Journal of Dispute Resolution

Volume 2011 | Issue 2 Article 11

2011

No Signature Needed: The Supreme Court of California Settles Precedent and Furthers the Goals of the Medical Injury Compensation Reform Act: Ruiz v. Podolsky

Meghan L. Travis

No Signature Needed: The Supreme Court of California Settles Precedent and Furthers the Goals of the Medical Injury Compensation Reform Act

Ruiz v. Podolsky[1]

I. INTRODUCTION

Astronomical increases in the cost of healthcare are nothing new in America. Ever-rising insurance premiums are a talking point for every politician, and it is hard to find a newspaper without at least one story discussing the tribulations of healthcare in the nation today. For citizens of California, the political discourse surrounding the ever-increasing costs associated with healthcare is an old story. The state of California has been struggling to remedy its healthcare crisis for almost forty years using a combination of legislative acts and judicial precedent. Much of this reform has been directed toward wrongful death litigation.

In *Ruiz v. Podolsky*,[2] the California Supreme Court ended the strife surrounding wrongful death claims when Rafael Ruiz (Ruiz), the decedent, executed a binding arbitration agreement.[3] The court was able to soundly support its decision on applicable legislation, case law and public policy after weaving its way through a turbulent mish-mash of contradictory precedent. This note will discuss: (1) California's attempt to decrease the cost of medical malpractice claims, (2) the ramifications of *Ruiz*'s allowing arbitration agreements to bind heirs, and (3) the differing approaches states have taken toward the application of binding arbitration agreements to beneficiaries.

II. FACTS AND HOLDING

On July 17, 2006, Ruiz visited the medical office of Dr. Anatol Podolsky for treatment of a fractured hip.[4] During this visit, both Podolsky and Ruiz signed a Physician-Patient Arbitration Agreement (Arbitration Agreement) that required arbitration of any malpractice claims brought by Ruiz and his heirs but gave Podolsky the ability to litigate any fee disputes.[5] The Arbitration Agreement was in accordance with California Code of Civil Procedure § 1295[6] and it required the

1. 237 P.3d 584 (Cal. 2010).
2. *Id.*
3. *See id.* at 586.
4. *Id.* at 586.
5. *Id.*
6. CAL. CIV. PROC. CODE § 1295 (West 2011). Section 1295 was enacted by the California Legislature as part of the Medical Injury Compensation Reform Act of 1975 in an attempt to combat skyrocketing medical malpractice insurance premiums, thus causing a medical crisis in the state. *See infra* § III.

parties to arbitrate all malpractice claims arising under the contract.[7] Additionally, the Arbitration Agreement required any wrongful death or loss of consortium claims to be arbitrated.[8] Ruiz died on July 25, 2006, as a result of blood clots from his hip fracture that became lodged in his pulmonary arteries.[9]

A year later, in July of 2007, Ruiz's wife Alejandra (Ruiz's wife), and their four children (the children),[10] filed medical malpractice and wrongful death claims against Ruiz's healthcare providers, including Podolsky.[11] The family alleged that Podolsky and the other healthcare providers failed to properly treat Ruiz's fractured hip and this failure caused complications that led to Ruiz's death.[12] In his answer, Podolsky included a copy of the Arbitration Agreement.[13] Podolsky then filed a petition to compel arbitration a few months later.[14] In response, Ruiz's wife acknowledged she was bound by the Arbitration Agreement.[15] However, Ruiz's wife, along with the children, argued that both the parties should be allowed to proceed in trial court because Ruiz's wife was the only party bound by the arbitration agreement.[16] They argued that allowing the case to be heard in court would be more efficient by preventing inconsistent verdicts, unnecessary delay, multiple actions, and duplicative discovery.[17] In response, Podolsky argued that along with Ruiz's wife, the children were "swept up" by the Arbitration Agreement as a result of the "one action rule" for wrongful death suits.[18]

At trial, the Superior Court of Orange County denied Podolsky's petition to compel arbitration regarding the children, but granted the petition to compel arbitration as to Ruiz's wife.[19] To address Ruiz's wife and the children's claim of possible inconsistent verdicts, the court stayed the action "pending resolution of

7. *Ruiz*, 237 P.3d at 586. The statute states: "that this agreement binds all parties whose claims may arise out of or relate to treatment or service provided by the physician including any spouse or heirs of the patient and any children, whether born or unborn, at the time of the occurrence giving rise to the claim."

8. *Id.* Section 1295(g)(2) states: "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital."

9. *Ruiz*, 237 P.3d at 586.

10. *Id.* The four children are Alejandro, Ana, Diana, and Samuel.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Ruiz*, 237 P.3d at 586.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* The one action rule is a long-standing rule in California that allows spouse to bind each other to arbitration agreements and once the spouses are bound the rule dictates that any adult children are swept up into the arbitration agreement for wrongful death suits. The rule is one of practicality and follows California law dictating that while wrongful death suits are independent actions, they are a single action by all heirs and the resulting lump sum of damages is split between the heirs based on their individual interest of loss as a result of the wrongful death. The showing of loss is to be presented at trial. *See* CAL. CIV. PROC. CODE § 377.60 (West 2011); *see also* Bruckner v. Tamarin, 119 Cal. Rptr. 2d 489, 491 (Cal. Ct. App. 2002).

19. *Ruiz*, 237 P.3d at 586.

arbitration."[20] Podolsky appealed the trial court's order denying arbitration as to the children.[21]

The California Court of Appeal for the Fourth District upheld the trial court's denial of the petition to compel arbitration as to the children.[22] In its opinion, the court reasoned that the children did not consent to the Arbitration Agreement and thus, could not be required to arbitrate.[23] The court also held that Ruiz's wife was bound to arbitrate via "the principles of equitable estoppel and invited error."[24] Podolsky filed a petition and was granted review by the Supreme Court of California.[25]

The court held that the arbitration agreement was enforceable under applicable California law and that the children were bound by the agreement, along with Ruiz's wife.[26] Podolsky argued the appellate court erred by not following clear precedent, ignoring the intent of the contracting parties, ignoring the effect of California Code of Civil Procedure Section 1295, and creating a conflict in case law.[27] In their answer, Ruiz's wife and the children argued the appellate court's holding clarified a conflict in case law and correctly found that the Arbitration Agreement between Podolsky and Ruiz did not bind the children.[28] The court reversed the appellate court's judgment and remanded, instructing the lower court to grant Podolsky's petition to compel arbitration of Ruiz's wife's wrongful death claim as well as the children's wrongful death claim.[29] In its holding, the *Ruiz* court relied primarily on section 1295, the legislative policy behind the enactment of MICRA and specific California precedent.[30] The Supreme Court of California held that the Arbitration Agreement could be enforced under California Code of Civil Procedure Section 1295 and that "a contrary holding would defeat Podolsky's reasonable contractual expectations."[31]

III. LEGAL BACKGROUND

Thirty-six years have passed since the inception of the Medical Injury Compensation Reform Act of 1975 (MICRA),[32] and, in this time, California courts have struggled to settle on a single interpretation of the act.[33] This section will focus on the policy considerations underlying MICRA and its interpretation, as

20. *Id.* The court set a deadline for when the arbitration needed to conclude and scheduled a post-arbitration status conference.

21. *Id.* The wife did not appeal the trial court's ruling.

22. *Id.* at 586-87.

23. *Id.* at 587. The court also found no reason to compel the children to arbitrate even though the wife was compelled to arbitrate.

24. *Ruiz*, 237 P.3d at 586.

25. *Id.* at 587.

26. *Id.* at 594-95.

27. Petition for Review, *Ruiz v. Podolsky*, 237 P.3d 584 (Cal. 2010) (No. S175204).

28. Answer to Petition for Review, *Ruiz*, 237 P.3d 584 (No. S175204).

29. *Ruiz*, 237 P.3d at 595.

30. *See id.* at 591-92.

31. *Id.* at 594-95.

32. *See* CAL. BUS. & PROF. CODE § 6146(c)(2)-(3) (West 2011); CAL. CIV. CODE § 3333.1(c)(1)-(2), § 3333.2(c)(1)-(2) (West 2011); CAL. CIV. PROC. CODE § 667.7(e)(3)-(4) (West 2011).

33. *See* Mormile v. Sinclair, 26 Cal. Rptr. 2d 725, 726-29 (Cal. Ct. App. 1994).

well as the subsequent case law in California and other states with similar statutory framework.

A. MICRA and Section 1295

MICRA was enacted by the California Legislature in reaction to a concerning shortage of medical malpractice insurance available within the state.[34] The alleged insurance crisis began when numerous insurance companies ceased to provide complete medical malpractice insurance coverage because of the ever-increasing costs associated with doing so.[35] Some companies completely stopped providing medical malpractice insurance, while others drastically increased premiums charged to doctors and hospitals.[36] As a result of the extreme cost of medical malpractice insurance, many doctors either refused to perform high-risk procedures or entirely withdrew from practicing medicine in California.[37] Other medical professionals chose to continue practicing, but they did not carry malpractice insurance.[38] Consequently, some areas of California only had access to limited medical care, and patients injured by uninsured doctors could no longer acquire enforceable remedies.[39] In alignment with the Governor's goals of remedying the health-care crisis in California, MICRA was an attempt to decrease the costs associated with medical malpractice claims while making the process more efficient.[40]

California Code of Civil Procedure section 1295[41] (section 1295) was enacted as part of MICRA to promote voluntary binding arbitration of medical malpractice claims and provide specific language for use in arbitration agreements between patients and medical professionals.[42] Section 1295 also requires that a notice be

34. Gross v. Recabaren, 253 Cal. Rptr. 829, 822-23 (Cal. Ct. App. 1988). The Governor of California called an extraordinary session of the Legislature on May 19, 1975 in an attempt remedy the alleged insurance crisis via legislative action. The Governor suggested the Legislature consider voluntary binding arbitration as mechanism to efficiently and judiciously settle medical malpractice claims without limiting patients' access to the courts.

35. *Ruiz*, 237 P.3d at 587.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. Am. Bank and Trust Co. v. Cmty. Hosp. of Los Gatos-Saratoga, Inc., 683 P.2d 670, 672 (Cal. 1984). MICRA was also an effort to reduce malpractice injuries by increasing government oversight and regulation of medical professionals, as well as an attempt to deter unnecessary insurance rate spikes by creating procedures to monitor and evaluate drastic increases in premiums.

41. CAL. CIV. PROC. CODE § 1295 (West 2011).

42. *See* Gross v. Recabaren, 253 Cal. Rptr. 820, 822-23; *see also* Weldon E. Havins & James Dalessio, *Limiting the Scope of Arbitration Clauses in Medical Malpractice Disputes Arising in California*, 28 CAP. U. L. REV. 331, 334-35 (2000). The section states:

> (a) Any contract for medical services which contains a provision for arbitration of any dispute as to professional negligence of a health care provider shall have such provision as the first article of the contract and shall be expressed in the following language: "It is understood that any dispute as to medical malpractice, that is as to whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompetently rendered, will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. Both parties to this contract, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration." CAL. CIV. PROC. CODE § 1295(a) (West 2011).

printed in red, bold 10-point font above the signature line of any agreement requiring arbitration of medical malpractice claims to ensure the patient is informed of his decision before he consents.[43] Pursuant to section 1295, subsection (c), signed arbitration agreements are considered to govern all successive "open-book account transactions" related to the medical treatment for which the agreement was signed unless the agreement is rescinded within 30 days of signing via written notice.[44] California's precedent is littered with cases discussing section 1295, many of which give conflicting answers as to the proper application of the section.

B. Cases Interpreting Section 1295

The *Ruiz* court referred to *Herbert v. Superior Court of Los Angeles County*[45] as the leading case for issues of wrongful death claims, brought by non-signatory beneficiaries, alleged to be bound to arbitration agreements between the deceased and his or her treating physician.[46]

The Court of Appeals of California, in *Herbert*, held that Section 1295 allowed properly written arbitration agreements to bind non-signatory spouse and

---

43. CAL. CIV. PROC. CODE § 1295(b). § 1295(b) states:

Immediately before the signature line provided for the individual contracting for the medical services must appear the following in at least 10-point bold red type:

"NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL. SEE ARTICLE 1 OF THIS CONTRACT."

44. *Id.* at § 1295(c)-(g). Subsection (c) states:

Once signed, such a contract governs all subsequent open-book account transactions for medical services for which the contract was signed until or unless rescinded by written notice within 30 days of signature. Written notice of such rescission may be given by a guardian or conservator of the patient if the patient is incapacitated or a minor.

The subsequent subsections of section 1295 address the circumstances regarding a minor, what language must be used to ensure compliance with section 1295, types of healthcare plans that are not governed by section 1295, and definitions of words used in section 1295. Subsections (d), (e), and (g) state:

(d) Where the contract is one for medical services to a minor, it shall not be subject to disaffirmance if signed by the minor's parent or legal guardian.

(e) Such a contract is not a contract of adhesion, nor unconscionable nor otherwise improper, where it complies with subdivisions (a), (b) and (c) of this section.

(g) For the purposes of this section:

(1) "Health care provider" means any person licensed or certified pursuant to Division (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;

(2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

45. 215 Cal. Rptr. 477 (Cal. Ct. App. 1985).

46. *Ruiz*, 237 P.3d 584, 588-89.

other non-signatory, interested third parties.[47] Decedent Clarence Herbert enrolled his wife and minor children in the Kaiser Foundation Health Plan.[48] Mr. Herbert was admitted to Kaiser Hospital for surgery, after which he suffered complications that led to a deep coma and required him to be on life-support.[49] Mr. Herbert later died and his heirs filed suit for multiple claims, including wrongful death, against Kaiser Foundation Hospitals.[50] Kaiser filed a motion to compel arbitration and the Superior Court of Los Angeles County enforced the arbitration clause against Mrs. Herbert and the five minor children, but not against the three adult children.[51]

On appeal the Court of Appeal of California held the arbitration agreement bound the three adult children, as well as Mrs. Herbert and the five minor children.[52] The court stated that to require a patient to get the signatures of all future heirs he or she intends to be bound by the contract would be unrealistic and an abysmal violation of the patient's privacy, as well as a violation of the venerated physician-patient relationship.[53] The court held that while allowing patients to bind non-signatory heirs would violate the heirs' rights to trial, the preservation of patient privacy was of utmost importance and when compared, the rights of the heirs were trumped by the patient's need for confidentiality.[54] The California courts' wrongful death doctrine continued to grow and change, however *Herbert* endured as the leading case for binding non-signatory heirs to arbitration agreements when they claimed wrongful death.

Baker v. Birnbaum[55] was decided by the same appellate district as *Herbert*, however the holdings of the two cases are in direct conflict. In *Baker*, Mr. W. J. Baker filed a loss of consortium claim against Dr. Lawrence Birnbaum after his wife, Mrs. B. H. Baker, was diagnosed with cancer following a breast implant replacement in 1984.[56] Prior to her initial breast augmentation surgery in 1977, Mrs. Baker signed an arbitration agreement for any medical malpractice disputes.[57] The agreement purported to: (1) bind Mrs. Baker, (2) people for whom she was responsible, such as her husband, (3) and anyone else who may assert a claim on her behalf.[58] Dr. Birnbaum moved to compel arbitration of both Mr. and Mrs. Baker's claims; however, the trial court granted the motion as to Mrs. Baker

47. Herbert v. Super. Ct. of L.A. County, 215 Cal. Rptr. 477, 481-82.

48. *Id.* at 477-78. The Teamsters, on behalf of the Union members, negotiated the contract with Kaiser. Clarence Herbert was a Union member.

49. *Id.* at 478. Herbert was admitted to Kaiser Hospital for closure of an ileostomy and while in the recovery room he suffered a cardio respiratory arrest that, after resuscitation, culminated in severe brain damage requiring life-support systems to keep him alive. Life-support systems were ultimately removed and Mr. Herbert died.

50. *Id.* Herbert's heirs, including his spouse, minor children, and three adult children, filed suit for wrongful death, fraud, negligent infliction of emotional distress, and wrongful termination of life support. They sued Kaiser Foundation Hospitals, Southern California Permanente Medical Group, and Doctors Neil Barber and Robert Nejdl.

51. *Id.* The Superior Court stayed the civil action of the three adult children, pending the outcome of the arbitration of the claims of Mrs. Herbert and the five minor children.

52. *Id.* at 480.

53. *Herbert*, 215 Cal. Rptr. at 481.

54. *Id.*

55. 248 Cal. Rptr. 336 (Cal. App. 1988).

56. *Id.* at 336.

57. *Id.*

58. *Id.*

and denied the motion as to Mr. Baker.[59] The Court of Appeals of California held that the policy favoring arbitration did not extend to non-parties of the agreement.[60] The court noted that there was nothing on the face of the agreement that extended it to claims made by Mr. Baker.[61] This holding conflicted with the holding in *Herbert* and led astray the already drifting case law leading up to *Ruiz*.

In *Gross v. Recabaren*,[62] the wandering case law following *Baker* and *Herbert* was sorted out and given a straighter path. The California appellate court held that the privacy of the patient, particularly the confidentiality inherent in the physician-patient relationship, is of utmost importance and supersedes the right of a spouse or third party to receive a jury trial in disputes arising out of medical services addressed in an arbitration agreement.[63] Steven Gross received medical treatment from Dr. James Racabaren on multiple occasions, but only signed an arbitration agreement during his first appointment.[64] Gross filed a medical malpractice claim, while his wife filed a loss of consortium claim, against Racabaren for a surgery performed eighteen months after Gross's first appointment with Racabaren.[65]

The court opined that the arbitration agreement covered all of Gross's treatment and the wife's claim of loss of consortium arose out of the same medical treatment and was therefore subject to the arbitration agreement.[66] The court held that when a patient expressly agrees to binding arbitration for any malpractice claims, and the agreement is in compliance with section 1295, it applies to all medical malpractice claims arising out of the services covered by the contract, including those brought by a third party.[67] The court reasoned that requiring a spouse or third party to sign an arbitration agreement in order to be bound by the agreement would be an unreasonable intrusion into the patient's privacy and could allow a third party to have unsolicited control over the patient's medical decisions.[68] While the *Gross* holding followed California's strong public policy favoring arbitration, this holding was in conflict with other courts that cited the common law of contracts that disallows contracting for other parties without their consent.[69]

Mormile v. Sinclair[70] followed the precedent set by *Gross* and affirmed that arbitration agreements in compliance with section 1295 are binding upon a non-signatory spouse and any finding to the contrary would threaten the inviolability of the physician-patient relationship.[71] Mary Mormile signed a physician-patient

59. *Id.*
60. *Id.*; *See also* Rhodes v. Cal. Hospital Medical Center, 143 Cal. Rptr. 59 (Cal. App. 1978).
61. *Baker*, 202 Cal. App. 3d at 338.
62. 253 Cal. Rptr. 820 (Cal. Ct. App. 1988).
63. *Id.*
64. *Id.* at 821-22.
65. *Id.*
66. *Id.* at 826.
67. *Id.*
68. *Gross*, 253 Cal. Rptr. at 827.
69. *See* Baker v. Birnbaum, 248 Cal. Rptr. 336, 338 (Cal. Ct. App. 1988).
70. 26 Cal. Rptr. 2d 725 (Cal. Ct. App. 1994).
71. *Id.* In its holding, the *Mormile* court cited extensively to *Gross*, especially regarding the policy behind MICRA and the importance of maintaining physician-patient confidentiality. The court also distinguished *Baker*, which involved an arbitration agreement that did not contain the required section 1295 and was thus not binding on the non-signatory spouse, whereas the *Mormile* arbitration agree-

agreement with a section 1295 binding arbitration clause on her first appointment with Dr. Alexander Sinclair.[72] Mormile was subsequently unhappy with the treatment she received from Sinclair and filed a medical malpractice action against him.[73] Mormile's husband joined her action with a loss of consortium claim.[74] Sinclair filed a petition to compel arbitration, which the trial court granted regarding Mormile but denied with respect to Mormile's husband.[75]

On appeal, the appellate court noted that the purpose of section 1295 was to decrease medical malpractice litigation costs.[76] A holding that the arbitration agreement was binding to only Mormile and not her husband would be in direct conflict with the policy behind the creation of section 1295.[77] Allowing Mormile's husband to litigate his loss of consortium claim, arising out of the same treatment as Mormile's medical malpractice claim, would not reduce costs and could lead to contradictory decisions based on one set of facts.[78] The Court of Appeal of California, Fourth Appellate District reversed the trial court's decision and remanded the case with directions to grant Sinclair's petition in its entirety.[79]

The broad application of section 1295 to encourage arbitration of medical malpractice disputes was reiterated by the Supreme Court of California in *Reigelsperger v. Siller*.[80] James Siller, a chiropractor, first treated Terry Reigelsperger for pain in his lower back in August of 2000.[81] Reigelsperger claimed he felt much better after his treatment, and, on his way out of the office, he paid his bill and signed an arbitration agreement.[82] Reigelsperger claimed he did not plan to return to Siller for treatment after his first visit, but, about two years later, returned to Siller for problems with his cervical spine and shoulder.[83] After his second visit, Reigelsberger filed a medical malpractice action against Siller.[84] The trial court denied Siller's request for a stay of litigation and also denied Siller's petition to compel arbitration.[85] The appellate court affirmed the trial court's decision and Siller appealed to the Supreme Court of California.[86]

In its decision, the California Supreme Court emphasized the policy behind MICRA and the goal of section 1295 to promote arbitration of malpractice claims like those of Reigelsberger.[87] The court opined, "the provisions of section 1295

---

ment addressed all claims arising out of or relating to the treatment contracted for, including claims by a spouse or third party.

72. *Id.* at 726.

73. *Id.*

74. *Id.*

75. *Id.* at 726.

76. *Mormile*, 21 Cal. Rptr. 2d at 726.

77. *Id.* at 730.

78. *Id.* The court also noted that finding the arbitration agreement to be non-binding upon the non-signatory spouse could lead to "an anomalous result" where the patient fails to prove liability in arbitration but the spouse is successful in establishing loss of consortium in court.

79. *Id.* at 730. *Mormile* was a case of first impression for the Court of Appeal of California, Fourth Appellate District but was not a case of first impression in the state of California.

80. 150 P.3d 764, 766 (Cal. 2007).

81. *Id.* at 765.

82. *Id.*

83. *Id.* at 765-66.

84. *Id.* at 766.

85. 150 P.3d at 766.

86. *Id.*

87. *Id.*

are to be construed liberally" to allow section 1295 to "encourage and facilitate arbitration of medical malpractice disputes."[88] To address Reigelsberger's contention that the arbitration agreement did not comply with section 1295, the court focused on the uniform language the section required as was discussed in *Gross*.[89]

The court held the arbitration agreement at issue did contain the section 1295 language.[90] The mandatory language was meant to ensure patients understood that signing arbitration agreements based on section 1295 meant they were forfeiting their right to adjudicate their medical malpractice claim in court.[91] The court noted that inclusion of the section 1295 language meant the arbitration agreement covered all "open book account transactions" for medical treatment that stemmed from Reigelsberger's first visit to Siller, when the agreement was signed.[92] This decision focused on the parties' addition of the clause "who now or in the future treat[s] the patient" to the arbitration, which the court found to show a manifestation of intent by the parties to arbitrate any disputes.[93] The court found Reigelsberger's unexpressed subjective intent to be irrelevant and reversed the judgment of the appellate court.[94]

C. Other Approaches to Binding Arbitration Agreements for Medical Malpractice

Wrongful death claims are either considered derivative claims or independent actions. Categorizing wrongful death suits as either derivative claims or independent claims will influence the direction a state's case law will proceed. In a majority of states, wrongful death claims are considered to be derivative, meaning the claim stems from the underlying tort claim of the decedent and heirs may sue only if the decedent would have had a right to sue.[95] Generally speaking, derivative states allow patients signing arbitration agreements to bind their future heirs to the terms and conditions of the agreements.[96] California, Texas, Mississippi, Alabama, and Michigan are all derivative claim states.[97] In contrast, a minority of states hold wrongful death actions to be new and independent claims.[98] This approach prevents patients from binding their future heirs to arbitration agreements.[99] Missouri and Utah are independent claim states.[100] Regardless of whether the claim is considered derivative or independent, wrongful death actions are a hotly contested issue throughout the United States.

---

88. *Id.*
89. *Id.* at 766-67.
90. *Id.* at 767.
91. *Reigelsperger*, 150 P.3d at 766.
92. *Id.* at 767; *see also* CAL. CIV. PROC. CODE § 1295(c) (West 2011).
93. *Reigelsperger*, 150 P.3d at 767.
94. *Id.* at 767-68.
95. Scott D. Marrs & Sean P. Milligan, *What You Always Wanted to Know About Arbitration: Five Arbitration Issues Recently Decided by the Courts*, 73 TEX. B. J. 634, 638 (2010).
96. *Id.*
97. *Id.*
98. *Id.*
99. *See* Lawrence v. Beverly Manor, 273 S.W.3d 525, 529 (Mo. 2009); *see also* Bybee v. Abdulla, 189 P.3d 40, 48 (Utah 2008).
100. *Id.*

In 2009 the Supreme Court of Missouri settled variant precedent in addressing whether a wrongful death claim was considered a derivative claim, as opposed to an independent action, solely for the limited purpose of determining the claim's proper venue, or whether the action was to be considered a derivative claim in all respects.[101] *Lawrence v. Beverly Manor*[102] reiterated and solidified Missouri's independent action approach to wrongful death claims.[103]

In *Lawrence*, a nursing home, Beverly Manor, argued that a non-signatory heir, in this case the decedent's son Dale Lawrence, was bound by the arbitration agreement between his mother and Beverly Manor.[104] The *Lawrence* arbitration agreement used language similar to the language used in the *Ruiz* arbitration agreement.[105] The Supreme Court of Missouri held the state's wrongful death statute creates a new cause of action that did not belong to the deceased, and thus the claim is not derivative.[106] Missouri courts reason that decedents and their estates cannot bring wrongful death claims, thus a wrongful death claim is a new and independent action.[107] The court followed more than 60 years of precedent by holding wrongful death claims to be independent actions.[108]

Similar to California, Mississippi is a derivative claim state. The Supreme Court of Mississippi, in *Cleveland v. Mann*,[109] followed recently changed precedent and held that an arbitration agreement is binding upon non-signatory heirs so long as the agreement contains language that shows intent by the parties to bind such persons.[110]

In *Cleveland*, two heirs argued they were not bound by the arbitration agreement because they did not sign it.[111] The court reasoned that because the decedent signed the arbitration agreement he could not have sued for the underlying tort claim had he survived, therefore the underlying tort could not be litigated and claims derivative of that tort, including wrongful death, were also bound to the

101. *Lawrence*, 273 S.W.3d at 528.
102. *Id.*
103. *Id.* at 528.
104. *Id.* at 526.
105. *Id.* The Lawrence arbitration agreement states:

> It is understood and agreed by [Beverly Manor] and [Dorothy Lawrence] that any and all claims, disputes and controversies . . . arising out of, or in connection with, or relating in any way to the Admission Agreement or any service or health care provided by [Beverly Manor] to [Dorothy Lawrence] shall be resolved exclusively by binding arbitration.
>
> It is the intention of the parties to this Arbitration Agreement that it shall inure to the benefit of and bind the parties, their successors, and assigns, including without limitation the agents, employees and servants of [Beverly Manor], and all persons whose claim is derived through or on behalf of [Dorothy Lawrence], including any parent, spouse, sibling, child, guardian, executor, legal representative, administrator or heirs of [Dorothy Lawrence]. The parties further intend that this agreement is to survive the lives or existence of the parties hereto.

106. *Id.* at 527.
107. *Lawrence*, 273 S.W.3d at 527; *see also* Finney v. Nat'l Healthcare Corp., 193 S.W.3d 393, 395 (Mo. Ct. App. 2006).
108. *See* Blessing v. Chicago, B. & Q.R. Co., 171 S.W.2d 602 (Mo. 1943); *Finney*, 193 S.W.3d 393; Ashley Brittain, *When Precedent Wears Thin: The Missouri Supreme Court Clarifies an Issue of Ambiguity Affecting the Arbitrability of Wrongful Death Claims*, 2009 J. DISP. RESOL. 503 (2009).
109. 942 So.2d 108, 117-18 (Miss. 2006).
110. *Id.*
111. *Id.* at 117.

agreement.[112] The court reiterated Mississippi's long precedent supporting its holding and refuted the use of any cases outside the jurisdiction, noting that there are a few states with contrary law, but those jurisdictions did not weigh on the court's holding.[113] In emphasizing the correctness of its holding the court also cited to other derivative jurisdictions, including Alabama, California, and Colorado.[114]

Cleveland was part of a new precedent in Mississippi. The process started when the Mississippi Supreme Court, in *Jenkins v. Pensacola Health Trust Inc.*,[115] held that the time of the underlying injury limited when an heir could bring a wrongful death claim.[116] This holding overturned more than 140 years of precedent and made way for *Cleveland* and the creation of Mississippi as a derivative state.[117] Opponents to the sudden switch in law argue that this change in jurisprudence is the result of judicial activism, namely because prior to the sudden change there was no uncertainty or crisis in the law.[118] They argue the Supreme Court of Mississippi took a solid, unwavering precedent and turned it into an assault on the constitutional rights of wrongful death beneficiaries.[119]

Texas, another derivative state, has also had recent disjunction in its wrongful death jurisprudence. In 2005, the Court of Appeals of Texas, in *In Re Kepka*, held that a non-signatory heir was not bound by an arbitration agreement because she brought the wrongful death claim in her individual capacity for the damage done to her personally and not the damage done to the decedent.[120] The court held that wrongful death claims are personal to the statutory beneficiaries asserting the claim and noted that Texas policy favoring arbitration does not apply until there is shown to be a valid arbitration agreement.[121] Because there was ambiguity as to whether or not a valid arbitration agreement was present, the court asserted that it would not use a pro-arbitration stance to conclude that the heirs were bound to the agreement.[122]

The Court of Appeals of Texas's holding in *Kepka* was furthered in *In Re Jindal Saw Limited, Jindal Enterprises LLC, and Saw Pipes USA, Inc.*[123] The court in *Jindal* held an arbitration agreement between the decedent and his employer did not bind his non-signatory heirs, including his wife, to arbitration of their wrongful death claims.[124] This precedent was then overturned by *In Re*

112. *Id.* at 118-19.
113. *Id.* at 119.
114. *Id.*
115. 933 So.2d 923, 926 (Miss. 2006).
116. *Id.*
117. Patrick J. Schepens, *"I'm Not Dead Yet!": An Analysis of the Recent Supreme Court of Mississippi's Wrongful Death Jurisprudence*, 27 MISS. C. L. REV. 235 (2008).
118. *Id.* at 235-36.
119. *Id. See also* Elizabeth K. Stanley, *Parties' Defenses to Binding Arbitration Agreements in the Health Care Field & the Operation of the McCarran-Ferguson Act*, 38 ST. MARY'S L.J. 591, 629-32 (2007).
120. 178 S.W.3d 279, 294 (Tex. App. 2005).
121. *Id.* at 295; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 74.451 (West 2011).
122. *In re Kepka*, 178 S.W.3d at 295. In this discussion the court distinguished itself from Colorado policy favoring arbitration, and their use of this policy to bind heirs to arbitration agreements when ambiguity as to the breadth of the agreement's coverage is at issue.
123. *Id.* at 764.
124. *Id.* at 762-63.

Labatt Food Service,[125] when the Court of Appeals of Texas held that non-signatory heirs are bound by the decedent's arbitration agreement because the wrongful death claim is conditioned on the decedent's standing to sue for his or her injuries.[126] These changes in the wrongful death jurisprudence of Texas exemplify the volatile, ever-changing precedent for wrongful death actions across the nation. Similarly, the precedent leading up to *Ruiz* is equally confusing, however in its holding the majority in *Ruiz* skillfully reconciled the contradictory precedent using sound foundation of public policy and law.

IV. INSTANT DECISION

A. The Majority Decision

In *Ruiz*, the California Supreme Court began its analysis by noting that section 1295 should be interpreted based on its purpose, as was held in *Reigelsberger*, *Gross*, and *Mormile*, and, therefore, by signing an arbitration agreement, a patient may bind wrongful death claims brought by heirs.[127] The court reasoned that section 1295 was clearly intended to encompass wrongful death claims as evidenced by the inclusion of wrongful death in the definition of "professional negligence" in Section 1295.[128] The court opined that the failure of section 1295 to distinguish between claims asserted by the patient or his or her estate and wrongful death claims evidenced the legislature's intention that section 1295 arbitration agreements encompass both types of claims.[129]

The court then addressed the problems associated with requiring wrongful death claimants to sign arbitration agreements.[130] The court reasoned that such a requirement would be impracticable because most heirs are not identified until death and requiring their signatures would allow an heir to delay medical treatment by refusing to sign the agreement.[131] The intrusion into the sacred physician-patient relationship and possible violation of the California Constitution,[132] caused by requiring heirs to sign arbitration agreements, was also an important consideration for the court.[133] The court noted that requiring heirs to sign arbitration agree-

125. 279 S.W.3d 640, 647 (Tex. App. 2009).

126. *Id.*

127. *Ruiz*, 237 P.3d 584, 591 (Cal. 2010).

128. *Id.* The court also noted that the § 1295(g)(2) definition of "professional negligence" was uniformly used throughout all of the statutes enacted via MICRA and interpreting § 1295 to require the arbitration of wrongful death claims would properly follow the purpose of MICRA to promote and facilitate arbitration of medical malpractice claims.

129. *Id.* at 591-92. The application of all MICRA provisions to wrongful death suits was considered by the court to be further evidence of section 1295's governance of wrongful death claims.

130. *Id.* at 592.

131. *Id.*

132. *Ruiz*, 237 P.3d at 592-93. The court addressed concerns that interpreting section 1295 to allow arbitration agreements to bind heirs in wrongful death suits would violate section 377.60, which grants to heirs to ability to bring wrongful death suits. The California statute created this so-called right to a trial, therefore it is reasonable for the state of California to then add limitations to the granting of such power.

133. *Id.* The court specifically noted the possible violation of California Constitution, article I, section I (2) that protects the citizen's privacy interest in making personal decisions without any intrusion by others, called "autonomy privacy."

ments would require patients to disclose very personal and often confidential medical information about the medical treatment sought.[134] The court reasoned that while the legislature considered including wrongful death claims in section 1295 arbitration agreements, it obviously would not want to force such an intrusion of privacy.[135] Thus, the legislature intended for heirs to be bound without being signatories on section 1295 arbitration agreements.[136]

The court noted that the ability to bind heirs is not a new concept and does not undercut the wrongful death statute, but it merely limits the scope of wrongful death claims.[137] The court then discussed the different occasions when, in a medical setting, agreements to arbitrate have bound non-signatory children born and unborn, spouses, employees and third parties.[138] The court opined that binding wrongful death plaintiffs does not eradicate their claims or make their success or failure dependent upon the outcome of the estate's litigation, but rather simply requires that their claims be resolved by a swift, favored method of dispute resolution.[139]

Finally, the court addressed the children's claim that forcing them to arbitrate their wrongful death claim would violate their right to a jury trial, as provided by the California Constitution.[140] In response, the court opined that the legislature has the power to regulate civil litigation and that, within this power, is the ability to place reasonable restrictions on the heirs' right to sue for wrongful death.[141] The court also noted that decedents have the ability to bind their heirs via wills and testamentary gifts, thus it is not a novel idea to allow patients to bind their heirs through arbitration agreements.[142] Regarding the instant case, the Supreme Court of California held that the arbitration agreement between Ruiz and Podolsky could be enforced and that a converse holding would conflict with Podolsky's contractual expectations.[143] The court reversed the judgment of the appellate court and remanded the case, directing the lower court to grant Podolsky's petition to compel arbitration of all of the wrongful death claims associated with the treatment of Ruiz.[144]

B. Associate Justice Kennard's Dissent

In her dissent, Associate Justice Kennard argued that the wrongful death claims of the children encompassed the injury to them as a result of their father's

134. *Id.*
135. *Id.*
136. *Id.* at 592-93. The court also noted that as held in *Mormile*, the purpose of section 1295 would be defeated if patients would be compelled to arbitrate but spouses and children could sue physicians in court. Such action would allow for inconsistent verdicts based on the exact same facts and would inhibit the decrease in costs that section 1295 aimed to cause.
137. *Id.* As examples the court used the ability of decedents to waive another party's negligence and assume all risk, or the capacity to bind wrongful death plaintiffs to statutorily applied defenses.
138. *Ruiz*, 237 P.3d at 593.
139. *Id.*
140. *Id. See also*, CAL. CONST. art. I, §16.
141. *Ruiz*, 237 P.3d at 594.
142. *Id.*
143. *Id.* at 594-95.
144. *Id.* at 595.

untimely death and not the father's injury.[145] Thus, Ruiz should not have been able to agree to binding arbitration on his children's behalf.[146] Associate Justice Kennard noted that the pertinent portion of text referring to the heirs and children of the patient was in small type and buried within the text of the document.[147] The same small font provision also allowed Podolsky to avoid arbitration and litigate any fee disputes he might have.[148]

Associate Justice Kennard first attacked the majority's interpretation of section 1295 by focusing on the dual party and "you" language within the document.[149] She argued that there were obviously only two parties meant to be bound by the agreement and the notice above the signature line was only meant to address the patient and not his heirs.[150] Second, Associate Justice Kennard discussed the meaning of the words "wrongful death" in the agreement's mandated section 1295 language.[151] Associate Justice Kennard argued that, in section 1295, "wrongful death" is used in its plain sense to "recognize the possibility that the injured patient might die."[152] Associate Justice Kennard also argued that the phrase "wrongful death" in section 1295 was not meant to refer to the cause of action brought by non-signatories of the arbitration agreement who want to litigate their personal claims rather than the claims of the deceased.[153]

Third, Associate Justice Kennard questioned the majority's focus on the policy of the legislature when enacting MICRA.[154] Associate Justice Kennard argued the majority's assumption that the legislature meant to limit the statutory right of litigating wrongful death claims was flawed and lacked proof of the legislature's intent.[155] Associate Justice Kennard also criticized the majority's reliance on the purpose of MICRA to decrease the cost of medical malpractice suits by citing public policy.[156] The flaw in the majority's reasoning, Associate Justice Kennard stated, was its reliance on the goal of decreasing costs as intended to be included in every provision of MICRA.[157] Associate Justice Kennard argued that because the children were not signatories of the arbitration agreement, they did not consent, and because they were not parties to the arbitration, the children should not be bound by the arbitration agreement between Ruiz and Podolsky.[158]

Finally, Associate Justice Kennard noted that the arbitration agreement should not bind the children because California law holds that a wrongful death

145. *Id.*
146. *Id.*
147. *Ruiz*, 237 P.3d at 595.
148. *Id.* "By contrast, this same obscure provision expressly permits *Podolsky* to avoid arbitration and take fee disputes *to court*."
149. *Id.* at 596.
150. *Id.*
151. *Id.*
152. *Id.* Associate Justice Kennard went on to argue that the phrase was only clarifying that the death of Ruiz would not "extinguish the contractual obligation to arbitrate the *patient's own* personal injury claim."
153. *Ruiz*, 237 P.3d at 597.
154. *Id.* at 596-97.
155. *Id.*
156. *Id.* at 597.
157. *Id.* Associate Justice Kennard also suggests that the binding of heirs to arbitration agreements was not among the goals of the Legislature in enacting MICRA.
158. *Id.*

claim is an independent action and is not a derivative of any claim by Ruiz.[159] The possibility of parallel proceedings was also an argument by the majority, and Associate Justice Kennard argued that parallel proceedings occur naturally and are not unusual in law, thus the possibility for parallel proceedings is not a reason to force arbitration upon non-consenting parties.[160]

Associate Justice Kennard disagreed with the majority and would have affirmed the appellate court's holding.[161]

V. COMMENT

A. Ruiz, *MICRA, and California Precedent*

As emphasized in this note, the California case law leading to *Ruiz* was contradictory and left many issues unaddressed. Disagreements of interpretation within such case law were prevalent, including contradictory holdings within divisions of the same appellate district.[162] Until *Ruiz*, the Supreme Court of California was silent on the issue of non-signatory heirs bringing wrongful death actions.[163] The *Ruiz* court affirmed the application of section 1295 to bind heirs' wrongful death claims to arbitration agreements.[164] Prior to *Ruiz*, California case law upheld section 1295's ability to bind non-signatory parties for claims of loss of consortium and other common malpractice claims other than wrongful death.[165] These cases included arbitration agreements with nursing homes and in contracted health plans, but until *Ruiz* the Supreme Court of California failed to address a doctor-patient arbitration agreement covering continuing services.[166] *Ruiz* broadened the scope of precedent by both upholding the use of section 1295 in agreements between physicians and their patients, as well as wrongful death suits by heirs.[167] These facts of *Ruiz* are distinct from previous California case law, yet the holding is in harmony with the goals of MICRA, particularly the attempt to decrease medical malpractice costs.[168]

---

159. *Ruiz*, 237 P.3d at 597.
160. *Id.*
161. *Id.*
162. *See* Baker v. Birnbaum, 248 Cal. Rptr. 336, 339 (Cal. Ct. App. 1985) (holding that the provision in the decedent's health plan that required arbitration of claims was binding to both member heirs covered under the health plan and non-member heirs not covered under the health plan); *See also* Herbert v. Super. Ct. of L.A. County, 215 Cal. Rptr. 477, 481 (Cal. Ct. App. 1988) (holding that a husband is not bound by arbitration provision contained in a medical contract signed by his wife but not signed by the husband). *Baker* and *Herbert* are in direct conflict and were decided by the same appellate district.
163. Havins & Dalessio, *supra* note 41, at 336-40. *See also* Victoria v. Superior Ct., 710 P.2d 833 (Ct. App. 1985).
164. *Ruiz*, 237 P.3d at 592.
165. *See generally*, *Ruiz*, 237 P.3d 584 (binding any heirs pursuing wrongful death actions); *Baker*, 248 Cal. Rptr. 336 (claim for loss of consortium); Gross v. Recabaren, 253 Cal. Rptr. 820 (Cal. Ct. App. 1988) (claim for medical malpractice); Mormile v. Sinclair, 26 Cal. Rptr. 2d 725 (Cal. Ct. App. 1994) (claim for loss of consortium).
166. *Ruiz*, 237 P.3d 584, 588-591.
167. *Id.* at 591-92.
168. *Id.* at 592-93.

B. The Ramifications of Ruiz

Ruiz's holding harmonized numerous, conflicting legal questions into a solid holding. In a single case, the Supreme Court of California was able to dissect and then reconcile previous courts' treatment of section 1295, whether in support of or conflicting with the *Ruiz* holding.[169] After its analysis, the court was able to reconcile the precedent's confusing and often contradictory discord with its holding.

The *Ruiz* court effectively distinguished itself from *Baker* by noting that in *Baker* the patient was a member of a medical plan, but the contract solely addressed the patient.[170] In *Ruiz* the arbitration agreement was broadly worded to encompass all claims, as was also the case in *Herbert*.[171] The contract in *Baker* solely addressed the medical services provided to her under that specific contract.[172] Additionally, the claim in *Baker* was for loss of consortium, not wrongful death like the claims in *Ruiz* and *Herbert*.[173] These differences materially affected the reasoning of the court in *Baker*, thus the *Ruiz* court was able to easily differentiate between the two cases.

When the *Ruiz* court addressed *Gross* it focused on both the similarities and the differences between the two cases. Like *Baker*, *Gross* was a claim for loss of consortium by a non-signatory spouse.[174] However unlike *Baker*, the *Gross* court was persuaded by *Herbert*'s argument, particularly its interpretation of section 1295.[175] The court agreed with the *Herbert* court's argument that requiring beneficiaries to sign the patient's arbitration agreement in order to be bound by the agreement would interfere with the sacred physician-patient relationship, particularly the patient's privacy.[176]

The court was concerned that adopting a rule allowing an intrusion upon patient confidentiality would allow third persons to have a sort of veto power over the medical decisions of the patient.[177] The courts in *Herbert* and in *Gross* found creating such a rule to be impermissible because the patient's future heirs' right to a trial did not trump the all-important right to confidentiality between a doctor and patient.[178] These considerations led the *Gross* court to opine a very broad holding that essentially allowed a patient to expressly contract to settle, via arbitration, any disputes arising out of his or her care, and to bind non-signatory third parties to these arbitration agreements.[179] The court in *Ruiz* agreed with *Gross*'s application of Section 1295 and followed suit, allowing the children to be bound to arbitration via the contract their father signed with Podolsky.[180] Thus, the *Ruiz* court chose to follow the winding precedent set forth by *Mormile*, *Herbert*, and *Gross*.[181]

---

169. *Id.* at 584.
170. *Id.* at 589.
171. *Id.*
172. *Ruiz*, 237 P.3d at 589.
173. *Id.*
174. *Id.* at 590.
175. *Id.*
176. *Id.*
177. *Id.*
178. *Ruiz*, 237 P.3d at 590.
179. *Id.*
180. *Id.* at 594.
181. *Id.* at 591.

With its holding the court successfully followed the policy considerations of the legislature when enacting MICRA, and by doing so seems to have settled a highly contested area of California law. During the 1975 healthcare insurance crisis in California, the legislature took numerous statutory steps in an attempt to remedy the situation and prevent further decline.[182] At the urging of the Governor of California, the legislature used voluntary binding arbitration as a means to prudently settle medical malpractice claims.[183] The goal of the legislature was to efficiently settle malpractice claims without limiting patients' access to the courts.[184]

The holding in *Ruiz* does seem to align with these specified goals of MICRA. The court directed all of the heirs' claims to be efficiently settled via arbitration and avoided conflicting holdings that could have occurred had only one case been arbitrated or if both cases had been separately litigated. The use of arbitration sufficiently limited any potential emotionally charged damages award by a sympathetic jury, which arguably kept the cost of settling the disputes to a minimum. The use of arbitration in *Ruiz* and in similar future cases will arguably continue the efficiency by settling medical malpractice claims.

Ruiz also effectively supports and continues the ability of a contracting party to dictate what their spouse and heirs can and cannot do after the contracting party's demise. This sort of posthumous control is not a foreign concept. Rather, it is well grounded in trust and estate law and is merely expanded to include wrongful death claims through *Ruiz*.[185] Trust and estate law allows testators to dictate who gets what from their estate, how their estate is divided, and even who can own the property after the initial devisees die. This is all done *after* the death of the testator, once the legal heirs have been determined. This sort of control from death is not a new concept and *Ruiz* is almost an extension of the power of the deceased to control and even limit the actions and abilities of the living. This development helps protect the sacred physician/patient relationship and additionally upholds the patient's right to privacy, which is also considered sacrosanct.[186]

A common argument in California against binding non-signatories to arbitration agreements is the violation of Article I, Section 16 of the California Constitution.[187] This section provides all California citizens the right to a jury trial for both

182. *Gross*, 253 Cal. Rptr. at 822-23.

183. *Id*

184. *Id.*

185. *Ruiz*, 237 P.3d at 593-94.

186. CAL. CONST. art. I, § 1, cl. 2. Section 1 states: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

187. CAL. CONST. art. I, § 16. Section 16 states:

> Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three- fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.
>
> In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes other than causes within the appellate jurisdiction of the court of appeal the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

criminal and civil claims.[188] The court in *Ruiz* addressed this issue by holding that the right to a jury trial is a statutorily granted right and is therefore subject to limitation by the legislature, so long as such limitation aligns with the legislature's intent.[189] Substantial precedent supports this limitation on the right to a jury trial in California, including cases involving binding arbitration clauses like the clause at issue in *Ruiz*.[190]

VI. CONCLUSION

The *Ruiz* decision is well supported in California precedent and is successful in uniting a very divisive and contradictory body of case law. *Ruiz* furthers MICRA's policy and helps to ensure its considerations will continue to have effect in the future. The constitutional arguments against *Ruiz* are well founded but are unpersuasive, although similar arguments are sure to be proffered in the future. Whether California's choice of derivative claim interpretation is the correct approach to addressing the skyrocketing costs of healthcare is yet to be determined. MICRA's success thus far, as well as its concrete support in precedent, may indicate the answer.

MEGHAN L. TRAVIS

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

188. *Id.*

189. *Id.* at 594.

190. *See generally Ruiz*, 237 P.3d 584; Mayerhoff v. Kaiser Found. Health Plan, Inc., 138 Cal. Rptr. 319 (Cal. Ct. App. 1977); Herbert v. Superior Court, 215 Cal. Rptr. 477 (Cal. Ct. App. 1985); Gross v. Recabaren, 253 Cal. Rptr. 820 (Cal. Ct. App. 1988); Mormile v. Sinclair, 26 Cal. Rptr. 2d 725 (Cal. Ct. App. 1994); Reigelsperger v. Siller, 150 P.3d 764 (Cal. 2007).