Calif. Long-Term Care Facilities Cannot Skirt Scrutiny

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Long-term care centers, you’ve been warned: citations issued by the California Department of Public Health are now available to the public in full. In State Department of Public Health v. Superior Court of Sacramento County, the California Supreme Court confirmed that DPH citations issued to long-term care facilities are matters of public record that will be released upon request after redacting patient names.

Case Facts

In May 2011, the Center for Investigative Reporting filed a Public Records Act request to the DPH for citations it issued to state-owned long-term health care facilities. The Long-Term Care Act provides that DPH citations are matters of public record along with writings received, owned, used or retained in connection with the citations.

The DPH nevertheless refused to release the citations, citing its obligations under a different law that appeared to prohibit their unredacted release, namely the Lanterman Petris Short Act. The Lanterman Act limits the disclosure of information and records obtained while providing treatment to mentally ill or developmentally disabled patients.

The DPH thus released the citations only after redacting “protected information,” information that made it impossible to fully understand why the citations were issued. For example, one citation describes an incident in which patients sustained injuries consistent with being needlessly tasered. After redaction, the citation said “nothing more than that a violation of Code of Federal Regulations, title 42, part 483.420, subdivision (a)(5) — ‘Protection of clients' rights’ — occurred.”

The Center for Investigative Reporting turned to the Sacramento County Superior Court for relief, demanding that the DPH release the citation records, and the case eventually reached the California Supreme Court.

Court Analysis

The California Supreme Court first determined that both statutes apply to the citations. The Center for
Investigative Reporting had argued that the Lanterman Act’s requirements do not apply because the citations were not “obtained in the course of providing services.”

But the California Supreme Court rejected such a literal interpretation of the Lanterman Act. When DPH investigates a facility governed by the Lanterman Act, it examines the facility’s records to carry out its investigation. That this information is then passed on to a DPH investigator and incorporated into a DPH citation does not change that it is deemed confidential by statute.

The California Supreme Court then turned to the primary question at issue: How much could DPH release when the Long-Term Care Act and the Lanterman Act appear to require different obligations?

The California Court of Appeal had concluded that the two laws could be harmonized since both shared a common purpose: the protection of the health and safety of mental health patients. The appellate court then conducted a line-item review of the information found in DPH citations and determined whether disclosure or redaction would better serve this purpose.

The California Supreme Court rejected this approach because it resulted in a disclosure scheme that was inconsistent with both statutes, requiring DPH to release some information that the Lanterman Act would require DPH to redact and requiring DPH to redact some information that the Long-Term Care Act would require DPH to release.

The California Supreme Court also questioned the logic of the appellate court’s solution in light of the purposes of the statutes.

The Long-Term Care Act encourages health care facilities to comply with the applicable regulations and avoid imposition of penalties by “naming and shaming” facilities that violate the law. But the “harmonized statute would require the redaction of information that would be highly significant in understanding why the DPH selected a particular penalty as the appropriate punishment for a particular violation.

Likewise, the Lanterman Act provides for the confidentiality of records so that mentally ill persons will not be haunted by unauthorized unnecessary exposure of their medical histories. But the harmonized statute would leave in the public record enough facts for a patient or resident who was the victim of the misconduct to know that he or she is the subject of the citation.

The California Supreme Court concluded that with respect to the citations, where there was a conflict about what to release and redact, the terms of the Long-Term Care Act should apply. Where conflicting statutes cannot be reconciled, later enactments supersede earlier ones, and more specific provisions supersede general ones, with specificity being more important.

The California Supreme Court found the Long-Term Care Act to be the more specific and more recent statute. The Long-Term Care Act focuses on the disclosure and redaction of DPH citations while the Lanterman Act addresses the confidentiality of records obtained in the course of treating mentally ill and developmentally disabled individuals generally. The Long-Term Care Act was also enacted a year after the relevant provision in the Lanterman Act was amended and reenacted.

**Implications of the Case Beyond State-Owned Facilities**

The California Supreme Court’s impact on long-term care facilities providing mental health services is
clear: moving forward, DPH will release information underlying its citations to these facilities. This includes the release of records and information obtained in the course of treating mentally ill and developmentally disabled individuals at the state-owned facilities at issue and the private long-term care facilities also governed by the Lanterman Act.

Although not the specific focus of the case, the California Supreme Court’s ruling likely applies with equal force to “long-term care facilities” that do not serve mentally ill and developmentally disabled residents.

The California Supreme Court makes clear that it intends to read the Long-Term Care Act to apply equally to all “long-term care facilities” and would not create a tiered enforcement system. The California Supreme Court in fact rejects the appellate court’s disclosure scheme in part because it would unfairly “shield long-term care facilities serving mentally ill and developmentally disabled residents from public scrutiny in a manner not applicable to other long-term care facilities” that would not have been under the Lanterman Act’s protections.

Moreover, if challenged by another statute that purports to prohibit the unredacted release of DPH citations with respect to other long-term care facilities, the California Supreme Court is likely to reach the same conclusion that it found here: The Long-Term Care Act is the more specific act regulating the redaction and release of DPH records and therefore controls.

As the California Supreme Court observed, “The particularly detailed nature of the Long-Term Care Act's discussion of DPH citations demonstrates that the [California] Legislature thought carefully and specifically about the importance of publishing citations and concluded that patients' and residents' confidentiality was adequately protected by redacting the names of the victims of a violation.”

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