

TENTATIVE RULING: JANUARY 25, 2007

Lyons v. Sutter Amador Hospital: 06CV4355

As directed at the hearing on January 25, 2007, for each motion, the moving party is to prepare an order. Where leave to amend is granted, the plaintiff is given 30 days leave to amend. In all cases, the time for leave to amend begins to run upon service of the signed order.

Defendant Sutter Amador Hospital's Demurrer to Complaint:

1. VI.A: Discriminatory Racial Practices:

In ruling on a demurrer, the court may only consider the information in the complaint and that information subject to judicial notice. Defendants contend that because the doctors at Sutter Amador Hospital (Hereinafter "SAH") are not employees of the facility, SAH cannot adequately answer a complaint that names, "Sutter Amador Doctors." However, said information is hearsay and the court may not consider said information upon a demurrer. Therefore, the demurrer is overruled on this basis.

However, Plaintiff fails to state a cause of action. It is unclear from the complaint what Plaintiff is attempting to plead. Moreover, Plaintiff fails to plead an injury as a result of the defendants' actions, which is an essential element of most all causes of action and, therefore, would likely be an element of any cause of action that the plaintiff was attempting to plead. Thus, the demurrer is sustained with leave to amend.

2. VII.A.: Failure to Treat Emergency Injuries:

In this instance, Plaintiff is attempting to state a cause of action in medical malpractice. In order to state such a cause of action, the plaintiff must plead injury as a result of the actions of the defendants. The plaintiff has failed to do so. Therefore, the demurrer is sustained with leave to amend on this basis.

3. VIII.A.: Statutory Duty to Warn:

It appears that the plaintiff is attempting to allege some sort of cause of action in medical negligence. However, he fails to plead injury. Therefore, Plaintiff has failed to state a cause of action and the demurrer is sustained with leave to amend, based upon failure to state a cause of action.

4. IX.A.: Physician-Patient Relationship:

It appears that the plaintiff is attempting to plead a medical malpractice cause of action. Plaintiff fails to plead injury sufficiently. Therefore, the demurrer is sustained with leave to amend, based upon a failure to state a cause of action.

5. X.A.: Failure to Produce Medical Records:

It appears that the plaintiff is again attempting to allege a medical negligence claim against both Sutter Amador and Mule Creek State Prison. However, again, the plaintiff fails to plead an injury caused by actions of the defendants. Therefore, the demurrer is sustained with leave to amend, based upon failure to state a cause of action.

6. XI.A.: Intentional Concealment:

It again appears that the plaintiff is attempting to plead a medical malpractice cause of action. However, he fails to plead injury as result of the defendants' conduct. Therefore, he fails to state a cause of action and the demurrer is sustained with leave to amend.

7. XI.B.: Strict Liability:

In this cause of action, the plaintiff does not name Sutter Amador. Only Dr. Bowhay is named in the complaint. Therefore, from the face of the pleading, this cause of action does not apply to SAH and the demurrer is overruled.

8. XII.A.: Standard of Care: Specialists versus General Practitioner:

Plaintiff fails to state a cause of action. He merely provides legal citations regarding the standard of care owed by a general practitioner. No facts are pled. The demurrer is sustained with leave to amend, based upon failure to state a cause of action.

9. XII.A.: Negligence as Proximate Cause of Injuries:

This cause of action is uncertain, as it fails to specify whom it pertains to. Moreover, Plaintiff fails to state a cause of action. Plaintiff merely states legal conclusions. Therefore, the demurrer is sustained with leave to amend, based upon uncertainty and failure to state a cause of action.

10. 12th Cause of Action:

This cause of action names the Sutter Amador Board of Trustees and the CEO, Brice Tigner. Neither was served with the complaint or officially named as a defendant in this action. It is uncertain whether SAH is meant to be a part of this cause of action.

Moreover, Plaintiff fails to state a cause of action. Plaintiff simply cites legal authority without pleading any facts. Plaintiff fails to plead an injury as a result of any defendants' conduct.

Therefore, the demurrer is sustained with leave to amend, based upon uncertainty and failure to state a cause of action.

Defendant Sutter Amador Hospital's Motion to Strike:

1. IV (irrelevant):

This section is the plaintiff's statement of facts. Although it may contain some inappropriate matter, it does contain information, which is necessary to the plaintiff's claim that he exhausted administrative remedies. The motion is denied on this issue, without prejudice to its reassertion after the plaintiff amends his complaint.

2. V (irrelevant):

This section of the complaint consists of the plaintiff's overview of pertinent law. There are no facts contained in this section of the complaint. Therefore, this section of the complaint is stricken as irrelevant.

3. VI (irrelevant and improper): Disposed of by the demurrer.

4. VIII: Disposed of by demurrer.

5. VIII (irrelevant and improper): Disposed of by demurrer.

6. IX (irrelevant and improper): Disposed of by demurrer.

7. X (irrelevant and improper): Disposed of by demurrer.

8. XI (irrelevant and improper): Disposed of by demurrer.

9. XII B (not in conformity with the law): Disposed of by demurrer.

10. XII (irrelevant): Disposed of by demurrer.

11. XIII (irrelevant and improper): Disposed of by demurrer.

12. IVX.3 (irrelevant and improper):

This paragraph requests damages for emotional distress. SAH contends that this paragraph is improper because the plaintiff did not plead any action for emotional distress in the complaint. SAH is correct that the plaintiff's request for damages is inappropriate, given the causes of action stated in the complaint. Therefore, the motion to strike is granted.

13. 12th Cause of Action (irrelevant and improper): Disposed of by demurrer.

14. Punitive damage allegations:

Plaintiff has not complied with the requirements of C.C.P. §425.13. Therefore, the punitive damage allegations are stricken.

Defendants Douglas, Grannis, Hansen, Hawkins, Kernan, Pearson, Porter, Surges, Swarthout, Tedder, Williams, and Zangrilli's Demurrer:

Plaintiff's complaint pleads compliance with the Tort Claims Act in Paragraph II of the complaint. Moreover, the documents attached to the complaint show that the plaintiff did comply with the Act, contrary to the defendants' assertions. A letter, dated January 26, 2005, stated that the Board rejected the plaintiffs claim number G551184 at a hearing on January 20, 2005. Another letter from the Board documents that claim number G551184 pertains to a "tort claim for CDC inmates, Medical Malpractice/Negligence." Therefore, the demurrer is overruled.

Defendant K. Punt's Demurrer:

Defendant Punt alleges that the plaintiff failed to comply with the Tort Claims Act by failing to file a claim with the Board and that he failed to timely petition the court for relief within 6 months of the notice of rejection.

Plaintiff pleads compliance with the Tort Claims Act in paragraph II of the complaint. He also attached a copy of the Notice of Rejection of the claim to the complaint. The notice of rejection is dated January 26, 2005. Plaintiff filed his complaint on July 10, 2006. Therefore, the plaintiff failed to submit his claim to the superior court within 6 months of the notice of rejection. Therefore, his claim is barred and the demurrer of Defendant K. Punt is sustained without leave to amend.

Defendant Dr. Bowhay's Demurrer:

1. Discriminatory Racial Practices:

This cause of action is directed to "Sutter Amador Doctors." It is unclear whether Dr. Bowhay is to be included in this group. Moreover, Plaintiff fails to state a cause of action. It is unclear from the complaint what Plaintiff is attempting to plead. In addition, Plaintiff fails to plead an injury as a result of the defendant's actions, which is an essential element of most all causes of action. Therefore, the demurrer is sustained with leave to amend, based upon uncertainty and failure to state a cause of action.

2. Failure to Treat Emergency Injuries:

This cause of action refers to "The Doctors of Sutter Amador hospital." It is unclear whether Dr. Bowhay is to be included in this group. Moreover, in this instance, Plaintiff is attempting to state a cause of action in medical malpractice. In order to state such a cause of action, the plaintiff must plead an injury as a result of the actions of the defendant. The plaintiff has failed to do so. Therefore, the demurrer is sustained with leave to amend, based upon uncertainty and failure to state a cause of action.

3. Statutory Duty to Warn:

This cause of action merely refers to "the doctors." It is unclear whether Dr. Bowhay is to be included in this group. Moreover, It appears that the plaintiff is attempting to allege some sort of cause of action in medical negligence. However, he fails to plead injury. Therefore, Plaintiff has failed to state a cause of action and the demurrer is sustained with leave to amend, based upon uncertainty and failure to state a cause of action.

4. Physician-Patient Relationship:

This cause of action refers to "Sutter Amador hospital Doctors" and "Mule Creek State Prison Doctors." It is unclear whether Dr. Bowhay is to be included in either of these groups. Moreover, it appears that the plaintiff is attempting to plead a medical malpractice cause of action. Plaintiff fails to plead injury sufficiently. Therefore, the demurrer is sustained with leave to amend, based upon a failure to state a cause of action and uncertainty.

5. Intentional Concealment:

This cause of action refers to "Sutter Amador hospital Doctors and Mule Creek State Prison doctors." It is unclear whether Dr. Bowhay is to be included in either of these groups. Moreover, it again appears that the plaintiff is attempting to plead a medical malpractice cause of action. However, he fails to plead injury as result of the defendants' conduct. Plaintiff fails to state a cause of action, the allegations are uncertain, and, therefore, the demurrer is sustained with leave to amend.

6. Strict Liability:

This cause of action specifically names Dr. Bowhay. Plaintiff fails to allege any grounds for the imposition of strict liability. Therefore, the demurrer is sustained with leave to amend.

7. Standard of Care—Specialist versus General Practitioner:

Plaintiff fails to state a cause of action. He merely provides legal citation regarding the standard of care owed by a general practitioner. The demurrer is sustained with leave to amend, based upon failure to state a cause of action.

8. Negligence as proximate cause of Injuries:

This cause of action is uncertain as it fails to specify to whom it pertains. Moreover, Plaintiff fails to state a cause of action. Plaintiff merely states legal conclusions. Therefore, the demurrer is sustained with leave to amend on the grounds of uncertainty and failure to state a cause of action.

9. Fourth Cause of Action: Intentional Tort (p. 30):

Plaintiff fails to state a cause of action in intentional tort. Plaintiff has failed to allege an injury resulting from the intentional wrongful act of the defendant. Therefore, the demurrer is sustained without leave to amend.

Defendant Dr. Bowhay's Motion to Strike:

1. #3 of Civil Case Cover Sheet (checkbox for punitives): As Plaintiff did not comply with C.C.P. §425.13, the motion to strike is granted.

#14 of Civil Case Cover Sheet: It appears that this should be #14 of the Judicial Counsel Form Complaint (which is the checkbox for punitive damages). For the reasons stated above, the motion to strike this portion of the complaint is granted.

25:21-24 (request for exemplary damages): For the reasons stated above, the motion to strike this portion of the complaint is granted.

Exemplary Damages Attachment: For the reasons stated above, the motion to strike this portion of the complaint is granted.

2. 6:1-12:10: This portion of the complaint essentially outlines various provisions of law. It contains legal conclusions and it is not essential to any claim or defense stated in the complaint. Therefore, this portion of the complaint is stricken.
3. 13:12-14:22: disposed of by demurrer.
4. 15:1-9: disposed of by demurrer.
5. 15:17-22: disposed of by demurrer.
6. 16:18-24: disposed of by demurrer.
7. 18:9-19:5: disposed of by demurrer.
8. 20:6-24: disposed of by demurrer.
9. 22:5-12: disposed of by demurrer.
10. 22:15-24:14: disposed of by demurrer.