

## Denial Of Coverage: Hospital Can Sue Insurer For Fraud.

The hospital admitted the patient following a motor vehicle accident and provided acute and post-acute medical services over a fifty day period for which the bill was almost two million dollars.

When the time came, the patient's health insurer refused payment based on an exclusion for injuries sustained as a result of having a blood alcohol level over the legal limit, i.e., drinking and driving.

The California Court of Appeal ruled the hospital had grounds to sue the patient's health insurer for intentional fraud as to authorizations of treatment, fraud based on suppression of facts as to the exclusion in the plan, negligent misrepresentation and unfair business practices.

### Hospital Had Obtained Authorization of Services

The Court reviewed the hospital's evidence about the numerous times hospital personnel communicated with the patient's insurer and received authorizations for specific acute and post-acute services as the course of the patient's treatment progressed.

The hospital phoned in the patient's name and the identifying information on his identification card when he first came in. As the days went by the hospital honored repeated requests to fax items and transmit data electronically from the patient's treatment records to keep the insurer apprised of what was going on.

Never, until it was time finally to reckon with the bottom line, was the hospital given any indication that any exclusion would stand in the way of final payment.

### Legal Elements of Fraud

The elements of fraud are a misrepresentation of facts or concealment of pertinent facts by a person with knowledge of the falsity and intent to deceive, justifiable reliance by the victim and resulting loss.

The Court ruled the health plan's numerous authorizations of services given by plan administrators to hospital personnel which were dishonored based on an undisclosed exclusion fit the definition of fraud.

The hospital naturally had available for the Court detailed records of all of its people's dealings with the insurer. **Tenet v. Blue Cross**, \_\_\_ Cal. Rptr. 3d \_\_\_, 2016 WL 1056521 (Cal. App., March 17, 2016).

***The patient's health insurer at all times had actual knowledge of the terms of the patient's plan's coverage, including exclusions.***

***The hospital does not and could not possibly maintain information regarding exclusions from coverage for the tens, if not hundreds of thousands of health insurance plans that cover the patients the hospital treats each year.***

***There is a customary practice in the industry that health plan administrators who have information indicating that services are not covered under the plan do not authorize such services.***

***The customary practice is that an authorization of services constitutes an affirmative representation by the health plan that, based on all of the information that the health plan has been provided to date, the services are covered.***

***This particular hospital and this particular plan have had their own continuing past course of dealing in which an authorization of services constitutes an affirmative representation that, based on all the information the hospital has given the plan, the services in question are covered.***

CALIFORNIA COURT OF APPEAL  
March 17, 2016

## Drug Allergy: Nurse's Chart Note Did Not Admit Fault By Hospital.

The patient was seen twice in the emergency department with a rash on her thigh. Each time she was prescribed oral Bactrim and Keflex and sent home.

She had to come in a third time because the rash and itching were getting worse, not better. She was admitted to the emergency department for IV Kefzol.

During the Kefzol infusion her nurse saw the patient's lips begin to swell. He contacted the pharmacist who confirmed that Kefzol is a cousin to the Keflex the patient had been given before.

Although the chart reflected only that an allergy to Bactrim had been confirmed, the nurse reasoned that the patient was likely also allergic to Keflex.

After the Kefzol infusion was unfortunately already complete the nurse got orders from the physician for Claritin, Benadryl and Solu-Medrol. He changed the tubing and continued IV fluids.

***The nurse's charting reflects only his due diligence in attempting to troubleshoot the source of a recurring problem the patient was having with a possible medication allergy.***

***His charting is in no way an admission that the hospital was at fault.***

COURT OF APPEALS OF KENTUCKY  
February 26, 2016

The Court of Appeals of Kentucky did not accept the patient's argument that the nurse's chart note as to the patient's reaction to the Kefzol infusion was an admission of fault by the hospital for giving and prescribing Keflex at her previous visits.

According to the Court, the nurse was fulfilling his duty to chart the deductive process that led to the physician's decision to substitute other medications for one to which another patient allergy had now been discovered. **Colo'n v. Norton**, 2016 WL 749490 (Ky. App., February 26, 2016).