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PERSPECTIVE

California Supreme Court Review: August 2023

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This month's column looks at two industry-specific cases: Q*uishenberry v. United-Healthcare, Inc.*, which evaluates preemption under Medicare Part C (and preemption more broadly); and *HNHPC v. Department of Cannabis Control*, which defines the track and trace requirements of the Department of Cannabis Control. Companies in the healthcare and cannabis industries–and the lawyers representing them–will want to read on.

Quishenberry v. UnitedHealthcare, Inc. , S271501 (California Supreme Court) (decided July 13, 2023)

In *Quishenberry v. UnitedHealthcare, Inc.*, 532 P.3d 239 (2023), the California Supreme Court considered whether Medicare Part C preempts state-law statutory and common law claims. In a decision issued on July 13, 2023, the California Supreme Court held that yes, "state-law duties that incorporate and duplicate standards established under Part C" are preempted. *Id.* at 241.

Quishenberry brought common law negligence and wrongful death claims alongside a state statutory claim for elder abuse after his father, who was enrolled in a Medicare Advantage plan under Medicare Part C, died following allegedly inadequate treatment. *Id.* at 241-43. Part C contains a preemption provision providing that the "standards established under" Part C "shall supersede any State law or regulation" concerning Medicare Advantage plans. *Id.* at 243-44; 42 U.S.C. § 1395w-26(b)(3). The trial court sustained, and the appellate court affirmed, Defendants demurrer to the complaint, holding that Part C's preemption provision preempted *Quishenberry*'s claims.

In a unanimous decision, the California Supreme Court agreed, holding that the "plain language" of the Part C preemption clause indicates intent to preempt "any" state-law duty "with respect to [Medicare Advantage] plans." *Quishenberry*, 532 P.3d at 244, 245.

The holding of *Quishenberry* will likely drastically limit the type of state-law claims that enrollees in Medicare Part C can bring. Moving forward, it appears that these claims will be preempted by federal law, precluding recovery based on common-law claims, like negligence, or state-law statutory claims, like elder abuse. This will likely simplify the defense of cases brought by Part C insureds against medical providers, providing a strong basis for demurrer. Meanwhile, *Quishenberry* will complicate recovery for Medicare Advantage enrollees.

Quishenberry also indicates broader movement in California towards accepting federal preemption. The California Supreme Court expressly declined to apply a presumption against preemption, *id.* at 243 n.3, which could operate in future cases as a thumb on the scale in favor of federal preemption, potentially in cases beyond the Medicare context.

HNHPC v. Dept. of Cannabis Control, G061298 (Fourth District Court of Appeal) (decided Aug. 2, 2023)

In *HNHPC v. Department of Cannabis Control*, – Cal. Rptr. 3d –, 2023 WL 4921857 (G061298), the Fourth District Court of Appeal considered whether the lower court erred in dismissing a request for writ of mandamus and injunctive relief from a licensed cannabis dispensary that alleged that the Department of Cannabis Control (DCC) violated the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) when the DCC failed to establish an electronic track and trace system that flags irregularities. *Id.* at *1-2. HNHPC alleged that the DCC's failure to implement a track and trace system flagging irregularities led to an "exponential rise" in cannabis laundering and evasion of state tax and cannabis laws. *Id.* at *2.

In dismissing HNHPC's complaint, the trial court took judicial notice of DCC contracts with entities hired to establish the system and an associated budget request, holding that these documents were enough to show that the DCC had upheld its duty under MAUCRSA. *Id.* at *3-4.

The Court of Appeal reversed the trial court's dismissal, holding that MAUCRSA requires the DCC to create an electronic database that flags irregularities, not just contract to do so, and that "full performance and completion of the contract per its terms ... is openly in dispute." *Id.* at *6.

The cannabis industry will want to closely watch this case as it is picked up again in trial court. An injunction clarifying and defining the DCC's obligation to establish a track and trace system could help to protect licensed dispensaries against cannabis laundering and illegal black market activity. With recent reports estimating that 2/3 of cannabis sales in California are illegal, greater regulation could shift cannabis activity into legal avenues, creating more business for licensed dispensaries.

At a broader level, the Court of Appeal's decision in *HNHPC* represents a sharp arrow in the quiver of any industry or individual hoping to challenge a stage agency's implementation of its duties. A contract that would hypothetically fulfill an agency's regulatory requirements could potentially not be enough to stave off an injunction; instead, courts will possibly now look to whether the agency has *de facto* carried out its duties.

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