

No. S218497

In the Supreme Court of the State of California

CENTINELA FREEMAN EMERGENCY MEDICAL  
ASSOCIATES, ET AL.,

Plaintiffs and Appellants,

vs.

HEALTH NET OF CALIFORNIA, INC., ET AL.,

Defendants and Respondents.

OPPOSITION TO REQUEST FOR  
JUDICIAL NOTICE

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

Appeal From A Judgment Of Dismissal Following Demurrer  
Los Angeles County Superior Court, Case No. BC415203  
Honorable John Shepard Wiley

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)

\*Margaret M. Grignon (SBN 76621)  
Kurt C. Petersen (SBN 83941)  
Kenneth N. Smersfelt (SBN 166764)  
Zareh A. Jaltorossian (SBN 205347)  
Reed Smith LLP  
355 S. Grand Avenue, Suite 2900  
Los Angeles, CA 90071  
Telephone: 213.457.8000  
Facsimile: 213.457.8080

William A. Helvestine (SBN 58755)  
Crowell & Moring LLP  
275 Battery Street, 23rd Floor  
San Francisco, CA 94111  
Telephone: 415.986.2800  
Facsimile: 415.986.2827

Attorneys for Defendant, Respondent,  
and Petitioner *Blue Cross of*  
*California dba Anthem Blue Cross*

(Additional Counsel on Next Page)

Attorneys for Plaintiffs, Appellants, and  
Respondents *Health Net of California Inc.*

SUPREME COURT  
FILED

FEB 17 2015

Frank A. McGuire Clerk

Deputy

RECEIVED

FEB 17 2015

CLERK SUPREME COURT

## ADDITIONAL COUNSEL

Jennifer S. Romano (SBN 195953)  
Crowell & Moring LLP  
515 S. Flower St., 40th Floor  
Los Angeles, CA 90071  
Telephone: 213.622.4750  
Facsimile: 213.622.2690  
Attorneys for Defendant, Respondent,  
and Petitioner *UHC of California f/k/a  
Pacificare of California*

Gregory N. Pimstone (SBN 150203)  
Joanna S. McCallum (SBN 187093)  
Jeffrey J. Maurer (SBN 190183 )  
Manatt, Phelps & Phillips, LLP  
11355 W. Olympic Blvd  
Los Angeles, CA 90064  
Telephone: 310.312.4000  
Facsimile: 310.312.4224  
Attorneys for Defendant, Respondent,  
and Petitioner *California Physicians'  
Service dba Blue Shield of California*

Don A. Hernandez (SBN 125119)  
Jamie L. Lopez (SBN 260721)  
Gonzalez Saggio & Harlan LLP  
2 N. Lake Avenue, Suite 930  
Pasadena, CA 91101  
Telephone: 626.440.0022  
Facsimile: 626.628.1725  
Attorneys for Defendant, Respondent,  
and Petitioner *SCAN Health Plan*

Richard J. Doren (SBN 124666)  
Heather L. Richardson (SBN 246517)  
Gibson, Dunn & Crutcher  
333 S. Grand Ave., 50th Floor  
Los Angeles, CA 90071  
Telephone: 213.229.7664  
Facsimile: 213.229.6664  
Attorneys for Defendant, Respondent, and  
Petitioner *Aetna Health of California*

William P. Donovan, Jr. (SBN 155881)  
Cooley LLP  
1333 Second Street, Suite 400  
Santa Monica, CA 90401-4100  
Telephone: 310.883.6435  
Facsimile: 310.883.6500  
Attorneys for Defendant, Respondent, and  
Petitioner *Cigna HealthCare of  
California, Inc.*

TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE SHOULD BE DENIED .....	2
III. CONCLUSION .....	7

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>People ex rel. Lockyer v. Shamrock Foods Co.</i> (2000) 24 Cal.4th 415 .....	2
<i>Mangini v. R.J. Reynolds Tobacco Co.</i> (1994) 7 Cal.4th 1057 .....	2
<i>People v. Rowland</i> (1992) 4 Cal.4th 238.....	2
<i>Soukup v. Law Offices of Herbert Hafif</i> (2006) 39 Cal.4th 260 .....	2
<b>Statutes</b>	
Health & Safety Code § 1371.4 .....	3, 6
<b>Regulations</b>	
Cal. Code Regs. § 1300.71(a)(3)(B).....	4

I.

INTRODUCTION

Plaintiffs and appellants Centinela Freeman Emergency Medical Associates, *et al.* have requested judicial notice of one sentence in the Answer to the Petition for Review of defendant and respondent Blue Cross of California filed in another case, *Children's Hospital Central California v. Blue Cross of California dba Anthem Blue Cross, Inc. et al.* (case no. S220019).

This Court should deny plaintiffs' request because Blue Cross's Answer in *Children's Hospital* is irrelevant to the issues in this appeal. *Children's Hospital* involved an entirely different issue and nothing in Blue Cross's Answer in that case remotely contradicts any position it has taken in this appeal. The request for judicial notice is an attempt to manufacture an inconsistency where there is none. It is entirely improper and this Court should deny it.<sup>1</sup>

---

<sup>1</sup> It should be noted that none of the other health plan defendants involved in this appeal was a party in *Children's Hospital*. For this additional reason, the request for judicial notice is entirely irrelevant as to them.

II.  
PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE  
SHOULD BE DENIED

As this Court has observed, there is “a precondition to the taking of judicial notice in either its mandatory or permissive form—any matter to be judicially noticed must be relevant to a material issue.” (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2; see also *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 [judicial notice is confined to matters that are relevant to the issue under review]; *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 295, fn. 12 [denying judicial notice of irrelevant information]; *People v. Rowland* (1992) 4 Cal.4th 238, 268, fn. 6 [reviewing court need not take judicial notice of irrelevant court records].)

Plaintiffs argue that Blue Cross’s Answer to Petition for Review in *Children’s Hospital* contains a statement they claim is inconsistent with the position Blue Cross has taken in this appeal. Plaintiffs’ claimed inconsistency appears to be as follows. Plaintiffs point out that, in *Children’s Hospital*, Blue Cross took the position that the Court of Appeal’s reversal of the judgment for evidentiary and instructional errors as to the reasonable value of the hospital’s services did not exempt Blue Cross from complying with statutory provisions regarding reimbursement of a non-contracted hospital’s medical services. According to plaintiffs, that position is somehow inconsistent with the position Blue Cross has taken in this case,

namely, that Health and Safety Code section 1371.4's language authorizing health plans to delegate payment responsibility for emergency services precludes post-delegation liability on the part of health plans.

To state plaintiffs' argument is to refute it. Manifestly, Blue Cross's position in *Children's Hospital*—that the reversal of the jury verdict for evidentiary and instructional error as to the *amount* of an obligation did not affect its statutory obligations with respect to reimbursement—is not inconsistent with Blue Cross's position in this case—that it does not even have any obligation (statutory or otherwise) to reimburse plaintiffs for emergency services after a proper delegation.

Some background provides further clarification for this conclusion. *Children's Hospital* involved a dispute between a non-contracted hospital and Blue Cross concerning the reasonable value of inpatient post-stabilization services provided to patients who were enrolled in a managed care plan provided by Blue Cross to Medi-Cal beneficiaries. Although Blue Cross paid what it determined to be the reasonable value of the hospital's services, the hospital sued Blue Cross claiming it was entitled to its full billed charges. The jury found there was an implied-in-fact contract between the hospital and Blue Cross to pay the reasonable value of the services and awarded the hospital the difference between its full billed charges and what Blue Cross had paid.

The Court of Appeal concluded that the damages award was the result of erroneous discovery and evidence rulings and erroneous instructions. The legal issue the Court of Appeal resolved was whether California Code of Regulations, title 28, section 1300.71, subdivision (a)(3)(B) (“C.C.R. section 1300.71(a)(3)(B)”) superseded the common law test for determining the reasonable value of inpatient hospital services in an action for breach of an implied-in-fact contract. The Court of Appeal held that C.C.R. section 1300.71(a)(3)(B) did not supersede common law quantum meruit principles for determining the reasonable value of a hospital’s claim for payment; that considerations other than those listed in the regulation could be relevant to the reasonable value determination; and that the trial court erroneously limited the evidence that could be obtained through discovery, admitted at trial, and considered by a jury to establish the reasonable value of the services. Accordingly, the Court of Appeal reversed the trial court’s judgment and remanded the case for a new trial on damages, including new discovery concerning the reasonable value of the hospital’s services.<sup>2</sup>

Plaintiffs’ request for judicial notice concerns a single sentence in Blue Cross’s Answer to Petition for Review in *Children’s Hospital*. According to plaintiffs, in the Answer Blue Cross argued “that a strict and literal interpretation of the Knox-

---

<sup>2</sup> The plaintiff petitioned this Court for review. On October 15, 2014, this Court denied review.



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.’” (RJN p. 3, quoting Answer p. 32.) This language has nothing to do with any issue in this case.

To begin, plaintiffs’ quote from Blue Cross’s Answer is not even accurate. What the Answer actually states is that the *Court of Appeal’s Opinion* would “not exempt Blue Cross or any other health care service plan from any statutory or regulatory duty it may have under the Knox-Keene Act or immunize Blue Cross from government or private action to enforce such duties.” (Answer p. 32.) There is nothing in the statement about a strict or literal interpretation of the Knox-Keene Act.

The legal issue in *Children’s Hospital*—the standard for determining the reasonable value of a provider’s services in a quantum meruit action—is miles apart from the legal issue in this case. The sentence in Blue Cross’s Answer for which plaintiffs seek judicial notice simply made the point that the Court of Appeal’s resolution of the issue in that case would not exempt Blue Cross from any statutory or regulatory duties it may otherwise have had *regarding the payment of provider claims*. That sentence says nothing about a health plan’s legal obligations with respect to delegation, much less expressing a position inconsistent with the arguments in this case. Put differently, the issue in *Children’s Hospital* was how to determine the amount of an obligation, not who

had it. This issue here is whether Blue Cross even has the obligation after delegation as section 1371.4 allows.

Indeed, not only is there no inconsistency whatsoever in Blue Cross's positions in the two cases, it makes little sense to evaluate whether the two positions are inconsistent when the issues in the two cases have no logical relationship to one another. Simply put, because *Children's Hospital* involved an entirely different issue, any legal arguments Blue Cross advanced in that appeal are simply irrelevant to the issue under review here.

Even on its face, the statement is irrelevant to this appeal because it concerns only "statutory and regulatory" duties. The duty plaintiffs seek to impose on the health plans in this case is a common law negligence duty, not a duty arising under a statute or regulation. Plaintiffs have not pled any causes of action for violation of any statute in the Health and Safety Code. For this further reason, the language of which plaintiffs seek judicial notice is irrelevant to the issue in this case.

In sum, nothing in Blue Cross's Answer in *Children's Hospital* is relevant to the issues in this case, and nothing in that Answer stands in the slightest tension with any position Blue Cross or any of the other health plans has advanced in this case.

III.  
CONCLUSION

The Court should deny plaintiffs' request for judicial notice as irrelevant.

DATED: February 13, 2015.

REED SMITH LLP

By Margaret M. Grignon  
Margaret M. Grignon  
Attorneys for Blue Cross of  
California dba Anthem Blue  
Cross

DATED: February 13, 2015.

CROWELL & MORING, LLP

By William Albert Helvestine  
William Albert Helvestine  
Attorneys for Health Net of  
California Inc.

DATED: February 13, 2015.

By \_\_\_\_\_  
Jennifer Salzman Romano  
Attorneys for UHC of California  
f/k/a Pacificare of California

**III.**  
**CONCLUSION**

The Court should deny plaintiffs' request for judicial notice as irrelevant.

DATED: February 17, 2015.

REED SMITH LLP

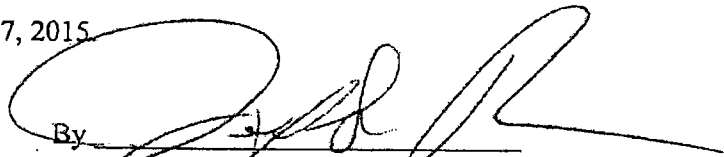
By \_\_\_\_\_  
Margaret M. Grignon  
Attorneys for *Blue Cross of California dba Anthem Blue Cross*

DATED: February 17, 2015.

CROWELL & MORING, LLP

By \_\_\_\_\_  
William Albert Helvestine  
Attorneys for *Health Net of California Inc.*

DATED: February 17, 2015.

By \_\_\_\_\_  
  
Jennifer Salzman Romano  
Attorneys for *UHC of California f/k/a Pacificare of California*

DATED: February 17, 2015.

MANATT, PHELPS & PHILLIPS, LLP

By 

Gregory N. Pimstone  
Attorneys for *California  
Physicians' Service dba Blue  
Shield of California*

DATED: February 17, 2015.

COOLEY LLP

By \_\_\_\_\_

William P. Donovan, Jr.  
Attorneys for *Cigna HealthCare  
of California, Inc.*

DATED: February 17, 2015.

GIBSON, DUNN & CRUTCHER LLP

By \_\_\_\_\_

Heather L. Richardson  
Attorneys for *Aetna Health of  
California, Inc.*

DATED: February 17, 2015.


MANATT, PHELPS & PHILLIPS, LLP

By \_\_\_\_\_

Gregory N. Pimstone  
Attorneys for *California  
Physicians' Service dba Blue  
Shield of California*

DATED: February 17, 2015.

COOLEY LLP

By  \_\_\_\_\_

William P. Donovan, Jr.  
Attorneys for *Cigna HealthCare  
of California, Inc.*

DATED: February 17, 2015.

GIBSON, DUNN & CRUTCHER LLP

By \_\_\_\_\_

Heather L. Richardson  
Attorneys for *Aetna Health of  
California, Inc.*

DATED: February 17, 2015.

MANATT, PHELPS & PHILLIPS, LLP

By \_\_\_\_\_

Gregory N. Pimstone  
Attorneys for *California  
Physicians' Service dba Blue  
Shield of California*

DATED: February 17, 2015.

COOLEY LLP

By \_\_\_\_\_

William P. Donovan, Jr.  
Attorneys for *Cigna HealthCare  
of California, Inc.*

DATED: February 17, 2015.

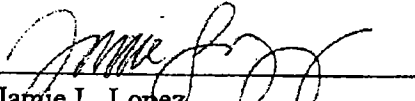
GIBSON, DUNN & CRUTCHER LLP

By  \_\_\_\_\_

Heather L. Richardson  
Attorneys for *Aetna Health of  
California, Inc.*

DATED: February 16, 2015.

GONZALEZ SAGGIO & HARLAN LLP

By   
Jamie L. Lopez  
Attorneys for Scan Health Plan



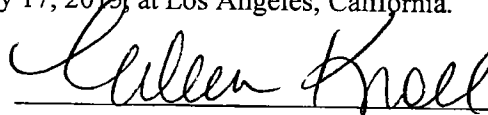
## PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 355 South Grant Avenue, Suite 2900, Los Angeles, CA 90071-1514. On February 17, 2015, I served the following document(s) by the method indicated below:

### OPPOSITION TO REQUEST FOR JUDICIAL NOTICE

- by transmitting via facsimile on this date from fax number +1 213 457 8080 the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 PM and was reported complete and without error. The transmission report was properly issued by the transmitting fax machine. The transmitting fax machine complies with Cal.R.Ct 2003(3).
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
- [BY E-MAIL] by transmitting via email to the parties indicated at the email addresses listed below:
- (BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION) Based on a court order and agreement of the parties to accept service by e-mail or electronic transmission, I provided the documents listed above electronically to the Lexis Nexis website and thereon to those parties on the Service List maintained by that website by submitting an electronic version of the documents to Lexis Nexis. If the documents are provided to Lexis Nexis by 5:00 p.m., then the documents will be deemed served on the date that it was provided to Lexis Nexis.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 17, 2015, at Los Angeles, California.



Eileen Kroll

*Centinela Freeman Emergency Medical Associates. v. Health Net of California, Inc., et al.*  
Supreme Court Case No. S218497

Court of Appeal, Second Appellate District, Division Three, Case No. B238867  
(Los Angeles Superior Court Case No. BC415203)

**SERVICE LIST**

<p>Andrew H. Selesnick, Esq. Michelman &amp; Robinson, LLP 15760 Ventura Blvd., 5th Floor Encino, CA 91436 Tel: (818) 783-5530 Fax: (818) 783-5506 aselesnick@mrllp.com</p>	<p>Attorneys for Plaintiffs and Appellants, <i>Centinela Freeman Emergency Medical Associates, Sherman Oaks Emergency Medical Associates; Valley Presbyterian Emergency Medical Associates and Westside Emergency Medical Associates</i></p>
<p>Robin James, Esq. Michelman &amp; Robinson, LLP 1 Post Street, Suite 2500 San Francisco, CA 94104 Tel: (415) 882-8772 Fax: (415) 882-1570 rjames@mrllp.com</p>	<p>Attorneys for Plaintiffs and Appellants, <i>Centinela Freeman Emergency Medical Associates, Sherman Oaks Emergency Medical Associates; Valley Presbyterian Emergency Medical Associates and Westside Emergency Medical Associates</i></p>
<p>William A. Helvestine, Esq. Ethan P. Schulman, Esq. Crowell &amp; Moring LLP 275 Battery Street, 23rd Fl. San Francisco, CA 94111 Tel: (415) 986-2800 Fax: (415) 986-2827 whelvestine@crowell.com eschulman@crowell.com</p>	<p>Attorneys for Defendant and Respondent <i>Health Net of California, Inc.</i>  <i>Via Email</i></p>
<p>Damian D. Capozzola, Esq. Crowell &amp; Moring 515 South Flower Street, 40th Fl. Los Angeles, CA 90071 Tel: (213) 622-4750 Fax: (213) 622-2690 dcapozzola@crowell.com</p>	<p>Attorneys for Defendant and Respondent <i>Health Net of California, Inc.</i>  <i>Via Email</i></p>
<p>Jennifer S. Romano, Esq. Crowell &amp; Moring 515 South Flower Street, 40th Fl. Los Angeles, CA 90071 Tel: (213) 622-4750 Fax: (213) 622-2690 jromano@crowell.com</p>	<p>Attorneys for Defendant and Respondent <i>UHC of California, f/k/a Pacificare of California</i>  <i>Via Email</i></p>

<p>Richard J. Doren, Esq.  Heather L. Richardson, Esq.  Gibson, Dunn &amp; Crutcher LLP  333 S. Grand Avenue  Los Angeles, CA 90071-3197  Tel: (213) 229-7000  Fax: (213) 229-7520  kpatrick@gibsondunn.com</p>	<p>Attorneys for Defendant and Respondent  <i>Aetna Health of California, Inc.</i></p> <p><i>Via Email</i></p>
<p>Gregory N. Pimstone, Esq.  Joanna S. McCallum, Esq.  Jeffrey J. Maurer, Esq.  Manatt, Phelps &amp; Phillips LLP  11355 West Olympic Blvd.  Los Angeles, CA 90064  Tel: (310) 312-4132  Fax: (310) 312-4224  jmaurer@manatt.com</p>	<p>Attorneys for Defendant and Respondent  <i>California Physicians' Service dba Blue Shield of California</i></p> <p><i>Via Email</i></p>
<p>William P. Donovan, Jr., Esq.  Matthew D. Caplan, Esq.  Cooley LLP  1333 2nd Street, Suite 400  Santa Monica, CA 90401  Tel: (310) 883.6400  Fax: (310) 883-6500  wdonovan@cooley.com  mcaplan@cooley.com</p>	<p>Attorneys for Defendant and Respondent  <i>Cigna Healthcare of California, Inc.</i></p> <p><i>Via Email</i></p>
<p>Don A. Hernandez  Jamie L. Lopez  Gonzalez Saggio &amp; Harlan LLP  2 N. Lake Avenue, Suite 930  Pasadena, CA 91101  Telephone: (626) 440-0022  Facsimile: (626) 628-1725</p>	<p>Attorneys for Defendant and Respondent  <i>SCAN Health Plan</i></p> <p><i>Via Email</i></p>
<p>Astrid G. Meghriagian  715 Scott Street  San Francisco, CA 94117</p>	<p>Attorney for Amicus Curiae for Appellant  <i>California Chapter of the American College of Emergency Physicians</i></p>
<p>Long Xuan Do  Francisco Javier Silva  Michelle Rubalcava  California Medical Association  1201 J. Street, Suite 200  Sacramento, CA 95814</p>	<p>Attorneys for Amici Curiae  <i>California Medical Association, California Hospital Association, California Orthopaedic Association, California Radiological Society, and California Society of Pathologists</i></p>

<p>Sandra I. Weishart  Hinshaw &amp; Culbertson LLP  633 West Fifth Street, 47th Floor  Los Angeles, CA 90071  Telephone: (213) 680-2800</p>	<p>Attorneys for Amicus Curiae  <i>California Association of Health Plans</i></p>
<p>Honorable John S. Wiley, Jr.  Los Angeles Superior Court  Central Civil West, Dept. 311  600 S. Commonwealth Avenue  Los Angeles, CA 90005</p>	<p>Case No. BC449056</p>
<p>Court of Appeal  Second Appellate District, Division Three  300 South Spring Street  Second Floor, North Tower  Los Angeles, CA 90013-1213</p>	<p>Case No. B238867</p>
<p>Consumer Law Section  Los Angeles District Attorney  210 West Temple Street, Suite 1800  Los Angeles, CA 90012-3210  Tel: (213) 974-3512</p>	<p>Served pursuant to Bus. &amp; Prof. Code § 17209  and Cal. Rules of Court 8.29(a) and (b)</p>
<p>Appellate Coordinator  Office of the Attorney General  Consumer Law Section  300 South Spring Street  Los Angeles, CA 90013  Tel: (213) 897-2000</p>	<p>Served pursuant to Bus. &amp; Prof. Code § 17209  and Cal. Rules of Court 8.29(a) and (b)</p>