No. S218497

In the Supreme Court of the State of California

CENTINELA FREEMAN EMERGENCY MEDICAL ASSOCIATES, ET AL.,

Plaintiffs and Appellants,

vs.

HEALTH NET OF CALIFORNIA, INC., ET AL.,

Defendants and Respondents.

REPLY TO ANSWER TO PETITION FOR REVIEW

After An Opinion By The Court Of Appeal
Second Appellate District, Division Three, No. B238867

Appeal From A Judgment Of Dismissal Following Demurrer
Los Angeles County Superior Court, Case No. BC415203
Honorable John Shepard Wiley

Service on the Attorney General and the Los Angeles District Attorney
Required by Bus. & Prof. Code § 17209 and
Cal. Rules of Court, rule 8.29(a) and (b)

---

*Margaret M. Grignon (SBN 76621)
Kurt C. Petersen (SBN 83941)
Kenneth N. Smersfelt (SBN 166764)
Zareh A. Jaltorossian (SBN 205347)
Reed Smith LLP
355 S. Grand Avenue, Suite 2900
Los Angeles, CA 90071
Telephone: 213.457.8000
Facsimile: 213.457.8080

Attorneys for Defendant and Respondent *Blue Cross of California dba Anthem Blue Cross*

William A. Helvestine (SBN 58755)
CROWELL & MORING, LLP
275 Battery Street, 23rd Floor
San Francisco, CA 94111
Telephone: 415.986.2800
Facsimile: 415.986.2827

Attorneys for Defendant and Respondent *Health Net of California Inc.*

(Additional Counsel on Next Page)

ADDITIONAL COUNSEL

Jennifer S. Romano (SBN 195953)
Crowell & Moring LLP
515 S. Flower St., 40th Floor
Los Angeles, CA 90071
Telephone: 213.622.4750
Facsimile: 213.622.2690
Attorneys for Defendant and Respondent *Pacificare of California dba Secure Horizons Health Plan of America*

Richard J. Doren (SBN 124666)
Heather L. Richardson (SBN 246517)
Gibson, Dunn & Crutcher
333 S. Grand Ave., 50th Floor
Los Angeles, CA 90071
Telephone: 213.229.7664
Facsimile: 213.229.6664
Attorneys for Defendant and Respondent *Aetna Health of California*

Gregory N. Pimstone (SBN 150203)
Joanna S. McCallum (SBN 187093)
Jeffrey J. Maurer (SBN 190183)
Manatt, Phelps & Phillips, LLP
11355 W. Olympic Blvd
Los Angeles, CA 90064
Telephone: 310.312.4000
Facsimile: 310.312.4224
Attorneys for Defendant and Respondent *California Physicians' Service dba Blue Shield of California*

William P. Donovan, Jr. (SBN 155881)
Cooley LLP
1333 Second Street, Suite 400
Santa Monica, CA 90401-4100
Telephone: 310.883.6435
Facsimile: 310.883.6500
Attorneys for Defendant and Respondent *Cigna HealthCare of California, Inc.*

Don A. Hernandez (SBN 125119)
Jamie L. Lopez (SBN 260721)
Gonzalez Saggio & Harlan LLP
2 N. Lake Avenue, Suite 930
Pasadena, CA 91101
Telephone: 626.440.0022
Facsimile: 626.628.1725
Attorneys for Defendant and Respondent *SCAN Health Plan*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

REGULATIONS

I.

INTRODUCTION

The Health Plans' petition demonstrated two conflicts engendered by the Court of Appeal's Opinion in this case: (1) the conflict between the Second District, Division Three's decision in this case and the Fourth District, Division One's decision in *California Emergency Physicians Medical Group v. Pacificare of California* (2003) 111 Cal.App.4th 1127 (*CEP*); and (2) the conflict between the negligence duty the Court of Appeal created and the comprehensive statutory and regulatory scheme that applies to delegation arrangements in general and to the rehabilitation of financially troubled independent physicians associations (IPAs) in particular. Both of these conflicts furnish compelling grounds for review.

The emergency physician plaintiffs nevertheless oppose review, surprisingly arguing that there is no conflict between the Court of Appeal's decision in this case and *CEP*. They claim that certain published decisions after *CEP* have eroded its precedential value. This argument does not merit serious consideration. As the Court of Appeal acknowledged, its decision is in direct and irreconcilable conflict with *CEP*. Although the Court of Appeal disagreed with *CEP* and followed the Second District, Division Six's decision in *Ochs v. PacifiCare of California* (2004) 115 Cal.App.4th 782 (*Ochs*), it did not question *CEP's* precedential value. Moreover, the Court of Appeal understood that *CEP* involved the

exact same legal issue raised in this case, and that *CEP* cannot be distinguished from this case in either its facts or procedural context.

Plaintiffs also dispute that the Court of Appeal's decision conflicts with the statutory and regulatory regime governing delegation arrangements. However, plaintiffs largely ignore the specific statutory and regulatory conflicts the Health Plans identified in their petition. Plaintiffs do not explain, for instance, how the Court of Appeal's imposition of a duty based on delegation to an IPA can be reconciled with the unqualified language of Health and Safety Code section 1371.4, subdivision (e), the legislative history of that provision demonstrating the failure of an amendment to provide for post-delegation liability on the part of health plans, or the DMHC's definition of "capitation" as an arrangement whereby the IPA "assumes the full risk for the cost of contracted services ... provided." (Cal. Code Regs., tit. 28, § 1300.76, subd. (f).) Nor do plaintiffs adequately address how the Court of Appeal's mandate that health plans reassume reimbursement responsibility from an IPA undergoing a corrective action plan, with its attendant disruption in capitation payments, can coexist with the DMHC's efforts to rehabilitate that IPA through such a plan.

Plaintiffs indirectly suggest that these conflicts should be resolved so as to guarantee emergency physicians' reimbursement for services rendered to an IPA's enrollees. Plaintiffs claim that, without a negligence duty, emergency physicians will be left without a "remedy" when an IPA goes bankrupt. Plaintiffs' proposed

solution amounts only to the assertion that their financial interests should take precedence over the interests of all other participants in the managed healthcare system—including enrollees, IPAs, and health plans. But whatever the merits of plaintiffs' arguments as to how to resolve the conflict between a negligence duty based on delegation and the statutory scheme that allows delegation, the fact remains that plaintiffs have failed to demonstrate the absence of those conflicts. Indeed, plaintiffs' answer, focused as it is on the policy reasons for why emergency physicians should be able to pursue a "remedy," underscores both the existence of those conflicts and the significance of the issues raised in the Health Plans' petition. It also reinforces the Health Plans' arguments regarding the need for clarity and certainty in this area of law.

II.

ARGUMENT

A. As The Court Of Appeal Recognized, Its Decision In This Case Is In Direct And Irreconcilable Conflict With *CEP*

Plaintiffs claim there is no conflict between the Court of Appeal's decision and *CEP* because certain decisions after *CEP* have somehow diminished its importance. This contention is untenable. The Court of Appeal recognized that *Ochs* and the decision here, on the one hand, and *CEP*, on the other, represent a split of authority on the identical legal issue—whether a "cause of action exists for negligent delegation of [a health plan's] statutory obligation to

reimburse emergency physicians." (Opn. 17.) As the court acknowledged, in addressing this issue, it was not "writing on a clean state," because *Ochs* and *CEP* had "addressed the [same] question directly . . . ." (*Ibid.*) The court recognized that although *Ochs* had "addressed the same factual scenario as in *CEP*," it had "reached the opposite result." (Opn. 21-25.)

Fully cognizant that *Ochs* and *CEP* had reached "contradictory results" on the same issue presented in this case, the Court of Appeal expressly disagreed with *CEP* and followed *Ochs*. (Opn. 17) The court did so because, in its view, *Ochs* was "the better reasoned of the two opinions," not because the court questioned *CEP's* viability. (*Ibid.*)

Moreover, as the Court of Appeal understood, neither *Prospect Medical Group, Inc. v. Northridge Emergency Medical Group* (2009) 45 Cal.4th 497 (*Prospect*) nor *Bell v. Blue Cross of California* (2005) 131 Cal.App.4th 211 (*Bell*) disturbs *CEP's* holding or its precedential value for the plain reason that these cases involved different legal issues. *Prospect* concerned whether emergency physicians may bill patients directly for sums that their health plan failed to pay for emergency treatment. (*Prospect*, *supra*, 45 Cal.4th at p. 502.) As the Court of Appeal pointed out, in "*Prospect*, there was no issue of an insolvent IPA," and this Court's holding in *Prospect* applied to both health plans and their delegatee

organizations.[1] (Opn. 25-26.) Indeed, this Court in *Prospect* expressly limited its holding to the specific question before it—whether emergency physicians could bill patients directly "when the doctors have recourse against the patient's" health plan. The Court expressed "no opinion regarding the situation when no such recourse is available . . . ." (*Prospect*, *supra*, 45 Cal.4th at p. 507, fn. 5.) *Prospect* did not even mention *CEP*, much less disturb or bring into question its holding.

The same conclusion holds for *Bell*. In *Bell*, the Court of Appeal held that, in circumstances where health plans *do* have a duty to reimburse emergency physicians, they must pay the reasonable value of those services. *Bell* does not purport to describe when such a duty arises, however. Notably, *Bell* did not involve a delegation arrangement. In that case, the health plan had not delegated the reimbursement obligation to an IPA. (*Bell, supra,* 131 Cal.App.4th at p. 213.) The dispute in *Bell* was, therefore, directly between the physicians and the health plan. *Bell* cited *CEP* but did not discuss it, much less criticize or disagree with it.

Accordingly, neither *Prospect* nor *Bell* can be read as diminishing *CEP's* holding. Indeed, even *Ochs* found *CEP's* reasoning concerning the legal effect of section 1371.4, subdivision (e) "persuasive." (*Ochs, supra,* 115 Cal.App.4th at

---

[1] In *Prospect,* this Court expressly included a health plan's "delegates" within its definition of "health plan." (*Prospect, supra,* 45 Cal.4th at p. 501, fn. 1.)

p. 789.) As *Ochs* explained, *CEP* "concluded that a health care service plan does not remain liable for emergency care claims when the responsibility for those claims has been delegated to a contracting medical provider . . . under section 1371.4, subdivision (e). The court reasoned that when a duty held by a licensee such as a medical plan is deemed to be *non* delegable, the licensee remains liable for the nonperformance of its agents . . . . Conversely, to say a duty is delegable is to say that there is no residual liability." (*Id.* at pp. 789-790.) Yet, despite agreeing with *CEP's* reasoning as to the "legal effect" of subdivision (e) and rejecting the emergency physicians' UCL and common count claims based on that very reasoning, *Ochs* failed to consistently apply that reasoning to the emergency physicians' negligence claim. (*Id.* at pp. 793-794.) Thus, even though *Ochs* diverged from *CEP* in its approach to the emergency physicians' negligence claim, like the Court of Appeal here, it nevertheless recognized the force of *CEP's* logic.

Plaintiffs' attempt to distinguish *CEP* is just as confused and misguided as their argument that *CEP* is no longer good law. Contrary to plaintiffs' contention, *CEP* did not involve some different and broader duty to protect emergency physicians' financial interests than the duty at issue here. (Ans. 9-10.) Rather, as the Court of Appeal in this case recognized, *CEP* involved the same issue raised in this case on materially identical facts. In *CEP*, as in this case, the emergency physicians alleged that they provided emergency services to the defendant health plan's enrollees, that they sought reimbursement for those services from the delegated

IPA, and that the IPA "filed for bankruptcy and went out of business owing" them a considerable sum of money. (*CEP*, *supra*, 111 Cal.App.4th at p. 1130.) Like the plaintiffs here, the emergency physicians in CEP unsuccessfully sought reimbursement from the health plan. (*Ibid.*) And, like the trial court did here, the trial court in *CEP* sustained the health plan's demurrer to the complaint, including the negligence cause of action. (*Ibid.*)

Moreover, on appeal, the *CEP* plaintiffs advanced the same negligence theory the emergency physicians pursue here—that the health plan owed them a duty of due care in entering into the delegation contract in that case. (*CEP*, *supra*, 111 Cal.App.4th at pp. 1135-1136.) The Court of Appeal in *CEP* rejected that argument because the plaintiffs could not allege that the delegation contracts were intended to affect them specifically, thus failing the key element of the test in *Biakanja v. Irving* (1958) 49 Cal.2d 647. (*Ibid.*) *CEP* also rejected the plaintiffs' negligence claim because section 1371.4, subdivision (e) permits delegation contracts and thus precludes negligence liability as a matter of legislative policy. (*Id.* at p. 1136.) The Court of Appeal in this case considered both of these arguments and disagreed with *CEP's* conclusions as to both. Thus, factually, procedurally, and in terms of the legal issue it addressed, *CEP* is indistinguishable from this case.

In sum, *CEP* involved the same issue the Court of Appeal addressed in this case, no subsequent authority has called its viability into doubt, and the Court of Appeal's decision is in stark

conflict with *CEP's* holding and rationale. Review is therefore necessary to secure uniformity in the case law.

B. The Negligence Duty The Court Of Appeal Created Is Incompatible With The Statutory And Regulatory Scheme And The DMHC's Role Within That Scheme

Plaintiffs mischaracterize the Health Plans' argument regarding how the Court of Appeal's decision impacts the effective functioning of the Knox-Keene Act with respect to delegation arrangements. (Ans. 11.) Contrary to plaintiffs' claim, the Health Plans did not contend in their petition that the Court of Appeal's decision will lead to the collapse of the "entire managed health care system." (*Ibid.*) Rather, the Health Plans demonstrated that the negligence duty the Court of Appeal formulated in this case conflicts with the statutory scheme in several ways: First, it contravenes section 1371.4, subdivision (e)'s language and the fundamental purpose of delegation contracts. (Petn. 26-30.) Second, such a duty can potentially subvert one of the goals of the Knox-Keene Act by interfering with the DMHC's efforts to rehabilitate financially troubled IPAs. (Petn. 30-33.) And third, a negligence duty is generally incompatible with a legislative scheme designed to comprehensively regulate managed care in general and delegation contracts in particular. (Petn. 33-37.) Plaintiffs' answer fails to adequately address any of these conflicts.

1. Plaintiffs Offer No Way To Reconcile A Delegation-Based Negligence Duty With The Language And Legislative History Of Section 1371.4 Or With The Unambiguous Definition Of Capitation Contracts

Plaintiffs leave unanswered the key conflict between the Court of Appeal's decision and the Knox-Keene Act. As the Health Plans demonstrated, section 1374.1, subdivision (e) embodies the Legislature's determination that health plans may delegate their obligations to reimburse emergency physicians to an IPA. A negligence duty arising from this same delegation is inconsistent with subdivision (e)'s unambiguous language. That language establishes that a health plan is not responsible for emergency care claims when it has delegated responsibility to a contracting medical provider in compliance with the statute. Plaintiffs fail to explain how the negligence duty the Court of Appeal created here can be reconciled with subdivision (e)'s unqualified language.

In addition, the legislative history of section 1371.4 demonstrates that the statute, as currently drafted, was intended to preclude any post-delegation reimbursement obligation on the part of health plans. Specifically, the Governor vetoed legislation to amend subdivision (e) by adding a new provision requiring health plans to pay emergency service providers if a contracting medical provider did not. (See Petn. 28-29.) That the Legislature tried to enact an amendment to impose a post-delegation reimbursement obligation on health plans evidences its recognition that the existing statute imposed no such obligation. (*Ochs, supra,* 115 Cal.App.4th at

p. 791.) Once again, plaintiffs make no attempt to justify a negligence duty in light of section 1371.4's legislative history reflecting the absence of a legislative intent to impose such a duty.

Nor do plaintiffs address how such a duty can be squared with the regulations' definition of "capitation" as a "fixed per member per month payment or percentage of premium payment *wherein the provider* [i.e. the IPA] *assumes the full risk* for the cost of contracted services without regard to the type, value or frequency of services provided." (Cal. Code Regs., tit. 28, § 1300.76, subd. (f), italics added.) Clearly, when health plans properly delegate reimbursement responsibilities pursuant to section 1371.4 to an IPA that meets the DMHC's financial grading criteria, as the Health Plans did here, any post-delegation retention of liability by those health plans would be inconsistent with an IPA's assumption of the "full risk for the cost of contracted services . . . ." Plaintiffs offer no analysis of the regulations that avoids this conflict.

Relying on *Bell*, plaintiffs argue that "existing case law establishes non-contracted emergency physicians' right to pursue court actions for compensation" for the reasonable value of services. (Ans. 13.) That health plans can be held liable for the reasonable value of services when they have *not* delegated payment obligations to an IPA, however, does not establish that they can properly be subjected to liability for negligent delegation. Once again, plaintiffs' argument mischaracterizes the Health Plans' position. The Health Plans do not contend that section 1371.4, subdivision (e)

precludes all claims related to the Knox-Keene Act. They argue only that it precludes liability for negligence arising from statutorily-compliant delegations of reimbursement responsibility. As such, that causes of action may be available against a health plan for the reasonable value of services when no such delegation has occurred is irrelevant.

Accordingly, a negligence duty arising from a health plan's delegation of risk to an IPA is at odds with section 1371.4's language, its history, and the overarching purpose of the delegated model of health care the Legislature has adopted—to *shift* to IPAs the *full risk* of the cost associated with patient care. The Court should grant review to resolve this conflict.

2. Plaintiffs' Attempt To Downplay The Impact Of A Negligence Duty On The Operation And Goals Of The Knox-Keene Act Is Unpersuasive

As plaintiffs recognize, "[a] financially strong IPA is in everyone's best interests—the patients, the providers, and the plans." (Ans. 11.) To this end, the Legislature and the DMHC have established a detailed procedure to rehabilitate financially troubled IPAs, and the Legislature has charged the DMHC with the authority to implement and oversee that procedure. (See Health & Saf. Code, § 1342, subd. (f) [Legislature's goal is to ensure "the financial stability" of the health care system "by means of proper regulatory procedures"]; Cal. Code Regs., tit. 28, § 1300.75.4.8 [health plans and IPAs must cooperate in the "development and

implementation of" corrective action plans]; § 1300.75.4.8, subd. (a) [IPA reporting a failure to meet financial grading criteria "shall simultaneously submit a self-initiated" corrective action plan]; Cal. Code Regs., tit. 28, § 1300.75.4.5, subds. (a)(2) and (3) [health plans must cooperate with the DMHC to rehabilitate financially troubled IPAs]; Cal. Code Regs., tit. 28, § 1300.75.4.5 subds. (a)(6) & (a)(7) [health plans may not transfer enrollees out of an IPA undergoing corrective action plan without DMHC approval].)

As the Health Plans pointed out in their petition, a health plan that is forced to re-assume reimbursement obligations from an IPA will have to adjust its capitation payments to that IPA accordingly. Such adjustments may cause some IPAs that might have emerged financially healthy from a corrective action plan to fail because of the decrease in capitation payments. (Petn. 31-32.) Plaintiffs dismiss this argument as "speculative" and claim that the Court of Appeal never had an opportunity to consider it. (Ans. 11-12.) They are wrong on both counts.

As to plaintiffs' first point, it defies common sense and elementary economics that a health plan would continue to make the same capitation payments to an IPA even though it has to re-assume the obligation to reimburse emergency providers. Clearly, the purpose of the capitation payments is to delegate to the IPA the responsibility to pay the physicians. Moreover, as the Health Plans pointed out *in their petition for rehearing*, "[t]he regulations do not contemplate that a health plan will continue to make capitation

payments to the IPA in the event it is forced to take over reimbursement of emergency physician claims." (PFR 23-24.) The Court of Appeal rejected this argument. (Opn. 35, fn. 32.)[2]

Although plaintiffs ask the Court to disregard this argument, they do not dispute the cogency of its logic—that a decrease in capitation payments could cause some IPAs undergoing a corrective action plan to fail. As the Court of Appeal did, plaintiffs overlook the fact that the regulations regarding financially troubled IPAs and the corrective action plans mandated by those regulations are designed to maintain the status quo so that the IPA has every opportunity to re-establish compliance with the DMHC's financial grading criteria. The Court of Appeal's imposition of a duty on health plans to re-assume reimbursement responsibilities in the middle of an ongoing corrective action plan is antithetical to the maintenance of the status quo and could interfere with the DMHC's rehabilitation efforts. And, the imposition of such a duty would benefit only emergency physicians at the cost of enrollees, the IPA and the health plans. It is in this sense that the Court of Appeal's decision elevates the emergency physicians' economic interests above the interests of all other participants in the managed care system. There is no denying, therefore, that imposing a negligence duty here is inconsistent with one of the fundamental goals of the

---

2 Moreover, plaintiffs' claim that the Health Plans failed to mention their petition for rehearing [Ans. 5] is false. (See Petn. 12, fn. 4.)

Knox-Keene Act and its implementing regulations—to rehabilitate financially troubled IPAs. (Health & Saf. Code, § 1342, subd. (f).)

Plaintiffs also cite to Health and Safety Code section 1371.25 for the proposition that the Act does not contemplate that the DMHC will resolve all issues under the statutory scheme. (Ans. 13-14.) That provision, however, offers no support for plaintiffs. Section 1371.25 prohibits the imposition of vicarious liability. It provides that health plans, IPAs, and providers are each responsible for their own acts or omissions. It further states that the prohibition on vicarious liability does not preclude liability on other fault apportionment doctrines like equitable indemnity, comparative negligence, or contribution. What type of fault *apportionment* is appropriate in a particular situation, however, does not answer the question whether *liability* is appropriate in a particular situation. The Court of Appeal recognized as much. (Opn. 36-37, fn. 34.) Moreover, whether section 1371.25 affects this case further underscores the need for review, as it raises another problem the published decisions have left unresolved.

3. *Loeffler's* Rationale Is Fully Applicable Here

It goes without saying that *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081 (*Loeffler*) was a sales tax case and this case is not. Plaintiffs are therefore correct that *Loeffler* is "factually distinguishable" from this case. (Ans. 18.) In their petition for review, the Health Plans did not contend otherwise. Plaintiffs fail to

realize, however, that the factual differences between *Loeffler* and this case are immaterial to the Health Plans' argument.

Loeffler, like other decisions by this Court, stands for the broader legal principle that when the Legislature has established a comprehensive statutory and regulatory regime over a particular field and has further empowered an administrative agency to determine the permissibility of practices arising within it, a plaintiff may not maintain a claim premised upon conduct that falls within the authority of that agency. Here, the Knox-Keene Act and its implementing regulations represent such a regime, and the DMHC is charged with administering it. A negligence duty is fundamentally incompatible with that system and will interfere with the DMHC's orderly administration of one of its key aspects—assisting financially troubled IPAs.

Plaintiffs further argue that, unlike the Board of Equalization in *Loeffler*, the DMHC does not have "exclusive jurisdiction" over all aspects of the managed care system. (Ans. 19.) Clearly, under section 1371.4, emergency physicians can pursue court claims against IPAs for failure to reimburse them. This does not alter the fact, however, that a negligence duty interferes with the DMHC's regulatory role and jurisdiction *with respect to financially troubled IPAs*. Plaintiffs thus miss the thrust of the Health Plans' argument regarding *Loeffler's* applicability: just as the statutory scheme in *Loeffler* provided "the exclusive means for resolving disputes" of the type underlying the plaintiffs' claims

in that case [*Loeffler*, *supra*, 58 Cal.4th at p. 1126], here the Knox-Keene Act and its regulations provide the exclusive means for dealing with a financially troubled IPA—a corrective action plan under the DMHC's oversight and control. In *Loeffler,* the problem in allowing the plaintiffs to pursue their claims lay in the fact that a judicial adjudication of those claims "*could* displace the Board and the procedures established by the Legislature . . . ." (*Id.* at p. 1130, italics added.) The same is true here—imposing a negligence duty on health plans and mandating that they re-assume reimbursement obligations from an IPA undergoing a corrective action plan could displace the DMHC and "the procedures established by the" DMHC and authorized by the Legislature for rehabilitating financially struggling IPAs. This case therefore implicates the same type of conflict between judicial and regulatory action that existed in *Loeffler*.

Plaintiffs also argue that, unlike the plaintiffs in *Loeffler* who could obtain judicial review of the Board's determination regarding the taxability issue in that case, here the emergency physicians cannot challenge any determinations by the DMHC regarding the Health Plans' re-assumption of reimbursement obligations. (Ans. 19.) Plaintiffs' reading of *Loeffler* is incorrect. The *consumer plaintiffs* in *Loeffler* did not have any administrative or judicial remedy. (*Loeffler*, *supra*, 58 Cal.4th at pp. 1126, 1128.)

Moreover, whether a remedy is available to the emergency physician plaintiffs falls within the Legislature's

province. The Legislature has already imposed on emergency physicians a statutory duty to treat all patients regardless of whether the physicians can be reimbursed at all. The Legislature also has determined that health plans may delegate their payment obligations (including to emergency physicians) to IPAs. And, the Legislature has delineated the emergency physicians' remedy, permitting them to bring a claim against an IPA when that IPA fails to reasonably reimburse the emergency physicians for their services. (See Health & Saf. Code, § 1371.4, subd. (b).) However, the potential absence of a remedy for emergency physicians in the event of an IPA's insolvency does not alleviate the *conflict* between the Court of Appeal's decision and the statutory scheme and the DMHC's role within that scheme. Stated differently, *Loeffler*'s rationale illuminates the conflict between the Court of Appeal's decision and the statutory and regulatory scheme in this case. How that conflict is to be *resolved* and even whether it can be resolved in a manner satisfactory to plaintiffs does address whether the issue here is worthy of review.[3] The Health Plans have clearly established that it is.

---

[3] Plaintiffs claim that the Court of Appeal took "great care with the decision" and granted re-hearing on its own motion to add language to its opinion. (Ans. 20.) However, this only demonstrates the importance of the issues and supports review. Moreover, that the Court of Appeal properly discharged its duty does not alter the reality that its decision conflicts with other published authority (as the Court of Appeal recognized) and the statutory scheme.

III.

CONCLUSION

Plaintiffs' answer fails to adequately address, much less negate, the conflicts created by the Court of Appeal's decision. Moreover, plaintiffs do not deny that the issues raised in the Health Plans' petition will have a wide-ranging impact on the managed care industry including, most importantly, the enrollees that health plans and IPAs serve. The Court of Appeal's decision creates uncertainty and unpredictability in an industry that can ill afford either. Because this case satisfies both criteria for review, the Court should grant the petition.

DATED: June 13, 2014.

REED SMITH LLP

By 
Margaret M. Grignon
Attorneys for *Blue Cross of California dba Anthem Blue Cross*

DATED: June 12, 2014.

CROWELL & MORING, LLP

By: _____
William Albert Helvestine
Attorneys for *Health Net of California Inc.*

DATED: June 12, 2014.

By: _____
Jennifer Salzman Romano
Attorneys for *Pacificare of California dba Secure Horizons Health Plan of America*

DATED: June 12, 2014.

MANATT, PHELPS & PHILLIPS, LLP

By: _____
Gregory N. Pimstone
Attorneys for *California Physicians' Service dba Blue Shield of California*

DATED: June 13, 2014.

CROWELL & MORING, LLP

By: _____
William Albert Helvestine
Attorneys for *Health Net of California Inc.*

DATED: June 13, 2014.

By: _____
Jennifer Salzman Romano
Attorneys for *Pacificare of California dba Secure Horizons Health Plan of America*

DATED: June 13, 2014.

MANATT, PHELPS & PHILLIPS, LLP

By: _____
Gregory N. Pimstone
Attorneys for *California Physicians' Service dba Blue Shield of California*

DATED: June 12, 2014.

CROWELL & MORING, LLP

By: _____
William Albert Helvestine
Attorneys for *Health Net of California Inc.*

DATED: June 12, 2014.

By: _____
Jennifer Salzman Romano
Attorneys for *Pacificare of California dba Secure Horizons Health Plan of America*

DATED: June 12, 2014.

MANATT, PHELPS & PHILLIPS, LLP

By: _____
Gregory N. Pimstone
Attorneys for *California Physicians' Service dba Blue Shield of California*

DATED: June 12, 2014.

COOLEY LLP

By: _____
William P. Donovan, Jr.
Attorneys for *Cigna HealthCare of California, Inc.*

DATED: June 12, 2014.

GIBSON, DUNN & CRUTCHER LLP

By: _____
Heather L. Richardson
Attorneys for *Aetna Health of California, Inc.*

DATED: June 12, 2014.

GONZALEZ SAGGIO & HARLAN LLP

By: _____
Jamie L. Lopez
Attorneys for *Scan Health Plan*

DATED: June 13, 2014.

COOLEY LLP

By: _____
William p. Donovan, Jr.
Attorneys for *Cigna HealthCare of California, Inc.*

DATED: June 13, 2014.

GIBSON, DUNN & CRUTCHER LLP

By: Heather L Richardson
Heather L. Richardson
Attorneys for *Aetna Health of California, Inc.*

DATED: June 13, 2014.

GONZALEZ SAGGIO & HARLAN LLP

By: _____
Jamie L. Lopez
Attorneys for *Scan Health Plan*

DATED: June 12, 2014.

COOLEY LLP

By: _____
William p. Donovan, Jr.
Attorneys for *Cigna HealthCare of California, Inc.*

DATED: June 12, 2014.

GIBSON, DUNN & CRUTCHER LLP

By: _____
Heather L. Richardson
Attorneys for *Aetna Health of California, Inc.*

DATED: June 12, 2014.

GONZALEZ SAGGIO & HARLAN LLP

By: _____
Jamie L. Lopez
Attorneys for *Scan Health Plan*

Certification Of Word Count Pursuant To California Rules Of Court, Rule 8.504(d)(1)

I, Zareh A. Jaltorossian, declare and state as follows:

1. The facts set forth herein below are personally known to me, and I have first-hand knowledge thereof. If called upon to do so, I could and would testify competently thereto under oath.

2. I am one of the appellate attorneys principally responsible for the preparation of the Petition for Review in this case.

3. The Reply to Answer to Petition for Review was produced on a computer, using the word processing program Microsoft Word 2010.

4. According to the Word Count feature of Microsoft Word 2010, the Reply to Answer to Petition for Review contains 4,155 words, including footnotes, but not including the table of contents, table of authorities, and this Certification.

5. Accordingly, the Reply to Answer to Petition for Review complies with the requirement set forth in Cal. Rules of Court, rule 8.504(d)(1), that a brief produced on a computer must not exceed 4,200 words, including footnotes.

I declare under penalty of perjury that the forgoing is true and correct and that this declaration is executed on June 13, 2014, at Los Angeles, California.

Zareh A. Jaltorossian

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 355 South Grant Avenue, Suite 2900, Los Angeles, CA 90071-1514. On June 13, 2014, I served the following document(s) by the method indicated below:

REPLY TO ANSWER TO PETITION FOR REVIEW

☐ by transmitting via facsimile on this date from fax number +1 213 457 8080 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report was properly issued by the transmitting fax machine. The transmitting fax machine complies with Cal.R.Ct 2003(3).

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

☐ (BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION) Based on a court order and agreement of the parties to accept service by e-mail or electronic transmission, I provided the documents listed above electronically to the Lexis Nexis website and thereon to those parties on the Service List maintained by that website by submitting an electronic version of the documents to Lexis Nexis. If the documents are provided to Lexis Nexis by 5:00 p.m., then the documents will be deemed served on the date that it was provided to Lexis Nexis.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 13, 2014, at Los Angeles, California.

Rebecca R. Rich

Rebecca R. Rich

Centinela Freeman Emergency Medical Associates. V. Health Net of California, Inc., et al.
Court of Appeal, Second Appellate District, Division Three, Case No. B238867
(Los Angeles Superior Court Case No. BC415203)

SERVICE LIST

Andrew H. Selesnick, Esq. Jason O. Cheuk, Esq. Michelman & Robinson, LLP 15760 Ventura Blvd., 5th Floor Encino, CA 91436 Tel: (818) 783-5530 Fax: (818) 783-5506 aselesnick@mrllp.com jcheuk@mrllp.com	Attorneys for Plaintiffs and Appellants, *Centinela Freeman Emergency Medical Associates, Centinela Radiology Medical Group; Sheran Oaks Energency edical Association; Valley Presbyterian Emergency Medical Association* and *Westside Energency Medical Association*
William A. Helvestine, Esq. Crowell & Moring LLP 275 Battery Street, 23rd Fl. San Francisco, CA 94111 Tel: (415) 986-2800 Fax: (415) 986-2827 whelvestine@crowell.com Jennifer S. Romano, Esq. Crowell & Moring 515 South Flower Street, 40th Fl. Los Angeles, CA 90071 Tel: (213) 622-4750 Fax: (213) 622-2690 jromano@crowell.com	Attorneys for Defendants and Respondents *Health Net of California, Inc.* Attorneys for Defendant and Respondent *Pacificare of California DBA Secure Horizons Health Plan of America*
Kirk A. Patrick, Esq. Heather L. Richardson, Esq. Gibson, Dunn & Crutcher LLP 333 S. Grand Avenue Los Angeles, CA 90071-3197 Tel: (213) 229-7000 Fax: (213) 229-7520 kpatrick@gibsondunn.com	Attorneys for Defendant and Respondent *Aetna Health of California, Inc.*

Gregory N. Pimstone, Esq. Joanna S. McCallum, Esq. Jeffrey J. Maurer, Esq. Manatt, Phelps & Phillips LLP 11355 West Olympic Blvd. Los Angeles, CA 90064 Tel: (310) 312-4132 Fax: (310) 312-4224 jmaurer@manatt.com	Attorneys for Defendant and Respondent *California Physicians' Service dba Blue Shield of California*
William P. Donovan, Jr., Esq. Matthew D. Caplan, Esq. Cooley LLP 1333 2nd Street, Suite 400 Santa Monica, CA 90401 Tel: (310) 883.6400 Fax: (310) 883-6500 wdonovan@cooley.com mcaplan@cooley.com	Attorneys for Defendant and Respondent *Cigna Healthcare of California, Inc.*
Jamie L. Lopez (SBN 260721) Gonzalez Saggio & Harlan LLP 2 N. Lake Avenue, Suite 930 Pasadena, CA 91101 Telephone: 626.440.0022 Facsimile: 626.628.1725	Attorneys for Defendant and Respondent *SCAN Health Plan*
Astrid G. Meghrigian 715 Scott Street San Francisco, CA 94117	Attorney for Amicus Curiae for Appellant *California Chapter of the American College of Emergency Physicians*
Long Xuan Do Francisco Javier Silva Michelle Rubalcava California Medical Association 1201 J. Street, Suite 200 Sacramento, CA 95814	Attorneys for Amici Curiae *California Medical Association, California Hospital Association, California Orthopaedic Association, California Radiological Society, and California Society of Pathologists*
John M. LeBlanc Sandra I. Weishart Barger & Wolen LLP 633 West Fifth Street, 47th Floor Los Angeles, CA 90071 Telephone: 213.680.2800	Attorneys for Amicus Curiae *California Association of Health Plans*

Honorable John S. Wiley, Jr. Los Angeles Superior Court Central Civil West, Dept. 311 600 S. Commonwealth Avenue Los Angeles, CA 90005	Case No. BC449056
Court of Appeal Second Appellate District, Division Three 300 South Spring Street Second Floor, North Tower Los Angeles, CA 90013-1213	Case No. B238867
Consumer Law Section Los Angeles District Attorney 210 West Temple Street, Suite 1800 Los Angeles, CA 90012-3210 Tel: 213.974.3512	Served pursuant to Bus. & Prof. Code § 17209 and Cal. Rules of Court 8.29(a) and (b)
Appellate Coordinator Office of the Attorney General Consumer Law Section 300 South Spring Street Los Angeles, CA 90013 Telephone: 213.897.2000	Served pursuant to Bus. & Prof. Code § 17209 and Cal. Rules of Court 8.29(a) and (b)