

Potvin v. Metropolitan Life - Supreme Court Decision

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As many of you know, the long awaited California Supreme Court decision in the *Potvin v. Metropolitan Life Insurance Company* case was handed down on May 8, 2000. Although the Supreme Court held in favor of Dr. Potvin – by declaring that the “without cause” termination clause in his PPO contract with Metropolitan Life was unenforceable and that termination could only be done following a “fair procedure” – there are some positives for the managed care industry and some planning opportunities.

This article will not attempt to summarize the full decision. Instead, we will give dental plans our thoughts on what the decision does – and does not – say. These can be summarized as follows:

- In addition to the PPO arrangement in which Dr. Potvin was involved, the decision is, most likely, applicable to all independent contractor relationships with individual providers, provider groups and IPAs.
- While the Supreme Court stated in a footnote that *Potvin* is not applicable to employer-employee contractual relations, dental plans that employ their dentists should nevertheless follow the rules set down by the case.
- A “fair procedure” is required prior to termination of a dentist only when the dental plan contract represents a “substantial economic interest” to the contracted dentist (for terminations based on issues unrelated to professional competence).
- If the contract does represent a “substantial economic interest,” the dentist is entitled to a “fair procedure” prior to termination, but this does not necessarily mean a full evidentiary hearing.
- If a “fair procedure” is required, dental plans have some leeway to decide what that means and what criteria are to be applied in determining whether termination is authorized. It will be up to the dentist to show that these decisions are not “substantively rational.”
- Except for a situation that can be characterized as a “layoff” – e.g., going out of business in a particular region – no guidance is given as to terminations for “economic” reasons.
- The decision does not say whether a fair procedure is required for a non-renewal or a refusal to offer a contract.

Now to elaborate briefly on some of the above points.

1. **Employment Contracts.** The *Potvin* decision states in a footnote that it is not applicable to employment contracts with providers. By the same token, the decision does not say how the Court would rule if presented with a case involving a “without cause” termination of an employment agreement *between an HMO and a provider*. The Court spent a great deal of time discussing the concept that the public has a substantial interest in the relationship between HMOs and their preferred providers. This interest is so significant that it enables courts to impose requirements upon that relationship that would not otherwise exist under the contract. One such requirement is the obligation to provide fair procedure prior to terminating a dentist when a dentist’s substantial economic interest is involved. This economic interest will exist whether the arrangement with the dentist is one of employment or independent contractor. We believe that it is reasonably safe to assume, therefore, that “without cause” termination rights in employment agreements between dentists and dental plans are likely to be found unenforceable.

2. **IPA Contracts.** Although the *Potvin* case dealt with a “PPO” type of agreement directly between an insurance company and a physician, it is reasonable to conclude that the decision is also applicable to the typical IPA/independent contractor type of relationship in which a dental plan contracts with non-employee dentists. In fact, a recent California Appellate Court case, *Castellanos v. Coastal Providers of San Luis Obispo* (March 10, 2000) holds that termination of such an agreement requires a “fair procedure” if the agreement represents a “substantial economic interest” to the provider.

3. **Fair Procedure Is Required Only When A Substantial Economic Interest Is Involved.** The *Potvin* decision states this as follows:

“The obligation to do so arises only when the insurer possesses power so substantial that the removal significantly impairs the ability of an ordinary, competent physician to practice medicine or a medical specialty in a particular geographic area, thereby affecting an important, substantial economic interest.”

How this standard will be applied remains to be developed in later cases. In any event, it is clear that loss of income is relevant, but not necessarily dispositive. In the *Castellanos* case, the court ruled that termination of an IPA agreement requires a “fair procedure” where the IPA contract in question accounted for about 35% of the physician’s patients. In another case (*Ambrosino*), the Court held that a contract covering 15% of a doctor’s patients represented a “substantial economic interest.” There is also an indication that the “ripple effect” resulting from the removal of the provider from one managed care provider list might be considered relevant.

Keep in mind, however, that the “substantial economic interest” standard is only relevant in determining whether or not a “fair procedure” is required. It is not relevant to whether that fair procedure can result in a valid termination. The *Potvin* decision states that, even when a “fair procedure” is required prior to termination, the termination can be effected

“without regard to the financial effect on the [provider], so long as the insurer’s decision is ‘substantively rationale and procedurally fair.’”

4. **What Is A Fair Procedure?** Assuming that a “fair procedure” is required, the question becomes what type of procedure must be followed. One clear message is that, regardless of the type of procedure, the dental plan must have a reason for the termination and this reason must be given to the provider. Of course, if the reason is based upon quality of dental practice issues, this may give a powerful incentive to the dental plan not to require that the process be instituted. As you know, once a formal statement is made, there is a likelihood that a report to the Dental Board under Section 805 of the Business and Professions Code will be required. This, in turn, will usually require a formal hearing under Section 809 of that code.

As indicated above, a “fair procedure” does not necessarily mean a formal hearing similar to a credentialing hearing. The reason for the proposed termination will dictate what type of procedure is required. To take an extreme example, assume that a dentist’s license to practice dentistry has been revoked. Here, a simple written notification of termination would suffice, subject only to giving the dentist the opportunity to advise you if you are incorrect about the license revocation. At the other end of the scale would be a termination for a “dental practice” issue. Here, even if Business and Professions Code Section 809 does not apply for some reason, you may need to conduct a formal hearing before a peer review committee.

What is required is to provide the dentist with a reasonable opportunity to address and, if appropriate, attack the validity and accuracy of the reasons given for the termination. If the reason for the termination is based upon demonstratable facts, all that is required is an opportunity to contest those facts, which can often be accomplished through written communications.

This, of course, results in your favorite type of advice from attorneys – i.e., the answer to the question “What type of procedure is required?” is “It depends.” This is all the more reason for you to keep your attorneys’ phone numbers on your speed dial.

5. **Economic Terminations.** There may be “substantively rational” reasons for terminating provider contracts for economic reasons. Of course, the bad news is that dental plans will need to state the economic reasons and allow the dentist an opportunity to tell the plan if he or she thinks the plan’s facts are incorrect and to attack the “rationality” of the decision. As indicated above, it is at least defensible that providing such notice and opportunity through written communications is a “fair procedure” for this type of termination. Unfortunately, the exchange of information could potentially provide an opportunity for the dentist to make arguments regarding the legality of the economic.

6. **No Ruling On Non-Renewals And Refusals To Contract.** The *Potvin* decision does not comment on these issues. The reasoning used by the Court could probably be used to require a “fair procedure” in either of these situations. In fact, our guess is that it is likely that a fair procedure would be required for an affirmative notice of non-renewal. Furthermore, dental plans must comply with Health and Safety Code Section 1373.65 regarding informing a provider of the reasons for termination of a contract when the termination occurs during the

contract year. On the other hand, if a contract simply expires and there is no provision for renewal and the relationship continues only if an entirely new contract is entered into, the result may be different. Of course, this is highly impractical, and if automatic renewals are common and are the expectation of the parties, it may well be treated the same as the “notice of non-renewal” situation.

In summary, the “good news” for dental plans is that (1) plans get to make the initial decision of whether a fair procedure is required and, if so, what type of procedure should be followed; (2) even if a “fair procedure” is required prior to termination, that procedure is potentially more damaging, expensive and disruptive for the dentist than it will be for the dental plan; and (3) if a fair procedure is conducted, the dental plan is still entitled to decide whether termination is permitted and that decision can only be attacked on the basis that the procedure was not fair or that the termination decision is not “substantively rational.” In most situations, this will be a difficult standard for the dentist to meet.

If you would like a copy of either the *Potvin* or the *Castellanos* decision, please feel free to contact Mary Antoine, Nossaman, Guthner, Knox & Elliott, phone: (916) 442-8888, e-mail: mantoine@nossaman.com.