Delaney v. Baker

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Kay Delaney's mother, Rose Wallien, resided at Meadowood Nursing Center (Meadowood) for approximately four months during which time she developed Stage III and Stage IV pressure sores. Ms. Wallien died while she was a resident at Meadowood.

Delaney brought this action against Meadowood and the two individuals (Calvin Baker, Sr. and Calvin Baker, Jr.) who served as administrators during portions of the time Ms. Wallien resided at the facility (collectively, appellants). [1]

Delaney's complaint alleged twelve causes of action, but ultimately the case was tried to a jury on only four theories: willful misconduct, negligence, reckless neglect of an elder as defined by the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, §§ 15600, et seq.) (EADACPA) and wrongful death. [2] The jury returned a verdict in favor of Delaney on the negligence and statutory neglect of an elder theories and in favor of appellants on the willful misconduct and wrongful death theories. Delaney was awarded special damages for her mother's medical expenses, damages for her mother's pain and suffering, and attorney fees and costs. Appellants challenge each of these awards.

Appellants argue that EADACPA does not authorize pain and suffering damages and the award of attorney fees and costs in this case. Appellants contend that Welfare and Institutions Code section 15657.2 exempts application of Welfare and Institutions Code section 15657 (which permits such remedies) where, as here, an action for reckless neglect of an elder is brought against health care providers. [3] Appellants additionally contend that the special damages award is not supported by substantial evidence and that Calvin Baker, Sr., and Calvin Baker, Jr., should not have been held personally liable. [4]

In the published portion of our opinion, we reject appellants' interpretation of EADACPA; in the unpublished portion of this decision, we agree with appellants' contention that the special damages award was not supported by substantial evidence and we reject appellants' argument that the Bakers should not be held liable personally. In sum, we affirm in part and reverse in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 15, 1993, Rose Wallien, the 88-year-old mother of Kay Delaney, fell and fractured her right ankle. Unable to care for Ms. Wallien while her ankle healed, Delaney looked for a skilled nursing facility that could provide the care her mother needed during that time. Delaney selected Meadowood, and Ms. Wallien entered the facility on April 20, 1993. Less than four months later, on

August 9, 1993, Ms. Wallien died while still a resident at Meadowood. At the time of her death, Ms. Wallien had Stage III and Stage IV pressure ulcers (commonly known as "bedsores") on her ankles, feet, and buttock areas.

Delaney brought this action against Meadowood and the two individuals (Calvin Baker, Sr., and Calvin Baker, Jr.) who served as administrators during portions of the time Ms. Wallien resided at the facility. The case was tried to a jury on theories of negligence, willful misconduct, neglect of an elder as defined by EADACPA and wrongful death. (See fn. 2, ante.) On the statutory neglect of an elder theory, the jury was instructed that "the essential elements of such a claim are: 1. That Mrs. Wallien was 65 years of age or older; 2. Defendant is liable for neglect as defined, and that 3. Defendant has been guilty of recklessness, oppression, or malice in the commission of this neglect." The jury instructions defined neglect by reciting the definition of that term in EADACPA. (See § 15610.57 [5] .)

The jury found for Delaney on her negligence and neglect of an elder claims and found for appellants on the willful misconduct and wrongful death claims. [6] The jury determined that the damage sustained by Rose Wallien for pain, suffering, inconvenience, physical impairment or disfigurement was $150,000. The jury awarded $15,000 in damage for the past cost of medical and hospital care and treatment resulting from appellants' negligence. The jury attributed 2 percent of the damage to Ms. Wallien's contributory negligence, 79 percent to appellants' negligence and 19 percent to the negligence of Dr. Jennings, who was no longer a defendant, (see fn. 1, ante) . Delaney moved for her attorney fees and costs. The court granted the motion and awarded Delaney $185,723.50 in attorney fees and $32,291.24 in costs.

II. DISCUSSION

A. The Award of Pain and Suffering Damages and Attorney Fees and Costs

1. Introduction

This appeal requires us to interpret section 15657.2 of the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA). [7] (Stats. 1991, ch. 774, § 1, p. 3476.) Delaney contends that section 15657.2 expressly makes the California Medical Injury Compensation Reform Act of 1975 (MICRA) applicable to causes of action brought under EADACPA. Appellants argue, however, that section 15657.2 displaces application of EADACPA if the cause of action is "based on a health care provider's alleged professional negligence." One could reasonably query why section 15657.2 does not state either of these premises in a straightforward fashion if that was indeed what the Legislature had in mind. However, the Legislature did not do so; we must therefore interpret section 15657.2 using the general rules of statutory interpretation, which include the consideration of legislative intent. In the end, we conclude that while it could have been said more simply, section 15657.2 ensures application of MICRA, but does not displace the enhanced remedies of EADACPA, when an action for elder abuse is "based on the health care provider's alleged professional negligence."

2. The Enhanced Remedies Of Section 15657

Appellants and Delaney dispute whether Delaney is entitled to the enhanced remedies permitted under EADACPA. Section 15657 provides that "where it is proven by clear and convincing evidence that a defendant is liable for physical abuse . . . neglect

These provisions increase the amount the plaintiff could otherwise recover. Absent these provisions in EADACPA, the jury could not base an award on the pain and suffering damages of a deceased person (see Code Civ. Proc., § 377.34) and the plaintiff could not recover attorney fees unless the parties had an express or implied agreement to the contrary (Code Civ. Proc., § 1021).

Delaney sought and received these enhanced remedies. The jury found "by clear and convincing evidence that the damage to Rose Wallien was due to neglect of an elder by" appellants. The jury additionally found "by clear and convincing evidence that [appellants] . . . were reckless in the conduct upon which [the jury based its] . . . finding of liability for abuse of an elder[.]" The jury computed the damage sustained by Ms. Wallien for "pain, suffering, inconvenience, physical impairment or disfigurement" as $150,000. Consistent with section 15657, the court awarded damages based upon the jury's valuation of Ms. Wallien's pain and suffering and also awarded Delaney her attorney fees and costs. The question raised by appellants is whether this award was prohibited by section 15657.2, given the nature of this case.

3. Interpreting Section 15657.2

Section 15657.2 provides that "notwithstanding this article [i.e., sections 15657 through 15657.3], any cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure, based on the health care provider's alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action." It is undisputed that appellants qualify as health care providers. [9] Appellants argue that, as health care providers, section 15657.2 exempts them from the enhanced remedy provisions of section 15657 in all causes of action "based on the health care provider's alleged professional negligence." (§ 15657.2.)

In considering the merits of appellants' construction of section 15657.2, "we are guided by the following principles: Our first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import . . . . The words of the statute must be construed in context, keeping in mind the statutory purpose . . . . Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent." (Central Pathology Service Medical Clinic, Inc. v. Superior Court (1992) 3 Cal. 4th 181, 186-187, 832 P.2d 924, internal quotation marks & citations omitted.)

Section 15657.2 provides that certain actions "based on the health care provider's alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action." This language indicates a legislative focus on statutes of specific application to this category of claims, such as those that comprise MICRA. For example, Civil Code section 3333.1, enacted as part of MICRA (see Flowers v. Torrance Memorial Hospital Medical Center (1994) 8 Cal. 4th 992, 999, 884 P.2d 142 (Flowers)), applies to "an action for personal injury against a health care provider based upon professional negligence . . . ." (Civ. Code, § 3333.1, subd. (a).) Similarly, Civil Code section 3333.2, also enacted as part of MICRA (see Flowers, supra, 8 Cal. 4th at p. 999), applies to "any action for injury against a health care provider based on professional negligence . . . ." (Civ. Code, § 3333.2, subd. (a).) Statutes like these, which specifically limit their application to actions against a health care provider based on professional negligence, are those statutes that section 15657.2 states "shall . . . govern[]."

The question, however, is whether section 15657.2 states that MICRA statutes shall solely govern or shall also govern. Appellants answer that the Legislature intended that MICRA alone should apply when the cause of action is based on the health care provider's alleged professional negligence. Appellants' argument implicitly assumes that the application of MICRA or EADACPA is an either-or proposition, but that both cannot apply in the same case. We disagree with this assumption. Section 15657 solely displaces statutes of general applicability, such as Code of Civil Procedure section 377.34, which limits the damages recoverable for a decedent's injuries or death, and Code of Civil Procedure section 1021, which limits the recovery of attorney fees. EADACPA's enhanced-remedy provisions do not conflict with any specific provision of MICRA.

Appellants disagree, suggesting that section 15657's provision for attorney fees conflicts with MICRA's provision regulating the contingency fee that an attorney may contract for or collect in connection with an action "against a health care provider based upon such person's alleged professional negligence . . . ." (Bus. & Prof. Code, § 6146.) This provision of MICRA, however, pertains to contingency fees only; it solely places "limits on the percentage of a plaintiff's recovery that an attorney may retain when he represents the plaintiff on a contingency basis." (Roa v. Lodi Medical Group, Inc. (1985) 37 Cal. 3d 920, 927, fn. 5, 211 Cal. Rptr. 77, 695 P.2d 164.) The award permitted by section 15657 does not provide for a contingency fee; it is not calculated solely as a percentage of the recovery and more importantly it does not come out of or reduce the plaintiff's award. An award of attorney fees under section 15657 is an additional liability imposed on the defendant. (See Code Civ. Proc., § 1033.5, subd.(a)(10)(B) [attorney fees authorized by statute are a form of recoverable costs].) We find no conflict between the provisions of MICRA and the enhanced remedy provisions of EADACPA. Thus, nothing precludes the joint application of MICRA and EADACPA.

With this understanding of MICRA and EADACPA, we consider the two proffered interpretations of section 15657.2. We conclude that accepting appellants' interpretation of section 15657.2 would require us to ignore the Legislature's focus on MICRA. If the Legislature's intent was simply to

displace application of section 15657, reference to MICRA was unnecessary, particularly since the two statutes are not inconsistent. We therefore decline to adopt such an interpretation. We instead interpret section 15657.2 as stating that the remedy created by section 15657 was subject to MICRA. This interpretation pays due respect to the Legislature's focus on the MICRA statutes. [10]

This interpretation of section 15657.2 is also consistent with the Legislature's concern for the welfare of elderly persons. The Legislature added sections 15657 through 15657.3 as part of its 1991 amendments to the elder abuse law. (See Stats. 1991, ch. 774, § 3, pp. 3477-3478.) The Legislature noted as part of these 1991 amendments, that even though "infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits." (§ 15600, subd. (h); see Stats. 1991, ch. 774, § 2, pp. 3476-3477.) Accordingly, "it [was] the . . . intent of the Legislature in adding Article 8.5 . . . to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults." (§ 15600, subd. (j).) Our interpretation of section 15657.2 respects the Legislature's intent by leaving intact the incentives created by EADACPA even where the cause of action is "based on the health care provider's alleged professional negligence." This Conclusion is particularly appropriate because remedial legislation, such as EADACPA, should be liberally construed to the end of fostering its objectives. (See People ex rel. Dept. of Transportation v. Muller (1984) 36 Cal. 3d 263, 269, 203 Cal. Rptr. 772, 681 P.2d 1340.) "Wherever the meaning is doubtful, [remedial legislation] must be so construed as to extend the remedy." (Ibid., internal quotation marks & citations omitted .)

In contrast, appellants' interpretation of the statute runs counter to the remedial purposes of EADACPA. Appellants acknowledge that section 15657's enhanced remedies apply in cases where it is proven by clear and convincing evidence that a defendant who is not a statutorily-defined health care provider has committed reckless neglect of an elder. Yet, appellants contend such awards are prohibited if the defendant qualifies as a health care provider even if the defendant has medical training and expertise or is in the business of caring for the elderly. We decline to adopt an interpretation that would yield such an anomalous result. (People v. Jenkins (1995) 10 Cal. 4th 234, 246, 893 P.2d 1224 [statute should not be interpreted in a manner that would lead to absurd results].)

Any deterrence value intended by the enactment of EADACPA would also be undercut by appellants' interpretation. (See Sen. Com. on Judiciary, 3d reading analysis of Sen. Bill No. 679 (1991-1992 Reg. Sess.) as amended Sept. 10, 1991.) Health care providers are some of the entities and individuals that provide care to the elderly on a recurring and continuing basis. Permitting enhanced remedies against such defendants would not simply compensate the victim and her family but could influence future conduct.

Appellants urge that the interpretation we adopt today, by permitting the recovery of attorney fees, will prompt an insurance crisis similar to that which precipitated the enactment of MICRA. The

legislative history suggests, however, that the Legislature declined to adopt a public policy of exempting health care providers (in response to concerns similar to those that resulted in the adoption of MICRA), instead reassuring the medical community that it was adequately protected by the clear and convincing evidence standard of proof and the limited applicability of the enhanced remedies to claims of egregious abuse and not to claims of simple or even gross negligence. (See Assem. Subcom. on the Administration of Justice, Statement to Present Sen. Bill No. 679 (July 16, 1991); Letter from Senator Henry J. Mello to Assemblyman Phil Isenberg dated July 16, 1991; Sen. Com. on Judiciary, 3d reading analysis of Sen. Bill No. 679, (supra) ; Assem. Ways & Means Com., Statement to Present Sen. Bill No. 679 (Aug. 29, 1991).)

Moreover, the concerns that prompted MICRA and EADACPA are in some respects quite different. The enactment of MICRA responded to a perceived inappropriate overuse of medical malpractice litigation. (See Roa v. Lodi Medical Group, Inc., supra, 37 Cal. 3d at pp. 931-932.) In contrast, the enactment of EADACPA responded to a perceived underutilization of litigation as a means of obtaining relief on behalf of abused elders. (§ 15600, subd. (h).) One of the express purposes of enacting EADACPA was to remedy this situation by "enabling interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults." (§ 15600, subd. (j).) Construing EADACPA to serve MICRA's goal of discouraging litigation would contravene this legislative policy behind EADACPA.

We also respond to appellants' reliance at oral argument on the "conspicuous absence" from the legislative history of any mention of claims for malpractice. The legislative history refers repeatedly and regularly to "abuse," which by definition in EADACPA includes neglect. (§ 15610.07.) Thus, specific reference to malpractice was simply unnecessary. If we read anything from the absence of any specific reference to claims of malpractice, it is simply that no blanket exception was to be accorded claims alleging negligence on the part of a health care provider (i.e., medical malpractice). The statutory scheme set forth in MICRA continues to govern claims against health care providers as defined in Code of Civil Procedure section 340.5, provided, however, that if a finder of fact should conclude by clear and convincing evidence that such neglect was committed with "recklessness, oppression, malice or fraud", the provisions of MICRA do not preclude recovery of the enhanced remedies of section 15657 for reasonable attorney fees and costs, and where applicable, recovery by a deceased elder's representative of damages for the deceased elder's pain, suffering or disfigurement, subject to the MICRA limitations on noneconomic damages set forth in Civil Code section 3333.2. [11]

We are aware that the Legislative Counsel's Digest described "this bill" as "specifying that actions against health care professionals for professional negligence shall be governed by laws specifically applicable to professional negligence actions, rather than by these provisions." (Legis. Counsel's Dig., Sen. Bill No. 679 (Mar. 5, 1991) p. 2, italics added.) Albeit imprecise, this statement is not inconsistent with our interpretation of section 15657.2. The statement refers to "professional negligence actions." It cannot be disputed that pure negligence causes of action are not subject to section 15657. (See § 15657.) The enhanced remedies of that section arise only where the defendant

has acted with recklessness, oppression, fraud or malice in the commission of the neglect. (§ 15657.)

Moreover, this confusing description of the 1991 amendments in the Legislative Counsel's digest is scant evidence of a legislative intent that section 15657.2 have the affect that appellants attribute to it. (Cf. Isbister v. Boys' Club of Santa Cruz, Inc. (1985) 40 Cal. 3d 72, 87, 219 Cal. Rptr. 150, 707 P.2d 212 [finding confusing comment by Legislative Counsel was scant evidence of legislative intent].) "Although a legislative counsel's digest may be helpful in interpreting an ambiguous statute, it is not the law." (In re Barry W. (1993) 21 Cal. App. 4th 358, 367, internal quotation marks & citation omitted.) We will not disregard the problems that we find in interpreting the statute in the fashion advocated by appellants simply as a result of this (or similar) inconclusive and ambiguous comments in the legislative history. [12] (See J.A. Jones Construction Co. v. Superior Court (1994) 27 Cal. App. 4th 1568, 1578 ["wisest course is to rely on legislative history only when that history itself is unambiguous"].)

Lastly, we address the recent decision of the Second Appellate District in Mueller v. Saint Joseph Medical Center (1997) 97 D.A.R. 13809 (Mueller). The Mueller decision summarily states that EADACPA "has no application" to claims "based on" the rendition of professional services even if the health care provider is recklessly negligent. (Id. at p. 13811.) Our colleagues' reached this Conclusion without analysis of section 15657.2 as a whole or consideration of the legislative purpose of the statutory scheme. We disagree with the Conclusion that EADACPA "has no application" to such claims.

The analysis of the Mueller decision focused solely on the meaning of the phrase "based on the health care provider's alleged professional negligence." (See Mueller v. Saint Joseph Medical Center, (supra) , 97 D.A.R. at p. 13809.) The Second Appellate District concluded that this phrase refers to claims which are "'directly related' to the rendition of professional services" regardless of whether the plaintiff asserts that defendant's conduct was negligent or intentional. (Ibid.) Our Conclusion does not conflict with this portion of the Mueller decision. In fact, we expressly do not reach the meaning of the phrase "cause of action . . . based on the health care provider's alleged professional negligence" as it is used in section 15657.2 because we conclude that appellants' appeal fails even if the phrase "cause of action . . . based on the health care provider's alleged professional negligence" includes, as appellants contend and the Mueller decision agrees, a case alleging reckless neglect.

However, for all of the reasons we have stated in this section of our opinion, we disagree with the Mueller Conclusion that section 15657.2 renders EADACPA irrelevant to claims "based on the health care provider's alleged professional negligence."

Section 15657 applies in this case even though Delaney's action alleged that appellants as statutory health care providers rendered recklessly negligent care to Delaney's mother. Accordingly, Delaney may recover damages for her mother's pain and suffering and may recover her reasonable attorney fees. [13]

4. The Effect of Section 15657, Subdivision (c)

[NOT CERTIFIED FOR PUBLICATION]

B. Special Damages

[NOT CERTIFIED FOR PUBLICATION]

C. The Bakers' Personal Liability

[NOT CERTIFIED FOR PUBLICATION]

III. DISPOSITION

We reverse the award of special damages and in all other respects affirm the judgment. Each party to bear its own costs on appeal.

Jones, J.

We concur:

Peterson, P.J.

Haning, J.

1. Delaney's complaint also named Suzanne Sinclair, Director of Nursing at Meadowood, and Dean Jennings, the doctor responsible for Ms. Wallien's care. These individuals were dismissed from the case.

2. We do not decide whether EADACPA creates a new cause of action or whether it simply creates additional remedies for existing causes of action. (Cf. ARA Living Centers - Pacific, Inc. v. Superior Court (1993) 18 Cal. App. 4th 1556, 1563 (ARA Living Centers) [concluding that "the amendment did not add a cause of action"]; but see California Assn. of Health Facilities v. Department of Health Services (1997) 16 Cal. 4th 284, 304, 940 P.2d 323 ["action recently created by the enactment of the Abuse of the Elderly and Other Dependent Adults Act"], 305 ["addition of a new statutory private right of action for elder abuse"].) We merely describe the manner in which this case was presented to the jury.

3. Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

4. We note that California Advocates For Nursing Home Reform, Inc., submitted an amicus curiae brief in this appeal.

5. Section 15610.57 provides as follows: '"Neglect' means the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise.

Neglect includes, but is not limited to, all of the following: (a) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter. (b) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment. (c) Failure to protect from health and safety hazards. (d) Failure to prevent malnutrition."

6. Delaney contends that "the EADACPA remedies were awarded on the basis of the jury's findings that Ms. Delaney had proven, by clear and convincing evidence, the elements of her First Cause of Action [Willful Misconduct], not her 'Ordinary Negligence' (Eighth) Cause of Action." The language of the special verdict form belies Delaney's contention that the award was based on a jury finding of willful misconduct. The jury was instructed that one of the elements of a claim of willful misconduct was "the defendant's conscious failure to avoid the peril." Question number 13 of the special verdict form queried whether defendants had consciously failed to avoid the peril to Ms. Wallien, to which the jury responded "no". Thus, Delaney's recovery could not be premised on the willful misconduct cause of action. Instead, Delaney recovered on a neglect-of-an-elder theory. The jury was specifically instructed on this theory and found each element of that claim to have been established.

7. Section 15657.2 provides that "notwithstanding this article [i.e., sections 15657 through 15657.3], any cause of action for injury or damage against a health care provider, as defined in Section 340.5 of the Code of Civil Procedure, based on the health care provider's alleged professional negligence, shall be governed by those laws which specifically apply to those professional negligence causes of action."

8 The complete text of section 15657 is as follows: "Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in subdivision (c) of Section 15610, neglect as defined in subdivision (d) of Section 15610, or fiduciary abuse as defined in subdivision (f) of Section 15610, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law: (a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term 'costs' includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article. (b) The limitations imposed by subdivision (c) of Section 573 of the Probate Code on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code. (c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer."

The definitions of physical abuse, neglect and fiduciary abuse referred to in subdivision (a) of section 15657 can now be found at sections 15610.63, 15610.57, and 15610.30, respectively.

Section 15657, subdivision (b) refers to Probate Code section 573. In 1991, when section 15657 was enacted, Probate Code section 573 provided that "when a person having a cause of action dies before judgment, the damages recoverable by his executor or administrator . . . shall not include damages for pain, suffering or disfigurement. " (Stats. 1961, ch. 657, § 2, p. 1868, italics added.) "The Legislature continued in substance this limitation in 1992 when it reenacted this part of Probate

Code section 573 as Code of Civil Procedure section 377.34." (ARA Living Centers, supra, 18 Cal. App. 4th p. 1563.)

9 For purposes of section 15657.2, health care providers include licensed nursing home administrators (see Bus. & Prof. Code, § 3901, et seq.), such as the Bakers, and skilled nursing facilities licensed under Health & Safety Code section 1254, such as Meadowood. (See Code Civ. Proc., § 340.5, subd. (1).)

10 We note that the "notwithstanding" language may additionally suggest that sections 15657 through 15657.3, which constitute "this article," will be subservient to "those laws which specifically apply to those professional negligence causes of action." In other words, to the extent "those statutes specifically applicable to those professional negligence causes of action" conflict with the provisions of sections 15657 through 15657.3, the terms of the former statutes will control rather than the terms of the latter. However, this case does not present such a conflict between MICRA and the enhanced remedies of EADACPA and hence we leave resolution of the question of potential conflicts for another case where they are in fact presented.

11 Civil Code section 3333.2 permits the recovery against a health care provider based on professional negligence of "non-economic losses to compensate for "pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damages," but provides that the amount of such damages shall not exceed $250,000.

12 We also note that Delaney submitted letters from advocacy groups. We decline to assign much, if any, weight to those letters inasmuch as we have been provided no indication that copies of the letters were distributed to any member of the Legislature other than the addressee, thus providing little assurance that we can draw any Conclusions about the collective intent of the Legislature. (See Brown v. Swickard (1985) 163 Cal. App. 3d 820, 828, fn.11, 209 Cal. Rptr. 844.)

13 We note that appellants have not disputed the amount of attorney fees or their method of calculation.