

# Daily Journal

FEBRUARY 26, 2025

## TOP VERDICTS OF 2024

### State of California ex. rel. Duncan and Hulbert v. Sutter Health et al.

**A** non-profit hospital network faced a \$500 million insurance fraud case that saw claims against them of unnecessary anesthesiology procedures in operating rooms and needless post-operative recovery room care.

Lawyers for Kecker, Van Nest & Peters, led by Sharif E. Jacob, Erin Meyer and Anjali Srinivasan, managed to prove in the seven-week bench trial the fundamental precept that medical decisions are best made by treating physicians.

The trial emanated from whistleblower accusations by a surgeon who had accused Sutter Health of “fraudulently overcharging patients and insurers through systematic misuse of billing codes.” *State of California ex. rel. Duncan and*



SHARIF E. JACOB



ERIN E. MEYER



ANJALI SRINIVASAN

*Hulbert v. Sutter Health et al.*, RG17846895 (Alameda Super. Ct., filed Jan. 25, 2017).

However, Alameda County Superior Court Judge Stephen D. Kaus ruled that Sutter’s recovery room billing was code compliant.

“Whenever a decision was made to discharge a patient from the recovery room, that was a decision that was made by a doctor,” Jacob said. “The same thing was true in these phase two recovery rooms. When a patient was sent to a phase two recovery room, that

was because a doctor made the decision.

“It immediately became apparent to us that what relator was asking for was less medical care in a way that contravened the decisions of the treating physicians.

“They didn’t put any doctors on the stand who questioned the judgements of the treating physicians and so that was our theme in the case. I think the judge saw that and that kind of essential nugget formed the basis for his opinion.”

A crucial moment in the trial came when one of the plaintiff’s expert witnesses changed their testimony while being cross-ex-

CASE DETAILS

CASE NAME	State of California ex. rel., Duncan and Hulbert v. Sutter Health et al.
TYPE OF CASE	Fraud; Health Insurance
COURT	Alameda County Superior Court
JUDGE(S)	Stephen D. Kaus
DEFENSE LAWYERS	Kecker, Van Nest & Peters, Sharif E. Jacob, Erin E. Meyer, Anjali Srinivasan
PLAINTIFFS LAWYERS	Hausfeld, Christopher L. Lebsock, Arthur N. Bailey Jr.; Hach Rose Schirripa & Cheverie, Frank R. Schirripa, Daniel B. Rehns, Scott R. Jacobsen

amined. Srinivasan was leading the cross-examination and the Keker team was forced to huddle and plan a new line of questioning after a motion to strike was overruled. Following further cross-examination from Srinivasan, the plaintiff decided to strike the expert witness's testimony – and around half the case connected to it – from its case.

Erin Meyer said: "It was a really

remarkable moment. We've both done a lot of trials and I'll be honest, I've never seen anything quite like it. Sharif and I both want to make sure that credit is given to our partner Anjali Srinivasan who was charged with cross-examining this expert and reacting in the moment. One of the big things is that we were very prepared.

"We knew the expert reports inside and out. And so, when this new op-

inion came out, we were able to be very nimble and react very quickly to make the record that this was an improper undisclosed expert opinion to make the oral motions."

"Our partner Anjali had to prepare for a very different cross-examination than we had expected. It really goes to show (the importance of) familiarity with the documents, familiarity with the case themes and being able to re-

spond on the spot and conduct that cross-examination in a really effective and compelling way."

Last June, Kaus ruled that there was no fraud and found that Sutter charged for recovery room care that was "medically ordered, appropriate, and supervised." The judge also found that Sutter's charges were consistent with and permitted by industry standard billing practices.