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Insurance Issue: Provider Coverage Decisions Aren't Immune from Punitive Damages

Plaintiffs in medical malpractice actions are hindered from pursuing punitive damages against health-care practitioners by a roadblock firmly set by California law.

But alternate routes to plead the same damages successfully against these practitioners are readily available in insurance-bad-faith cases. Here is how it works.

Summary
Code of Civil Procedure § 425.13 provides that in order to assert a punitive-damages claim against a medical provider, a plaintiff must first obtain a court order. But this law applies only if the claim is based on the rendering of services for which the provider is professionally licensed. Therefore, if health-care providers are rendering the type of service for which they are not professionally licensed, a court order is unnecessary. As a result, in insurance-bad-faith cases, plaintiffs may assert punitive-damages claims against medical providers for their coverage determinations that delay or deny medically necessary care and treatment, since these providers are not professionally licensed to make coverage determinations.

Governing Statute is limited to professional-negligence actions

By its text, CCP § 425.13 precludes the allegation of punitive damages in an action "arising out of the professional negligence of a health care provider." It does not, however, preclude a claim for punitive damages in a cause of action unrelated to the practice of medicine.

Supreme Court limits § 425.13 to professionally licensed conduct Medical providers typically cite the seminal case of Central Pathology Service Medical Clinic, Inc. v. Superior Court (1992) 3 Cal.4th 181, 187, in support of a motion to strike punitive-allegations against them. But the Supreme Court's actual holding did leave open a window of opportunity for plaintiffs to assert punitive-damages claims.

That is, the Court defined the "professional negligence" within § 425.13 as a health-care practitioner's negligent conduct within the course of rendering services for which the provider is professionally licensed. And so, the Court's decision means that CCP § 425.13 does not apply to the alleged conduct of medical providers for which they are not professionally licensed.

Medical provider licenses are limited to medical care and treatment.

The license of a health-care provider is to practice medicine, and not, for example, to grant or deny insurance benefits. Physicians and surgeons are certified or licensed "to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions." (Business and Professions Code, §§ 2050 and 2051.)

The law does not, however, provide that health-care providers are certified or licensed to make insurance coverage or benefits determinations.

Application of law to insurance-bad-faith actions

In a bad-faith case against medical providers, these providers act in two different capacities: (1) as health-care practitioners providing medical care (for which no punitive exposure attaches), and (2) as insurance-coverage or benefit determiners (for which punitive exposure may lie).

A bad-faith claim does not plead medical negligence, that is, conduct below the standard of care in the community in providing medical services. Rather, plaintiffs in bad-faith claims plead the unreasonable and

deliberate denial of insurance-policy coverage so as to benefit defendants financially - including staying in the good graces of the contracting insurance company. Under these facts, medical providers who deny medical benefits to which patients/insureds are entitled under their health plans are acting more as claims adjuster or claims managers who determine coverage than medical providers who determine and apply the optimal medical care for patients in accordance with the community standard.
There is, however, nothing inherently medical about denying an insured his or her insurance benefits. An easy way to see this is that a medical provider can deny covered medical benefits without ever providing any medical care or treatment to a patient/insured.

For these reasons, § 425.13 does not apply to a complaint that alleges (1) misconduct by practitioners in various capacities other than as health-care providers (e.g., marketing, utilization review, coverage or benefits determination, and claims administration); or (2) conduct engaged in by anyone in the insurance chain with policy-related authority (e.g., a claims manager, who of course has no license to provide medical services). And in general, California medical providers are not professionally licensed to engage in any of this conduct.

In response to bad-faith allegations, medical-provider defendants frequently argue that these claims are merely for medical negligence - that is, for below-standard medical care that they did or did not provide the patient/insured. And based thereon, these defendants typically move to strike any allegations of punitive damages against them.

Medical providers often contend that since they are "health care providers," they are automatically, irrefutably, and forever entitled to the protection of § 425.13 from any punitive-damages claims. But California law does not provide to health-care providers total civil immunity from punitive damages. Otherwise, a medical provider could do anything to a patient and still be immune from punitive damage, since anything that a medical provider does must surely be "related" to the provision of medical services. This, however, is far too broad an interpretation of § 425.13, since it ignores the above-mentioned law that the alleged wrongful conduct must occur while the providers are rendering services for which they are professionally licensed.
Contrary authority
Probably the strongest judicial authority for attacking the pleading of punitive damages against medical providers in a bad-faith case is Davis v. Superior Court (Los Angeles County) (1994) 27 Cal.App.4th 623.

In Davis, plaintiff brought a medical-malpractice count along with a claim for punitive damages based on allegations that the defendant physicians had fraudulently deprived him of his workers' compensation benefits. The Davis court acknowledged that § 425.13 would preclude the assertion of punitive damages only if the alleged tortious conduct was performed while doing something ordinarily expected of a medical practitioner in his or her capacity as a health care provider.

The issue then becomes whether a medical provider, such as a physician, is ordinarily expected to make insurance-coverage or benefit determinations under a patient's policy of insurance coverage. Case law on this issue is not conclusive, but from the perspective of an ordinary patient/insured, the expectation is that the insurance company will handle coverage questions and the medical providers will handle medical questions. And if either crosses over into the other's field - and the insurer makes medical decisions or the provider makes insurance decisions - then that is exactly when bad-faith liability may arise.

Just as HMOs have faced bad-faith liability for having medical decisions made by non-medical or insurance personnel, so, too, must medical providers be subject to bad-faith liability for their insurance-coverage determinations.

In this way, insurance-coverage determinations are not the kind of conduct that would ordinarily be expected

of health-care providers to perform in their capacity as health-care providers.

Davis specifically determined that although the causes of action alleged were other than for medical negligence, the gravamen of the action was, at bottom, the failure to render proper medical care and treatment. The Davis court similarly noted that while the patient alleged a fraud cause of action, the fraud alleged was as to the treatment that would be given to the patient and the doctor¹s qualifications for providing that treatment. Thus, the fraud cause of action was inextricably linked with the provision of medical care.

That is not the case in most bad-faith cases, where the allegations concern administering the insurance plan and the provider's decisions regarding whether benefits under the plan - such as admittance to or retention in a medical facility or entitlement to certain medical treatment - should have been made available to plaintiff. This conduct is totally separate and distinct from the conduct of rendering a proper diagnosis or providing proper medical care. More importantly, it is not conduct for which a medical provider is professionally licensed.

Alternative to bad-faith: Interference with contractual relationship

As shown above, punitive-damage allegations against medical providers are usually proper in an insurance-bad-faith case. But if the facts of a particular case do not support allegations of a medical provider's insurance-coverage determinations that would support a punitive-damages claim, the provider is still not off the hook. For a viable alternative to alleging bad-faith liability against medical providers is to allege that the providers interfered with the contractual relationship between the insured (the patient) and the insurer (which contracted with the provider to treat its insured). Since contract interference is not conduct for which a health-care provider is professionally licensed, a plaintiff can in this way, too, avoid the application of § 425.13. Punitive-damages claims can then be included in a cause of action for intentional interference with contractual relationship.

Conclusion

Under California law, plaintiffs are free to make punitive-damages claims against health-care providers if the claims are based not on medical negligence, but rather on conduct for which the providers are not professionally licensed, such as making insurance-coverage and benefits determinations or intentionally interfering in an insured-insurer contract.