

# Hospital and Professional Liability Policy Covers Economic "Injury"

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In an unpublished opinion, a California appellate court has ruled that an insurer must defend a managed care organization under a hospital and professional liability policy against claims that the company engaged in unfair business practices aimed at limiting health care services and information provided to subscribers.

*Truck Ins. Exch. v. PacifiCare Health Sys., Inc.*, 2005 WL 715976 (Cal. Ct. App. Mar. 30, 2005).

The insurer issued a comprehensive hospital and professional liability policy to the company, which provided coverage for "damages because of injury to any person arising out of the rendering of or failure to render ... Hospital and Professional services," including "medical, surgical, dental, nursing or other health care services to such person." The policy provided that "injuries ... include, but are not limited to, bodily injury and injury, sickness, disease or death resulting from rendering or failing to render professional services."

Subscribers and physicians sued the company, alleging that its payment caps, incentive programs and restrictions on treatment information provided to patients deprived subscribers of the "quality health care" for which they contracted and paid and interfered with the doctor-patient relationship. The insurer refused to defend the company, arguing that the term "injury" was limited to bodily injuries arising from medical malpractice.

The court disagreed, finding the definition of injury ambiguous and construing it in the company's favor. The court noted that the company did not operate hospitals or directly provide medical treatment itself. Instead, the company contracted with physicians and hospitals to provide treatment to its subscribers. In this context, the court found that coverage for the company's failure to render professional services could reasonably mean loss or detriment to subscribers and providers occasioned by a business practice of limiting or denying health care services or refusing to pay for medical treatment that was rendered. It therefore found that the claimants' allegations were potentially covered under the policy, triggering the insurer's duty to defend.

The court also found the underwriting history of the policy relevant to interpreting the term "injury," which it had found to be ambiguous. When the policy was issued, the insurer's agent represented to the company that the policy covered claims involving not only patient care but also the company's own business practices of providing health insurance programs and health care management services. The insurer later attempted to convert the policy to a narrower form because it did not wish to provide coverage for allegations that the

company failed to perform its obligations as a health insurer. The company refused the conversion. The court concluded that the company would have changed insurers or policies had the insurer's agents not assured it that the policy covered the type of risk at issue in the instant matter.

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