

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

In re JESUS ESTEVEZ,  
  
On Habeas Corpus.

F054515

**ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]**

It is ordered that the opinion filed herein on August 14, 2008, be modified as follows:

The following paragraphs are added immediately after the first full paragraph on page 18 and before the hearing, “**DISPOSITION**,” on page 19:

By way of a petition for rehearing, the Attorney General, on behalf of the warden, requests that we modify our opinion to provide that the warden is only a necessary and proper party, and need only respond in the instant action, to the extent necessary to establish the legality of the inmate’s physical custody. The Attorney General asserts that the Receiver is the sole and proper party to respond to medical claims.

We decline to make the requested modification. To the extent that the warden does not have control over an inmate’s medical care due to specific restraints imposed by statute or court order, the warden may defer to such party as is legally mandated to provide the requisite care – at this juncture, the Receiver. However, we do not read the orders in *Plata* so broadly that we can conclude, with certainty, that responsibility for all inmate medical care has been removed from the state, regardless of the adequacy of care provided by a delegated authority. In part, we so conclude because the state, and through its appointed representative the warden, cannot abdicate its constitutional responsibility to provide adequate medical care, concomitant with which is the duty to assure said care is not dispensed without any regard for the effect on the prison system as a whole. That responsibility is uniquely that of the warden as representative of the state, as opposed to being that of the Receiver. In short, the existence of the orders in *Plata*, and the appointment of the Receiver, do not relieve the state of its constitutional responsibility to determine whether adequate care is in fact being provided, or whether the proposed

medical care or actions to facilitate that care are inconsistent with the state's overall constitutional responsibility for public safety and welfare.

Further, we reject the Attorney General's assertion that, if the warden and Receiver have conflicting conclusions regarding the adequacy of an inmate's medical care, the warden's position on the merits will be irrelevant because he is powerless to make any decision relative to such care or to direct the Receiver to provide care. The warden presently may be powerless in this regard, but this does not render his position on the merits irrelevant: as previously discussed in our opinion, the courts of this state retain power, pursuant to their habeas jurisdiction, to make orders with respect to inmate medical care and, assuming no conflict between those orders and the Receiver's developing health care delivery system, to impose those orders upon the Receiver. Thus, at the very least, any disagreement between the warden and the Receiver regarding the adequacy of an inmate's medical care, should be fully aired before the court in question so that it may be fully informed in determining the appropriate course of conduct with respect to the issues before it. Taken to its logical conclusion, the Attorney General's position would obligate the warden to accept unquestioningly any decision of the Receiver, regardless of its impact on the entire system, and would require courts to render habeas decisions on medical care issues without input from the one party who is legally required to consider the effect on the entire prison itself and, by extension, the state prison system as a whole.

Except for the modifications set forth, the opinion previously filed remains unchanged.

This modification does not effect a change in judgment.

The petition for rehearing is denied.

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ARDAIZ, P.J.

WE CONCUR:

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CORNELL, J.

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KANE, J.