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OPINION	:	No. 80-306
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of	:	<u>October 30, 1980</u>
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**SUBJECT: LIENS TO SECURE PAYMENT FOR HEALTH CARE SERVICES –**  
This opinion deals with the relative priorities of the liens to secure payment for health care services established pursuant to Civil Code section 3045.1. Government Code section 23004.1 and Welfare and Institutions Code section 14124.74.

The Honorable Beverlee A. Myers, Director of the Department of Health Services, has requested an opinion on the following question:

What are the relative priorities of the liens to secure payment for health care services that are established pursuant to Civil Code section 3045.1, Government Code section 23004.1 and Welfare and Institutions Code section 14124.74?

CONCLUSION

The relative priority of the liens to secure payment for health care services furnished to a person injured at the hands of a tortfeasor, that are established pursuant to Civil Code section 3045.1, Government Code section 23004.1 and Welfare and Institutions Code section 14124.74 is as follows: first the lien established by Welfare and Institutions Code

section 14124.74 in favor of the State Director of Health Services for repayment of expenditures for the benefit of a beneficiary under the Medi-Cal program; second the lien established by Government Code section 23004.1 in favor of a county for the reasonable value of care and treatment it may have furnished the injured person; and third the lien established by Civil Code section 3045.1 in favor of a hospital for three days of emergency care and treatment services it may have furnished the injured person.

## ANALYSIS

A person is injured at the hands of a tortfeasor. He incurs some costs of care and treatment which are covered by California's Medi-Cal Program, other costs of care and treatment furnished by a county hospital and still other costs for emergency care and treatment that are furnished by another hospital. He subsequently sues the tortfeasor.

We are asked to define the relative priority of liens to secure payment for health care services that various code sections establish against a judgment, settlement or award that the injured party might obtain. Civil Code section 3045.1 provides for a lien against such a judgment in favor of a hospital for the cost of three days emergency care provided to a patient in excess of \$100; Government Code section 23004.1 provides for a "first lien" against the judgment in favor of a county which is authorized or required by law to furnish hospital, medical, surgical or dental care and treatment and has furnished them to the injured. Welfare and Institutions Code section 14124.74 provides for a "first lien" against such a judgment in favor of the Director of the State Department of Health Services (hereinafter, "the Director") for repayment to the Medi-Cal Program of a percentage of its expenditures for the benefit of a beneficiary. We conclude the relative priority of these liens to be as follows: first the Director's Medi-Cal Program lien established by Welfare and Institutions Code section 14124.74; second the county's lien established by Government Code section 23004.1; and third the hospital's lien established by Civil Code section 3045.1.<sup>1</sup>

Section 2897 of the Civil Code declares: "Other things being equal, different liens upon the same property have priority according to the time of their creation . . . ." In our situation however, we need not be concerned with the niceties of the times of the creation

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<sup>1</sup> We have assumed that the services provided—by the emergency hospital, by the county hospital and those covered under the Medi-Cal Program—were distinct and did not overlap. Particularly we assume that the first two were not covered under the Medi-Cal Program or at least were not paid by it. If a Medi-Cal card was accepted by them Welfare and Institutions Code sections 140193.3 and 14019.4 (*cf.* Title 42, U.S.C.A. § 1396h(d) and Title 42 CFR, section 447.15 (Medicaid)) would preclude their seeking additional compensation for services provided over the amount that was paid them on behalf of the beneficiary under the Medi-Cal Program.

of the liens involved because other things regarding them are not equal. The three liens are each creatures of statute, and as such can have no greater force than the statute creating them accords. (*First National Bank v. Silva* (1927) 200 Cal. 494, 497–498.) Thus if the Legislature has manifested an intention that they have a particular priority with respect to each other, their relative precedence is thereby established. (*Ibid.*) We therefore must discern the fair intendment of the Legislature by interpreting the three legislative enactments creating the liens in question. (*Id.*, at p. 499.)

In so doing we start with a fuller exposition of the provisions of the Welfare and Institutions Code and the lien established thereby in favor of the Director of the Department of Health Services for repayment to the Medi-Cal Program of a percentage of its expenditures on behalf of the injured beneficiary. (Div. 9, Pt. 3, Ch. 7, Art. 3.5, §§ 14124.70–14124.79.)

Section 14124.71, subdivision (a) provides:

“(a) When benefits are provided or will be provided to a beneficiary under this chapter [to wit, Welfare and Institutions Code, Div. 9, Pt. 3, Ch. 7] because of an injury for which another person is liable, or for which a carrier is liable in accordance with the provisions of any policy of insurance issued pursuant to Insurance Code Section 11580.2, the director shall have a right to recover from such person or carrier the reasonable value of benefits so provided . . . .”<sup>2</sup>

To enforce such right the Director is entitled:—to have an appropriate action prosecuted in his own behalf (*Ibid.*) without prejudice to the beneficiary’s proceeding on any claim or cause of action for other damages (*Id.*, subd. (c));—to have his claim for

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<sup>2</sup> “Carrier” is defined by section 14 124.70(a) to include “any insurer as defined in Section 23 of the Insurance Code, including any private company, corporation, mutual association, trust fund, reciprocal or interinsurance exchange authorized under the laws of this state to insure persons against liability or injuries caused to another, and also any insurer providing benefits under a policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of a motor vehicle which provides uninsured motorist endorsement of coverage, pursuant to Section 11580.2 of the Insurance Code.”

“Beneficiary” is defined by section 14 124.70(b) to mean “any person who has received benefits or will be provided benefits under this chapter because of an injury for which another person may be liable. It includes such beneficiary’s guardian, conservator or other personnel representative, his estate or survivors.” The reference to the conservator was added by chapter 730, § 175 of the statutes of 1979, to be operative January 1, 1981.

“Director” refers to the State Director of Health Services. (§ 14065.)

reimbursement paid Out of any settlement, judgment or award the beneficiary may receive in an action brought by him;—or to join the beneficiary in a consolidated action or a joint suit.<sup>3</sup>

If the Medi-Cal beneficiary brings an independent action or claim in his own behalf, he must notify the Director within 30 days of its filing. (§ 14123.73 (a).) The Director then has a right, at any time before trial on the facts, to become a party to that action or to consolidate any independent action or claim he also may have instituted. (*Ibid.*)

Section 14124.74(a) provides for a “first lien” in favor of the director against any judgment or award in favor of the beneficiary in any independent action or claim the latter may bring against the tortfeasor (or carrier). It reads as follows:

“In the event of judgment or award in a suit or claim against such third party or carrier,

“(a) If the action or claim is prosecuted by the beneficiary alone, the court or agency *shall first order paid* from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of such action or claim, together with reasonable attorney’s fees, when an attorney has been retained. *After payment of such expenses and attorney’s fees the court or agency shall, on the application of the director, allow as a first lien against the amount of such judgment or award, the amount of the director’s expenditures for the benefit of the beneficiary under the Medi-Cal Program, as provided in subdivision (d) of Section 14124.72.*”<sup>4</sup> (Emphasis

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<sup>3</sup> Where the Director brings an independent action first he must notify the beneficiary within 30 days of his so doing (§ 14123.73 (a) and also inform him of his right to intervene in the proceeding, his right to obtain a private attorney and or” the Director’s right to recover the reasonable the reasonable value of the benefits provided.” (§ 14123.73(b).

<sup>4</sup> Subdivision (d) of action 14124.72(d) sets forth the limits on the amount of the Director’s lien as follows:

“(d) Where the action or claim is brought by the beneficiary alone and the beneficiary incurs a personal liability to pay attorney’s fees and costs of litigation, the director’s claim for reimbursement of the benefits provided to the beneficiary shall be limited to the amount of the medical expenditures for the benefit of the beneficiary less 25 percent which represents the director’s reasonable share of attorney’s fees paid by the beneficiary and that portion of the coat of litigation expenses determined by multiplying by the ratio of the full amount of the expenditures to the full amount of the judgment, award, or settlement.”

This is contrasted with the Director’s recovery in the situation where an action or claim is prosecuted *both* by the beneficiary and by the director, for there the latter is reimbursed in full

added.)

Section 14124.75 provides for a “further lien” in favor of the Director for Medi-Cal benefits provided subsequent to the first court or agency order and prior to the satisfaction of the judgment or award.

Finally Welfare and Institutions Code sections 14124.76 and 14124.78 must be noted.

Section 14124.76 provides:

“No judgment, award, or settlement in any action or claim by a beneficiary to recover damages for injuries, where the director has an interest, shall be satisfied *without first giving the director notice and a reasonable opportunity to perfect and satisfy his lien.*” (Emphasis added.)

And section 14124.78 provides:

“Except as otherwise provided in this article, *notwithstanding any other provision of law, the entire amount of any settlement of the injured beneficiary’s action or claim, with or without suit, is subject to the director’s claim for reimbursement of the benefits provided and any lien filed pursuant thereto*, but in no event shall the director’s claim exceed one-half of the beneficiary’s recovery after deducting for attorney’s fees, litigation costs, and medical expenses relating to the injury paid for by the beneficiary.”<sup>5</sup> (Emphasis added.)

We proceed next to the “first lien” established by Government Code section 23004.1 in favor of a county for the reasonable value of the care and treatment it may have furnished the injured person. That section reads as follows:

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following payment of the costs of suit related to the Medi-Cal payment. (§ 14 124.74(b).)

<sup>5</sup> The death of a beneficiary does not abate any right of action of the Director established by section 14124.71 (§ 14124.72(b)) and “when an action or claim is brought by persons entitled to bring such actions or assert such claims against a third party who may be liable for causing the death of a beneficiary, *any settlement, judgment or award obtained is subject to the director’s claim for reimbursement of the benefits provided to the beneficiary under the Medi-Cal Program.*” (§ 14124.72, subd. (c).) (Emphasis added.)

“(a) Subject to the provisions of Section 23004.3,<sup>[6]</sup> in any case in which the county is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment, including prostheses and medical appliances, to a person who is injured or suffers a disease, under circumstances creating a tort liability upon some third person to pay damages therefore, *the county shall have a right to recover from said third person the reasonable value of the care and treatment* so furnished or to be furnished, or shall, as to this right, be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished.

“(b) The county may, to enforce such rights, institute and prosecute legal proceedings against the third person who is liable for the injury or disease in the appropriate court, either in its own name or in the name of the injured person, his guardian, personal representative, estate, or survivors. Such action shall be commenced within the period prescribed in Section 340 of the Code of Civil Procedure. *In the event that the injured person, his guardian, personal representative, estate, survivors, or either of them brings an action for damages against the third person who is liable for the injury or disease; the county’s right of action shall abate during the pendency of such action, and continue as a first lien against any judgment recovered by the injured or diseased person, his guardian, personal representative, estate, or survivors, against the third person who is liable for the injury or disease, to the extent of the reasonable value of the care and treatment so furnished or to be furnished. When the third person who is liable is insured, the county shall notify the third person’s insurer, when known to the county, in writing of the lien within 30 days following the filing of the action by the injured or diseased person, his guardian, personal representative, estate, or survivors, against the third person who is liable for the injury of disease; provided, however, that failure to so notify the insurer shall not prejudice the claim or cause of action of the injured or diseased person, his guardian, personal representative, estate, or survivors, or the county.*” (Emphasis added.)

Pursuant to Government Code section 23004.2, subdivision (a), a county may compromise, settle or waive any claim in whole or in part. Finally, any action undertaken by a county does not bar the injured person (his guardian, personal representative, estate or

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<sup>6</sup> Section 23004.3 provides: “Sections 23004.1 and 23004.2 shall become operative in a county only if the board of supervisors of that county, by resolution, elects to be governed by the provisions of such sections.”

survivors) from proceeding against the tortfeasor for recovery of additional damages not covered in the county's claim. (*Id.*, subd. (b); compare Welf. & Inst. Code, § 14124.71(a).)

Turning last to the lien established in favor of a hospital for its reasonable and necessary charges for three days' emergency treatment, care, and maintenance of the injured, Civil Code section 3045.1 provides as follows:

“Every person, partnership, association, corporation, including but not limited to a municipal corporation, or other institution or body maintaining a hospital licensed under the laws of this State which furnishes emergency medical or other services of a reasonable value in excess of one hundred dollars (\$100) to any person injured by reason of an accident or wrongful act not covered by Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code, shall, if the person asserts or maintains a claim against another for damages on account of his injuries, *have a lien* upon the damages in excess of one hundred dollars (\$100) recovered, or to be recovered, by the person, or by his heirs or personal representative in case of his death *to the extent of the amount of the reasonable and necessary charges of the hospital for the treatment, care, and maintenance of the person in the hospital during the emergency period.* For the purposes of this section, the emergency period shall not exceed a period of 72 hours.” (Emphasis added.)

The lien is not effective however, unless written notice is given to each person, firm or corporation known to the hospital and alleged to be liable for the injuries, as well as to their insurance carrier(s), prior to payment of compensation to the injured. (Civ. Code § 3045.3.) Should the tortfeasor or his insurance carrier make payment to the injured *after* receiving notice from the hospital of its lien, they become liable to the hospital for the amount of its lien claimed in the notice. (Civ. Code § 3045.4.) The hospital then has one year to enforce its lien by filing an action at law against the person, firm or corporation making the payment and to whom such notice was given. (*Id.* § 3045.5.)

With the three liens now in hand we proceed to determine their relative priority. We have no problem declaring the hospital's Civil Code lien to be third in order of relative priority. It, unlike the other two, is not designated a “first lien” (compare Civ. Code § 3045.1 with Welf. & Inst. Code § 14124.74(a) and Gov. Code § 23004.1(b)), and it, unlike the other two, requires notification to the tortfeasor and parties alleged to be liable, in order to establish its validity. (Compare Civ. Code § 3045.3 with Welf. & Inst. Code § 14124.74(a) (director's lien established on application in the beneficiary's action) and Gov. Code § 23004.1(b) (county's lien established after the county's action abates in the event the injured person also brings an action for damages).) Further, while the Welfare and

Institutions Code and the Government Code each specially limits the lien it establishes to be in favor of a governmental entity, the Civil Code's lien is of more general application, being established as it is, in favor of "every person maintaining a hospital." Under the familiar rule of statutory construction which declares that the provisions of the special statute dealing with a particular subject take precedence over and control those of a statute of general application dealing with that subject (*Agricultural Labor Relation Board v. Superior Court* (1976) 16 Cal. 3d 392, 420; *In re Williamson* (1954) 43 Cal. 2d 651, 654; *Rose v. State of California* (1942) 19 Cal. 2d 713, 723-724; *Cf. Kennedy v. Ukiab* (1977) 69 Cal. App. 3d 545, 552), the lien established by the Civil Code must yield priority to the other two.

We are thus faced with deciding "who's on first"-the director under the Welfare and Institutions Code or the county under the Government Code. Comparing the nature of their relative "first" liens we see that unlike the county's lien, which is only established if it brings an independent action (Gov. Code § 23004.1), the lien of the director is established without that necessity; it is established merely on application by the director in any action the beneficiary may have brought. (Welf. & Inst. Code § 14124.74(a).) Moreover, the "first lien" of the director is established in the very code section which sets forth the order of payment from the injured beneficiary's judgment. (See Welf. & Inst. Code, § 14124.74(a).) After payment of the injured person's reasonable litigation expenses together with attorney's fees which must be first ordered paid, the court must, on application of the director, allow as a first lien against the judgment, a percentage of the director's expenditures for the benefit of the beneficiary under the Medi-Cal program. (*Ibid.*)

We view these differences to evince a legislative intention that the lien in favor of the director be paid before the lien in favor of the county. We are particularly confirmed in this view by the fact that the statute creating the director's "first lien" (Stats. 1976, ch. 621, p. 1474, § 2, derived from Stats. 1969, ch. 1420, p. 2909, § 2)<sup>7</sup> was enacted *after* that creating the county's first lien (Stats. 1967, ch. 1495, p. 3493, § 2) and thus it is to be considered as expressing the latest statement of the will of the Legislature on the matter.

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<sup>7</sup> The statute from which Welfare and Institutions Code section 14124.74(a) was derived (Welf. & Inst. Code § 14117) did not directly provide for a *first* lien in favor of the director. Rather it authorized him in enforcing his right of recovery from the tortfeasor to "commence and prosecute actions, file liens, or intervene in court proceedings all in the same manner with the same rights and authority is as to notice, settlement and other matters, and to the same extent provided in Chapter 5 (commencing with Section 3850), Part 1, Division 4 of the Labor Code for an employer or workmen's compensation insurer where payments have been made liability incurred by an employer or an insurer under the workmen's compensation laws." (Stats. 1969, ch. 1420, § 2, p. 2909.) The referenced section of the Labor Code however, did establish a "first lien" in favor of an employer or insurer against a judgment an employer might obtain in an act or against a tortfeasor. (Lab. Code § 3856, subd. (b); *cf.* § 3850, subd. (b).)



(*In re Thierry S.* (1977) 19 Cal. 3d 727, 744 citing *Cal. Drive-In Restaurant Assn. v. Clark* (1943) 22 Cal. 2d 287, 292.) Any lingering doubt is quickly dispelled by Welfare and Institutions Code sections 14124.76 and 14124.78 which we read as establishing the primacy of the director's lien.

Section 14124.76 provides that, “No judgment, award, or settlement in any action or claim by a beneficiary to recover damages for injuries, where the director has an interest, shall be satisfied without first giving the director notice and a reasonable opportunity to perfect and satisfy his lien.” (Emphasis added.) But the county's lien can only arise in just such an action, for under Government Code section 23004.1(b) quoted above, an independent action by the beneficiary is a sine qua non for a county “first lien” to be created at all. Without that action, the county's independent action (which is necessary for it to secure its claim) will not abate and mutate into a lien. But under section 14124.76, the action undertaken by the beneficiary cannot be satisfied, “without first giving the director . . . [an] opportunity to perfect and satisfy his lien” and thus the county's “first lien,” being part of that action, can only be satisfied after that command is fulfilled.<sup>8</sup>

Section 14124.78 then deals the *coup de grace* to any asserted claim of supremacy by a county for the “first lien” created in its favor by Government Code section 23004.1(b). It reads:

“Except as otherwise provided in this article, *notwithstanding any other provision of law, the entire amount of any settlement of the injured beneficiary's action or claim, with or without suit, is subject to the director's claim for reimbursement of the benefits provided and any lien filed pursuant thereto*, but in no event shall the director's claim exceed one-half of the beneficiary's recovery after deducting for attorney's fees, litigation costs, and medical expenses relating to the injury paid for by the beneficiary.” (Emphases added.)

The use of words “notwithstanding any other provision of law,” “make such rules ‘sui generis’ and controlling over both statutory and decisional law.” (*In re Marriage of Dover* (1971) 15 Cal. App. 3d, 675, 678, fn. 3; *State of California v. Superior Court* (1967) 252 Cal. App. 2d 637, 639; see also *Theodore Roosevelt AG. v. General Motors Acc. Corp.* (Cob. 1965) 398 P.2d 965, 966.) In utilizing the phrase in section 14124.78, the Legislature has directed that the entire amount of any settlement, including that portion representing a county's interest, be subject to the director's claim for reimbursement for the benefits

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<sup>8</sup> “If the county sues as a subrogee of the injured beneficiary (Gov. Code § 23004.1), its position is less strong, for then it stands in the latter's shoes and has no greater rights than the injured beneficiary. (58 Cal. Jur. 3d, *Sabrogation* § 21, pp. 661–662 and 662, fn. 40.)

provided under the Medi-Cal Program and any lien filed pursuant thereto. (Compare § 14124.72(c) quoted at fn. 5, *supra*.)

Accordingly we conclude the relative priority of the liens to secure payment for health care services furnished to a Medi-Cal Beneficiary injured at the hands of a tortfeasor to be as follows: first the lien established by Welfare and Institutions Code section 14124.74 in favor of the State Director of Health Services for repayment of expenditures for the benefit; of a beneficiary under the Medi-Cal Program, second the lien established by Government Code section 23004.1 in favor of a county for the reasonable value of care and treatment it may have furnished, and third the lien established by Civil Code section 3045.1 in favor of a hospital for three days of emergency services it may have rendered.

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