

## HMOs Liable for Unreasonably Delaying Referrals to Specialists

CALIFORNIA APPEALS COURT SETS NEW LAW

Editorial Staff

PacifiCare, an HMO operating in the state of California, has been handed a decision by the California Court of Appeal for breach of agreement by unreasonably delaying a patient's referral to a specialist. This ruling becomes law for the state of California, affecting all patients referred for specialist care, including care by doctors of chiropractic. A PacifiCare patient sought care from an infectious disease specialist after unsuccessful care from his general practitioner. The patient was given a referral, but, "he couldn't have an appointment until six weeks later, in part because Dr. Polaski (the specialist) saw patients for PacifiCare only one day a week." The patient sought an earlier specialist appointment from his general practitioner, but "he was told that they were unable to advance his appointment."

Frustrated, the patient made an appointment with another infectious disease specialist, who provided the care his illness required. When the patient sought payment for the specialist care from PacifiCare, they refused. The patient sued PacifiCare, alleging, among other things, "a claim of breach of the agreement by unreasonably delaying referring plaintiff (patient) to a specialist, and then only to one with limited hours available for plan subscribers."

The case was ultimately pushed up to the California Court of Appeal, Second Appellate District, Division Eight, after a lower-court summary judgment on the issue of breach of contract. The Court of Appeal reversed the lower-court ruling, making HMOs liable for unreasonably delaying referrals to specialists.

Michael Schroeder, vice president of the National Association of Chiropractic Attorneys (NACA), explains:

"This ruling is highly significant. Many HMOs attempt to limit chiropractic care by defining chiropractic doctors as 'specialists.' In the past, HMOs acted under the belief that a referral to a specialist could be deferred indefinitely as long as the failure to refer was not life threatening. This case holds that an unreasonable delay in referring to a specialist leaves the HMO liable to the patient. This should open up more legal avenues for chiropractic doctors and chiropractic associations to bring legal pressure on HMOs to act reasonably in referring to chiropractic doctors."

### Resource

1. Reversal of a judgment of the Superior Court of Los Angeles County in the case of *Steven Kotler v. PacifiCare of California, et al.* Filed Feb. 10, 2005.

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