



For a future without senior poverty.

August 12, 2020

Honorable Tani G. Cantil-Sakauye, Chief Justice
& Associate Justices of the
Supreme Court of California
350 McAllister St.
San Francisco, CA 94102

Re: Amici Letter Supporting Petition for Review in *Marline Wicks et al. v. Antelope Valley Healthcare District*, No. S262977, Petition Filed July 13, 2020

To the Chief Justice and the Associate Justices of the Supreme Court of California:

AARP and AARP Foundation file this letter brief as Amici Curiae pursuant to Rule 8.500(g) of the California Rules of Court. For the reasons stated herein, AARP and AARP Foundation respectfully request that the Court grant the Plaintiffs' Petition for Review.

Statement of Interest

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans fifty and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families, with a focus on health security, financial stability, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works to end senior poverty by helping vulnerable older adults build economic opportunity and social connectedness. Among other things, AARP and AARP Foundation fight against the abuse and exploitation of older adults in health care settings by, among other things, participation as amici curiae in state and federal courts. To that end, AARP and AARP Foundation have filed amici curiae briefs concerning access to the civil justice system to address neglectful conditions.

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AARP Foundation also files litigation to obtain redress for older adults who received substandard and harmful care in health care settings.

**The Ramifications of Insulating a Hospital from Liability
for the Acts or Omissions of its Emergency Department
Physicians Are Particularly Harmful to Older Adults Who
Are at a Greater Risk of Adverse Events Due to Their
Unique Care Needs.**

Older adults often visit emergency departments under more urgent conditions than younger patients and have longer emergency department stays.¹ Compared to younger patients, older adults present with higher-acuity conditions and multiple comorbidities.² Disease presentation in older adults is frequently atypical and can result in misdiagnosis or under-triage.³ Hospital doctors are also more likely to misdiagnose and/or delay treatment for older patients.⁴

¹ Aminzadeh & Dalziel, *A Systematic Review of Patterns of Use, Adverse Outcomes, and Effectiveness of Interventions*, 39 *Annals Emergency Med.* 238, 239 (2002).

² Pines et al., *National Trends in Emergency Department Use, Care Patterns and Quality of Care of Older Adults in the United States*, 61 *J. Am Geriatrics Soc'y* 12, 12 (2013).

³ *Id.*

⁴ See Thomas R. Skinner, et al., *Diagnostic Errors in Older Patients: A Systematic Review of Incidence and Potential Causes in Seven Prevalent Diseases*, 9 *Int'l J. Gen. Med.* 137, 143-44 (2016) (finding that over- and under-diagnosis are common in older patients); see also Stephanie E. Rogers, et al., *Discrimination in Healthcare Settings is Associated with Disability in Older Adults: Health and Retirement Study, 2008–2012*, 30 *J. Gen. Internal Med.* 1413, 1418 (2015) (linking age discrimination to a delay in testing and treatment).

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Unfortunately, older adults suffer serious medical errors at twice the rate of other patients. *See, e.g.,* Jeffrey M. Rothschild & Lucian L. Leape. AARP Pub. Policy Inst., *The Nature and Extent of Medical Injury in Older Patients*, at 13, 23, 26, 29 (2000).⁵ In 2016, 37% of all emergency department visits in California were for people over the age of fifty.⁶ The most common reasons that an older person seeks care in an emergency department include ischemic heart disease, congestive heart failure, syncope, cardiac dysrhythmias, acute cerebrovascular accidents, pneumonia, abdominal disorders, urinary tract infections, and fall-related injuries.⁷ The urgent nature of going to the emergency department for potentially life-altering illnesses differs greatly from the circumstances when a patient hand selects a physician for a scheduled elective treatment.

Older adults face great risk of harm from any rule limiting a hospital's vicarious liability for independent contracting physicians. Older adults are especially susceptible to adverse events during emergency department treatment because they are particularly vulnerable at the time they enter an emergency department. They often enter the hospital under frenzied circumstances and should not bear the burden of seeking out the employment status of their emergency department physician to ensure that they will have full legal recourse against the hospital if they are neglected or abused. Whether or not a boilerplate admission form is meaningful notice to a patient

⁵ <https://www.aarp.org/health/doctors-hospitals/info-2000/aresearch-import-546-2000-17.html>.

⁶ *See* Cal. Health Care Found., *Cal. Emergency Departments: Use Grows as Coverage Expands*, in Health Care Almanac (2018) at 15, <https://www.chcf.org/wp-content/uploads/2018/08/CAEmergencyDepartments2018.pdf>.

⁷ Lesley P. Latham, & Stacy Ackroyd-Stolarz, *Emergency Department Utilization by Older Adults: A Descriptive Study*, 17 *Can. Geriatrics J.* 118, 118 (2014).

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like Mr. Wicks, who seeks care in the emergency department of a hospital while in the throes of a medical emergency should be subject to an intense factual inquiry and not summarily dismissed. *See e.g., Cal. Advocates for Nursing Home Reform v. Smith*, 38 Cal. App. 5th 838, 871 (2019) (concluding that written notice alone is sometimes inadequate to provide meaningful notice). Public policy precludes hospitals from securing an automatic exculpatory release as a condition of emergency treatment. *Tunkl v. Regents of University of Cal.* (1963) 60 Cal.2d 92, 101.

Conclusion

The Court should grant the petition for review to resolve the important issue of what is meaningful notice.

Respectfully submitted,
AARP & AARP Foundation

/s/ Barbara Jones

By: Barbara Jones, SBN 88448

Enc. Proof of Service

PROOF OF SERVICE

Wick, et al. v. Antelope Valley Healthcare District
S262977

Appellate Case No. B297171
Los Angeles County Superior Court Case No. MC027302

I, Barbara Jones declare:

At the time of service I was over 18 years of age and not a party to this action. My business address is 601 E Street, N.W., Washington, D.C. 20049.

On August 12, 2020, I served the following document described as:

AMICUS LETTER IN SUPPORT OF REVIEW

on all interested parties in this action in the manner designated below at the address(es) set forth in the service list attached hereto:

[X] ImageSoft TrueFiling (TrueFiling) – I caused service through the Court’s electronic filing system by filing the document(s) via TrueFiling (Pursuant to California Rules of Court 8.70).

[X] U.S. Mail – I caused service on those who are not registered with TrueFiling.com via first-class U.S. Mail, postage thereon fully prepaid, and deposited in a mailbox regularly maintained by the United States Postal Service in Redwood City, California.

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

Executed on August 12, 2020, at Redwood City, California.

/s Barbara Jones
Barbara Jones

SERVICE LIST

<p><i>Via TrueFiling</i> David Oeran, Esq. La Follette, Johnson, DeHaas, Fesler & Ames 865 South Figueroa St. Ste. 320 Los Angeles, California 90017 <i>Counsel for Defendant- Respondent Antelope Valley Healthcare District dba Antelope Valley Hospital</i></p>	<p><i>Via TrueFiling</i> Steven B. Stevens Philip Michels Law Offices of Michels & Lew 11755 Wilshire Boulevard, Suite 1300 Los Angeles, CA 90025 sstevens@michels-lew.com pmichels@michels-lew.com <i>Attorneys for Plaintiffs- Appellant Marline Wicks and Bethanie Wicks</i></p>
<p><i>Via TrueFiling</i> Supreme Court of California 350 McAllister Street San Francisco, California 94102</p>	<p><i>Via TrueFiling</i> Court of Appeal Second Appellate District (Via True Filing, pursuant to CRC 8.70-8.79, 8.212)</p>
<p><i>Via U.S. Mail</i> Hon. Randolph A. Rogers Superior Court for the County of Los Angeles Department A15 42011 4th Street West Lancaster, California 93534</p>	