

The Supreme Court - November 5, 2021

Today, the Supreme Court of the United States granted certiorari in the following cases:

Marietta Memorial Hospital v. Davita Inc., No. 20-1641: This case, involving the Medicare Secondary Payer Act, presents the following questions: 1) Does a group health plan that provides uniform reimbursement of all dialysis treatments observe the Act's prohibition that group health plans may not "take into account" the fact that a plan participant with end stage renal disease is eligible for Medicare benefits? 2) Does a plan that provides the same dialysis benefits to all plan participants, and reimburses dialysis providers uniformly regardless of whether the patient has end stage renal disease, observe the Act's prohibition that a group health plan may not "differentiate" between individuals with end stage renal disease and others "in the benefits it provides"? 3) Is the Act a coordination-of-benefits measure designed to protect Medicare, not an antidiscrimination law designed to protect certain providers from alleged disparate impact of uniform treatment?

Ruan v. United States, No. 20-1410; **Kahn v. United States**, No. 21-5261: These consolidated cases present the following questions: 1) Whether a physician alleged to have prescribed controlled substances outside the usual course of professional practice may be convicted of unlawful distribution under 21 U.S.C. §841(a)(1) without regard to whether, in good faith, he "reasonably believed" or "subjectively intended" that his prescriptions fall within that course of professional practice. 2) Where the government prosecutes a medical practitioner under the Controlled Substances Act for issuing a prescription outside "the usual course of professional practice," is the government required to prove that the doctor knew or intended that the prescription be outside the scope of professional practice? 3) Does a "good faith" defense in the context of a licensed medical practitioner prosecuted under the Controlled Substances Act protect doctors who have an honest but mistaken belief that they have issued the charged prescription in "the usual course of professional practice," and, if so, must that belief be objectively reasonable? 4) Should the "usual course of professional practice" and "legitimate medical purposes" prongs of C.F.R. § 1306.04(a) be read in the conjunctive or

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the disjunctive?

Egbert v. Boule, No. 21-147: 1) Whether a cause of action exists under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for First Amendment retaliation claims. 2) Whether a cause of action exists under *Bivens* for claims against federal officers engaged in immigration-related functions for allegedly violating a plaintiff's Fourth Amendment rights.