



Judge set to rule on Kern Health-doctors group dispute

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A Boston lawyer representing Kern Health Systems squared off in a Bakersfield courtroom Tuesday morning against an Encino attorney representing a local group of emergency room doctors.

At issue is money KHS claims the doctors' group fraudulently overcharged the Medi-Cal administrator -- or if you heed the doctors -- that KHS owes them for medical services rendered.

J. Mark Waxman, the attorney for KHS, argued that the judge should throw the case out of court on the grounds that the doctors' case is based on a single, unsupportable premise: that KHS is required to pay the ER physicians at a rate in excess of mandated maximums.

One you accept KHS is a Medicaid- and Medi-Cal-managed entity, he argued, finding in favor of KHS is just a matter of following the law.

But Andrew H. Selesnick, the attorney for Emergency Medical Services Group, argued that the doctors were not paid according to the law, that they were underpaid thousands of times by KHS.

"We allege they have a legal obligation to reimburse us," he told the court.

The judge indicated that he would take the attorneys' arguments under submission and would rule on KHS' demurrer, or motion for dismissal, at a later date.

If the lawsuit and counter-lawsuit between the two parties move forward -- the trial is set for April 5 -- KHS Chief Executive Carol Sorrell would likely be subject to a video-taped deposition, Selesnick said following Tuesday's hearing.

That would allow him to ask detailed questions about the nearly \$8 million KHS has spent on an investigative audit -- and the approximately \$130,000 per month KHS has continued to pay Allied Management Group for overall "claims editing and fraud and abuse detection services," even after the audit was suspended in late 2008 or early 2009.

"It's a credibility issue," Selesnick said. If Sorrell as CEO went months without being aware of the cumulative multimillion-dollar cost of the audit -- as she revealed to county supervisors recently -- it raises questions about the credibility of KHS' other positions regarding the lawsuit.

One thing is sure: In an attempt to make the lawsuit go away, Kern Health has already offered to reimburse the ER doctors group using a formula that is significantly higher than Medi-Cal rates. That settlement offer was turned down.

While the dispute between KHS and Emergency Medical Services Group remains up in the air, documents show Kern Health Systems has underpaid doctors who care for its members in at least two other cases.

In 2009, Kern Health finished paying off more than \$1.9 million it owed to UCLA for physician and hospital services, its financial filings with state regulators show. The underpayments date back to 2002. Kern Health's filings say it discovered the underpayments in 2005 and worked with UCLA over the course of several years to resolve the dispute. The matter is now over.

And in July, Sorrell signed a settlement agreement with a second local emergency room doctor group. Kern Health has spent more than \$7.8 million investigating the two groups for alleged overbilling.

In the end, Kern Health ended up paying out funds -- more than \$295,000 -- to the second group of doctors who staff the emergency room at Bakersfield's Mercy Hospital. The Mercy ER doctors effectively swept away the findings of the pricey audit, the settlement agreement shows, saying its results were "unsatisfactory."