Dr. Brent asserts that the TAC does not connect any wrongful actions to decedent's death; instead, it simply alleges that decedent died "following the attack" and the deterioration of his condition.

The elements of wrongful death are "(1) a 'wrongful act or neglect' on the part of one or more persons that (2) 'cause[s]' (3) the 'death of [another] person.'" (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 390.) Here, the TAC alleged, in great detail, the actions of defendants that led to the battery by another patient. The TAC also alleged that following the battery, decedent "suffer[ed] a major decline in his health, which ultimately resulted in his death." Dr. Brent not only failed to take precautionary steps before the battery, but afterward "abandon[ed] treatment and therapeutic care," which "caused the rapid and irreversible decline" in decedent's health. The TAC alleged that the nurse defendants contributed to the lack of care in similar ways. These allegations are sufficient to state a cause of action for wrongful death against each of the defendants.

The hospital and nurse defendants cite no legal authority for their position that too much time elapsed between their actions and the decedent's death to warrant a viable wrongful

death cause of action. Plaintiffs have adequately alleged that defendants' action caused decedent's death. We cannot assume that his death was caused by an intervening factor that occurred in the nine-month time span between his transfer from the Hospital and his death. (See *Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 528 ["[W]e assume as true all facts alleged in the complaint."].) Moreover, additional allegations regarding the intervening time period are not required. "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." (*C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872.)

The nurse defendants further contend that the cause of action is untimely as to them. As discussed in relation to the first cause of action above, we find that the Doe defendant allegations allow plaintiffs' claims against the nurse defendants to relate back to the filing of the original complaint. Thus, the wrongful death cause of action is not time-barred as to the nurse defendants.

E. Fourth cause of action for breach of fiduciary duty

"'The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach.'" (*Williamson v. Brooks* (2017) 7 Cal.App.5th 1294, 1300.) The trial court found that a hospital has a fiduciary duty to its patients, but the doctors did not have a fiduciary duty. The court then stated that the demurrer to the cause of action was sustained without leave to amend as to all defendants, without stating why the demurrer was sustained as to the Hospital. We

find that the demurrer to this cause of action was appropriately sustained as to the hospital and nurse defendants, as plaintiffs do not establish a legal basis for holding that the patient-hospital or patient-nurse relationship is fiduciary in nature. We reject Dr. Brent's contention that the cause of action was insufficient as to him.

Plaintiffs assert that each of the defendants owed decedent a fiduciary duty. The hospital and nurse defendants assert that plaintiffs failed to establish any fiduciary duty as to them. The California Supreme Court has found that a hospital-patient relationship is not fiduciary in nature. In *Moore v. Regents of University of California* (1990) 51 Cal.3d 120, a patient alleged that his physician used the patient's cells without permission to conduct lucrative medical research. The patient sued the physician, the medical center where he was treated, and other defendants related to the research. The Supreme Court held, "[A] physician who is seeking a patient's consent for a medical procedure must, in order to satisfy his fiduciary duty and to obtain the patient's informed consent, disclose personal interests unrelated to the patient's health, whether research or economic, that may affect his medical judgment." (*Id*. at pp. 131-132, fn. omitted.) As to the non-physician defendants including the medical center, however, the Court stated, "In contrast to [Dr.] Golde, none of these defendants stood in a fiduciary relationship with Moore or had the duty to obtain Moore's informed consent to medical procedures." (*Id*. at p. 133.) The facts involving disclosure in *Moore* are dissimilar to the allegedly inadequate inpatient care provided here. Nevertheless, we follow the Supreme Court's holding that the medical facility did not have a fiduciary relationship with a patient being treated there.

Plaintiffs correctly point out that other cases mention that a hospital owes a fiduciary duty to patients. They cite *Weinberg v. Cedars-Sinai Medical Center* (2004) 119 Cal.App.4th 1098 (*Weinberg*), in which a doctor sued her employer hospital in relation to disciplinary proceedings. In determining the employment matter, the Court of Appeal mentioned that a hospital "owes a duty of a fiduciary nature to its patients and the public to deliver safe and competent medical services." (*Id.* at p. 1109.) Similarly, in *O'Byrne v. Santa Monica-UCLA Medical Center* (2001) 94 Cal.App.4th 797 (*O'Byrne*), the court rejected a physician's assertion that his employer hospital owed him a fiduciary duty. The court discussed several other hospital staffing cases and noted, "The fiduciary responsibility [of a hospital] is to the *public*, not to an individual physician seeking to obtain or retain a staff position." (*Id.* at p. 811.)

O'Byrne discussed *Hongsathavij v. Queen of Angels/ Hollywood Presbyterian Medical Center* (1998) 62 Cal.App.4th 1123 (*Hongsathavij*). In that case, a doctor challenged a hospital's decision to remove him from the on-call rotation. The court stated, "Hospital governing body members have fiduciary duties as directors and under certain circumstances have exposure to personal liability. [Citations.] A hospital itself may be responsible for negligently failing to ensure the competency of its medical staff and the adequacy of medical care rendered to patients at its facility. (*Elam v. College Park Hospital* (1982) 132 Cal.App.3d 332, 346, [183 Cal.Rptr. 156].) A hospital has a duty to ensure the competence of the medical staff by appropriately overseeing the peer review process. (*Id.* at pp. 338, 341-342, 347.) Hospital assets are on the line, and the hospital's governing body must remain empowered to render a final medical practice

decision which could affect those assets. A hospital's governing body must be permitted to align its authority with its responsibility and to render the final decision in the hospital administrative context." (*Hongsathavij,* 62 Cal.App.4th at p. 1143.)

Weinberg, *O'Byrne*, and *Hongsathavij* each involved hospitals' decisions regarding employment and staffing, and did not directly consider whether there is a fiduciary relationship between a hospital and a patient. *Moore*, on the other hand, directly considered and rejected the assertion that a hospital-patient relationship was fiduciary in nature. We therefore find that *Moore* controls, and no fiduciary relationship existed between the decedent and the Hospital.

Plaintiffs also assert that the existence of a fiduciary duty is "well-established in the elder abuse context." They cite *Cotton v. StarCare Medical Group, Inc.* (2010) 183 Cal.App.4th 437, in which the plaintiffs sued a decedent's health maintenance organization (HMO), alleging that while the decedent was in a nursing facility, the HMO denied coverage for medically necessary care and failed to disclose financial conflicts of interest. (*Id.* at p. 442.) Plaintiffs assert that the court in *Cotton* "ruled that in the context of elder abuse claims, plaintiffs could allege breach of fiduciary duty against medical care providers." In fact, the *Cotton* court held only that the trial court erred in sustaining one defendant's demurrer after the parties had stipulated to a continuance (*id.* at p. 445), and that plaintiffs' claims as to the other defendant were not preempted by federal law. (*Id.* at p. 450.) Although the *Cotton* court mentioned that one of plaintiffs' causes of action was breach of fiduciary duty (*id.* at p. 455), it did not consider whether a fiduciary relationship actually existed

between the patient and the medical care providers. Cases are not authority for propositions not considered (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1134), and therefore *Cotton* does not support plaintiffs' contention that a patient-hospital relationship is fiduciary in nature.[12]

Plaintiffs also assert that the nurse defendants had a fiduciary relationship with decedent as his health care providers, because "Nurses were the staff of the hospital and the nurses and hospital collectively owed a fiduciary duty to the decedent." They cite no authority to support their assertion that nurses owe patients a fiduciary duty, and we have found none. They also do not urge us to find that a nurse-patient relationship is inherently fiduciary based on the nature of that relationship. We therefore find that the demurrer to the fiduciary duty cause of action as to the nurses was properly sustained.

Dr. Brent does not appear to dispute that "[t]he doctor-patient relationship is a fiduciary one." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 748.) However, Dr. Brent asserts that this cause of action relies "on the existence of a duty . . . which is not alleged," and that the cause of action is based on Dr. Brent's alleged duty to reveal information to decedent or his family.

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[12]We note that even in the absence of a fiduciary relationship, plaintiffs' allegations of understaffing and related injuries against the hospital may be subsumed in their professional negligence and elder abuse causes of action. (See, e.g., *Worsham v. O'Connor Hospital* (2014) 226 Cal.App.4th 331, 338 [failing to provide adequate staffing may constitute professional negligence]; *Fenimore v. Regents of University of California* (2016) 245 Cal.App.4th 1339, 1348-1349 [a violation of staffing regulations coupled with evidence of recklessness may provide a basis for finding neglect under the Act].)

Although some of the fiduciary duty allegations focus on disclosures to decedent's family members, the TAC also alleges that as decedent's healthcare providers, each of the defendants owed decedent a fiduciary duty to "act with the utmost good faith and in [decedent's] best interests." In addition, this cause of action alleges that Dr. Brent failed to provide adequate care in that he "failed and refused to secure adequate therapy to work-on Decedent's bedridden status," and "failed to afford any meaningful treatment to Decedent." Thus Dr. Brent's assertion that the claim is based solely on a duty to disclose information to decedent or his family is not supported by the record.[13]

We therefore find that the TAC failed to state a cause of action for fiduciary duty as to the Hospital or the nurse defendants, and sustaining the demurrer as to those defendants was not error. We find that the TAC stated a cause of action as to Dr. Brent, and thus his demurrer to this cause of action should have been overruled.

F. Fifth cause of action for willful misconduct

The trial court overruled the hospital and nurse defendants' demurrer on the willful misconduct cause of action. Although the court did not discuss this cause of action with respect to Dr. Brent at the demurrer hearing, the court's order stated that Dr. Brent's demurrer to this cause of action was sustained. On appeal, defendants assert that the TAC failed to allege facts sufficient to state a cause of action for willful misconduct.

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[13]We do not address Dr. Brent's arguments about the court's findings in relation to the hospital and nurse defendants' demurrer.

"'[W]illful misconduct implies the intentional doing of something either with knowledge, express or implied, that serious injury is a probable, as distinguished from a possible, result, or the intentional doing of an act with a wanton and reckless disregard of its consequences.'" (*Ewing v. Cloverleaf Bowl* (1978) 20 Cal.3d 389, 402.) "'"[T]hree essential elements must be present to raise a negligent act to the level of wilful misconduct: (1) actual or constructive knowledge of the peril to be apprehended, (2) actual or constructive knowledge that injury is a probable, as opposed to a possible, result of the danger, and (3) conscious failure to act to avoid the peril. [Citations.]"'" (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 528.)

The willful misconduct cause of action alleged that defendants "knew or should have known of the perils posed to Decedent from Defendants' failures to comply with their duties of care." The TAC discussed the allegation that decedent required supervision and additional medical care that he did not receive, including allegations specific to Dr. Brent, the Hospital, and "Defendant Nurses." The TAC further stated that due to defendants' "failure to comply with the standards of care," they "exposed Decedent to the high probability of suffering injuries, which he did then suffer." The TAC alleged that defendants "knowingly, intentionally, and recklessly failed to place Decedent in a safe environment" and "failed to safeguard Decedent from falls." Decedent "was at Defendants' mercy, and they not only abandoned him and failed to feed him, but they directly placed him in harm's way, which ultimately led to his demise."

The hospital and nurse defendants assert that these allegations are insufficient. They compare this case to *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th

396 (*Carter*). In that case, the plaintiffs alleged elder abuse, willful misconduct, and wrongful death relating to the care of their father following his treatment in two different facilities. The court held that the elder abuse cause of action was inadequately pled as to one of the defendants, stating, "[W]e do not find in plaintiffs' pleadings allegations that the Hospital did anything sufficiently egregious to constitute neglect (or any other form of abuse) within the meaning of the Elder Abuse Act." (*Id*. at p. 407.) The court stated that "no facts are alleged as to any care or treatment the Hospital denied or withheld from" the decedent. (*Id*. at p. 408.) The court also held that a cause of action for willful misconduct was inadequate, because when the cause of action was "stripped of its conclusory assertions of willful misconduct, what remains is a survivors' claim for professional negligence against the Hospital." (*Id*. at p. 413.)

Here, the TAC does not suffer the same shortcomings. Plaintiffs' extensive allegations do not simply allege that defendants failed to adequately treat decedent. Instead, plaintiffs assert that the risk to decedent arose directly as a result of defendants' actions, such as placing decedent in a room with another combative patient and failing to monitor decedent thereafter, leading to the battery. Plaintiffs also allege that after the battery, defendants intentionally did not provide needed care or adequate nutrition, despite knowing that decedent required this care. This is not like the allegations in *Carter*, where egregious allegations of wrongdoing implicated one inpatient facility, but not the demurring defendant.

Dr. Brent argues that "the sole reference to Dr. Brent" in this cause of action is insufficient to state a claim against him. Again, Dr. Brent ignores that the TAC expressly incorporates the

long introductory fact section into this cause of action, and thus his focus on the factual allegations specifically within this cause of action is not persuasive. He does not address the remainder of plaintiffs' allegations. We therefore find that the TAC states a cause of action for willful misconduct, and the demurrer as to this cause of action was properly overruled as to the hospital and nurse defendants, and should have been overruled as to Dr. Brent.

In sum, we find that the court's ruling sustaining the demurrers on uncertainty grounds was erroneous. We find that the demurrers should have been overruled on all causes of action except breach of fiduciary duty. On the breach of fiduciary duty cause of action, the hospital and nurse defendants' demurrer was correctly sustained, and Dr. Brent's demurrer should have been overruled. As plaintiffs have not challenged the demurrer rulings as to Alta and Prospect, the demurrer rulings as to those defendants are affirmed.

DISPOSITION

The judgment is reversed in part and affirmed in part. Plaintiffs are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J. DUNNING, J. *

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*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.