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Kantor & Kantor Files Complaint Against Blue Shield of California for Breach of Contract in a Case Involving Breast Cancer

Kantor & Kantor, LLP filed a complaint against Blue Shield of California in the Superior Court for the State of California, County of Los Angeles alleging Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and violation of California Civil Code Section 3428.

After a routine mammogram in 2013, and a subsequent biopsy, Kantor & Kantor's client, a 59-year old woman, was advised her risk of developing breast cancer was higher than the general population based on the presence of the papillomatous tissue. Upon being advised that she would be a good candidate for one stage breast reconstruction, plaintiff underwent a bilateral mastectomy with bilateral breast reconstruction in February of 2014.

In 2019 the plaintiff contacted her surgeon reporting chronic pain over the chest wall and into her back, despite physical therapy. Plaintiff reported that the pain had gotten consistently worse over a few years and was limiting her activity and causing daily pain.

Her surgeon recommended that the implants be removed and submitted a pre-authorization request to Blue Shield for bilateral removal of intact mammary implants and bilateral periprosthetic capsulectomy of the breast. This request was denied. The surgeon submitted a second request.

Blue Shield denied both requests for pre-authorization, both times stating the procedure was not medically necessary. The surgeon then participated in a peer-to-peer review with a Blue Shield doctor, who upheld the denial noting that the plaintiff did not qualify for surgery as she "looked okay" and stating her other medical issues were "meaningless" and did not qualify as medically necessary.

"Unfortunately, a case like this is becoming familiar," said Kantor & Kantor's Cari Schwartz. "Insurance companies deny medically necessary medical treatment daily. Patients then take on the burden of getting the medically necessary treatment they need and fighting the insurance company. Many patients give up. Fortunately, our client was not willing to give up."

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In February of 2020 the plaintiff underwent a bilateral implant removal – also referred to as explant surgery. During the procedure her surgeon discovered that the left implant was ruptured, with silicone visible outside the implant.

Significantly, as acknowledged in Blue Shield’s denial letters, Blue Shield’s Medical Policy for Breast Implant Management specifically states that “[r]emoval of a breast implant may be considered medically necessary for...Intra- or extra-capsular rupture of a silicone gel-filled or combination silicone/saline-filled implant.”

As a result of Blue Shield’s denial, the plaintiff incurred the cost of the surgery. She filed a grievance with Blue Shield soon thereafter. Blue Shield denied plaintiff’s request for breast reconstruction surgery again on the grounds that the service was not medically necessary.

As a last resort, plaintiff submitted an Independent Medical Review/ Complaint Form (“IMR”) to the CA Department of Managed Health Care. The decision from the IMR not only upheld Blue Shield’s denial but it was full of factual errors. Kantor & Kantor filed a Final Appeal & Request to Reprocess Plaintiff’s Claims to Blue Shield. Blue Shield upheld their denial yet again, causing Kantor & Kantor to file this complaint in State Court on the plaintiff’s behalf.

From Cari Schwartz: “The facts in this case are clear. Our client had a ruptured implant. The notion that her insurance company gets to dictate her treatment and quality of her medical care is unacceptable.”

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About Kantor & Kantor, LLP

Kantor & Kantor, LLP is one of the most experienced and highly respected law firms in the nation dealing with litigating insurance claims against insurance companies. Our firm also has extensive experience with the complex appeals procedure and Federal Court litigation of ERISA matters.

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