

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

**No. S259364**

SUNDAR NATARAJAN, M.D.,

Petitioner and Appellant,

v.

DIGNITY HEALTH,

Respondent.

Court of Appeal  
Case No. C085906

County of San Joaquin  
Superior Court No.  
STK-CV-UWM-20164821

**PETITIONER'S THIRD MOTION FOR JUDICIAL NOTICE;  
MEMORANDUM OF POINTS AND AUTHORITIES;  
DECLARATION OF STEPHEN D. SCHEAR IN SUPPORT;  
PROPOSED ORDER AND EXHIBIT.**

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SUNDAR NATARAJAN, M.D.

## MOTION FOR JUDICIAL NOTICE

Pursuant to California Evidence Code § 452, subd. (d) and California Rule of Court 8.252, subd. (a), Petitioner Sundar Natarajan, M.D., moves this Court for an order taking judicial notice of the appellate briefs submitted to the Court of Appeal in the case of *Yaqub v. Salinas Valley Memorial Healthcare System* (“*Yaqub*”). (2004) 122 Cal.App.4th 474.

The ground for this motion is that Evidence Code § 452, subd. (d) provides for discretionary judicial notice of court records. In this case, Respondent Dignity Health argued in its Answer Brief that the decision in *Yaqub* was seriously flawed, and should be disregarded, because, inter alia, it failed to discuss Business and Professions Code § 809.2 (“Section 809.2”). (Dignity Answer Brief, pp. 62-63.) The lack of discussion of Section 809.2 was also a primary reason why the Court below deemed *Yaqub* “a derelict on the waters of the law” that has no precedential value. (*Natarajan v. Dignity Health* (“*Natarajan*”) (2019) 42 Cal.App.5th 383, 390-391.) The Court of Appeal briefs at issue in this motion are relevant to explain why the Court of Appeal in *Yaqub* did not discuss Section 809.2 in reaching its decision.

The documents for which judicial notice is being sought are:

Exhibit 7:<sup>1</sup> Appellant Dr. Yaqub’s Opening Brief

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<sup>1</sup> Dr. Natarajan’s First Motion for Judicial Notice sought notice of Exhibits 1-5, and his Second Motion for Judicial Notice sought notice of Exhibit 6. The documents at issue in this motion are therefore numbered 7, 8 and 9. These exhibits are being filed separately on a CD due to their size.

Exhibit 8: Respondent Salinas Valley Memorial Health Care System's Brief

Exhibit 9: Appellant's Reply Brief

This motion is based on the Memorandum of Points and Authorities and the Declaration of Stephen D. Schear.

Dated: September 3, 2020

Stephen D. Schear

Stephen D. Schear  
Attorney for Petitioner  
Sundar Natarajan, M.D.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. THE *YAQUB* BRIEFS ARE RELEVANT AND SUBJECT TO JUDICIAL NOTICE AS COURT RECORDS.

One of the issues before this Court is whether *Yaqub* or *Natarajan* was correctly decided, since they come to opposite conclusions on the question of whether a hospital hearing officer with a financial incentive to favor the hiring hospital is permissible, and whether the correct standard for evaluating that question is the appearance of bias or actual bias.

Both *Natarajan* and Dignity rely on the language of Section 809.2, subd. (b) in support of their positions. In its Answer Brief, Respondent Dignity Health (“Dignity”) argues that *Yaqub* was an erroneous decision because it did not analyze Section 809.2. In doing so, it echos the Court of Appeal’s opinion. (*Natarajan*, 42 Cal.App.5th 383, 390-391.)

Court records are subject to judicial notice pursuant to Evidence Code § 452, subd. (d). (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1561.) Only relevant evidence is subject to judicial notice. (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063; overruled on other grounds, *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1261.)

The *Yaqub* appellate briefs are relevant to explain why the Court of Appeal did not refer to Section 809.2 in its opinion. The Appellant Dr. Yaqub did not argue or even mention Section 809.2, subd. (b), in his Opening Brief. (Exhibit 7.)

Likewise, Respondent Salinas Valley Memorial Health Care System (“Salinas Valley”) also did not argue or mention Section 809.2, subd. (b) in its opposition brief. On the question of hearing officer bias, both Dr. Yaqub and Salinas Valley instead focused entirely on the question of whether *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017 applied to hospital hearing officers. (Exhibit 7, MJN pp. 0027-0041 [brief pp. 19-33]; Exhibit 8, MJN pp. 0115-0126 [brief pp. 22-33.]) In Appellant’s Reply Brief, Dr. Yaqub briefly cited Section 809.2, subd. (b) in support of his contention that *Haas* applied (Exhibit 9, MJN pp. 0172-0173, [brief pp. 7-8], but most of his argument focused on the language of *Haas*, not on the statute. (Exhibit 9, MJN pp.0169-0174, [brief pp. 4-9.]

The fact that Section 809.2, subd. (b) was not mentioned in the briefings until the reply brief, and was not discussed at all by the respondent hospital, explains why the Court did not analyze or rely upon Section 809.2 in its opinion, but instead relied on the applicability of *Haas*. The briefs are therefore relevant to this appeal to rebut the contention that the *Yaqub* opinion was deficient and therefore should not be followed.

As a general rule, courts do not take judicial notice of the truthfulness of a document's contents because they are disputable. (*StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 456-457, fn. 9.) Here, however, Dr. Natarajan is not asking the Court to take judicial notice of the truth of any of the statements included in Exhibits 7-9, but only what the parties argued and what they did not.

Those facts are indisputable, subject to verification through independent access to the court records, and therefore properly subject to judicial notice.

## II. CONCLUSION

Under Evidence Code § 452, subd. (d), judicial notice of court records is proper. The Court should therefore take judicial notice of the parties' briefing in *Yaqub*, since those briefs are relevant to Dignity's contention that *Yaqub* was wrongly decided.

Dated: September 4, 2020

Respectfully submitted,

Stephen D. Schear

Stephen D. Schear  
Attorney for Petitioner  
Sundar Natarajan, M.D.

## DECLARATION OF STEPHEN D. SCHEAR

I, Stephen D. Schear, declare:

1. I am the lead counsel for Petitioner Sundar Natarajan, M.D.
2. This motion for judicial notice has been brought due to the reliance of Respondent Dignity Health on the argument that the *Yaqub* case was wrongly decided because it did not discuss Business and Professions Code Section 809.2.
3. The briefs in *Yaqub* submitted with this motion as Exhibits 7, 8 and 9 were not available through the Sixth District Court of Appeal or the California Supreme Court, because they had been sent to the state archives. I therefore requested those documents from the State Archives. Exhibits 7, 8 and 9 are true and correct copies of the documents I received from the State Archives, other than the Bates-numbering I added to comply with the court rules for filing electronic documents. In Exhibit 8, Respondent's Brief, the first page of the Table of Contents was missing from the documents I received, likely due to a copying error. I am submitting Exhibits 7, 8 and 9 on a CD because Exhibits 7 and 8 are too large to be submitted through TrueFiling.
4. Dr. Natarajan did not request judicial notice of Exhibits 7, 8 and 9 in the trial court or in the Court of Appeal.
5. The briefs to be noticed do not relate to proceedings occurring after the judgment that is the subject of the appeal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 3, 2020, at Oakland, California.

Stephen D. Schear

Stephen D. Schear



**[PROPOSED] ORDER**

Good cause appearing, IT IS HEREBY ORDERED that the Court takes judicial notice of the following documents:

Exhibit 7: Appellant Dr. Yaqub’s Opening Brief in *Yaqub v. Salinas Valley Mem. Healthcare System* (“*Yaqub*”). (2004) 122 Cal.App.4th 474.

Exhibit 8: Respondent Salinas Valley Memorial Health Care System’s Brief in *Yaqub*.

Exhibit 9: Appellant’s Reply Brief in *Yaqub*.

DATED: \_\_\_\_\_

\_\_\_\_\_

JUSTICE OF THE SUPREME COURT

## PROOF OF SERVICE

Re: *Natarajan v. Dignity Health*, California Supreme Court No. S259364

I, the undersigned, hereby declare:

I am a citizen of the United States of America over the age of eighteen years. My business address is 2831 Telegraph Avenue, Oakland, CA 94609. I am not a party to this action.

On September 3, 2020, I served this document entitled Dr. Natarajan's Third Motion for Judicial Notice; Memorandum of Points and Authorities; Declaration of Stephen D. Schear in Support; and Proposed Order on the following persons/parties by electronically mailing a true and correct copy through the TrueFiling filing and service electronic mail system to the e-mail addresses, as stated below, and the transmission was reported as complete and no error was reported.

Barry Landsberg: [blandsberg@manatt.com](mailto:blandsberg@manatt.com)  
Joanna McCallum: [jmccallum@manatt.com](mailto:jmccallum@manatt.com)  
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Manatt, Phelps and Phillips, LLP

Jenny Huang: [jhuang@justicefirst.com](mailto:jhuang@justicefirst.com)  
Tara Natarajan: [tarabadwal@yahoo.com](mailto:tarabadwal@yahoo.com)

I declare under penalty of perjury the foregoing is true and correct and that this Declaration was executed on September 3, 2020, in Oakland, California.

Stephen D. Schear

Stephen D. Schear

**PROOF OF SERVICE**

Re: Natarajan v. Dignity Health, California Supreme Court No. S259364

I, the undersigned, hereby declare:

I am a citizen of the United States of America over the age of eighteen years. My business address is 2831 Telegraph Avenue, Oakland, CA 94609. I am not a party to this action.

On September 3, 2020, I served Exhibits 7, 8 and 9 (Appellate Briefs in *Yaqub v. Salinas Valley Memorial Health Care System*) on the following persons/parties by sending a CD with Exhibits 7, 8 and 9 by Federal Express overnight delivery addressed as follows:

Joanna McCallum  
Manatt, Phelps and Phillips, LLP  
2049 Century Park East, 17th Floor  
Los Angeles, CA 90067

I declare under penalty of perjury the foregoing is true and correct and that this Declaration was executed on September 3, 2020, in Oakland, California.

*Stephen D. Schear*  
Stephen D. Schear

**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **NATARAJAN v. DIGNITY HEALTH**

Case Number: **S259364**

Lower Court Case Number: **C085906**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **steveshear@gmail.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
MOTION	Natarajan Third Motion for Judicial Notice

Service Recipients:

<b>Person Served</b>	<b>Email Address</b>	<b>Type</b>	<b>Date / Time</b>
Tharini Natarajan Attorney at Law	tarabadwal@yahoo.com	e-Serve	9/4/2020 10:42:32 AM
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/4/2020

Date

/s/Stephen Schear

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Signature

Schear, Stephen (83806)

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Last Name, First Name (PNum)

Law Offices of Stephen D. Schear

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Law Firm