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Torts

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Torts

Torts; wrongful death plaintiffs

Code of Civil Procedure §377 (amended).

SB 404 (Wilson); STATS 1977, Ch 792

Support: State Bar of California

Section 377 of the Code of Civil Procedure generally provides that when a person's death is caused by the wrongful act or neglect of another, an action for damages may be brought only by the heirs of the decedent. Chapter 792 amends this wrongful death statute to include within the definition of "heirs," as used within the statute, minors who resided in the decedent's household at the time of, and 180 days previous to, his or her death and who were dependent upon the decedent for at least half of their support [CAL. CIV. PROC. CODE §377]. In this manner, Chapter 792 authorizes such minors to bring an action for the decedent's wrongful death [CAL. CIV. PROC. CODE §377(b) (3)]. Prior to the enactment of Chapter 792, only two classes of persons were allowed to bring such actions: (1) persons who would have inherited the decedent's estate had he or she died intestate [*E.g.*, *Redfield v. Oakland Consol. St. Ry. Co.*, 110 Cal. 277, 289-90, 42 P. 822, 825 (1895); *Kunakoff v. Woods*, 166 Cal. App. 2d 59, 62, 332 P.2d 773, 775 (1958); *see* CAL. STATS. 1975, c. 1241, §5.5, at 3190]; and (2) if dependent upon the decedent, the putative spouse, children of the putative spouse, stepchildren, and parents of the decedent [CAL. STATS. 1975, c. 1241, §5.5, at 3190]. Extension of the cause of action for wrongful death to certain minors does not alter the definition of "heirs" for purposes other than the wrongful death statute [CAL. CIV. PROC. CODE §377(b) (3)]. Thus, to bring a wrongful death action now, minors—persons under 18 years of age [CAL. CIV. CODE §25]—need not be related to the decedent but need only to have resided with that person for 180 days prior to his or her death and to have been dependent upon the decedent for one half or more of their support, which is the same amount of support prescribed for dependency for taxation purposes [I.R.C. §152(A); CAL. REV. & TAX. CODE §17056; CAL. CIV. PROC. CODE §377(b) (3)].

COMMENT

Wrongful death statutes have traditionally been intended to benefit only the decedent's relatives and not unrelated persons who may suffer pecuniary loss from the death [2 S. SPEISER, *RECOVERY FOR WRONGFUL DEATH* § 10:21 (2d ed. 1975)]. Furthermore, wrongful death actions were generally not allowed at common law but were based exclusively on statute [*See* 1 S. SPEISER, *RECOVERY FOR WRONGFUL DEATH* §1.1 (2d ed. 1975)]. *But see*

Moragne v. States Marine Lines, 398 U.S. 375, 409 (1970); *Gaudette v. Webb*, 362 Mass. 60, 69, 284 N.E.2d 222, 229 (1972)], a view recently reaffirmed in California [*See Justus v. Atchison*, 19 Cal. 3d 564, 573, 565 P.2d 122, 128, 139 Cal. Rptr. 97, 103 (1977)]. Accordingly, Section 377 of the code of Civil Procedure has consistently been construed to limit the right to bring a wrongful death action to those persons described in this statute [*E.g.*, *Steed v. Imperial Airlines*, 12 Cal. 3d 115, 119, 524 P.2d 801, 803, 115 Cal. Rptr. 329, 331 (1974); *Fuentes v. Tucker*, 31 Cal. 2d 1, 9-10, 187 P.2d 752, 757 (1947)]. There was one brief exception, however, when the California Supreme Court originally decided *Steed v. Imperial Airlines* [515 P.2d 17, 110 Cal. Rptr. 217 (1973), *vacated*, 12 Cal. 3d 115, 524 P.2d 801, 115 Cal. Rptr. 329 (1974)] by a four to three decision, holding that the denial of a stepchild's right to bring a wrongful death action for the death of her stepfather, when a natural child could bring such an action, constituted a denial of equal protection of the law under the fourteenth amendment to the United States Constitution [*Id.* at 22, 110 Cal. Rptr. at 222]. Within seven weeks, after the appointment of a new justice to the court, a rehearing was granted. In July of 1974, the court vacated its earlier holding in another four to three decision with the new justice siding with the former minority [*Steed v. Imperial Airlines*, 12 Cal. 3d 115, 524 P.2d 801, 115 Cal. Rptr. 329 (1974)]. The three justices who became the new minority filed a strong dissent espousing the court's responsibility to interpret legislation so as to save its constitutionality [*Id.* at 127, 524 P.2d at 808, 115 Cal. Rptr. at 336]. These dissenting justices adamantly maintained that exclusion of stepchildren from the right to sue for wrongful death was violative of the equal protection clause of the fourteenth amendment, relying heavily on recent United States Supreme Court and the California Supreme Court decisions that had found such violations in laws not allowing wrongful death actions by illegitimate children [*Id.* at 126-32, 524 P.2d at 808-12, 115 Cal. Rptr. at 336-40. *See generally* *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972); *Levy v. Louisiana*, 391 U.S. 68 (1968); *Arizmendi v. System Leasing Corp.*, 15 Cal. App. 3d 730, 93 Cal. Rptr. 411 (1971)].

This final holding in *Steed v. Imperial Airlines* [12 Cal. 3d 115, 524 P.2d 801, 115 Cal. Rptr. 329 (1974)], as applicable to stepchildren, was eventually altered by a 1975 amendment to Section 377 [CAL. STATS. 1975, c. 334, §2, at 784]. Prior to that amendment, classification of those entitled to bring a wrongful death action in California had always been based entirely upon blood lines, except when substituted by adoption [12 Cal. 3d at 123, 524 P.2d at 806, 115 Cal. Rptr. at 334 (construing CAL. STATS. 1968, c. 766, at 1488)]. An express intent of this 1975 amendment was to alter the rule of law set forth in *Steed*, which prevented unadopted dependent stepchildren from bringing such actions [CAL. STATS. 1975, c. 334, §2, at 784]. Thus,

with the exception of California, a wrongful death action by a stepchild is generally not allowed in the United States [*See* 2 S. SPEISER, RECOVERY FOR WRONGFUL DEATH §10:8 (2d ed. 1975)]. Nevertheless, at least one state has allowed recovery when the decedent stepparent stood *in loco parentis* to the child [ARK. STATS. ANN. §27-908 (1962); *see* Moon Distributors, Inc. v. White, 245 Ark. 627, 633, 434 S.W.2d 56, 59 (1968)].

By enacting Chapter 792, the legislature again appears to have broken new ground by allowing a minor to bring an action for wrongful death as long as he or she was dependent upon and residing with the decedent at the time of his death—even though the decedent was neither standing *in loco parentis* nor related to the minor [*See* CAL. CIV. PROC. CODE §377]. Prior to the enactment of Chapter 792, when two children were raised by a decedent and were entirely dependent upon him or her, one being the child of a putative spouse or the decedent's natural, adopted or stepchild, and the other not having such a relationship, only the former could recover, even though both suffered substantially the same injury as a result of the death of the decedent [*See* CAL. STATS. 1975, c. 334, §1, at 783-84]. Therefore, the intent of the legislature in enacting Chapter 792 is apparently to protect economically and possibly emotionally dependent minors, who do not otherwise qualify as heirs, from any injustice caused by their inability to bring an action for the wrongful death of decedents from whom they had previously received support [*See* STATE BAR OF CALIFORNIA, 1975 CONFERENCE RESOLUTION 3-3; STATE BAR OF CALIFORNIA, COMM. ON THE ADMINISTRATION OF JUSTICE, ANNUAL REPORT, Item 7 (1976)].

Since the final holding in *Steed*, three of the four justices who made up the final majority (Wright, C.J., Sullivan and McComb, JJ.) have retired from the court, while two of the dissenters (Mosk and Tobriner, JJ.) remain. With the new makeup of the court, the two dissenters from the final holding in *Steed* may find supporters in the court's new members. If this were to occur, it is conceivable that a person not within the protected class of Section 377, but in a class *similar* to that so protected, might prevail by claiming that he or she was denied equal protection under the law [*See* *Steed v. Imperial Airlines*, 515 P.2d 17, 22, 110 Cal. Rptr. 217, 222 (1973), *rev'd on rehearing*, 12 Cal. 3d 115, 123, 524 P.2d 801, 806, 115 Cal. Rptr. 329, 334 (1974)]. For instance, dependent adults not related to but living with the decedent at his or her death could argue that extension by Chapter 792 of protection to minors in a similar situation unfairly excludes adults from protection in that they would suffer essentially the same injury as would a dependent minor. The California Supreme Court, however, has often reiterated the right of the legislature to confer rights of action to particular classes for injuries not previously actionable without giving the same right to all persons that suffer from such injuries. [*E.g.*, *Justus v.*

Atchison, 19 Cal. 3d 564, 580-81, 565 P.2d 122, 133, 139 Cal. Rptr. 97, 108 (1977); Pritchard v. Whitney Estate Co., 164 Cal. 564, 568, 129 P. 989, 992 (1913)]. This legislative right can be denied only if it appears beyond a rational doubt that an arbitrary discrimination between similarly situated classes has been made without reasonable cause [*E.g.*, *Justus v. Atchison*, 19 Cal. 3d 564, 580-81, 565 P.2d 122, 133, 139 Cal. Rptr. 97, 108 (1977); *Pritchard v. Whitney Estate Co.*, 164 Cal. 564, 568, 129 P. 989, 992 (1913)]. Since the law is replete with special provisions concerning minors [*See, e.g.*, CAL. CIV. CODE §§33, 35 (contractual limitations), §§196, 196a (right to support from parents)], it appears the court could easily find that drawing a distinction between adults and minors in the wrongful death statute is not arbitrary discrimination. Such an argument also appears to invoke a dependency test, which the minority in the final holding of *Steed* specifically rejected [12 Cal. 3d at 132 n.4, 524 P.2d at 812 n.4, 115 Cal. Rptr. at 340 n.4]. Perhaps a more viable argument could be presented by a stepparent who—along with a natural parent—was dependent upon the deceased adult offspring for support. The legislature has included parents among those defined as “heirs” who are able to bring wrongful death actions under Section 377 [CAL. CIV. PROC. CODE §377(b)(2)]. The natural parent could therefore recover; but stepparents, who have generally been found not to qualify as “parents” under such wrongful death statutes [*See, e.g.*, *California State Auto Ass’n Inter-Insurance Bureau v. Jacobson*, 24 Cal. App. 3d 850, 853, 101 Cal. Rptr. 366, 368 (1972); 2 S. SPEISER, RECOVERY FOR WRONGFUL DEATH §10:13 (2d ed. 1975)], apparently could not recover. A new majority on the California court, using the same equal protection rationale espoused in the *Steed* dissent, could hold that to preserve the constitutionality of the statute it must be interpreted so that stepparents dependent upon the decedent would be included in the statute’s definition of “heirs” [*See* 12 Cal. 3d at 127-32, 524 P.2d at 808-12, 115 Cal. Rptr. at 336-40].

In summary, extension by Chapter 792 of a right of action for wrongful death to minors living with and dependent upon the decedent, even if there was no blood relationship between them, is a unique extension of the statutory right beyond that which has been previously allowed in California or other jurisdictions. It could also conceivably open the way for the courts to grant even wider extension of this right to others similarly situated based on the theory that it would be a denial of equal protection of law not to do so.

See Generally:

- 1) 4 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §788 (defining heirs) (8th ed. 1974); §§788, 789A (heirs under 1975 amendment) (Supp. 1976).

- 2) 7 PAC. L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 562 (wrongful death) (1976).

Torts; statute of limitations for legal malpractice

Code of Civil Procedure §340.6 (new).

AB 298 (Brown); STATS 1977, Ch 863

Support: Association of California Defense Counsels

Prior to the enactment of Chapter 863, there apparently was no law *expressly* providing a statute of limitation for legal malpractice actions or professional negligence suits against an attorney [See CAL. CIV. PROC. CODE §§337, 339, 340]. Generally, such actions were brought under the two year period of limitation prescribed by Section 339(1) of the Code of Civil Procedure [See *Neel v. Magana, Olney, Levy, Cathcart & Gelfand*, 6 Cal. 3d 176, 182, 491 P.2d 421, 424, 98 Cal. Rptr. 837, 840 (1971)]. In an effort to codify an express period of limitation, which supporters argue would help curb the increase in lawyer malpractice insurance rates [Sacramento Bee, Aug. 24, 1977, §A, at 7, col. 1]. Chapter 863 creates a separate statute of limitation for professional negligence suits against an attorney similar to that for medical malpractice actions [Compare CAL. CIV. PROC. CODE §340.6(a)-(c) with CAL. CIV. PROC. CODE §340.5]. Thus, Chapter 863 provides that an action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services, must be commenced within *one* year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or *four* years from the date of the wrongful act or omission, whichever occurs first [CAL. CIV. PROC. CODE §340.6(a)]. Although not defined by Chapter 863, the term "wrongful act" has generally been construed in negligence actions to mean simply a tortious act, or an act accomplished without due care under the circumstances [See *Callum v. Hartford Acc. & Indem. Co.*, 186 Cal. App. 2d Supp. 885, 888, 337 P.2d 259, 260 (1959) (negligent discharge of a gun causing injury to plaintiff was a "wrongful act" and covered by the bond written by defendant)]. Thus, "a wrongful act or omission . . . arising in the performance of professional services" would appear to refer to professional negligence [Compare CAL. CIV. PROC. CODE §340.6(a) with CAL. CIV. PROC. CODE §340.5(2)].

Chapter 863 provides, however, that the period of limitation will be tolled whenever any of the following conditions exists: (1) the plaintiff has not sustained actual injury; (2) the attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred; (3) for the purpose of tolling the four year period only,

the attorney *willfully conceals* the facts constituting the wrongful act or omission when such facts are known to him or her; or (4) the plaintiff is under a legal or physical disability that restricts his or her ability to commence a legal action [See CAL. CIV. PROC. CODE §340.6(a)]. For the purpose of these conditions, it appears to be unclear at what point a plaintiff will have suffered actual injury so as to commence the running of the statute of limitation on a legal malpractice cause of action. It has been suggested that the payment of attorney's fees and costs for services that were negligent and therefore exceeded the value of the legal services rendered may be sufficient [Solis, *Statute of Limitations in Legal Malpractice Cases: The California Supreme Court Establishes New Guidelines*, 7 U.S.F. L. REV. 85, 89, 91, 103 (1972-73); see *Budd v. Nixen*, 6 Cal. 3d 195, 201-02, 491 P.2d 433, 437, 98 Cal. Rptr. 849, 853 (1971)]. In any case, whether actual damages have occurred would appear to be a question of fact for the court or the trier of fact [*Budd v. Nixen*, 6 Cal. 3d 195, 202, 491 P.2d 433, 437-38, 98 Cal. Rptr. 849, 853-54 (1971)].

For the tolling of the four-year limitation period, Chapter 863 also fails to define the term "willfully conceals" as it is to apply under the new law. Insofar as the courts accept the definition of "willfully" provided by the Penal Code, the term "willfully conceals" would appear to require a showing of no more than a purpose or willingness to conceal the facts relating to the professional negligence claim, and not require proof of any intent to violate the law [Compare CAL. CIV. PROC. CODE §340.6 with CAL. PENAL CODE §7]. Furthermore, the phrase "legal or physical disability," which restricts the plaintiff's ability to commence a legal action, as used in Chapter 863 would appear to refer to minors, or insane or imprisoned persons [Compare CAL. CIV. PROC. CODE §340.6(a) with CAL. CIV. PROC. CODE §352].

Finally, in an action against an attorney based on an instrument in writing, the effective date of which depends upon some act or event in the future, the period of limitation will commence to run upon the occurrence of that future event [CAL. CIV. PROC. CODE §340.6(b)]. Thus, Chapter 863 establishes a one year period of limitation, from the date of discovery, for the initiation of a lawsuit against an attorney for professional negligence, or in the alternative, a period of four years from the date of the negligent act, with the exception that the period will be tolled under certain conditions [See CAL. CIV. PROC. CODE §340.6(a)].

See Generally:

- 1) 2 B. WITKIN, CALIFORNIA PROCEDURE, *Actions* §§331A, 331B (attorney malpractice—delayed accrual) (Supp. 1977).

Torts; good samaritan immunity

Civil Code §1714.2 (new).

SB 601 (Beverly); STATS 1977, Ch 595

Support: American Heart Association (Los Angeles Chapter); American National Red Cross; California Department of Health; California Highway Patrol; CPR Council of Los Angeles; California Medical Association

Chapter 595 has added Section 1714.2 to the Civil Code to protect persons trained in cardiopulmonary resuscitation techniques, as well as individuals and groups that supply such training, from civil liability for acts or omissions resulting from rendering cardiopulmonary resuscitation in good faith and for no compensation in emergency situations. Under a variety of previously enacted good samaritan statutes, individuals immune from civil liability when rendering emergency care at the scene of an emergency include, *inter alia*, licensed doctors [CAL. BUS. & PROF. CODE §2144], licensed dentists [CAL. BUS. & PROF. CODE §1627.5], registered nurses [CAL. BUS. & PROF. CODE §2727.5], vocational nurses [CAL. BUS. & PROF. CODE §2861.5], trained members of emergency vehicle rescue teams [CAL. VEH. CODE §165.5], persons trained in first aid who are summoned by authorities to aid in search or rescue operations [CAL. GOV'T CODE §50086], and paramedics following instructions of a physician or nurse [CAL. HEALTH & SAFETY CODE §1483]. Chapter 595 now includes in this group, those qualified persons who render or provide training in cardiopulmonary resuscitation [CAL. CIV. CODE §1714.2].

Cardiopulmonary resuscitation is an emergency procedure combining both artificial respiration and artificial circulation (by manual chest compression) to treat persons stricken with cardiac arrest [AMERICAN NATIONAL RED CROSS, CARDIOPULMONARY RESUSCITATION *passim* (1974)], which may follow trauma such as myocardial occlusion, chest injuries, near drownings, electrocutions, anaphylactic or hemorrhagic shock, or certain poisonings [IMMEDIATE CARE OF THE ACUTELY ILL AND INJURED 45 (cardiopulmonary resuscitation) (H. Stevenson, Jr. ed. 1974)]. Most of the 800,000 victims of fatal heart attacks each year and most of those dying from severe injuries die before reaching the hospital [*Id.* at 58]. There is evidence that a substantial percentage of these patients could be saved if adequate resuscitative efforts were immediately available [*Id.*]. The success of the heart-lung resuscitation is directly related to the speed and efficiency with which it is applied; lack of oxygen to body tissues during heart stoppage for periods of more than four to six minutes will result in brain damage or death [MERCK, SHARP & DOHME RESEARCH LABORATORIES, THE MERCK MANUAL OF DIAGNOSIS AND THERAPY 1663 (12th ed. 1972)].

To be protected by Section 1714.2, persons rendering such emergency

treatment must have completed a basic cardiopulmonary resuscitation course that complies with standards adopted by the American Heart Association or the American Red Cross [CAL. CIV. CODE §1714.2(a)]. Furthermore, Section 1714.2 requires that aid must be rendered at the scene of the emergency, in good faith [CAL. CIV. CODE §1714.2(a)] and without expectation of compensation from the individual receiving the emergency care [CAL. CIV. CODE §1714.2(e)]. Immunity is not granted when the conduct of the person rendering the cardiopulmonary resuscitation amounts to gross negligence [CAL. CIV. CODE §1714.2(b)]. No public or private organization or entity, however, that supports, sponsors, or finances cardiopulmonary resuscitation programs shall be liable for *any* civil damages resulting from such training programs [CAL. CIV. CODE §1714.2(c)]; nor shall any certified instructor of cardiopulmonary resuscitation be liable for civil damages for any acts or omissions of persons who received training from that instructor [CAL. CIV. CODE §1714.2(d)]. It appears that the purpose of Section 1714.2 is to encourage groups and agencies to train individuals in cardiopulmonary techniques and to encourage citizens to participate in such training by extending the protection of good samaritan statutes to such parties [See CAL. CIV. CODE §1714.2(a), (c), (d)].

See Generally:

- 1) 4 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §163 (emergency medical aid) (8th ed. 1974), (Supp. 1976).
- 2) Note, *California Good Samaritan Legislation: Exemptions from Civil Liability While Rendering Emergency Medical Aid*, 51 CALIF. L. REV. 816 (1963).

Torts; informed consent in an emergency

Business and Professions Code §2144.5 (new).

AB 896 (Berman); STATS 1977, Ch 668

Support: California Medical Association; United Physicians of California

Opposition: California Trial Lawyers Association

Chapter 668 adds Section 2144.5 to the Business and Professions Code and appears to codify the common law exemption from civil liability for physicians who render emergency medical aid without first having informed the patient of the possible risks [*Compare* CAL. BUS. & PROF. CODE §2144.5 *with* *Preston v. Hubbell*, 87 Cal. App. 2d 53, 57-58, 196 P.2d 113, 115 (1948)]. The new statutory exemption is applicable only to actions for injuries or death arising out of a physician's or podiatrist's failure to inform the patient and not for actions arising out of negligence in rendering or failure to render treatment [CAL. BUS. & PROF. CODE §2144.5(b)].

Generally, a physician has a duty to his or her patient to make a reasonable disclosure of available choices with respect to proposed therapy and

the dangers inherently and potentially involved in each [Cobbs v. Grant, 8 Cal. 3d 229, 243, 502 P.2d 1, 10, 104 Cal. Rptr. 505, 514 (1972)]. The scope of the physician's duty to inform is measured by the patient's need for material information upon which to base an intelligent choice [*Id.* at 245, 502 P.2d at 11, 104 Cal. Rptr. at 515]. Whether a particular potential peril must be divulged depends upon whether it would be material to the patient's decision [*Id.*]. If a patient suffers an injury from a risk known to the physician and if the patient can establish that he or she would not have consented to the treatment had he or she known of the risk, then the physician may be liable for negligent malpractice [*See id.*; W. PROSSER, HANDBOOK OF THE LAW OF TORTS 106 (4th ed. 1971)]. Usually an action for battery will arise if the physician does not obtain consent before performing treatment or if the physician performs a type of treatment substantially different from that consented to by the patient [*See Cobbs v. Grant*, 8 Cal. 3d 229, 239, 502 P.2d 1, 7, 104 Cal. Rptr. 505, 511 (1972)]. It has been the common law rule, however, that the physician is justified in rendering such treatment without the express consent of the patient in cases of emergency when immediate action is necessary for the preservation of life or health and it is impractical to first obtain consent for treatment that the physician deems immediately necessary [*See Preston v. Hubbell*, 87 Cal. App. 2d 53, 57-58, 196 P.2d 113, 115-16 (1948)]. In such an emergency situation, consent is implied [*Id.*; *see Cobbs v. Grant*, 8 Cal. 3d 229, 243, 502 P.2d 1, 10, 104 Cal. Rptr. 505, 514 (1972)].

Chapter 668 codifies this common law immunity in certain circumstances by providing that a physician or a podiatrist shall not be liable for damages for injury or death caused in an emergency situation occurring in a physician's or a podiatrist's office or a hospital for failure to inform the patient of possible consequences of a medical procedure if the failure to inform was caused by the following: (1) the unconscious state of the patient [CAL. BUS. & PROF. CODE §2144.5(a)(1)]; or (2) the physician's or podiatrist's reasonable belief that, because of medical necessity, there was insufficient time to inform fully either the patient [CAL. BUS. & PROF. CODE §2144.5(a)(2)] or the person authorized to give informed consent for a patient legally incapable of so consenting [CAL. BUS. & PROF. CODE §2144.5(a)(3)].

An "emergency situation" as used in Section 2144.5 refers to a situation requiring immediate services for alleviation of severe pain or immediate diagnosis and treatment of unforeseeable medical conditions which, if not immediately diagnosed and treated, would lead to serious disability or death [CAL. BUS. & PROF. CODE §2144.5(c)(3)]. "Physician" is defined as a person licensed as a physician and surgeon pursuant to either Chapter 5 (commencing with Section 2000) of the Business and Professions Code or the Osteopathic Initiative Act [CAL. BUS. & PROF. CODE §§2144.5(c)(1),

3600 to 3600-5]; and “podiatrist” refers to a person licensed as a podiatrist pursuant to Business and Professions Code Sections 2525 through 2525.24 [CAL. BUS. & PROF. CODE §2144.5(c)(2)]. “Hospital” as used in this section means a licensed general acute care hospital as defined in Section 1250 of the Health and Safety Code (a hospital providing 24-hour inpatient care with an organized medical staff providing certain specified basic services) [Compare CAL. BUS. & PROF. CODE §2144.5(c)(4) with CAL. HEALTH & SAFETY CODE §1250(a)], while “office” refers to a place, other than a hospital, used by the physician or podiatrist for examination or treatment of patients [CAL. BUS. & PROF. CODE §2144.5(c)(5)]. Thus, Chapter 668 creates a statutory exception to the requirement that a physician or podiatrist informs a patient of material risks involved in proposed emergency medical treatment when to furnish information is impossible or impractical, thereby codifying an established exception to common law tort liability.

See Generally:

- 1) CAL. BUS. & PROF. CODE §2144.
- 2) Simonaitis, *The Law of Informed Consent in All Jurisdictions*, 14 CAL. TRIAL LAW. A.J. 87 (Winter 1974-75).
- 3) Comment, *Patients' Rights and Informed Consent: An Emergency Case for Hospitals?*, 12 CAL. W.L. REV. 406 (1976).

Torts; releases from liability

Business and Professions Code §§6152, 6153 (amended).
 AB 1882 (Berman); STATS 1977, Ch 799
(Effective September 14, 1977)
 Support: California Railroad Association

Prior to enactment of Chapter 799, a general release from a liability claim was presumed fraudulent if obtained from an individual within 15 days of his or her admission to a medical facility for treatment of the injury alleged to have given rise to the claim, or prior to his or her release from such a facility, whichever occurred first [CAL. STATS. 1976, c. 1016, §1, at—]. Section 6152(b) of the Business and Professions Code has been amended to make the presumption of fraud apply to general releases obtained during the period of initial confinement as an inpatient or outpatient in a *clinic* or health facility if executed within 15 days from commencement of that confinement. “Health facility” as used in Section 6152(b), is defined as any facility or place organized, maintained and operated for the diagnosis, care, prevention and treatment of physical or mental illness to which persons are admitted for a 24-hour stay or longer [CAL. HEALTH & SAFETY CODE §1250]. By contrast, “clinics,” which are generally operated for the same basic purposes, include facilities that offer more limited services than a

health facility and that admit persons for periods of *less* than 24 hours [*See* CAL. HEALTH & SAFETY CODE §§1202, 1203].

Section 6152 apparently is intended, among other things, to protect injured parties from being harrassed or exploited by claims agents [8 PAC. L.J., REVIEW OF SELECTED 1976 CALIFORNIA LEGISLATION 279, 280 (1977)]. Chapter 799 arguably furthers this intent and resolves the ambiguities in the previously existing statute by substituting "health facility" and "clinic," with specified definitions, for the term "medical facility" and by specifying that a person protected by the statute may be either an inpatient or outpatient [*See* CAL. BUS. & PROF. CODE §6152(b)]. Consistent with this effect Chapter 799 also amends Section 6153, which formerly provided that any violation of Section 6152 was a misdemeanor [CAL. STATS. 1976, c. 1125, §3.5, at—], to specify that only violations of Section 6152(a), which are concerned with the use of cappers and runners for attorneys, create criminal liability. Thus, Chapter 799 would appear to clarify the law governing the validity of general releases obtained from individuals still being treated for compensable injuries.