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

DR. NATARAJAN'S RESPONSE TO DIGNITY HEALTH'S MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEPHEN D. SCHEAR IN SUPPORT; AND PROPOSED ORDER.

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DR. NATARAJAN'S RESPONSE TO DIGNITY HEALTH'S MOTION FOR JUDICIAL NOTICE

I. INTRODUCTION

Respondent Dignity Health ("Dignity") has moved this Court for judicial notice of 18 exhibits. A majority of its exhibits are not judicially noticeable.

Exhibit 1 contains thousands of pages of documents of purported evidence of legislative intent.[1] The vast majority of those documents are not cognizable evidence of legislative intent under the well-established standards set forth in this Court's decision in *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, and *Kaufman-Broad Communities, Inc. v. Performance Plastering, Inc.* ("*Kaufman*") (2005) 133 Cal.App.4th 26, 31-39.

Dr. Natarajan has no objection to judicial notice of those documents within Exhibit 1 which are cognizable evidence of legislative intent. Petitioner has compiled the admissible documents from Exhibit 1 as Exhibits A and Exhibit B to the Declaration of Stephen D. Schear filed with this Response. Judicial notice should be denied as to the other documents in Exhibit 1, because they do not meet the standards of *Quintano* and *Kaufman.*

Dignity also has moved for judicial notice of its purported corporate bylaws, Exhibit 14, to support its factual argument that it did not appoint the hearing officer who presided over Dr. Natarajan's hearing. This document was

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[1] All exhibit references are to exhibits contained in Dignity's Motion for Judicial Notice before this Court unless otherwise indicated.

not part of the administrative record. Both the trial court and the Court of Appeal correctly ruled that the corporate bylaws are not subject to judicial notice. Dignity also has requested judicial notice of declarations which are clearly not subject to judicial notice.

Dignity has also moved for judicial notice of the bylaws of the California Medical Association (CMA), Exhibit 15. This case concerns the application of the common law and Business and Professions Code § 809.2 to the selection of hospital hearing officers. The bylaws of the CMA are not relevant to any question raised in this appeal and judicial notice is therefore not warranted.

This Court should therefore grant Dignity's motion as to those documents that are cognizable evidence of the Legislature's intent in passing Senate Bill (SB) 1211 in 1989. Dr. Natarajan also does not object to cognizable evidence of the Legislature's intent in 2009 when it passed Assembly Bill (AB) 120, a bill that was subsequently vetoed by the Governor. The motion should otherwise be denied.

II. PROCEDURAL BACKGROUND

The trial court denied Dignity's motion for judicial notice of its corporate bylaws, which were not a part of the administrative record of the hospital hearing at issue here. (8 CT 2188.) In the trial court, Dignity did not move for judicial notice of the legislative history of SB 1211, the bill enacted as Business and

Professions Code § 809 et seq.[2]

Dignity did not request judicial notice of its corporate bylaws or the legislative history of SB 1211 before or with its Opposition Brief in the Court of Appeal. Dr. Natarajan served his Court of Appeal Reply Brief on Dignity on November 14, 2018. Two days later, on November 16, 2018, Dignity requested judicial notice of its corporate bylaws. Dr. Natarajan opposed that motion on grounds set forth below and on the ground that the motion was untimely. The Court of Appeal denied that motion on the ground that the corporate bylaws had not been before the trial court. (Exhibit 17.)

On February 6, 2019, Dignity moved in the Court of Appeal for judicial notice of 84 pages of documents, consisting of the same exhibits submitted in Dignity's current motion as Exhibits 2-13. Dr. Natarajan opposed the motion on the grounds that it was untimely; that the documents shed no useful light on the language of Section 809.2 that was at issue in the appeal; and that letters from the California Medical Association could not be judicially noticed as evidence of legislative intent. (Exhibit 16.) The Court of Appeal denied Dignity's motion on the grounds that the legislative intent exhibits submitted by Dignity were not necessary to the resolution of the appeal. In its order, the Court of Appeal recognized that only some of the documents submitted by Dignity constituted legislative history under *Kaufman, supra,* 133 Cal.App.4th 26. (Exhibit 18.)

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[2] All statutory references are to the Business and Professions Code unless otherwise indicated.

III. LEGAL DISCUSSION

A. General Standards for Judicial Notice

Under the doctrine of judicial notice, certain matters are assumed to be indisputably true and the introduction of evidence to prove those facts is not required. (*Professional Engineers v. Dept. of Transportation* (1997) 15 Cal.4th 543, 590-591.) The party seeking judicial notice has the burden to provide sufficient information to allow the court to take judicial notice. (*Ross v. Creel Printing Publishing Company* (2002) 100 Cal.App.4th 736, 744.) The evidence at issue must be relevant. (*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.) As a general rule, courts do not take judicial notice of the truthfulness and proper interpretation of a document's contents because they are disputable. (*StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 456, fn. 9.) "Judicial notice may not be taken of any matter unless authorized or required by law." (Evidence Code § 450.)

B. Exhibit 1 Contains Thousands of Pages of Documents That Are Not Subject to Judicial Notice as Evidence of Legislative Intent.

Exhibit 1 consists of 3,247 pages of documents compiled by a legislative history service. (Exhibits 1, 2 and 8 of Dignity's Motion.)

Evidence of legislative intent in enacting a statute is only relevant when a statute is ambiguous. (*Diamond Multimedia Systems, Inc. v. Superior Court*

(1999) 19 Cal.4th 1036, 1046-1047, 1054.) In Dignity's Answer Brief, p. 67, it asserts that the language in Section 809.2(b) that the hearing officer shall "gain no direct financial benefit from the outcome" is unambiguous. Under Dignity's theory of the case, the legislative history of SB 1211 and AB 120 is thus irrelevant. Dr. Natarajan contends that Section 809.2 is ambiguous and requires interpretation by this Court to determine whether the proper standard for disqualification of a hearing officer who has a financial incentive to favor the appointing hospital is the appearance of bias or actual bias. Dr. Natarajan therefore agrees to judicial notice of documents that are cognizable evidence of legislative intent.

Under *Quintano v. Mercury Casualty Co., supra,* 11 Cal.4th at 1062, only documents that demonstrate the intent of the Legislature *as a whole* in adopting a piece of legislation are subject to judicial notice. In *Kaufman, supra,* 133 Cal.App.4th at 31-39, the Court of Appeal did a comprehensive analysis of what constitutes cognizable legislative history under *Quintano* and other cases, and what does not. The original text of a bill and different versions and amendments to the bill, reports and analyses of legislative committees and certain other documents are cognizable legislative history, because they "shed light on the collegial view of the Legislature as a whole." (*Id.,* at 30.) As stated above, Petitioner has collected from Exhibit 1 those documents that are cognizable evidence of legislative intent and submitted them as Exhibit A (SB 1211

documents) and Exhibit B (AG 120 documents) concurrently with this Response.[3] Exhibit B also contains three documents that constitute cognizable legislative history of SB 820, a bill whose passage was necessary for the enactment of AB 120. (Exhibit B, AB-120 pp. 303-323.) The Governor vetoed SB 820, which was the only reason AB 120 did not become law. (Exhibit B, AB-120 pp. 98-99.) The limited cognizable legislative history of SB 820 contained in Exhibit 1 is therefore relevant to this appeal.

Exhibit 1 also contains thousands of pages of documents that are clearly not subject to judicial notice as evidence of legislative intent. They include a hodgepodge of letters from individuals or organizations, newspaper articles, fact sheets, anonymous markups of the bills, documents from Hawaii and Maryland, and a host of other documents that are not evidence of legislative intent under *Quintano* and *Kaufman,* 133 Cal.App.4th at 37-39.

Exhibit 1 also contains approximately 600 pages of legislative history of SB 2565, the predecessor bill to SB 1211. As with SB 1211, most of the documents are not cognizable evidence of legislative intent. Predecessor bills can be subject to judicial notice as evidence of legislative intent. (*City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1199.) However, in

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[3] For ease of reference, the documents contained in Exhibits A and B have been organized in three categories: (1) the bills and amendments; (2) reports and analyses by legislative committees; and (3) other documents that meet the *Kaufman* criteria for evidence of legislative intent. The documents are organized in chronological order to the extent that dates of documents could be determined. Exhibit B also has a fourth category, SB 820 documents.

this case the legislative history of SB 2565 adds nothing of significance to the legislative history of SB 1211. The fact that the legislative history of SB 2565 is irrelevant in this case is evidenced by the fact that Dignity's Answer Brief fails to mention it. As set forth above, it is the moving party's burden to demonstrate the propriety and relevance of judicial notice of documents. Dignity's motion does not provide any rationale, evidence or argument for the inclusion of SB 2565's legislative history. Judicial notice of those documents should therefore be denied.

Although Dignity's motion, p. 10, n. 4, references *Kaufman,* it completely ignored the Court's admonition:

> Many attorneys apparently believe that every scrap of paper that is generated in the legislative process constitutes the proper subject of judicial notice. They are aided in this view by some professional legislative intent services. Consequently, it is not uncommon for this court to receive motions for judicial notice of documents that are tendered to the court in a form resembling a telephone book. The various documents are not segregated and no attempt is made in a memorandum of points and authorities to justify each request for judicial notice. This must stop.

Kaufman, 133 Cal.App.4th at 29.[4]

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[4] Dignity has violated Rule of Court 8.74, subd. (a)(2) by failing to consecutively paginate Exhibit 1. As a result, documents in Exhibit 1 cannot be readily cited. Dignity has also violated Rule of Court 8.204, subd. (1)(C), which requires that any reference to a matter in the record be supported by a citation to the place in the record where the matter appears. Dignity's Answer Brief, p. 41, claims that the "legislative history of Section 809 cites *Hackethal* . . ." In its footnote 30, Dignity supports that claim only by a reference to Exhibit 1, with no

(continued...)

Dignity's Memorandum of Points and Authority cites no authority supporting judicial notice of Exhibit 1 as a whole, or to any document therein. (Dignity Motion, p. 8.) Judicial Notice should therefore be denied as to Exhibit 1 except for those documents that are cognizable evidence of legislative intent in enacting SB 1211 and passing AB 120, the documents attached as Exhibits A and B to the Declaration of Stephen D. Schear.[5]

C. The Declarations Submitted by Dignity Are Not Subject to Judicial Notice.

Exhibits 2 and 8 are declarations authenticating the legislative histories of SB 1211 and AB 120, respectively. While those declarations are properly submitted in support of Dignity's motion, they are not documents that are subject to judicial notice as matters that are indisputably true. Declarations that were not submitted to the trial court are inadmissible through a request for judicial notice, absent exceptional circumstances. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) A court cannot take judicial notice of hearsay allegations as being true, even when they are part of a court record or file.

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[4](...continued)
clue to which of the 3,247 pages of Exhibit 1 contains a citation to *Hackethal*.

[5] The trial court granted Dr. Natarajan's Request for Judicial Notice of the State-commissioned report prepared by Lumetra entitled "Comprehensive Study of Peer Review in California: Final Report: July 31, 2008." (6 CT 1589-1591, 9 CT 2188). It is therefore already part of the record on appeal. (6 CT 1602-1773.) Judicial notice of the same document contained in Dignity's Exhibit 1 is unnecessary.

(*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-1565.)

Exhibit 14, Dignity's corporate bylaws, includes a declaration from Elizabeth Shih that purportedly authenticates those bylaws. (Dignity Motion, p. 124.) As with Exhibits 2 and 8, her declaration does not set forth facts that are indisputably true. It is inadmissible hearsay, and her declaration was not part of the administrative record or submitted to the trial court. Ms. Shih's declaration therefore also does not meet the requirements for judicial notice. The declaration of Teresa Diaz (Dignity Motion, p. 161) authenticating **Exhibit 15** does not meet the requirements for judicial notice for the same reasons.

D. Dr. Natarajan Does Not Object to Dignity's Exhibits That Are Cognizable Evidence of Legislative Intent.

Exhibits 3, 4, 5, 9, 10, 11, and 12 are all permissible evidence of legislative intent and Dr. Natarajan does not object to judicial notice of those documents.

E. Letters of the California Medical Association Are Not Subject to Judicial Notice.

Exhibits 6 and 7 are letters from the CMA to the Governor urging him to sign SB 1211. They are obviously not evidence of legislative intent in passing SB 1211, since they did not come from the Legislature and were sent only after the bill had already passed. Letters to the Governor urging signature of a bill have been expressly held *not* to be documents subject to judicial notice as evidence of

legislative intent. (*Kaufman, supra,*133 Cal.App.4th at 38; *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, at 701.)

Exhibit 13 is a letter from the CMA to the author of AB 120. Like Exhibits 6 and 7, it is not cognizable legislative history because it is not an expression of the intent of the legislature, but merely expresses the opinion of the author. (*Kaufman, supra,*133 Cal.App.4th at 38; *Quintano v. Mercury Casualty Co.*, *supra*, 11 Cal.4th at p. 1062, fn. 5.)

This Court has specifically rejected third party documents as evidence of legislative intent:

> More critically, we have repeatedly concluded, as noted above, that even the statements of individual legislators are not generally considered in construing a statute. Of how much less worth is a third party's opinion regarding that legislative process?

(*American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1262, n.11.)

Recognizing that Exhibits 6, 7 and 13 are not subject to judicial notice as evidence of legislative intent, Dignity attempts to circumvent the law by asserting that the letters "are submitted as evidence of the *sponsor's* intent." (Dignity Motion, p. 10, n. 4.) Dignity's justification for admission of this evidence violates California law governing judicial notice in several ways.

As held in *American Financial Services Assn.,* the sponsor's intent is not relevant to the determination of legislative intent or statutory construction.

Judicial notice of evidence of legislative intent is an exception to the usual rules governing evidence in an appeal, because the courts permit hearsay evidence that was not presented to the trial court. As stated above, documents that are not cognizable evidence of legislative intent cannot be admitted if they were not presented to the trial court, absent exceptional circumstances. (*Vons Companies, Inc. v. Seabest Foods, Inc., supra,* 14 Cal.4th at 444, fn. 3.) Since the CMA is a private entity, its letters are not admissible as an official act of the legislature. The CMA's letters are hearsay documents that are not admissible in these appellate proceedings under any theory, and they are certainly not admissible as indisputable matters subject to judicial notice.

F. Dignity's Corporate Bylaws Are Not Subject to Judicial Notice.

Exhibit 14 consists of Dignity's purported corporate bylaws and the declaration of Elizabeth Shih verifying the bylaws. The inadmissibility of Ms. Shih's Declaration is discussed above.

Dignity's request for judicial notice of its corporate bylaws is based on Evidence Code § 452, subd. (h). (Dignity Motion, p. 14.) That subdivision provides for discretionary judicial notice of:

> Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Dignity argues that this Court is required to take judicial notice of its corporate bylaws because the trial court erred in failing to do so. (Dignity motion, pp. 15-

16.) Dignity asserts that Evidence Code § 453 mandated judicial notice of the bylaws in the trial court. (*Ibid.*) However, as recognized by Dignity, Evidence Code § 453 only requires judicial notice of a document when a party provides the court with "sufficient information to enable it to take judicial notice of the matter." (Dignity motion, p. 15.)

In the trial court, Dignity's motion failed to provide the Court sufficient information to take judicial notice of its corporate bylaws for at least four reasons:

1. The bylaws were not authenticated by a declaration from anyone. (8 CT 2030-2032.) Documents that have not been properly authenticated by a person with personal knowledge are not subject to judicial notice. (*Childs v. State of California* (1983) 144 Cal.App.3d 155, 162-163.)

2. Dignity failed to provide the trial court with evidence or argument establishing the relevance of the bylaws to the writ of mandate proceedings. Indeed, it did not even try. (8 CT 2030-2032.)

3. Dignity provided no explanation for its failure to include the corporate bylaws in the administrative record of the hospital hearing at issue. (*Ibid.*)

4. Dignity did not establish that judicial notice of the bylaws was proper rather than an augmentation of the record. (*Ibid.*)

Because of these failures, the trial court's decision to deny judicial notice of the corporate bylaws was clearly an appropriate exercise of its discretionary authority under Evidence Code § 452.

When presiding over a petition for writ of mandate, a court should deny a request for judicial notice when the document at issue is not part of the administrative record or if it is unnecessary to the resolution of the writ. (*Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135, 1137, n. 1.) Dignity's private corporate bylaws are not a proper subject for judicial notice because they are not indisputably true. (*Sosinsky v. Grant, supra,* 6 Cal.App.4th at 1564.) Augmentation would have been the correct procedure to add the bylaws to the trial court record. (Code of Civil Procedure § 1094.5, subd. (e).)

Under Section 1094.5, subd. (e), a party may add factual information to the administrative record only if the evidence is relevant and if it could not have been produced or was improperly excluded from the record. "In the absence of a proper preliminary foundation showing that one of the exceptions noted in section 1094.5, subdivision (e) applies, it is error for the court to permit the record to be augmented." (*Pomona Valley Hospital Medical Center v. Superior Court* (1997) 55 Cal.App.4th 93, 101.) Dignity has failed to provide the trial court, the Court of Appeal or this Court, any evidence or argument that its purported bylaws could not have been produced or were improperly excluded during the hospital hearing. Neither of the exceptions to Section 1094.5, subd. (e) apply here. Dignity is attempting to circumvent the law governing the record in writ proceedings through an improper request for judicial notice.

The requirements of Section 1094.5, subd. (e) are consistent with the general rule governing appeals that judicial notice of matters that were not before the trial court is generally not appropriate absent "exceptional circumstances." (*Vons Cos. Inc. v. Seabest Foods, Inc., supra,* 14 Cal.4th at 444, n. 3.) There are no exceptional circumstances justifying granting Dignity's request for judicial notice of its corporate bylaws, and Dignity does not claim that there are.[6] Furthermore, in both the Court of Appeal and in this Court, Dignity has continued to fail to explain why it did not introduce its corporate bylaws into the administrative record and why it failed to move to augment the record in the trial court.

Moreover, appellate courts will not take judicial notice of matters irrelevant to the issues raised in the appeal. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, n. 1; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573, n. 4.) In its motion, Dignity makes a conclusionary and cursory assertion that its corporate bylaws support its point that Dignity hospitals' medical staffs were "responsible" for the appointment of hearing officers. However, it provides no evidence or argument supporting its claim of relevance to the issues before this Court. (Dignity motion, pp. 13-14.) In its Answer Brief, Dignity only

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[6] In its Answer Brief, pp. 18-19, Dignity makes the misleading assertion that the bylaws were "submitted" to the trial court and implies that the Court of Appeal's decision to deny judicial notice was therefore erroneous. However, since the trial court did not grant judicial notice, the Court of Appeals was correct that the bylaws were not "before the trial court." (Exhibit 17.)

alleges that the governing board of the hospital had overall responsibility for quality issues and "final authority" over medical staff matters, citing the corporate bylaws. (Dignity Answer Brief, p. 18, citing Exhibit 14, pp. 142-143, bylaw ¶¶ 11.1 and 11.3.)

However, the issue presented in this appeal is whether the appearance of bias or actual bias standard applies to hospital hearing officers. There is no evidence in the administrative record or trial record that the corporate bylaws had any impact on the selection of the hearing officer in this matter. To the contrary, undisputed facts demonstrate that only a Dignity attorney and hospital administrators participated in the selection and hiring of the hearing officer. (Natarajan Opening Brief, pp. 19-20; Dignity Answer Brief, pp. 22-23.) The allegation that the governing board of the hospital had overall responsibility for quality issues and "final authority" over medical staff matters is not relevant to the factual question of who selected the hearing officer or whether he had an appearance of bias. The bylaw provisions cited by Dignity in support of its argument have nothing to do with the selection of hearing officers for its hospital fair hearings and are therefore irrelevant to this appeal. Judicial notice of the bylaws must be denied for this reason as well.

Finally, because the truthfulness and contents of the Declaration of Elizabeth Shih is not a document subject to judicial notice, as discussed above, Exhibit 14 has not been properly authenticated. Documents lacking an appropriate

evidentiary foundation are not subject to judicial notice. (*Childs v. State of California, supra,* 144 Cal.App.3d at 162.)

G. The CMA's Model Bylaws Are Irrelevant to the Issues Presented in this Case.

Exhibit 15 is the model bylaws of the California Medical Association. Dignity seeks judicial notice of Exhibit 15 under Evidence Code § 452, subd. (h). (Dignity Motion, p. 14.) Dignity's only arguments for the relevance of the model bylaws is that they incorporate the language of Section 809.2, subd. (b); and they refer in a footnote to "the CMA's view regarding the qualifications of hearing officers." (Dignity motion, p. 14.)

However, Business and Professions Code § 809, subd. (a)(8) requires hospitals to adopt medical staff bylaws that include the provisions of Sections 809 to 809.8, inclusive. The fact that the CMA's model bylaws follow the legal mandate of Section 809 adds no relevant information to the record on appeal. This is especially true because there is no legal issue concerning the medical staff's bylaws in this case. Dr. Natarajan contends Dignity violated his right under California law to a hearing officer without a financial incentive to favor the hospital. As Dignity correctly states in its Answering Brief, p. 84, n. 15, "Natarajan has never alleged that his fair hearing violated any Medical Staff Bylaw."

Dignity argues that this Court took judicial notice of the CMA's model bylaws in *El-Attar v. Hollywood Presbyterian Med. Ctr.* (2013) 56 Cal.4th 976, 989, and *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 819. (Dignity Motion, p. 15.) In those cases the plaintiff physicians had asserted a violation of the hospital bylaws or the use of the wrong bylaws as a primary reason that their hearings had been unfair. (*El-Attar*, 56 Cal.4th at 986; *Anton*, 19 Cal.3d at 812.) The validity and interpretation of the bylaws were thus at issue in both cases, unlike here.

Dignity also cites two cases involving the University of California's bylaws, *Provost v. Regents of Univ. of Cal.* (2011) 201 Cal.App.4th 1289, 1292, and *Kashmiri v. Regents of Univ. of Cal.* (2008) 156 Cal.App.4th 809, 822, fn. 7. However, both those cases involved the University of California, a public institution. The University's bylaws are therefore public documents subject to judicial notice under Evidence Code § 452, subd. (c), the official acts subdivision.

In *Bollengier v. Doctors Medical Center* (1990) 222 Cal.App.3d 1115, 1123, on the other hand, the court denied judicial notice of the CMA's model bylaws because they were not relevant to the determination of the case. Likewise, the CMA's use of the language of Section 809.2, subd. (b) in its model bylaws provides no information relevant to this appeal. Appellate courts do not take judicial notice of matters irrelevant to the dispositive point on appeal. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089.)

The footnote in the CMA's model bylaws cited by Dignity refers to the California Society of Healthcare Attorneys' provision of hearing officers to hospitals. (Dignity Motion, Exh. 15, p. 167, n. 172.) This footnote has no relevance to any issue in this appeal, nor is it admissible evidence. Taking judicial notice of the truth of the contents of the CMA's footnote, or interpreting the meaning of that footnote, would violate the fundamental rule that a court cannot take judicial notice of hearsay statements in a document as being true. (*Sosinsky v. Grant, supra,* 6 Cal.App.4th at 1564-1565.)

As stated above, Dignity has the burden of establishing the propriety of its request for judicial notice. It has failed to establish the relevance and admissibility of the two provisions of the CMA's model bylaws it seeks to use, and the motion should therefore be denied as to Exhibit 15.

H. Exhibits 16-18 Are Already in the Record.

Dignity requests judicial notice of Exhibits 16 through 18, court records concerning the denial of Dignity's Motion for Judicial Notice in the Court of Appeal. Those documents are already in the record of this appeal, and so judicial notice of Exhibit 16-18 is unnecessary. The documents are also irrelevant to the substance of this appeal.

IV. CONCLUSION

Dignity has submitted thousands of pages of documents that are not subject to judicial notice in its Exhibit 1. It did so in patent violation of the admonition in *Kaufman* that such tactics were not acceptable and should be stopped. Dignity's conduct evidences a lack of consideration and respect for the time and resources of this Court and its staff. It has also requested judicial notice of other documents that are plainly not subject to judicial notice. Dignity's motion should therefore be denied except as to those documents that qualify for judicial notice as described above.

Dated: August 24, 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. I have reviewed the 3,247 pages of Exhibit 1, the legislative histories of SB 1211, SB 1265 and AB 120 submitted by Respondent. I then extracted the documents that met the criteria for cognizable evidence of legislative intent set forth in *Kaufman-Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31-39. Those documents are assembled as Exhibit A (SB 1211 documents) and Exhibit B (AB 120 and SB 820 documents), submitted with Dr. Natarajan's Response. I did not include in Exhibit A documents from the legislative process of SB 1265 for the reasons set forth in the Memorandum of Points and Authorities above.

3. For ease of reference, I organized the documents in Exhibits A and B in three categories: (1) the text of bills and amendments; (2) legislative committee reports and analyses; and (3) other documents. I also attempted to place the documents in each category in chronological order, to the extent that I could determine the dates of documents. I also included as a part of Exhibit B a fourth category, SB 820 documents. Documents in Exhibit A are bates-stamped SB 1211 - [page no.] and documents in Exhibit B are bates-stamped AB 120 - [page no.]

4. I was uncertain whether a few documents contained in Dignity's Exhibit 1 were cognizable evidence of legislative intent. I included those documents in

Exhibit A, pp. 0104 to 0105 and 0108-0111, and in Exhibit B, pp. 280-289. Dr. Natarajan does not object to judicial notice of those documents if they are found to be cognizable evidence of legislative intent.

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 August 24, 2020, at Oakland, California.

Stephen D. Schear

Stephen D. Schear

[PROPOSED] ORDER

Good cause appearing, IT IS HEREBY ORDERED that the Motion for Judicial Notice by Respondent Dignity Health dated August 7, 2020, is granted in part and denied in part.

The Court takes judicial notice of the following documents submitted by Dignity Health:

From Exhibit 1: Those documents submitted as Exhibits A and B to the Declaration of Stephen D. Schear filed as a part of Dr. Natarajan's Response to Dignity's Motion for Judicial Notice; and Exhibits 3, 4, 5, 9, 10, 11 and 12.

The Court denies judicial notice of Exhibits 2, 6, 7, 8, 13, 14, 15, 16, 17 and 18.

DATED: _____

_____
JUSTICE OF THE CALIFORNIA
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 August 24, 2020, I served this document entitled Dr. Natarajan's Response to Dignity Health's 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 True Filing 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
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Craig Rutenberg: crutenberg@manatt.com
Doreen Shenfeld: dshenfeld@manatt.com
Manatt, Phelps and Phillips, LLP

Jenny Huang: jhuang@justicefirst.com
Tara Natarajan: tarabadwal@yahoo.com

I declare under penalty of perjury the foregoing is true and correct and that this Declaration was executed on August 24, 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 August 24, 2020, I served Exhibit A (Legislative History of SB 1211) and Exhibit B (Legislative History of AB 120) in Support of Dr. Natarajan's Response to Dignity Health's Motion for Judicial Notice on the following persons/parties by sending a CD with both Exhibit A and Exhibit B by Federal Express overnight delivery addressed as follows:

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

I declare under penalty of perjury the foregoing is true and correct and that this Declaration was executed on August 24, 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: **steveschear@gmail.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
OPPOSITION	Natarajan Response to DIgnity Motion Judicial Notice

Service Recipients:

Person Served	Email Address	Type	Date / Time
Tharini Natarajan Attorney at Law	tarabadwal@yahoo.com	e-Serve	8/24/2020 8:04:48 AM
Joanna Mccallum Manatt Phelps & Phillips, LLP 187093	jmccallum@manatt.com	e-Serve	8/24/2020 8:04:48 AM
Barry Landsberg Manatt Phelps & Phillips 117284	blandsberg@manatt.com	e-Serve	8/24/2020 8:04:48 AM
Stephen Schear Law Offices of Stephen Schear 83806	steveschear@gmail.com	e-Serve	8/24/2020 8:04:48 AM
Jenny Huang Justice First 223596	jhuang@justicefirst.net	e-Serve	8/24/2020 8:04:48 AM
Brigette Scoggins Manatt Phelps & Phillips LLP	bscoggins@manatt.com	e-Serve	8/24/2020 8:04:48 AM
Craig Rutenberg 205309	crutenberg@manatt.com	e-Serve	8/24/2020 8:04:48 AM
Doreeen Shenfeld 113686	dshenfeld@manatt.com	e-Serve	8/24/2020 8:04:48 AM

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.

8/24/2020

Date

/s/Stephen Schear

Signature

Schear, Stephen (83806)

Last Name, First Name (PNum)

Law Offices of Stephen D. Schear

Law Firm