

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DANIEL BATLLE,

Plaintiff and Respondent,

v.

AG REDLANDS, LLC, et al.,

Defendants and Appellants.

D083077

(Super. Ct. No. CIVSB2116544)

APPEAL from an order of the Superior Court of San Bernardino County, Michael A. Sachs, Judge. Reversed and remanded with directions.

Lewis Brisbois Bisgaard & Smith, Kathleen M. Walker, Tracy D. Forbath, Suzanne L. Schmidt, Emily D. Hyatt, and Daniel R. Velladao for Defendants and Appellants.

The Barnes Firm, Allen R. Oghassabian and Christian R. Oliver, for Plaintiff and Respondent.

When Digna Barreiro (Patient) moved into a skilled nursing facility (Facility), her son Daniel Batlle signed two arbitration agreements as her representative. After Patient died, Batlle filed a complaint against the owners and operators of Facility—AG Redlands, LLC; AG Facilities

Operations, LLC; and Jacob Wintner (collectively, AG)—both as Patient’s successor in interest and in his individual capacity. AG petitioned to compel arbitration. The trial court denied the petition, finding Batlle (1) lacked authority to execute the arbitration agreements on Patient’s behalf, and (2) did not sign the agreements in his individual capacity.

On appeal, AG contends Patient’s survival claims are subject to arbitration either because Batlle was Patient’s (1) actual agent, under both a general power of attorney (POA) and an advance health care directive (AHCD); or (2) ostensible agent. AG also asserts Batlle’s individual wrongful death claim is subject to arbitration under *Ruiz v. Podolsky* (2010) 50 Cal.4th 838 (*Ruiz*).

We need not address AG’s arguments regarding the AHCD or ostensible agency, because we agree that the POA granted Batlle the actual authority to execute the arbitration agreements on Patient’s behalf. Because the arbitration agreements were optional, separate documents from the agreement admitting Patient to Facility, signing them was not a “health care decision” excluded from Batlle’s authority under the POA. (See *Harrod v. Country Oaks Partners, LLC* (2024) 15 Cal.5th 939, 963-964 (*Harrod*).) Instead, signing the arbitration agreements was an “act . . . with respect to . . . claims and litigation.” Although not all Patient’s survival claims are subject to arbitration, as the agreements expressly exempt Patient’s claim under the Patient’s Bill of Rights (Health & Saf. Code, § 1430, subd. (b), citing Cal. Code Regs., tit. 22, § 72527), because some are, we reverse the order denying AG’s petition.

However, we agree with the trial court’s ruling that Batlle “was a third party” to the agreements who was “not required to arbitrate his individual claims.” Code of Civil Procedure section 1295 and *Ruiz* are inapplicable,

because the complaint's gravamen is not that AG negligently administered medical services, but rather that AG made willful policy decisions at the corporate level to increase profits and decrease costs that ultimately resulted in Patient's illness and death. Accordingly, as Batlle cannot be compelled to arbitrate his individual claim, on remand we direct the trial court to (1) decide whether Code of Civil Procedure section 1281.2, subdivision (c) applies, and (2) if so, exercise its discretion under section 1281.2.

I.

A.

In 2016, Patient signed two documents giving Batlle authority to make certain decisions on her behalf. First, a form POA appointed Batlle her attorney-in-fact. The POA expressly did not allow Batlle "to make medical or other health care decisions" for her. It did, however, permit him "to act in [Patient's] name, place and stead . . . with respect to" certain matters initialed on the form, including "claims and litigation" and "all other matters." The POA provided that these powers "will not exist after [Patient] become[s] disabled or incapacitated." (Capitalization omitted.) It was dated, signed by Patient, and notarized as required by Probate Code section 4121. Second, a form AHCD appointed Batlle Patient's health care agent, permitting Batlle to make "medical decisions" for her "now."

In 2017, Patient was admitted to Facility. Batlle signed Patient's admission documents. In doing so, he signed, as "Resident Representative," two arbitration agreements appearing in separate documents. Under both agreements, "the Resident agree[d] to be bound" to arbitrate certain claims involving Facility.

One of the agreements was titled "Arbitration of Medical Malpractice Disputes," while the other was titled "Arbitration of Dispute[s] Other than

Medical Malpractice.” The first applied to “any dispute as to medical malpractice (that is, whether any medical services rendered under this admission agreement were necessary or unauthorized or were improperly, negligently[,] or incompetently rendered).” The second covered “any claim other than a claim for medical malpractice, arising out of the provision of services by the Facility, . . . which allege violations of the Elder Abuse and Dependent Adult Civil Protection Act [the Act], . . . or . . . punitive damages or attorneys’ fees.”

Both agreements specified “[r]esidents shall not be required to sign . . . as a condition of admission to this facility, and cannot waive the ability to sue for violation of the [Patient’s] Bill of Rights.” They each reiterated twice more that “the Resident does not waive his/her right to bring a lawsuit in court against the Facility for violations of the Patient’s Bill of Rights contained in [t]itle 22 of the California Code of Regulations [s]ection 72527.” Each agreement purported to “bind[] the parties hereto, including the heirs, representative, executors, administrators, successors, and assigns of such parties.”

In April 2020, Patient tested positive for Covid-19 and was transported to an emergency room “due to pneumonia, malnutrition[,] and pain to her side.” “She was diagnosed with acute respiratory failure, sepsis[,] and pneumonia.” She passed away in May 2020.

B.

Battle filed a complaint against AG, both as Patient’s successor in interest and individually. The complaint contains four causes of action: (1) elder abuse and neglect in violation of the Act, (2) violation of the Patient’s Bill of Rights, (3) negligence, and (4) wrongful death. It alleges AG made conscious policy decisions at the corporate level to understaff Facility, hire

unqualified staff, and provide subpar training, all to increase profits and bring down costs, resulting in failures to provide for Patient's basic needs that directly contributed to Patient's illness, suffering, and death.

AG removed the case to federal court. It moved to dismiss the complaint, and Batlle moved to remand.¹ The district court granted the motion to remand and denied as moot the motion to dismiss.

Upon remand, AG filed a petition to compel arbitration, appending copies of both arbitration agreements, the POA, and the AHCD, although the AHCD was missing the notary acknowledgment page.

At the hearing, the trial court tentatively denied the petition and took the matter under submission after hearing argument. In a written decision, the trial court denied AG's petition, finding Batlle lacked actual authority to bind Patient to arbitration. First, it found the AHCD "ineffective for multiple reasons," including its failure to be either notarized or signed by witnesses. Second, as to the POA, the court concluded that Batlle's authority to make decisions regarding "claims and litigation" was inapplicable because "there were no claims or litigation pending when the arbitration agreements were signed," making Batlle's execution of the arbitration agreements "closer to a 'health care decision' than an act relating to 'claims and litigation.'" The court further found Batlle lacked ostensible authority to bind Patient to arbitration, as "[t]here is no evidence" Patient "caused a third person to believe that her son had authority to act on her behalf."

Regarding Batlle's individual claim, the court found Batlle only signed the agreements in a representative capacity. Because Batlle's signature in a

¹ We grant Batlle's unopposed request for this court to take judicial notice of (1) the order granting the motion to remand, and (2) the docket in *Barriero v. AG Redlands, LLC*, (C.D.Cal. May 31, 2022, No. 5:21-cv-01329-JWH-SHK) 2022 U.S. Dist. Lexis 98222. (Evid. Code, § 452, subd. (d).)

representative capacity “was ineffective” given his lack of authority, it could bind neither Batlle nor Patient to arbitration. Accordingly, AG failed to meet its burden of establishing a valid arbitration agreement with either Batlle or Patient.

II.

Relevant to this opinion, AG argues the trial court erred in finding Batlle (1) lacked actual authority under the POA to bind Patient to arbitration such that no valid arbitration agreement between Patient and Facility existed, and (2) could not be compelled to arbitrate his wrongful death claim absent signing the agreements in his individual capacity.

In his respondent’s brief, Batlle contends for the first time that AG waived its right to arbitration because filing and fully briefing its motion to dismiss upon removal, rather than immediately moving to compel, was “inconsistent” with its right to arbitrate. We disagree with Batlle’s claim that this issue is appropriately decided in the first instance on appeal because it raises a question of law based on undisputed facts. The parties dispute the nature of AG’s motion to dismiss and whether there was litigation on the merits prior to AG petitioning to compel arbitration. Nor do we agree that Batlle’s waiver argument implicates jurisdictional issues redressable at any time. We therefore conclude Batlle has forfeited this argument. (*California Horse Racing Bd. v. Workers’ Comp. Appeals Bd.* (2007) 153 Cal.App.4th 1169, 1173.)

A.

AG first argues the trial court erred in finding the arbitration agreements between AG and Patient invalid. According to AG, Batlle was either Patient’s actual or ostensible agent. We conclude Batlle was Patient’s

actual agent under the POA and validly bound Patient to arbitrate at least some of her survival claims.

1.

The parties dispute the applicable standard of review. AG claims our review is de novo, because the issues decided below “involve[d] interpretation of written instruments as well as evaluation of undisputed facts.” Batlle contends the trial court’s ruling “was based on numerous issues of fact” such that substantial evidence review applies.

We agree with AG that the trial court’s agency determination depended on its interpretation of the POA and the AHCD without consulting disputed extrinsic evidence. Whether those instruments grant Batlle the requisite authority to enter into the arbitration agreements on Patient’s behalf is a legal question. (*Logan v. Country Oaks Partners, LLC* (2022) 82 Cal.App.5th 365, 371.) Accordingly, we independently analyze the instruments, applying general principles of contract interpretation. (See *Gordon v. Atria Management Co., LLC* (2021) 70 Cal.App.5th 1020, 1026.)

2.

AG argues the POA provisions authorizing Batlle to act on Patient’s behalf as to matters concerning “claims and litigation,” and “all other matters” not expressly exempted, applies to Batlle’s signing of the arbitration agreements. According to AG, the trial court erred in (1) limiting Batlle’s authority over “claims and litigation” to litigation pending when he executed the arbitration agreements, and (2) finding as a result that signing the arbitration agreements was “closer to a ‘health care decision’ than an act relating to ‘claims and litigation.’” Batlle, meanwhile, claims signing arbitration agreements upon admission to a skilled nursing facility is a

“healthcare decision” exempt from the scope of his authority under the POA. We agree with AG.

a.

Contrary to Batlle’s claim, AG did not concede on appeal that signing the arbitration agreements was a “medical or other health care decision[]” for purposes of the POA just because AG claims that act was a “medical decision[]” for purposes of the AHCD. As AG argues, identical or similar words and phrases can have disparate meanings in different legal instruments—here, the POA and the AHCD—depending on each instrument’s purpose, substance, and wording. The arguments AG makes as to the meaning of these words or phrases in one instrument are not necessarily conclusive as to their meaning in another.

Further, to the extent AG conceded below that signing the arbitration agreements was a health care decision—which AG disputes and we agree is an inaccurate reading of the record—an “erroneous concession cannot and should not prevent this court from applying sound legal principles to the objective facts disclosed by the record.” (*Bell v. Tri-City Hospital Dist.* (1987) 196 Cal.App.3d 438, 449.) This principle applies given the California Supreme Court’s recent decision in *Harrod*.

Accordingly, we must decide whether Batlle’s signing of the arbitration agreements was (1) a “medical or other health care decision[]” expressly exempted from Batlle’s authority under the POA, or (2) an authorized act “with respect to . . . claims and litigation” or “all other matters.”

b.

The POA does not define these terms; however, it is to be strictly construed using the plain and ordinary meaning of its words. (*Rosenberg v. C.W. Clarke Co.* (1962) 200 Cal.App.2d 178, 197.) Importantly, after this

matter was fully briefed but before oral argument, the California Supreme Court issued its opinion in *Harrod*, which grapples with essentially the same issue. This court requested supplemental briefing from the parties as to the effect of *Harrod* on this case.

In *Harrod*, the decedent authorized his nephew Harrod, pursuant to a power of attorney for health care, to be his health care agent and make health care decisions for him should he be unable to make decisions for himself. (*Harrod, supra*, 15 Cal.5th at p. 947.) As here, Harrod signed two optional arbitration agreements appearing in separate documents as part of the decedent’s admission to a skilled nursing facility. (*Id.* at pp. 947-948.) In subsequent litigation, the parties disputed whether that act was a health care decision such that Harrod could bind the decedent to arbitration. (*Id.* at pp. 949-950.)

The court construed the phrase “health care decision” in the power of attorney, relying on the Health Care Decisions Law, the Power of Attorney Law, and the Uniform Statutory Form Power of Attorney Act (USFPAA) in doing so. (*Harrod, supra*, 15 Cal.5th at pp. 951-958.) It determined that a health care decision “directly pertains to who provides health care and what may be done to a principal’s body in health, sickness, or death.” (*Id.* at p. 952.) An “optional, separate arbitration agreement” with a skilled nursing facility is not such a decision. (*Id.* at p. 964.) The court expressly disapproved of *Garrison v. Superior Court* (2005) 132 Cal.App.4th 253, *Hogan v. Country Villa Health Services* (2007) 148 Cal.App.4th 259 (*Hogan*), and *Hutcheson v. Eskaton FountainWood Lodge* (2017) 17 Cal.App.5th 937 to the extent they concluded otherwise. (*Harrod, supra*, 15 Cal.5th at pp. 957, fn. 7, 967, fn. 17.)

In so interpreting the phrase, the court noted that a principal who designates separate agents in a power of attorney for health care and a power of attorney under the USFPAA would “expect[]” that the first would make health care decisions and the second decisions about claims and litigation. (*Harrod, supra*, 15 Cal.5th at pp. 957.) The USFPAA’s form power of attorney provides that it “does not authorize anyone to make medical and other health-care decisions for you.” (*Id.* at p. 956, quoting § 4401 [emphasis omitted].) One of the predefined powers as to which the principal may authorize the agent to act includes “claims and litigation.” (*Ibid.*) The USFPAA defines the phrase to include submitting a claim or litigation to arbitration and executing agreements regarding claims and litigation. (*Ibid.*) The USFPAA likewise provides that for any of the authorized powers, the agent can act in various other ways supporting the exercise of that power, including “submit[ting] to arbitration.” (*Ibid.*, quoting § 4450, subds. (b), (d), (j).)

Under *Harrod* and the plain terms of the POA, we conclude Batlle had the power under the POA to sign the arbitration agreements as part of his authority to “act . . . with respect to . . . claims and litigation” such that Patient is bound by the agreements. Both parties’ supplemental briefs accept that *Harrod*’s construction of the phrase “health care decision” applies here. We agree. Signing an optional, standalone agreement to arbitrate claims arising out of “medical or other health care decisions” may *relate to or concern* medical or healthcare decisions but is not *itself* such a decision, as it determines nothing about the actual medical treatment the patient will or will not receive, by whom, or where. (*Harrod, supra*, 15 Cal.5th at pp. 950-953.) While the POA exempts “mak[ing] medical or other health care decisions,” it permits “act[ing] . . . *with respect to* . . . claims and litigation”

and “all other matters.” (Italics added.) “[W]ith respect to,” meaning “as regards : insofar as concerns : with reference to,” broadens the words that follow. (Merriam-Webster Unabridged Dict. Online (2024) <<https://unabridged.merriam-webster.com/unabridged/respect>> [as of April 19, 2024], archived at <<https://perma.cc/4R8Y-K8HW>> [select “View the live page”].) Accordingly, the scope of Batlle’s authority over claims and litigation expands beyond the specified words alone to matters also relating to or concerning claims and litigation. The scope of medical and health care decisions over which he lacks authority, however, is not so modified, and thus the phrase is cabined to making such decisions themselves.

Meanwhile, signing the agreements is fairly considered an “act . . . with respect to . . . claims and litigation.” The word “litigation” has a broad common meaning. It encompasses a “dispute,” “the act or process of litigating,” or “the practice of taking legal action.” (Merriam-Webster Unabridged Dict. Online (2024) <<https://unabridged.merriam-webster.com/unabridged/litigation>> [as of April 19, 2024], archived at <<https://perma.cc/Z3D2-ES6E>> [select “View the live page”].) The word “claim” is similarly broad, meaning “a demand of a right or supposed right,” “a calling on another for something due or supposed to be due,” or “a demand for compensation, benefits, or payment.” (Merriam-Webster Unabridged Dict. (2024) <<https://unabridged.merriam-webster.com/unabridged/claim>> [as of April 19, 2024], archived at <<https://perma.cc/FL6Y-QE3E>> [select “View the live page”].)

Here, the medical malpractice arbitration agreement concerns “dispute[s]” or “issue[s]” of medical malpractice, and the other agreement covers “any claim other than a claim for medical malpractice” arising out of Facility’s provision of care to Patient. These matters are fairly encompassed

within the broad meaning of “claims and litigation” under the POA, and executing agreements to determine how and where such claims are to be decided should they arise is reasonably interpreted as an act “with respect to” such claims. (E.g., *Barnick v. Longs Drug Stores* (1988) 203 Cal.App.3d 377, 382.) We agree with AG that nothing in the POA limits “claims and litigation” to those already existing. Many of the other powers granted Batlle by the POA encompass decisions not yet made or things yet to transpire, such as “making gifts” to family members and engaging in “banking transactions.” Considered contextually, “claims and litigation,” devoid of clear limiting language, should not be interpreted any differently.

Harrod further supports this construction. Although the POA here is governed by the Power of Attorney Act rather than the USFPAA, which *Harrod* analyzed, both acts were codified contemporaneously with the Health Care Decisions Law. (*Harrod, supra*, 15 Cal.5th at p. 955.) We thus find persuasive the definition of “claims and litigation” in the USFPAA in construing the identical phrase in the POA here. As sections 4450(b), (d), and (j) and 4459(d) and (e) expressly provide that submitting to arbitration and entering into agreements concerning claims and litigation are authorized powers if the “claims and litigation” option on the form is initialed, we perceive no reason why the phrase should be different when the identical option is initialed on a general power of attorney. (§§ 4450(b), (d), & (j), 4459(d) & (e).)

As we conclude Batlle had the authority under the POA to sign the arbitration agreements on Patient’s behalf, we need not address whether the AHCD authorized Batlle to sign the arbitration agreements—a foregone

conclusion under *Harrod*—or whether Batlle had ostensible authority to do so.²

c.

Not all Patient’s claims are subject to arbitration under the agreements. Both arbitration agreements specifically exempt claims for violations of the Patient’s Bill of Rights. Accordingly, the second cause of action is not subject to binding arbitration. (See *Fitzhugh v. Granada Healthcare & Rehabilitation Center, LLC* (2007) 150 Cal.App.4th 469, 473-474 (*Fitzhugh*).)

Batlle urges us to find the elder abuse and neglect cause of action not arbitrable as contrary to public policy, relying on *Fitzhugh*. We acknowledge that *Fitzhugh* broadly recognized, in interpreting Health and Safety Code section 1430(b), “the Legislature’s expression of public policy that under no circumstances may a patient or resident waive his or her right to sue for violations of rights under the Patient[']s Bill of Rights, or other federal and state laws and regulations, which would include the existing . . . Act.” (*Fitzhugh, supra*, 150 Cal.App.4th at p. 476.) But we agree with AG that this sweeping statement cannot mean a claim for elder abuse or neglect is per se nonarbitrable. In *Laswell v. AG Seal Beach, LLC* (2010) 189 Cal.App.4th

² While both parties refer to the POA as a “durable” power of attorney in their appellate briefs, on its face the POA, which expressly provided any powers would no longer exist upon Patient’s incapacitation or disability, is *not* a durable power of attorney. (See Prob. Code, § 4124.) During oral argument, Batlle claimed, for the first time, that “one could argue” the powers authorized under the POA were no longer effective at the time Patient was admitted to Facility, given she was suffering from dementia and Alzheimer’s disease. We agree with AG that this argument was available to Batlle when the trial court initially considered the merits of AG’s petition; while the argument may have grown in importance post-*Harrod*, *Harrod* did not give rise to it. The argument is thus forfeited.

1399, the court of appeal rejected the argument Batlle advances, noting numerous cases that found claims of elder abuse or neglect arbitrable. (*Id.* at p. 1409, fn. 3.) We, too, decide there is no indication that the public policy in favor of protecting elderly and other vulnerable persons from abuse and neglect conflicts with the public policy favoring arbitration. (*Hogan, supra*, 148 Cal.App.4th at p. 269.)

* * *

We conclude that a valid arbitration agreement between Patient and Facility bound Patient to arbitrate her survival claims for (1) elder abuse and neglect and (2) negligence.

B.

AG argues, relying on Code of Civil Procedure section 1295 and *Ruiz*, that Batlle’s wrongful death claim also is subject to arbitration, given the agreements purport to bind Patient’s heirs. Batlle argues *Ruiz* is inapplicable, as his asserted claim is not based on professional negligence. Relying instead on *Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835 (*Avila*) and *Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal.App.4th 674 (*Daniels*), Batlle contends he cannot be bound by the terms of arbitration agreements he did not sign in his individual capacity. We agree with Batlle.

1.

Section 1295 is part of the Medical Injury Compensation Reform Act (MICRA). (*Smith v. Ben Bennett, Inc.* (2005) 133 Cal.App.4th 1507, 1514.) MICRA was enacted “to reduce the cost and increase the efficiency of medical malpractice litigation.” (*American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, 363-364.) Section 1295 specifies the requirements for valid arbitration provisions in contracts for medical services. (Code Civ.

Proc., § 1295.) The section defines “[p]rofessional negligence” as “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.” (§ 1295(g)(2).) The medical malpractice arbitration agreement here contains the same substantive language as section 1295, which defines “dispute[s] as to medical malpractice” subject to binding arbitration to include “whether any medical services rendered under this contract were unnecessary or unauthorized or were improperly, negligently[,] or incompletely rendered.” (§ 1295(a).)

In general, third parties to an arbitration agreement cannot be compelled to arbitrate a dispute subject to that agreement. (*Daniels, supra*, 212 Cal.App.4th at p. 680.) However, that general rule “ha[s] been qualified.” (*Ruiz, supra*, 50 Cal.4th at p. 845.) In *Ruiz*, our Supreme Court concluded that an agreement to arbitrate disputes under section 1295 can bind a patient’s heirs to arbitrate wrongful death claims in actions asserting professional negligence. (*Id.* at p. 849.)

Subsequent appellate decisions have clarified the scope of the *Ruiz* exception. In *Daniels*, for instance, the court of appeal concluded *Ruiz* should not “be extended to arbitration agreements not governed by section 1295.” (*Daniels, supra*, 212 Cal.App.4th at p. 683.) The court of appeal affirmed the trial court’s finding that the decedent’s daughter, who brought claims of elder abuse, negligence, and wrongful death against a residential care facility for the elderly, was not bound by an arbitration agreement she signed as a representative. (*Id.* at pp. 676-677.) One of several reasons the arbitration agreement was not governed by section 1295 was because the wrongful death claim was “not based on” professional negligence. (*Id.* at p. 684.)

The court of appeal in *Avila* expanded on this reasoning, explaining that “whether *Ruiz* is controlling” depends on “whether this case is about ‘professional negligence.’” (*Avila, supra*, 20 Cal.App.5th at p. 842.) There, the decedent’s son signed an arbitration agreement on his father’s behalf, and after his father died, the son brought claims against the long-term acute care hospital for “negligence/willful misconduct,” elder abuse and neglect, and wrongful death. (*Id.* at pp. 838-839.) The court of appeal concluded section 1295 did not apply because, although the complaint contained “allegations that could be categorized as professional negligence as well as elder abuse,” it “was pleaded as one for” non-professional negligence claims. (*Id.* at p. 843.) That the son “could have also pleaded a claim for medical malpractice . . . is irrelevant,” given he successfully pleaded a claim for elder abuse and neglect. (*Ibid.*) As “the primary basis” for the wrongful death claim was elder abuse, not professional negligence, section 1295 did not apply. (*Id.* at p. 842-843.) Thus, the son, who only signed the agreement in a representative capacity, was not required to arbitrate his wrongful death claim. (*Id.* at pp. 843-845.)

2.

We find the reasoning of *Daniels* and *Avila* persuasive here. The overarching premise of the complaint is that AG consciously decided to understaff the facility, “in both quantity and quality of nursing personnel, . . . to increase the profitability of the nursing home, in conscious disregard of patient care needs.” These deliberate corporate decisions resulted in personnel failing to fulfill Patient’s basic needs, thereby causing Patient’s injuries. Rather than rendering medical services “improperly, negligently[,] or incompletely” (§ 1295(a)), the complaint claims AG “withheld basic care” and “medical care” by failing to act, in a manner evidencing

“recklessness, fraud, oppression, and/or malice.” These allegations concern not “the substandard performance of medical services but, rather, . . . the failure to *provide* medical care.” (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783.) Such acts and decisions undertaken to benefit the health care provider, rather than the patient, are not “professional negligence.” (*So v. Shin* (2013) 212 Cal.App.4th 652, 667.) We accordingly disagree with AG’s contention that “[t]he thrust of [Batlle]’s wrongful death claim is that [AG] was negligent.” As the gravamen of Batlle’s wrongful death claim is intentional elder abuse and neglect resulting from corporate-level decisions rather than mere professional negligence, the claim is subject to neither section 1295 nor the medical malpractice arbitration agreement Batlle signed as Patient’s representative.

AG contends “allegations of elder abuse . . . cannot be a basis for an heir’s wrongful death claim,” relying on *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256 (*Quiroz*). But AG is mistaken. In *Quiroz*, the decedent’s mother filed a timely wrongful death claim but later sought to add an untimely survival claim for elder abuse. (*Id.* at pp. 1266-1275.) Because the elder abuse claim was for injury to the decedent, however, it did not relate back to the wrongful death claim, premised on injuries the decedent’s death caused his mother. (*Id.* at pp. 1277-1279.) Accordingly, the elder abuse claim was time-barred. (*Id.* at pp. 1274-1275, 1281.) *Quiroz* did not address the effect of an arbitration agreement on claims for wrongful death or elder abuse or the extent to which a wrongful death cause of action can sound in elder abuse.

As the parties do not dispute that Batlle signed the arbitration agreements solely in a representative rather than individual capacity, and as we conclude his wrongful death claim is governed by neither section 1295 nor

Ruiz, we affirm the trial court’s ruling that Batlle is not bound to arbitrate his claim.

C.

This matter comprises three types of claims: (1) Patient’s claims of elder abuse and negligence that are subject to arbitration, (2) Patient’s claim for violation of the Patient’s Bill of Rights that is not subject to arbitration, and (3) Batlle’s third-party claim for wrongful death, which also is not subject to arbitration.

In opposing AG’s petition, Batlle argued the trial court should refuse to enforce the arbitration agreements pursuant to Code of Civil Procedure section 1281.2, because arbitrating the survival claims while litigating the wrongful death claim would require duplication of effort and could result in inconsistent outcomes. Whether the conditions set forth in section 1281.2(c) are satisfied and, if so, the choice under section 1281.2 of how to proceed, is “entrusted to the trial court’s discretion.” (*Williams v. Atria Las Posas* (2018) 24 Cal.App.5th 1048, 1054.) We therefore remand for the trial court to exercise its discretion in the first instance. (*Ibid.*) It is also for the trial court to decide how best to address the existence of both arbitrable and nonarbitrable claims between Patient and AG. (§ 1281.2.)

III.

We reverse the trial court's order denying AG's petition to compel arbitration, affirm the trial court's finding that Batlle is not bound by the arbitration agreements, and remand this matter for the trial court to (1) determine whether the conditions of Code of Civil Procedure section 1281.2(c) are satisfied, and (2) if so, exercise its discretion under section 1281.2. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).)

CASTILLO, J.

WE CONCUR:

DO, Acting P. J.

BUCHANAN, J.