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1. July 2020

VIA ELECTRONIC SUBMISSION:

Honorable Justices Peter A. Krause, Ronald B. Robie, and Jonathan K. Renner
CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT
914 Capitol Mall, 4th Floor
Sacramento, CA 95814

Re: McAlpine v. Norman, Appellate Case No. C088327
Request for Publication, Rule 8.1120

Dear Honorable Justices:

This letter is being written for purposes of Cal. Rules of Court, Rule 8.1120, in purview of the Court's unpublished opinion issued in the matter of McAlpine v. Norman. I am Plaintiff and Appellant's limited scope attorney, though my representation of her is through my nonprofit corporation, Nonprofit Legal Services, Inc. I, for myself and on behalf of the Plaintiff, would agree with the letter sent to your attention on June 22, 2020 by Benjamin T. Ikuta, of the law firm of Hodes, Milman, Liebeck LLP. Please note I am not affiliated with Mr. Ikuta, his firm, or any of its other attorneys.

Echoing Mr. Ikuta, however, I believe the first portion of the opinion meets the requirements of Cal. Rules of Court, Rule 8.1105(c). Specifically, the Court's opinion showcases expert requirements (at summary judgment) in purview of an act or omission that may have caused a plaintiff harm *against* the notion of informed consent. As the Court noted, "Norman's position appears to be that since a perforated colon is a known risk of the procedure, the perforated colon suffered by McAlpine necessarily was within the standard of care." (Opinion, p. 9). While I can't speak to general trends in medical malpractice-litigation, as that is not my primary practice area, I have seen physicians use the concept of "informed consent" as a catch-all-defense. As the Court noted, though, "it does not follow" (Opinion, p. 9). In short, the Court's Opinion is a clear articulation that informed consent does not supersede other applicable standards. This should be true of most, if not all, medical procedures, and should not be confined to the facts of this case.

For that reason, I believe the Court's opinion meets the requirements of Rule 8.1105(c)(3) and (6) for purposes of publication.

With respect to the portion of the opinion dealing with leave to amend, I am in agreement with Kenneth Pedroza of Cole Pedroza LLP and his letter written on June 29, 2020. The standards for leave to amend are well-established, and I do not believe that portion of the Court's opinion merits publication. I disagree with Mr. Pedroza that the Court's opinion was entirely "factually based," however. Mr. Pedroza, who is now associated counsel to Dr. Norman, claims the Court's opinion "applie[d] well established decisional authority to facts that are significant only to the parties in this case."

As Ms. McAlpine's counsel, this is a frustrating sentence to read to the extent it appears that Dr. Norman is conceding the very point Mr. Ikuta made and worried about: that defense counsel knowingly file conclusory expert declarations in order to either succeed at summary judgment or, at worst, "flush-out" the entirety of a plaintiff's evidence, theories, and expert opinions (June 22, 2020 letter, p. 2).

The publication of the first portion of the Court's opinion will serve the public interest by thoroughly establishing the requirements of expert testimony at the summary judgment-stage, and will further ward-off the use and reliance on conclusory expert declarations.

Sincerely I am,



Adam Dolce, Esq.

[Proof of Service Overleaf]

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18, employed in the County of Los Angeles, and I am not a party to this action. My business address is located at 414 Yale Avenue, Suite B, Claremont CA 91711. I rely on thenonprofitlawfirm@gmail.com or adam@dolcelegal.com for electronic transmissions.

On **July 1, 2020**, I filed and served the foregoing document described as **PLAINTIFF/APPELLANT'S REQUEST FOR PUBLICATION-LETTER** as follows:

X **(BY TRUEFILING'S ELECTRONIC SERVICE)**: I electronically filed the documents with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system, including:

Counsel for the Defendant/Respondent:

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X **(BY FIRST-CLASS MAIL)**: I also enclosed the documents in a sealed envelope or packaged addressed to the persons at the address to follow and placed the envelope for collection and mailing following my office's ordinary business practice:

Clerk of the El Dorado Superior Court

495 Main Street
Placerville, CA 95667

I DECLARE UNDER PENALTY OF PERJURY under the laws of the State of California that the above is true and correct. Executed on **July 1, 2020** in Claremont CA.



Adam Dolce, Esq.