

Protection Against Punitive Damage Claims at Pleading Stage Denied to California Health Plan

Healthcare Law Newsletter

April 2012 by [Michael Scanlon, Jr.](#)

California Code of Civil Procedure section 425.13 precludes a claim for punitive damages in an action seeking damages arising out of a health care provider's negligence unless the plaintiff first obtains a court order. To garner such an order, plaintiffs must show there is a substantial probability they will prevail on the claim at trial. In a case of first impression, the California Court of Appeal in *Kaiser Foundation Health Plan, Inc. v. Superior Court (Rahm)*, __ Cal.App.4th __ (February 15, 2012) held that section 425.13 does not apply to a health care service plan.

Anna Rahm and her parents sued the health plan and two affiliated health care providers for injuries Rahm alleged she sustained because of a delay in diagnosing a fast-growing cancer. Plaintiffs asserted the delay resulted from initial refusals of the health care providers to approve a diagnostic MRI. Further, they alleged the health plan – which delegated to its contracted physicians the responsibility of deciding what medical care to provide plan members – induced their physicians to deny costly medical services to plan members. More specifically, the plaintiffs contended the plan required its physicians to base their approval of medical care (at least in part) on the cost of the care, and then incentivized the physicians to withhold more costly care through a bonus system directly dependent upon cost savings the plan realized. The plaintiffs alleged tort and contract claims and sought punitive damages against all defendants.

The defendants filed a motion to strike the punitive damages, pursuant to Code of Civil Procedure section 425.13(a). The trial court denied the motion and the defendants filed a petition for writ of mandate, which the appellate court summarily denied. The defendants then petitioned the California Supreme Court for review. Under a procedural rule, California's high court granted review and transferred the matter back to the intermediate appeals court to decide on the merits. At this point, the plaintiffs dismissed the punitive damage claims against the health care providers, and the appellate case proceeded against the plan only.

On appeal, the plan argued section 425.13 applies to any claim against a service plan that seeks compensation for injuries that are directly related to the quality of medical services rendered by a health care provider – reasoning that the plaintiffs' claims against it were predicated on injuries caused by the alleged failure of the health care providers to administer proper care. The plaintiffs responded that the health plan could not avail itself of section 425.13's protections because the statute applied only to health care providers.

Since it considered section 425.13 to be ambiguous, the Court of Appeal turned to the statute's legislative history for guidance. The court concluded the statute was intended to apply only to health care providers and not to health care service plans, an interpretation it felt was amply supported by many decisions that previously construed the scope of section 425.13. The Court of Appeal also found that extending section 425.13 to health care service plans would conflict with other California statutes, which state health care plans are not health care service providers. (See Civil Code §3428(c); Health & Safety Code §1367.01(m).) Finally, the appellate court rejected the plan's argument that section 425.13 should be applied in circumstances where the plaintiff seeks to hold the service plan vicariously liable for the utilization review decisions of the health care provider. In addition, the court noted that extending section 425.13 to cover vicarious liability claims would serve no purpose, since it is already settled that Health & Safety Code section 1371.25 precludes such claims, citing *Martin v. Pacificare of California*, 198 Cal.App.4th 1390 (2011), and *Watanabe v. California Physicians' Service*, 169 Cal.App.4th 56, 63–64 (2008).

NOTE: In *Martin*, [David M. Humiston](#) of Sedgwick was the lead trial counsel who obtained a nonsuit based on *Watanabe* and section 1371.25, and [Christina J. Imre](#) and [Douglas J. Collodel](#) of Sedgwick's appellate team successfully briefed the appeal, which preserved the nonsuit ruling. Sedgwick also provided amicus support in *Watanabe*.

Related Practices:

[Healthcare](#)

[Insurance Practices](#)