

Court Approval is Not Needed to Assert a Punitive Damages Claim Against a Health Care Service Plan

In a victory for health insurance policy holders over health insurers/health care service plans, in *Kaiser Foundation Health Plan, Inc. v. Superior Court (Rahm, et al, Real Parties)*, 2012 Cal. App. LEXIS 138 (Cal. App. 2d Dist. Feb. 15, 2012), the Court of Appeals ruled that a plaintiff does not need to obtain approval from the trial court before asserting a claim for punitive damages against a health care service plan. Specifically, the Court ruled that California Civil Procedure section 425.13 applies only to health care providers (such as doctors), but does not apply to health care service plans such as Kaiser Foundation Health Plan or Anthem/Blue Cross.

The Rahm family filed a lawsuit against Kaiser Foundation Health Plan and two Kaiser health care providers. The Rahms claimed that Kaiser improperly delayed before ordering an MRI for their daughter Anna, resulting in the eventual loss of Anna's right leg and portions of her pelvis and spine. Specifically, despite numerous requests by Anna's parents that Kaiser authorize an MRI for Anna, Kaiser refused. As a result, there was a considerable delay in discovering that Anna was suffering from a "high grade" osteosarcoma, one of the fastest growing types of osteosarcoma. The delay significantly contributed to Anna's poor prognosis and the need for the amputations.

After the Rahms filed their lawsuit, the defendants filed a motion to strike the punitive damages allegations. The defendants asserted that the Rahms failed to comply with California Civil Procedure section 425.13, which requires a plaintiff to obtain a trial court order before a claim for punitive damages can be asserted against a health care provider for damages arising out of professional negligence. The Rahms eventually dismissed their punitive damages claims against the two Kaiser health care providers. Accordingly, the Court only reviewed whether California Civil Procedure section 425.13 applied to claims against health care service plans.

The Court of Appeals indicated that "the text of the statute is unclear as to whether section 425.13 is intended to apply only to claims against health care providers, or whether it is intended to apply to claims against any type of defendant—including claims against health care service plans," and thus turned to the legislative history. After reviewing the legislative history, as well as *Central Pathology Service Medical Clinic, Inc. v. Superior Court*, 3 Cal. 4th 181 (1992) in which the California Supreme Court considered the scope of claims subject to section 425.13, the Court held that section 425.13 does not apply to claims against health care service plans. Specifically, the Court noted that:

Defendants' argument that section 425.13 may be applied to claims against health care service plans, rather than health care providers, is also in conflict with other sections of California code. Civil Code section 3428, subdivision (c) states that "[h]ealth care service plans ... are not health care providers under any provision of law, including, but not limited to ... Section[] ... 425.13 ... of the Code of Civil Procedure." Likewise, Health and Safety Code section 1367.01, subdivision (m) clarifies that a health care service plan's role in determining the medical necessity of a requested procedure "shall [not] cause a health care service plan to be defined as a health care provider for purposes of any provision of law, including ... Section[] ... 425.13 ... of the Code of Civil Procedure." The language of these statutes demonstrates a clear intent to exclude health care service plans from the procedures required under section 425.13.

Defendants have not cited a single decision that has applied section 425.13 to claims pleaded against a health care service plan or any other type of entity that was not a medical care provider.

In conclusion, the Court ruled that:

The legislative history of section 425.13 and various provisions in California code demonstrate that the procedural requirements described in the statute do not apply to claims against health care service plans. Because defendants admit that Kaiser Health Plan is a health care service plan, rather than a health care provider, the trial court did not err in refusing to strike the punitive damages allegations asserted against the Health Plan.

Based on this ruling, plaintiffs can assert punitive damage claims against health care service plan without first obtaining court approval and will therefore have an easier time holding entities such as Kaiser Foundation Health Plan or Anthem/Blue Cross liable for their actions.