

Health Care Service Plan Not Liable for Provider's Failure to Diagnose Illness

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[*Watanabe v. California Physicians' Service*](#), 169 Cal. App. 4th 56 (2008)

On February 25, 2009, the California Supreme Court denied a petition to review the Court of Appeal decision in [*Watanabe v. California Physicians' Service*](#), 169 Cal. App. 4th 56 (2008). This decision let stand the opinion by Judge Flier which held Health Care Service Plans and plan providers are separately liable for their own acts or omissions under the Knox-Keene Health Care Service Plan Act of 1975 (the "Act"), notwithstanding the delegation of duties from one to the other. Blue Shield of California, a Health Care Service Plan under the Act, delegated to the plan provider the task of initially determining whether a particular service or treatment was medically necessary (what is called a "utilization review"). Plaintiff sued Blue Shield on the grounds that it wrongfully delegated the utilization review to the plan provider and, as a result, should be vicariously liable for the provider's failure to diagnose the Plaintiff's brain tumor. The provider settled with the Plaintiff before trial which continued against Blue Shield.

The California Court of Appeal rejected the Plaintiff's arguments and held that (1) the Act permitted Blue Shield to delegate utilization review to a plan provider, and (2) the Act unequivocally precluded imposition of vicarious liability against Blue Shield for the plan provider's acts or omissions. The Court of Appeal agreed with the trial court which instructed the jury that Blue Shield and the plan provider was each liable for its own acts and omissions. Plaintiff argued that the third sentence of The Act at section 1367 imposed vicarious liability on Blue Shield for the plan provider's acts or omissions. Section 1367 states:

A plan, any entity contracting with a plan, and providers are each responsible for their own acts or omissions, and are not liable for the acts or omissions of, or the costs of defending, others. Any provision to the contrary in a contract with providers is void and unenforceable. Nothing in this section shall preclude a finding of liability on the part of a plan, any entity contracting with a plan, or a provider, based on the doctrines of equitable indemnity, comparative negligence, contribution, or other statutory or common law bases for liability.

The court clarified this section, noting "under the third sentence an entity that has committed an act or omission for which it is liable remains liable for that act or omission, *even if it shares liability with another entity.*" However, the first two sentences of section 1367 are "unmistakably clear in precluding the imposition of vicarious liability."

Judicial Opinion Available [Here](#)