

JAN 30 2015

No. S218497

Frank A. McGuire Clerk

In the Supreme Court of the State of California

 Deputy

**CENTINELA FREEMAN EMERGENCY MEDICAL
ASSOCIATION, ET AL.,**
Plaintiffs and Appellants

vs.

HEALTH NET OF CALIFORNIA, INC., ET AL.,
Defendants and Respondents

**REQUEST FOR JUDICIAL NOTICE
FOR ANSWERING BRIEF ON THE MERITS**

After An Opinion By The Court of Appeal
Second Appellate District, Division Three, No. B238867

Service on the Attorney General and
the Los Angeles District Attorney
Required by Bus. & Prof. Code § 17209 and
Cal. Rules of Court, rule 8.29(a) and (b)

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TABLE OF CONTENTS

MOTION FOR JUDICIAL NOTICE 1
MEMORANDUM OF POINTS AND AUTHORITIES 2
CONCLUSION..... 3

TABLE OF AUTHORITIES

Cases

Dwan v. Dixon
(1963) 216 Cal.App.2d 260 4

Statutes

Evidence Code section 453 4
Evidence Code sections 452 3, 4
Health and Safety Code section 1371.4 4

MOTION FOR JUDICIAL NOTICE

Plaintiffs/Appellants/Respondents (collectively “Emergency Physicians”)¹ hereby move this Court to take judicial notice of the Answer to Petition for Review in case no.S220019, entitled *Children’s Hospital Central California v. Blue Cross of California dba Anthem Blue Cross, Inc. et al.* (“*Children’s Hospital Answer*”) pursuant to Evidence Code sections 452, subdivision (d)(1) and 453 and California Rules of Court, rule 8.252.

The Emergency Physicians seek judicial notice of the *Children’s Hospital Answer* for the purpose of showing that the one of the petitioners herein² (“Plans”) took a position in *Children’s Hospital* that is contrary to the Plans’ fundamental position in this case. The *Children’s Hospital Answer* is therefore relevant to the proceeding in this Court.

The Emergency Physicians did not request judicial notice of the *Children’s Hospital Answer* in the Court of Appeal or in the trial court and could not have do so because the *Children’s Hospital Answer* did not exist while those lower court proceedings were pending: The Court of Appeal below filed its decision on April 2,

¹ The Emergency Physicians are Centinela Freeman Emergency Medical Associates, Sherman Oaks Emergency Medical Associates, Valley Presbyterian Emergency Medical Associates, and Westside Emergency Medical Associates.

² The Plans are Blue Cross of California dba Anthem Blue Cross, Health Net of California, Inc., UHC of California f/k/a PacifiCare of California, California Physicians’ Service dba Blue Shield of California, SCAN Health Plan, Aetna Health of California, and Cigna HealthCare of California, Inc.

2014 (opn. 1), and the *Children's Hospital* Answer was filed on August 8, 2014.

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code section 453, subdivision (b)(1) provides that judicial notice may be taken of “[r]ecords of . . . any court of this state[.]” “It is well settled that a court may take judicial notice of its own records.” (*Dwan v. Dixon* (1963) 216 Cal.App.2d 260, 265.) Evidence Code section 453 provides that a court shall take judicial notice of any matter listed in Evidence Code section 452 if a party requests it, if the requesting party gives the adverse party sufficient notice of the request to enable the adverse party to meet the request, and if the requesting party provides the court with sufficient information to take judicial notice of the matter.

This case is a suit by the Emergency Physicians against the Plans to recover compensation for their services to the Plans’ enrollees after the entity that was contracted to pay the Emergency Physicians because insolvent and could not compensate the Emergency Physicians. The Plans argue in their opening brief on the merits that Health and Safety Code section 1371.4 permits plans to delegate their obligations to pay health care providers to independent practice associations (“IPA’s”); that the Plans delegated their payment obligations in this case; and that the Knox-Keene Act insulates the Plans from any financial liability to the Emergency Physicians after the delegation. (OBM 22-43.)

However, in the *Children's Hospital* Answer, one of the Plans in this case – Blue Cross of California – refutes the argument by admitting that a strict and literal interpretation of the Knox-Keene Act

does not exempt the Plan “from any statutory or regulatory duty it may have under the Knox-Keene Act or immunize Blue Cross from government or private actions to enforce such duties.” (*Children’s Hospital Answer 32.*) The Emergency Physicians seek this Court’s judicial notice of the Children’s Hospital Answer to show this contradiction in the Plans’ contentions.

CONCLUSION

For the reasons stated above, the Emergency Physicians respectfully request this Court to grant their motion for judicial notice of the *Children’s Hospital Answer*.

Respectfully submitted this 29th day of January, 2015.

MICHELMAN & ROBINSON, LLP

By: 

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1 **PROOF OF SERVICE**

2 *Centinela Freeman Emergency Medical Assoc., et al. vs. Health Net of California, Inc. et al.*
3 **(Supreme Court Case No.: S218497)**
4 **(Appeal No.: B238867; LASC Case No. BC449056)**

5 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

6 I am employed in the County of Los Angeles. I am over the age of eighteen years and not
7 a party to the within entitled action; my business address is 15760 Ventura Boulevard, 5th Floor,
8 Encino, California 91436.

9 On **January 29, 2015**, I served a copy of the foregoing document(s) described as follows:
10 **REQUEST FOR JUDICIAL NOTICE FOR ANSWERING BRIEF ON THE MERITS** on
11 the party(ies) in this action as follows:

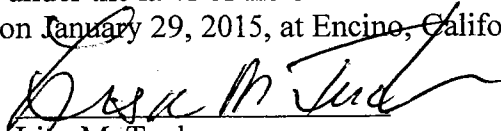
12 ***SEE ATTACHED SERVICE LIST***

13 **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as
14 above, and placing each for collection and mailing on that date following ordinary business
15 practices. I am "readily familiar" with this business's practice for collecting and
16 processing correspondence for mailing, it is deposited in the ordinary course of business
17 with the U.S. Postal Service in Encino, California, in a sealed envelope with postage fully
18 prepaid.

19 **BY FACSIMILE:** Based on an agreement of the parties to accept service by fax
20 transmission, I faxed the documents to the persons at the fax numbers listed above. The
21 telephone number of the sending facsimile machine was (818) 783-5507. The sending
22 facsimile machine issued a transmission report confirming that the transmission was
23 complete and without error. A copy of that report is attached.

24 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
25 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
26 documents to be sent to the persons at the e-mail addresses listed above. I did not receive,
27 within a reasonable time after the transmission, any electronic message or other indication
28 that the transmission was unsuccessful.

29 **STATE:** I declare under penalty of perjury under the laws of the State of California that
30 the foregoing is true and correct. Executed on ~~January 29, 2015~~, at Encino, California.

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32 Lisa M. Tucker

SERVICE LIST

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