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## Nursing Home Must Pay Punitive Damages In Med Mal Case

By **Bonnie Eslinger**

Law360, Los Angeles (March 15, 2017, 5:50 PM EDT) -- A California state appeals court Tuesday said an HCR ManorCare facility that a jury found negligently violated a patient's rights must pay punitive damages, saying the volume of violations was sufficient evidence the nursing home acted with "conscious disregard" for the elderly man's rights and safety.

Janice Jarman had sued HCR ManorCare Inc. and Manor Care of Hemet, California, LLC on behalf of her father, John L. Jarman, alleging he sustained injuries while convalescing from a broken leg at a Manor Care facility for three months in 2008. The suit claimed violations of patient rights under California law, elder abuse and neglect, and negligence.

The jury found in favor of Jarman, concluding ManorCare committed 382 violations of the elder Jarman's rights while he was at its facility, awarding \$95,500 in statutory damages plus \$100,000 in damages caused by the negligence. The court also awarded \$368,755 in attorneys' fees to Jarman. However, the trial court granted ManorCare's motion to strike the punitive damages claim, agreeing that there was insufficient evidence to support the jury's finding that the defendants had acted with malice, oppression or fraud. Jarman appealed the denial of punitive damages.

In its opinion released Tuesday, the appeals court agreed that the trial court had erred.

"The sheer number of violations found by the jury, during the course of Jarman's three-month stay in the ManorCare facility, provides a sufficient basis to infer that ManorCare was acting with a conscious disregard of Jarman's rights and safety during that time," the panel wrote. "Further, there was evidence the problems were reported to the director of nursing, who qualified as a managing agent of the facility for purposes of imposing punitive damages against it."

ManorCare had appealed the June 2011 trial court judgment as well, first arguing that the jury shouldn't have been allowed to award Jarman a separate measure of statutory damages under state law for each violation of patient rights under California law, Section 1430.

"We are unpersuaded by ManorCare's assertion that Jarman can recover only a single measure of statutory damages under Section 1430, no matter how many violations he has proved," the opinion states. "We conclude instead that a plaintiff would be entitled to a measure of damages for each cause of action asserted under the statute. And because ManorCare made no effort to demonstrate that violations found by the jury in this case added up to fewer causes of action under the statute, we cannot conclude the statutory damages awarded were excessive."

The court also rejected ManorCare's assertion that the damages awarded on Jarman's negligence claim were inherently speculative.

"Assessing the appropriate amount of damages that would compensate a person who was subjected to the poor treatment and numerous violations of rights the jury found in this case is exactly the type of judgment we rely on juries to exercise," the opinion states.

The appeals court remanded the case to the trial court with directions to conduct further proceedings to establish the amount of punitive damages Jarman is entitled to recover as a result of the violation of her father's patient rights.

In its filings with the court, ManorCare argued that the evidence cited by Jarman in support of the jury's finding of malice, oppression or fraud would demonstrate, "at most, recklessness."

The appellate panel was not persuaded.

"[T]he defendant's conscious disregard of the plaintiff's rights or safety will be sufficient to support a finding of malice or oppression, as long as the conduct is also deemed to be despicable," the opinion states. "In our view, the jury's finding that Manor Care committed a combined 382 violations of Jarman's rights protected by state and federal law, during the course of his three-month stay at Manor Care's facility, would support not only a finding that its conduct was 'despicable,' but also a finding that Jarman was subjected to 'cruel and unjust hardship.' Thus, in that factual context, we reject Manor Care's assertion that a showing it acted in 'conscious disregard' of Jarman's rights and safety would be consistent only with a finding of recklessness."

The panel also rebuffed ManorCare's argument that there was no finding that the company itself, as opposed to its employees, engaged in conduct with malice, oppression or fraud. The opinion states that Jarman's claims for punitive damages were not based on the actions of any specific employee who acted with malice or oppression on a particular occasion

"Instead, Jarman's argument was that the facility's consistent and repeated violations of patient rights reflected the Manor Care's own conscious disregard of the rights and safety of its patients, including Jarman," the panel wrote.

In her complaint, Jarman alleged that when her father was admitted to ManorCare's facility, it was aware he was "a high risk for skin breakdown" yet failed to take appropriate preventative measures, and he suffered significant skin breakdown.

She also alleged her father was frequently left in soiled diapers, that call lights were ignored, and that he suffered other abuse and neglect.

The first complaint's first cause of action is based on California's Patient's Bill of Rights, which requires facilities to have sufficient nursing staff to provide for "the highest practicable physical, mental and psychological well-being of each resident," ensure residents "remain free from physical and mental abuse," and treat residents "with consideration, respect and full recognition of dignity in care of personal needs."

Representatives for HCR ManorCare Inc. did not immediately respond to requests for comment on Wednesday.

An attorney for Jarman, Anthony Lanzone of Lanzone Morgan LLP, said his client is very pleased with the outcome and called the trial court's removal of punitive damages in the case "a monumental mistake."

Janice Jarman is represented by Anthony C. Lanzone, Steffi A. Jose, Anna H. Cronk and Travis K. Siegel of Lanzone Morgan LLP.

The HCR ManorCare Inc. defendants are represented by John Patrick Petruccio of Petruccio LLP, and Barry S. Landsburg and Joanna S. McCallum of Manatt Phelps & Phillips LLP.

The case is Jarman v. HCR ManorCare Inc. et al., case number G051086, in the Court of Appeal of the State of California, Fourth Appellate District.

--Editing by Breda Lund.

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