



Protest Your Denied Insurance Claims Without Fear Of Insurance Company Retaliation

When it comes to "deselection" by insurance companies, doctors who protest denied claims are safer than those who remain silent in the face of nonpayment for services

Every practicing doctor in California fears retaliation by the insurance companies -- if and when we protest denied claims. We are afraid the insurance companies will "deselect" or "delist" us from the PPO panels as a result of protesting denied claims. Does this sound familiar? If so, I hope the following will put this fear to rest. The truth is, we are far better protected from deselection if we protest denials than if we do not.

There are three types of insurance deselection actions: for "good cause," for "no cause" (or "without cause") and for "bad cause." Even though an insurance company may terminate a contracted California doctor for "good cause," or perhaps for "no cause," an insurance company may not lawfully terminate a California doctor for "bad cause."

Of the three categories of deselection actions under the PPO provider contracts, termination for "good cause" is always allowed. An example of termination for "good cause" would be termination of a doctor who knowingly submits fraudulent claims to a PPO for payment.

Deselection for "no cause" is a little trickier because this would include situations such as a termination where there are too many doctors of one subspecialty within a geographic area. The California Supreme Court gave protection to doctors by giving them some rights when terminated for "no cause." The Court directed that the common law right to fair procedure demanded that the doctor be given notice of the reasons for termination and a reasonable opportunity to be heard, and that the insurance company's action must be "substantively rational and procedurally fair." *Potvin v. Metropolitan Life Insurance Company*, 22 Cal. 4th 1060 (2000). This gives the doctor some, but not absolute, protection against deselection.

The doctor's best protection from deselection is protesting denied claims. California law quite clearly prohibits insurance companies from deselecting a doctor for "bad cause." And terminating a contracted California doctor for protesting claim denials is termination for "bad cause." Stated in a slightly different way: saying nothing about denied claims may allow an insurance company to terminate you for "no cause." But, if you exercise your legal right to

protest denied claims, you gain protection, because deselecting you then would suggest retaliation and show bad faith on the part of the insurance company. So after you protest a denied claim, an insurance company cannot deselect you because that would automatically be considered retaliatory, and forbidden as termination for "bad cause."

The California law that protects you from termination for "bad cause" may be found in the California Business and Professions Code Section 2056. In layman's terms this law states that California doctors are encouraged, as a matter of public policy, to fight for medically appropriate health care for their patients. Fighting for medically appropriate health care includes taking a claim denial through an insurance company's appeals procedures to protest denial of payment for services.

The State of California has written this code section specifically to prohibit an insurance company from retaliation against any healthcare provider who protests denied claims. This is published California law and violation of this law by any insurance company entitles any doctor deselected for this "bad cause" to sue the insurance company not only for compensatory damages (the actual amount lost), but also for PUNITIVE DAMAGES. Punitive damages are what every insurance company or corporation fears, because punitive damages are multiples of the actual damages and are intended to be large enough to hurt the offending insurance company.

So, under California law, a California doctor who protests non-payment of insurance claims is relatively "bulletproof." Insurance companies may be greedy but they are not stupid. They are not willing to terminate a doctor for "bad cause" and put themselves at risk of punitive damages.

In summary, an insurance company can deselect you for "good cause" such as fraudulent misconduct. The insurance company has a more difficult time deselecting a doctor for "no cause." However, by legislative statute law and by judicial case law, California forbids retaliatory conduct by insurance companies against doctors who protest non-payment of claims -- deselection for "bad cause." Protesting denied claims thus protects you from deselection with a legal presumption that the action is retaliatory. The bottom line is that we are more vulnerable to deselection by a PPO if we stay silent than if we protest non-payment of claims.

Written by David D. Mullens, D.P.M., J.D. originally published in The California Podiatric Physician. *Information contained in this newsletter does not constitute legal advice and is not a substitute for the professional judgment of an attorney.*

The Law Office of David D. Mullens
1101 Welch Road Suite C-6
Palo Alto, CA 94304-1926
(650) 324-2091 Phone (650) 324-4404 Fax
info@mullenslawoffice.com