

## Aetna Skirts Docs' False Ad Claim In Reimbursement Fight

By **Aaron Taube**

*Law360, New York (April 30, 2013, 10:01 PM EDT)* -- A California federal judge Monday pared a lawsuit filed by the California Medical Association alleging three Aetna Inc. units threatened physicians who referred patients to out-of-network providers, ruling that the plaintiffs did not adequately plead their false advertising claim.

U.S. District Judge S. James Otero found that the medical association and its fellow plaintiffs failed to show how Aetna's alleged refusal to reimburse patients for out-of-network services, as promised by the costly insurance policies Aetna sold them, hindered the doctors' ability to compete for customers, a requirement to file a false advertising claim under the Lanham Act.

Judge Otero said that in addition to failing to prove they were in direct competition with Aetna, the 37,000-member California Medical Association and its fellow plaintiffs were unable to show that they were even pursuing the same group of customers.

"Although they may be players in the same market — the market for health care services — they do not necessarily compete against one another," Judge Otero said. "As plaintiffs indicate in their first amended complaint, defendants are in competition with other insurance companies."

Judge Otero also declined Monday to exercise supplemental jurisdiction over the plaintiffs' state law claims, sending to state court the remaining claims for unfair business practices, state law false advertising, breach of contract, violation of right to fair procedure and intentional and negligent interference with prospective advantage.

The suit was filed in July by the California Medical Association, several other regional physicians' groups, 60 physicians, four surgery centers and a man who says he was wrongly denied reimbursement for surgery.

The plaintiffs accused Aetna of retaliating against physicians who referred patients to out-of-network health care providers by terminating and threatening to terminate agreements to reimburse the physicians for care provided to Aetna's preferred provider organization customers.

Under a PPO agreement, a health insurer agrees to provide customer patients with benefits for services provided by out-of-network physicians, as well as those provided by doctors it has agreed to reimburse.

The doctors said Aetna also attempted to dissuade its customers from requesting out-of-network care by subjecting them to harassing phone calls and letters.

“Aetna retaliates against patients by making threatening phone calls and sending threatening letters if they attempt to use their out-of-network benefits, by not authorizing care at out-of-network providers and by grossly underpaying those out-of-network providers, and thereby causing the patient to incur most of the health care costs,” the plaintiffs said in their complaint.

Aetna, however, has said the doctors filed the suit as payback for lawsuits the company has launched against several doctors and surgery centers it suspects of overbilling.

One of those centers — Bay Area Surgical Management — has also been sued by United Healthcare Services Inc., which accuses the company of a \$39 million rip-off in which physicians who referred patients were paid massive kickbacks funded by overbilling practices.

Attempts to contact attorneys for Aetna and the plaintiffs were not immediately successful Tuesday.

The plaintiffs are represented by Angela C. Agrusa, Rockard John Delgadillo and Sterling Lynn Cluff of Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP and Daron L. Tooch and Katherine Markowski Dru of Hooper Lundy and Bookman PC.

Aetna is represented by Beth A. Coombs, Heather Lynn Richardson and Richard Joseph Doren of Gibson Dunn LLP.

The case is Los Angeles County Medical Association, et al. v. Aetna Health of California Inc., et al., case number 2:12-cv-11020, in the U.S. District Court for the Central District of California.

--Additional reporting by Jeff Overley. Editing by Jeremy Barker.