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NEWSLETTER

Letter Requesting That State Agency Investigate to Prevent Future Harm Is Not Claim for Medical Incident

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A California intermediate appellate court has held that a letter written by the son of a patient who died at a nursing home requesting that a state agency investigate the nursing home to prevent future negligence did not constitute "a claim for a medical incident" under a professional liability policy. *Sun Haven Care, Inc. v. Lexington Ins. Co.*, 2006 WL 788037 (Cal. Ct. App. Mar. 29, 2006).

The policyholder operated a residential nursing care facility. The insurer issued a professional liability policy providing that it would pay "those amounts that you are legally required to pay others as damages resulting from a medical incident arising out of professional services provided by any insured. The medical incident must take place during the policy period. A claim for a medical incident must be first made against an Insured during the policy period or the extended reporting period." The policy defined "medical incident" as "any act, error or omission in the providing or failure to provide professional services." "Claim" was not defined by the policy.

After one of the policyholder's patients died, the California Department of Health Services investigated, cited and fined the facility for violating certain regulations regarding assessing patient care. This investigation was prompted by a letter from the deceased's son detailing the incident. This letter was sent during the policy period. After the investigation and the policy had expired, the deceased's son sued the facility for negligence and wrongful death. This case settled, and coverage litigation ensued.

The court first rejected the facility's argument that the insurer waived its right to appeal by the terms of the policy. The policy provided that "[i]t is agreed that in the event of the failure of the [insurer] to pay any amount claimed to be due hereunder, the [insurer] hereon at the request of the Insured will submit to the Jurisdiction of any Court of competent Jurisdiction within the State of California and will comply with all requirements necessary to give such court Jurisdiction . . . [and that] the [insurer] will abide by the final decision of such court or of any Appellate court in the event of an Appeal." Since a trial court decision was not final, the court held that the insurer's "agreement to abide by a 'final' decision of a trial court in no way curtails its right to challenge that decision *before* it becomes final."

The court then held that the letter by the patient's son did not constitute a claim because the letter did not state a claim for a medical incident. The court found that the undefined term "Claim" was not ambiguous as used in the policy and required some type of demand. The court explained that under the policy, "[c]overage is triggered only when a timely claim '*for*' a medical incident is made. It is not sufficient that a factual claim 'of' a medical incident is made." The court noted that the letter did not seek anything from the facility and requested only that the state agency investigate to prevent future incidents, not to redress the past.