PROPOSED TENTATIVE

The court will detail the procedural background of the case, the allegations in the complaint, and the arguments advanced by both sides as they relate to the demurrers and motions to strike. The court will thereafter explore the requests for judicial notice made by defendants and comment on the plaintiff's exhibits attached to the opposition. It will then *separately* address the challenges made to each of the two causes of action at issue, identify the relevant legal principles that frame the inquiry for each cause of action, and assess the merits of the challenges advanced where appropriate. The court will finish with a summary of its conclusions.

A) Procedural Background, Allegations in the Complaint, the Demurrer and Opposition

On June 17, 2024, plaintiff in propria persona filed a first amended pleading against defendants Dignity Health (dba Marian Regional Medical Center) (Dignity Health), Dr. Christina Brooke Walker (Dr. Walker), Community Health Centers of the Central Coast, Inc., Dr. George Martins Cury, and nurse Lisa Michelle Madala, advancing five causes of action (the face sheet of the first amended complaint only lists three causes of action), as follows: 1) fraud (against defendants Community Health Centers of the Central Coast and Lisa Michelle Madala); 2) intentional infliction of emotional distress (against defendants Community Health Centers of the Central Coast and Lisa Michelle Mandala); 3) negligent infliction of emotional distress (against defendants Community Health Centers of the Central Coast and Lisa Michelle Mandala); 4) fraud (against Dignity Health and Dr. Walker); and 5) intentional infliction of emotional distress (against Dignity Health and Dr. Walker). According to the operative pleading, plaintiff suffers from Amyotrophic Lateral Sclerosis (ALS). Only the latter two causes of action are at issue in the demurrers and motions to strike on calendar.

In the chain pleading portions of the first amended complaint, plaintiff details a number of visits to defendant medical facilities, beginning in October 2019. On May 29, 2023, after a slip and fall, he went to the emergency room at Marian Regional Medical Center, where his blood pressure was determined to be "233/125mm Hg"; plaintiff was refused blood pressure control pills, and plaintiff left after a 5-hour wait when no treatment was provided.

On May 31, 2023, plaintiff, feeling unwell, went to an urgent care clinic at Santa Maria Med Plus Central Coast (a Walk-In Clinic of Pacific Central Coast Health Centers). At this time his blood pressure was determined to be "232/134 mm HG." He was again refused blood pressure medication, and the staff physician insisted that plaintiff be transported to the nearest emergency room. Plaintiff agreed, and he was transported to Marian Regional Medical Center. Plaintiff received a "tablet to stabilize his blood pressure," and was discharged with his consent "without any emergency diagnoses."

On June 1, 2023, plaintiff went to CHC Arroyo Grande – Walk-In Clinic of Community Health Centers of the Central Coast, Inc, in Arroyo Grande. The nurse on duty was Lisa Michelle Madala, who measured plaintiff's blood pressure, which was "240/110 mm Hg." His high blood pressure was recorded. It was recommended that plaintiff go to the nearest emergency room, but he refused, asking for a "pill to lower his blood pressure as soon as possible," which was denied. Plaintiff was removed from the facility by security.

Apparently later on June 1, 2023 (this is the critical event for purposes of the demurrers and motions to strike before the court), plaintiff's wife took him to the emergency room at Marian Regional Medical Center, where his blood pressure was initially determined to be "207/115 mm Hg." Dr Walker was on duty, and, according to plaintiff, after reviewing his medical records, was "dismissive" of his complaints. Plaintiff alleges: "Her skepticism and hostility towards Plaintiff was expressed in the fact that she copy-pasted in the records the phrase which her colleague [from an earlier visit] wrote in the records . . . : 'Goes on to say that he has a history of ALS.' Dr. Walker chose not to record the presence of neurological pathology in Plaintiff's [medical records], [who is] a neurologically disabled person with a bilateral foot drop, reduced muscle mass on the right arm and both legs and other visible signs of neurological deficit." When additional blood pressure measurements were taken, they revealed "extremely high numbers: 250/129 mmHg, 262/134 mmHg[,] 268/135 mmHg. Plaintiff thought all of these numbers were being recorded by the nurses and reported to the physician. [] Plaintiff's wife, Victoria Shtein, who was with him all this time, took several photographs of [] Plaintiff's face against the background of the monitor of the blood pressure measuring machine. . . ." Those pictures are included in the operative pleading. Plaintiff "asked the nurse to record his unusually high blood pressure readings in the medical record and bring it to the physician's attention. The nurse assured the Plaintiff that all blood pressure readings would be properly recorded and reported to the physician . . ." No one gave plaintiff an injection, which is what he expected. "All of this ended with the issuance of prescription to the Plaintiff for anti-hypertensive drug Amlodipine and discharging him with his consent . . . ." After discharge, plaintiff received and reviewed the medical records from this visit, and he discovered "that the emergency room team . . . failed to record Plaintiff's true blood pressure readings. The records only revealed plaintiff's blood pressure reading upon arrival, which was 207/115 mmHg. The huge, life-threatening readings 250/129 mmHg, 264/124 mmHg and 268/135 mmHg were not recorded in the hospital records."

In paragraph 33 of the first amended complaint, plaintiff makes the following allegations as relevant for our immediate purposes: "The above falsification of medical records by non-recording exceptionally high blood pressure readings after multiple measurements is a deliberate fraud, committed for the purpose of avoiding liability for causing harm to a patient. This is not medical malpractice (that is, negligence), but an intentional tort." Plaintiff offers pictorial evidence of the high blood pressure readings on page 13 of the operative pleading (the first

picture indicates "250/129 mm Hg"; the second picture "164/134 mm Hg"; and the third picture "268/135 mm HG").

As to the fourth cause of action for fraud (with only Dignity Health and Dr. Walker as the named defendants stemming from the June 1, 2023, visit), plaintiff contends that defendants committed "fraud by falsifying medical records in which they did not record critically high blood pressure." He alleges this omission was intentionally done, was a mistake, and both "must be jointly and severally liable for this fraud . . . ."

As to the fifth cause of action for intentional infliction of emotional distress (again with only Dignity Health and Dr. Walker as the named defendants stemming from the June 1, 2023, visit), plaintiff claims that by "falsifying medical records, [defendants Dignity Health and Dr. Walker] knew that their deception was causing severe emotional distress to a neurologically disabled patient. They were aware of the nature of the disabled patient's chronic illness and they knew that the plaintiff has slipped and fallen on a concrete floor two days prior to the incident." By failing to include the heightened/elevated blood pressure results, defendants' conduct was intentional or reckless, was outrageous, and caused severe emotional distress.

Plaintiff seems to request punitive damages as to both the fourth and fifth causes of action, as alleged in paragraph 67 of the first amended complaint ["Therefore, [the] Complaint at the stage of its filing contains a demand for Punitive Damages as to most of the defendants. . . ."] and the Prayer for Relief [{$150,000 in punitive damages'].)

B) Defendant's Arguments and Plaintiff's Opposition

Dignity Health and Dr. Walker have each filed separate demurrers, challenging the fourth and fifth causes of action, as well as separate motions to strike, challenging the request for punitive damages (and other allegations as least in the motion filed by Dignity Health).

As for her special demurrer, Dr Walker contends that the fraud cause of action is fatally uncertain. As for her general demurrer to the fraud cause of action, Dr. Walker claims, first, that plaintiff has failed to plead facts with sufficient specificity, and in any event, the fraud cause of action is in reality a refashioned claim for medical negligence, which California courts have precluded. (See, e.g., *Stone v. Foster* (1980) 106 Cal.App.3d 334, 347 [claim of fraud did no lie based on allegations that a physician had failed to advice a patient of the "low probability' risks inherent in the operation – negligence was the appropriate cause of action]; *People v. Taylor* (1961) 191 Cal.App.2d 266, 271 ["even though the plaintiff alleges false representations on the part of the physician or fraudulent concealment, our courts have always treated the action as one for malpractice"].) Dr. Walker also contends that as to the fifth cause of action for intentional infliction of emotional distress, plaintiff has failed to allege specific facts that show the conduct

at play was outrageous, and further, plaintiff has failed to allege facts to show severe emotional distress.

Dignity Health in its demurrer to the fourth cause of action for fraud echoes the claims advanced by Dr. Walker, emphasizing that the cause of action really sounds in negligence, not fraud, underscoring the argument by observing that failure to record information in a patient's medical charge is measured against a professional standard of care associated with negligence. It emphasizes additionally that plaintiff has failed to allege specific facts to support fraud, arguing particularly that there is no causal relationship between any alleged falsity and damages. Dignity Health's challenges to the fifth cause of action for intentional infliction of emotional distress mirror those advanced by Dr. Walker, insisting that any misconduct was not "outrageous," and also arguing there are no facts to support plaintiff claim that he suffered severe emotional distress. Dignity Health supplements the arguments by contending that plaintiff has failed to allege sufficient facts of intent or recklessness.

Dr. Walker's motion to strike asks the court to strike all references to punitive damages. Although plaintiff is advancing medical negligence in the guise of fraud, opines Dr. Walker, plaintiff is still required to meet the requirements of Code of Civil Procedure section 425.13, subdivision (a) even if the intentional tort characterization survives. (*Central Pathology Service Medical Interest, Inc. v. Superior Court* (1992) 3 Cal.4th 181,192 [identifying a cause of action as an "intentional tort" as opposed to negligence does not itself remove the claim from the requirements of this statutory provision].) This provision provides that "in an action for damages arising out of professional negligence of a health care provider,[1] no claims for punitive damages shall be included in a complaint or pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed." No court order has been secured. Dr. Walker alternatively claims that plaintiff has failed to allege sufficient acts to support malice, oppression or fraud under Civil Code section 3294, subdivision (a).

Dignity Health's motion to strike asks the court to strike not only all requests for punitive damages, but also paragraphs 7 to 12 [describing the main source of incomes and compensation rates, including tables], paragraph 24 [describing plaintiff's medical training and past experiences with his blood pressure takings], paragraphs 38-40 [a number of Health and Safety Code statutory provisions, including sections 1317, 1317.1, and 1319.6] as irrelevant. Dignity

---

1 Code of Civil Procedure section 425.13, subdivision (b) defines "health care provider" as "any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider." It is undisputed that Dr. Walker and Dignity Health are both "health care providers" under this provision.

Health's arguments concerning punitive damages mirror those advanced by Dr. Walker, except it claims that plaintiff has failed to allege compliance with Civil Code section 3294, subdivision (b), which discusses the requirements for punitive damages against a corporate employer, such as defendant.

Plaintiff filed a joint opposition to both the demurrers and motions to strike. He claims he has stated sufficient facts to support both fraud and intentional infliction of emotional distress causes of action (p. 2.) Plaintiff's opposition in fact reads like a manifesto of discontent. He claims that falsifying "medical records by concealing a patient's huge blood pressure helps dishonest healthcare providers who do not want to treat a patient they don't like, escape liability for misdiagnosis and mistreatment in the event of the patient's death." As for punitive damages, plaintiff seems to acknowledge the import of *Central Pathology Service Medical Clinic, Inc*. (i.e., that a court order is required for punitive damages even when an intentional tort is alleged (see, e.g., *Divine Plastic Surgery, Inc. v. Superior Court* (2022) 78 Cal.5th 972, 984), but claims it would be premature to grant the motion to strike. Plaintiff has submitted his own declaration as well as Exhibits A through G (although he has made no request for judicial notice), and references the exhibits throughout his opposition.

Dignity Health filed a reply to the demurrer and a reply to the motion to strike. It also filed eight evidentiary objections to plaintiff's exhibits attached to his opposition. All briefing has been examined.

C) Defendants' Requests for Judicial Notice/Admissibility of Plaintiff's Exhibits

1) Requests for Judicial Notice

Dr. Walker has filed a single request for judicial notice (as to both her demurrer and motion to strike), asking the court to judicially notice the following documents: plaintiff's first amended complaint in this matter. The court grants this request as it is unopposed.

Dignity Health has filed separate requests for judicial notice for the demurrer and motion to strike (i.e., both under separate cover), requesting the court judicially notice the following documents: 1) the complaint filed in this matter; 2) the first amended complaint in this matter; and 3) a June 13, 2022, order written by United States District Court Judge Michael Fitzgerald, from the Central District of California in *Shtein v. Dignity Health,* Case No. CV-20-9800MWF (ARGx), granting Dignity Health's motion for summary judgment/summary adjudication.[2]

[2] Neither defendant makes much use of this federal district order to support the demurrers and motions to strike. This perhaps is not surprising because the events at issue in this action occurred on June 1, 2023, long after the federal district court's order, which is dated on June 13, 2022. While one could question the relevance of this order for our purposes because plaintiff does not oppose the request for judicial notice, the court will grant

These documents are included as exhibits to the demurrer/motion to strike. The court grants the unopposed requests for judicial notice.

2) Plaintiff's Exhibits Attached to Opposition/Dignity Health's Evidentiary Objections

The court feels obligated to comment on plaintiff's exhibits A to G, attached to his opposition. Plaintiff has attached to his declaration in opposition the following exhibits: 1) Exhibit A, consisting of correspondence between plaintiff and Dignity Health regarding disclosure of the name of the nurse who measured plaintiff's blood pressure on June 1, 2023; 2) Exhibit B, consisting of correspondence with Dr. Walker, similar to that contained in Exhibit A; 3) Exhibit C, plaintiff's administrative grievance, dated April 12, 2024, addressed to Dignity Health, and relevant regulatory agencies and organizations involved in the incident; 4) Exhibit D, a statement of deficiencies and plan of correction adopted by the Department of Public Health upon investigation of plaintiff's complaint, attached to a letter sent to defendants; 5) Exhibit E, consisting of online publications regarding shortage of health care providers in the Dignity Health care system, including press releases; 6) Exhibit F, consisting of a declaration of Victoria Shtein (plaintiff's wife), who took the photographs of plaintiff's blood pressure readings; and 7) Exhibit G, a "Patient Rights and Responsibilities" ratified by Dignity Health. Plaintiff does not ask the court to take judicial notice of any of these documents – he simply attaches them to the opposition.

It is settled that for purposes of demurrer, the court is limited to testing the legal sufficiency of the complaint as well as facts that have been judicially noticed. (*Iram Enterprises v. Veditz* (1981) 126 Cal.App.3d 603, 608; *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.) The same is true for motions to strike. Plaintiff has not asked the court to take judicial notice of any of these documents, although it seems evident in any event that Exhibits A, B, C, E, F, and G are *not* documents subject to judicial notice, as they contain disputed issues of fact material to this lawsuit; accordingly, the documents in these exhibits have not been examined or relied upon by the court in assessing the merits of either motion before it.

The only documents that come close to being an appropriate subject of judicial notice are those contained in Exhibit D, which consists of a July 2, 2024, letter from the California Department of Public Health, addressed to plaintiff, indicating that it substantiated plaintiff's complaint that defendants failed to record all blood pressure readings on June 1, 2023; as well as the California Department Of Public Health's "Statement of Deficiencies and Plan of Correction." The court will take judicial notice of the letter, the "Statement of Deficiencies," and the "Plan of Correction," on its own motion, pursuant to Evidence Code section 452(b), which

---

defendants' request. For the record, the federal district court ordered played no meaningful role in the court's examination of the merits of defendants' demurrers and motions to strike.

permits judicial notice of official acts of any executive department of California.[3] (See, e.g., *Rodas v. Spiegal* (2001) 87 Cal.App.4th 513, 518 [official acts include records, reports and orders of administrative agencies, which are official acts]; *Hogan v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125 [same]; see *Travelers Indemnity Co. v. Gillespie* (1990) 50 Cal.3d 82, 96 [letters from state agency are property subject of judicial notice].) Of course, the court is not taking judicial notice of the truth of the contents of the documents in Exhibit D, only the fact the documents in Exhibit D exist as an official act of a governmental agency. (See, e.g., *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 [judicial notice of public records proper but not truth of matters stated in records].)

In light of this, the court sustains Dignity Health's evidentiary objection Nos. 1, 2, 3, 4, 6, 7 and 8. It overrules Dignity Health's evidentiary objection No. 5 to Exhibit D, as the court is taking judicial notice of the existence of the documents on its own authority.

D) Demurrers

1) Fifth Cause of Action for Fraud

The elements of a claim for fraud and deceit based upon concealment are as follows: (1) defendants concealed or suppressed a material fact; (2) where the defendant was under a duty to disclose the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, that is, to induce reliance; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the

---

[3] Defendant claims in its evidentiary objections that Exhibit D is inadmissible under Health and Safety Code section 1280, subdivision (f), citing *Nevarrez v. San Marino* (2013) 221 Cal.App.4th 102. This statutory provision provides that "the act of providing a plan of correction, the content of the plan of correction, or the execution of a plan of correction be used in any legal action or administrative proceeding as an admission within the meaning of Sections 1220 to 1227, inclusive, of the Evidence Code against the health facility, its license, or its personnel." Evidence Code section 1220 to 1227 involve exceptions to hearsay rule based on statements offered against a party opponent (1220), adoptive admissions (1221), authorized admission (1222), co-conspirator statement (1223), statement of declarant whose liability, obligation, or duty is in issue (1224), statement of declarant whose right, title, or interest in property is in issue (1225), statement of a child in parent's action for child child's injury (1226), and statement of deceased declarant in wrongful death action (1227). Exhibit D is not being offered under any of these hearsay exceptions, but as a record of a government agency, a far more limited purpose. The documents are being used to establish the fact that a ***possible*** violation occurred with regard to the blood pressure measurements only for purposes of addressing plaintiff's claim that the alleged omissions can constitute outrageous conduct. They are not being used to establish liability or to prove culpable conduct. And as noted in the end the court is not taking judicial notice of the truth of their contents, just the fact the records exists as an official act of the state executive agency.

Nothing in *Nevarrez v. San Marino Skilled Nursing & Wellness Centre, LLC*, undermines this conclusion. The court agrees that ***if*** the documents were being admitted for purposes of actual liability, they likely would be inadmissible. (*Id*. at p. 121 [the citation and plan of correction are inadmissible pursuant to Health & Safe. Code, § 1280(f) as admissions of a party, and are subject to exclusion as remedial measures pursuant to Evid. Code, § 1151 to prove negligence or culpable conduct].) They are instead used as a basis to explore whether outrageous conduct cannot be established as a matter of law (assuming for the sake or argument the omissions occurred as alleged) in order to survive demurrer. Nothing in *Nevarrez* suggests Exhibit D is inadmissible for that limited purpose. Accordingly, defendant's evidentiary objections to Exhibit D are overruled.

concealed or suppressed fact; and (5) resulting damages. (*Bank of America Corp. v. Superior Court* (2011) 198 Cal.App.4th 862, 870–871; *Lovejoy v. AT & T Corp.* (2001) 92 Cal.App.4th 85, 93.) Knowledge of falsity or scienter is an element of fraudulent concealment. (*OCM Principal Opportunities Fund v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 862–863 (*OCM Principal Opportunities Fund*).) Fraud must be pleaded with specific factual particularly. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 639.)

With this background, the court does not need to address all arguments advanced by both defendants in order to determine whether the fraud cause of action survives demurrer. For example, the court does not need to address any claim of uncertainty raised via special demurrer. It does not need to address whether plaintiff's fraud cause of action is actually masquerading as a medical negligence cause of action (and is thereby precluded as a matter of policy). Nor does it need to address whether plaintiff has failed to plead the elements of fraud with the required factual specificity under well-settled California pleading requirements. This is so because there is an obvious pleading defect to support the demurrer.

More precisely, in order to plead fraud (as distinguished from a cause of action in equity for rescission of contract on the ground of fraud), plaintiff must allege not only reliance but that, by reason of the fraud, plaintiff has ***suffered pecuniary damage in some amount***. (*Gold v. Los Angeles Democratic League* (1975) 49 Cal.App.3d 365, 374.) Our high court has been crystal clear in this requirement -- plaintiff must suffer ***actual monetary loss*** to recover on a fraud claim. (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1240; accord, *City of Vista v. Robert Thomas Securities, Inc.* (2000) 84 Cal.App.4th 882, 887 [for fraud, the resulting damage must be "actual monetary loss']; *Empire West v. Southern California Gas Co.* (1974) 12 Cal.3d 805, 810, fn. 2.) Deception without resulting pecuniary loss is not actionable fraud. (*Service by Medallion, Inc v. Clorox* (1996) 44 Cal.App.4th 1807, 1818 [whatever form it takes, the injury damage must not only be distinctly alleged by its causal connection with the reliance on the [concealment] must be shown].)[4] Emotional distress resulting from fraud is not compensable unless it is accompanied by actual economic injury, because actual monetary loss is an essential element of a fraud cause of action. As noted in Witkin, a seminal authority on California law, "Fraud is not actionable unless it results in some injury; hence, injury or damage is an essential element of the cause of action. In the tort action the injury is pecuniary damage; in an action based on rescission the injury may be the undesirable contract that would not have been made except for

[4] "There are two measures of damages for fraud: out of pocket and benefit of the bargain. [Citation.] The 'out-of-pocket' measure of damages 'is directed to restoring the plaintiff to the financial position enjoyed by him prior to the fraudulent transaction, and thus awards the difference in actual value at the time of the transaction between what the plaintiff gave and what he received. The "benefit-of-the-bargain" measure, on the other hand, is concerned with satisfying the expectancy interest of the defrauded plaintiff by putting him in the position he would have enjoyed if the false representation relied upon had been true; it awards the difference in value between what the plaintiff actually received and what he was fraudulently led to believe he would receive.' " (*Alliance Mortgage, supra*, at p. 1240.) There are no allegations made to support either form of monetary loss.

the fraud. Whatever form it takes, the injury or damage must not only be distinctly alleged but its causal connection with the reliance on the representations must be shown. This is ordinarily a simple matter, but sometimes – because of faulty pleading . . . the pleading fails in this element." (5 Witkin, California Procedure (6th ed. 2025 Supp.), § 728.)

Witkin has presaged the exact problem here, for plaintiff has not alleged pecuniary damage and reliance, an omission that is generally fatal to recovery. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43 ["Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show the complaint alleges facts sufficient to establish every element of each cause of action. If the complaint fails to plead, or if the defendant negates, any essential element of a particular cause of action, this court should affirm the sustaining of a demurrer"].) Further, there is no indication that plaintiff can actually plead a pecuniary loss, and, notably, that any assumed fraudulent concealment of his blood pressure readings by failing to place them in his medical records was reasonably relied upon in causing any pecuniary loss. (*Blankenheim v. E.F. Hutton & Co*. (1990) 217 Cal.App.3d 1463, 1475.) It is settled that whether a party's reliance was justified may be decided as a matter of law if reasonable minds can come to only one conclusion based on the facts. (*Guido v. Koopman*, *supra*, 1 Cal.App.4th at p. 843.)" (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1239.) That is the case here; the court cannot envisage what possible pecuniary loss plaintiff suffered even assuming possible reliance on the omission as alleged. As plaintiff does not address this problem in opposition, the court will sustain the demurrer to the fraud cause of action *without leave to amend*.[5]

2) Sixth Cause of Action for Intentional infliction of Emotional Distress

The elements of a cause of action for intentional infliction of emotional distress are as follows: (1) defendant engaged in extreme and outrageous conduct with the intent to cause, or with reckless disregard to the probability of causing, emotional distress; and (2) as a result, plaintiff suffered extreme or severe emotional distress. (*Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1273.) Conduct, to be outrageous, must be ***so extreme*** as to exceed all bounds of that usually tolerated in a civilized society. In order to avoid demurrer, plaintiff must allege with great factual specificity the acts which he believes are so extreme as to exceed all bounds of that usually tolerated in civilized community. (*Yau v. Santa Margarita Ford, Inc*. (2014) 229 Cal.App4th 144, 160-161.) Further, our high court has made it clear that liability for intentional infliction of emotional distress involves an intent to inflict injury or a realization that injury will result. The tort does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051.) Finally,

[5] The same conclusion would apply to a potential negligent misrepresentation cause of action, which is a subspecies of the tort of deceit. Justifiable reliance and actual monetary loss are also essential elements of a claim for negligence misrepresentation. (*Alliance Mortgage, supra,* 10 Cal.4th at p. 1239, fn. 4.) Accordingly, the same reasons that preclude a fraud cause of action would also preclude this possible variation.

"'[s]evere emotional distress means " 'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.' " ' " (*Ibid.*) Whether behavior is extreme and outrageous is a legal determination to be made by the court, in the first instance. (*Faunce v. Cate* (2013) 222 Cal.App.4th 166, 172.) More specifically, it is for the court to determine in the first instance whether the defendant's conduct may reasonable be regarded as so extreme and outrageous as to permit recovery. (*Fowler v. Varian Associates, Inc*. (1987) 196 Cal.App.3d 34, 44.)

The court (again) does not need to address all arguments advanced by defendants in assessing the demurrers, for two grounds appear dispositive.

First, there are no allegations in the operative pleading that support plaintiff's claim that defendants' conduct – orally providing results of the elevated blood pressure readings but failing to record them in plaintiff's medical record – is so outrageous and extreme <u>*as to exceed all bounds of that usually tolerated in a civilized community.*</u> (See, e.g., *Garamendi v. Golden Eagle Ins. Co*. (2005) 128 Cal.App.4th 452, 480 [demurrer properly sustained for lack of showing of extreme and outrageous conduct].) A comparison with the facts in *Hughes v. Pair* indicates why this is appears true as a matter of law.

The *Hughes* court found plaintiff could not advance a claim of intentional infliction of emotional distress on summary judgment. (*Hughes, supra,* 46 Cal.4th at p. 1050.) In *Hughes,* defendant was one of the trustees of a trust established by the plaintiff's ex-husband, before his death, for the benefit of his and plaintiff's son. Plaintiff asked that the trustees approve her request that the trust provide money for the two-month rental of beach house in Malibu. (*Id.* at p. 1039.) The trustees denied the request, but approved money to cover a one-month rental. Approximately five days after the trustees conveyed this information to plaintiff's attorney, plaintiff received a telephone call from defendant, to whom she had not spoken for at least three years. Defendant said he was calling to invite plaintiff's son, who was then 13 years old, to accompany him and his nine-year-old son to a private showing of the King Tut exhibit that evening at the Los Angeles County Museum of Art. The sponsor of the event was an investment bank, Goldman Sachs, which managed the assets of the son's trust. During the conversation, defendant called plaintiff "sweetie" and "honey," and said he thought of her "in a special way, if you know what I mean." When plaintiff asked why the trustees had authorized payment for the Malibu house rental for just one month, defendant suggested that he could be persuaded to cast his vote for an additional month if plaintiff would be "nice" to him. Defendant added: "You know everyone always had a thing for you. You are one of the most beautiful, unattainable women in the world. Here's my home telephone number and call me when you're ready to give me what I want." Responding to plaintiff's retort that his comments were "crazy," defendant said: "How crazy do you want to get?" "That evening, plaintiff took [the son] to the private showing at the museum. Defendant was there with his son. After greeting [the son], defendant told plaintiff: 'I'll get you on your knees eventually. I'm going to f[*****] you one way or another.' " (*Id.* at p. 1040.) The *Hughes* court stated that "this crude statement, considered in the

context in which it allegedly was made, is most reasonably construed as a threat that, unless plaintiff granted him sexual favors, he would use his authority, as a trustee of the trust set up for plaintiff's son Alex, to deny plaintiff's requests for funds." (*Hughes*, *supra*, 46 Cal.4th at p. 1050.) Nevertheless, the *Hughes* court unanimously held that "defendant's inappropriate comments ***fall far short*** of conduct that is so 'outrageous' that it ' " ' exceed[s] all bounds of that usually tolerated in a civilized community.' " ' " (*Id.* at p. 1051, emphasis added.)

The conduct at issue here seems of the same quality as the conduct at issue in *Hughes.* Were defendants' acts inconsiderate as alleged? Arguably. Were they annoying, inconvenient, and less than complete? Again, arguably so. But context is critical. Here, defendants took plaintiff's blood pressure measurements in his presence, and plaintiff was obviously aware of the results. Plaintiff and his wife were allowed to take pictures of the results. And there is no allegation that medical services were negligent, or that the medical treatment administered to address plaintiff's hypertension was less than the appropriate standard of care. Moreover, and perhaps most significantly, there is no claim that the supposed falsified medical records based on omission were used for purposes of terminating plaintiff's medical care or medical coverage, or terminating disability payments. That is, there is nothing offered here to suggest the medical records actually generated by defendants were used in an untoward way or with any actual deleterious consequence to plaintiff.

These acts are dissimilar to the acts at issue in *Younan v. Equifax, Inc.* (1980) 111 Cal.App.3d 498, and *Little v. Stuyvesant Life Ins. Co.* (1977) 67 Cal.App.3d 459, not cited by the parties, in which both appellate courts found plaintiff had stated a cause of action for intentional infliction of emotional distress causes of action ***based upon defendants' falsification of medical records***. In *Little*, plaintiff brought an action against a group disability insurer for damages for intentional infliction of emotional distress, arising out of an insurer's termination of plaintiff's disability payments. The termination was based on examinations by physicians selected by the defendant who concluded defendant was not totally disabled. The physicians who made this decision, however, had not been supplied with all of plaintiff's medical records or reports. In discussing whether this could be deemed outrageous conduct, the *Little* court observed that plaintiff alleged defendants "purposely ignored the great bulk of medical information it had and withheld medical information from physicians it selected to examine plaintiff in the hopes of justifying its predetermined course of discontinuing disability payments benefits to plaintiff under the policy." (*Id.* at p. 462.) In *Younan*, plaintiff alleged that defendant Dr. Packer intentionally omitted test results "pursuant to his agreement with the other defendants to write a false report to be used in justifying a denial of plaintiff's claim for disability benefits. It cannot be said where the complaint alleges facts which show that noninsurer defendants worked with an insurer defendant to deliberately falsify medical records so as to provide a basis upon which to deny an insured's claim, does not amount to outrageous conduct . . . ." (111 Cal.App.3d at p. 516.) Nothing similar occurred here.

Plaintiff does reference in the operative pleading defendants' motives in allegedly falsifying the records by omission – he claims defendants did so for "the purpose of avoiding liability for causing harm to a patient." (¶ 33.) He also claims in opposition (on p. 9) that falsifying medical records "helps dishonest healthcare providers who do not want to treat a patient they don't like, escape liability for misdiagnosis and mistreatment in the event of the patient's death." These naked allegations are too speculative to support ***any*** reasonable inference that defendants were attempting to avoid liability by failing to record the three heighted blood measure readings. Of course, plaintiff has not died, and there is simply no nexus between any intent and harm or debilitating impact on plaintiff's medical care, insurance coverage, or disability coverage in any way, an obvious omission that stands in stark contrast to what occurred in *Little* and *Younan*. Fatally, plaintiff's claims here are undermined by other allegations made in the operative pleading. At one point plaintiff acknowledges that during his stay in the emergency room at Marian, he received a "prescription . . . for anti-hypersensitive drug Amlodipine," with a consensual discharge thereafter. That is, he seems to acknowledge that he received from the defendant the very treatment he contends would be precluded in the future by defendants' failure to memorialize his blood pressure measurements. And plaintiff makes it clear he is ***not*** challenging the quality of defendants' medical treatment at any time.

Plaintiff also indicates that defendants violated Health and Safety Code section sections 1317, subdivision (a), 1317.1, subdivision (a)(1) [defining "emergency services and care", 1317.6 [person who suffers personal harm as result of violation of article and regulations may recover damages], California Code of Regulations, title 22 section 70215(d), by failing to record his blood pressure measurements, and seems to argue that these violations alone and by themselves constitute a claim for outrageous conduct as result. It is true that Exhibit D in defendant's opposition may support these supposed violations, as there is a letter from the California Department of Public Health (the Department), as well as "Statement of Deficiencies and Plan of Correction," indicating the Department found defendants had failed to document all appropriate blood measure readings. For example, the Department's "Statement of Deficiencies" indicated that defendants documented plaintiff's initial blood pressure readings at 7:25 p.m., (which were 207/115 mm HG), although defendants failed to document any other blood pressure readings until 9:23 p.m.. The Department's "Plan of Correction" required defendants to conduct a vital sign assessment and reassessment frequency with a result greaten that 90% compliance by July 31, 2024; discuss and share in daily department huddles this event, and obtain new vital sign equipment with integrated data.

Yet these violations alone (and by themselves) do not and cannot establish a basis for outrageous conduct as the law currently sits. There must be more, which has not and cannot be pleaded, for the reasons detailed above. Indeed, if these violations were sufficient, ***any*** violation of a hospital policy, regulation or statute, by the very nature a violation had occurred, would automatically support a claim of outrageous misconduct, thereby turning every statutory or regulatory violation into a basis for intentional infliction of emotional distress. That is not the

law. Outrageous conduct contemplates conduct that is ***so extreme*** that it exceeds ***all bounds*** usually tolerated in a civilized society. Most statutory violations do not alone meet this elevated standard. Context and effectuation matter.

An explanation for this heightened standard emanates from a comment to the Restatement Second of Torts, section 46: ". . . ***It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' a degree of aggravation which would entitle the plaintiff to punitive damages for another tort***. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community . . ." (Restatement (Second) of Torts § 46, com. (d), emphasis added.) The violations here fall into the scope of the highlighted language; while they may be enough to advance a statutory violation, they are insufficient by themselves to state an independent cause of action for intentional infliction of emotional distress.[6] California case law is in full accord. (See, e.g., *Muraoka v. Budget Rent-A-Car, Inc.* (1984) 160 Cal.App.3d 107, 122 [while the facts pleaded may be sufficient to permit recovery of damages for the emotional distress resulting from defendant's tortious conduct, they are insufficient for plaintiff to state an independent cause of action for intentional infliction of emotional distress]; see also *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494 [conduct will be deemed outrageous where the recitation of the facts to an average member of the community would arouse resentment against the actor and lead him to exclaim "Outrageous"].)

Finally, plaintiff in opposition relies on *Moreau v. San Diego Transit Corp*. (1989) 210 Cal.App.3d 614, to support his claim that defendant's conduct was outrageous. (See p. 8 of Opp.) *Moreau* is inapposite. In *Moreau,* plaintiff advanced a claim of intentional infliction of emotional distress based on claims that his former employer (the San Diego Transit Corp.) entrapped him into selling drugs to a police informant during employment (plaintiff was ultimately acquitted or selling drugs in a criminal prosecution). The *Moreau* court acknowledged the appropriate standard – plaintiff must show extreme and outrageous conduct on the part of defendant. (*Id*. at p. 625.) Ultimately, the appellate court found that plaintiff's claims were preempted by federal law, "since it is necessary to determine whether Transit's participation in Moreau's entrapment and its discharge of him based on his entrapment exceeded all bounds of decency or instead constituted reasonable actions contemplated by the parties to fall within the 'just cause' provision of the collective bargaining agreement." The *Moreau* court went on to conclude that it "perceive[d] no indication whatsoever that parties to a collective bargain

---

[6] The Restatement provides the following example of possible outrageous conduct in a hospital setting. "A is in a hospital suffering from a heart illness and under medical orders that he shall have complete rest and quiet. B enters A's sick room for the purpose of trying to settle an insurance claim. B's insistence and boisterous conduct cause severe emotional distress, and A suffers a heart attack. B is subject to liability to A if he knows of A's condition, but is not liable if he does not have such knowledge." Nothing remotely similar occurred here.

agreement have been prevented by this state form entering into employment agreements which permit the use of entrapment as a basis for just cause for discipline or discharge of employees involved in on-premises drug usage or trafficking." (*Id.* at p. 625.) Nothing in *Moreau* aids plaintiff here.

In the end, plaintiff's allegations are a far cry from those in *Little* and *Younan.* Plaintiff's cause of action rests on possible future harm, the possibility of which is seemingly undermined by the allegations in the operative complaint that the medical treatment is not being challenged. The court finds as a matter of law that the violations as alleged by plaintiff alone and by themselves, while perhaps troubling, do not give rise to a finding of conduct so extreme as to go beyond all bounds of decency and utterly intolerable in a civilized community, meaning no jury could find they could be. The only thing the operative pleading establishes -- and can establish in the foreseeable future -- is a potential ***future claim*** for intentional infliction of emotional distress should there be some actual consequence stemming from the omissions allegedly made. No amendment can correct this deficiency. Leave to amend is therefore inappropriate under the circumstances. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081 [plaintiff has the burden of proving that there is reasonable possibility he or she can amend the complaint to cure the deficiency].) (Plaintiff will be given an opportunity to convince the court otherwise at the hearing.)

There is a second basis to support the demurrers, as plaintiff has not pleaded ***severe*** emotional distress as required for intentional infliction of emotional distress. Plaintiff claims perfunctorily in paragraph 61 of the operative that he suffered "severe emotional distress," but provides no facts in support. The complaint must plead specific facts that establish severe emotional distress resulting from defendant's conduct. (*Michaelian v. State Comp. Ins. Fund* (1996) 50 Cal.App.4th 1093, 1114.) Plaintiff has not done this.

Further, in the court's view, there is no reasonable possibility that plaintiff can plead ***severe*** emotional distress even if an amendment is allowed. The standard involves a "high bar." (*Hughes, supra*, 46 Cal.4th at p. 1051; see *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1376 [it is for the court to determine whether on the evidence severe emotional distress can be found; it is for the jury to determine, whether on the evidence, it has in fact existed].) Severe emotional distress does not include mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. It must be emotional distress of such substantial quality or enduring quality that no reasonable person in civilized society should be expected to endure it. (*Ibid*.) Severe emotional distress disrupts a person's life, causes physical symptoms such as heart palpations or panic attacks, or a mental health diagnosis such as depression or post-traumatic stress disorder. (*Wong, supra,* 189 Cal.app.4th at p. 1376-1377.) Because plaintiff has not – and cannot reasonably – allege outrageous misconduct that exceeds all bounds of that tolerated in civilized society, plaintiff cannot realistically plead the type of severe emotional distress required to survive demurrer. Plaintiff has not explained in opposition in what manner he can amend the complaint to allege severe emotional distress, and how that amendment will change the legal effect of the

current pleading. In fact, plaintiff ignores the issue entirely. Leave to amend under these circumstances seems inappropriate.[7] (Again, plaintiff will be given an opportunity to convince the court otherwise at the hearing.).

The court therefore sustains the demurrer as to the fifth cause of action for intentional infliction of emotional distress *without* leave to amend for these two reasons.

E) Motions to Strike

Because the court will sustain both demurrers without leave to amend as to the fourth and fifth causes of action, the court finds it unnecessary to address defendants' motions to strike.

In Summary:

- The court grants defendants' unopposed requests for judicial notice.
- The court reminds plaintiff that for purposes of a demurrer and motion to strike, the court is limited to the allegations of the complaint as well as documents that have been judicially noticed. There is no request for judicial notice. Further, plaintiff's Exhibits A, B, C, E, F and G (attached to the opposition) are not the proper subject of judicial notice, and thus have not been considered. The court on its own motion will take judicial notice of plaintiff's Exhibit D, and has considered it in assessing the merits of the demurrers. The court therefore sustains Dignity Health's evidentiary objections Nos. 1, 2, 3, 4, 6, 7, and 8, but overrules evidentiary objection No. 5 to Exhibit D.
- The court sustains both demurrers to the fifth cause of action for fraud because plaintiff has not pleaded a monetary or pecuniary loss (and thus reliance on any omission as a basis for the monetary loss). Leave to amend is denied because plaintiff cannot in reality amend the complaint to satisfy this requirement (the court will give plaintiff an opportunity to convince it otherwise at the hearing).
- The court also sustains both demurrers to the sixth cause of action for intentional infliction of emotional distress, for two reasons. First, plaintiff has not alleged that defendant's failure to memorialize all blood pressure readings constituted outrageous behavior under existing law. At best plaintiff has only pleaded a

[7] The court is aware that there is great liberality in assessing an operative pleading and in affording an opportunity for leave to amend. (See *AREI II Cases* (2013) 216 Cal.App.4th 1004, 1012; *Otay Land Co. v. Royal Indemnity Co.* (2008) 169 Cal.App.4th 556, 561.) The court is also aware that this is defendants' first challenge to plaintiff's pleading, a factor to be considered in the calculus. Where plaintiff has not had an opportunity to amend complaint in response to demurrer, "leave to amend is liberally allowed as a matter of fairness, *unless the complaint shows on its face that it is incapable of amendment*." (*City of Stockton v. Sup.Ct. (Civic Partners Stockton, LLC)* (2007) 42 Cal.4th 730, 747 [emphasis added].) Here, as the pleading has significant defects related to these requirements, underscored by the fact plaintiff has failed to address the deficiency in his briefing, which is his obligation, leave to amend seems unwarranted.

plead a possible future basis for intentional infliction of emotional distress, which is insufficient. Second, plaintiff has failed to allege severe emotional distress. Leave to amend as to both grounds is denied because it does not appear reasonably possible that plaintiff can allege severe emotional distress. (Plaintiff will be given an opportunity to convince the court otherwise at the hearing.)

- The court's decision concerning the demurrers obviates the need to address the merits of both motions to strike.
- Defendants are directed to provide a proposed order and judgment for signature.