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Kaiser sued over mental health care

Proposed class action comes after state investigation resulted in a \$4 million fine

By **Saul Sugarman**
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Kaaiser Permanente medical centers in California are not treating patients with mental health conditions in a timely fashion, a proposed class action alleges in Alameda County Superior Court.

The complaint, which was served to Kaiser on Thursday, accuses the health care provider of violating four laws by dissuading patients to use certain mental health services or by failing to provide them. *Futterman et al. v. Kaiser Foundation Health Plan Inc. et al.*, RG13697775 (Alameda Co. Super. Ct., filed Oct. 2, 2013).

Latika M. Malkani, one of the Oakland-based attorneys who filed the case, believes the lawsuit the first to piggyback on findings released earlier this year from the state Department of Managed Health Care.

This summer, the agency fined Kaiser \$4 million based on an investigation completed in March, which found the health care provider failed to ensure the quality or speed of its services, and did not provide adequate material for patients to learn about their medical plans.

"The Department's actions are a result of both the seriousness of the deficiencies and the failure of Kaiser to

promptly correct them," DMHC Director Brent Barnhart said in a prepared statement in June. Barnhart is a former in-house counsel with Kaiser.

A Kaiser representative fired back a statement on Friday, accusing the plaintiffs of using the Alameda court lawsuit as a smokescreen for attacks brought by a labor union, the National Union of Healthcare Workers, or NUHW. The union uses Siegel, LeWitter & Malkani to handle labor disputes.

"This suit is NUHW's latest attempt to use inaccurate claims about our mental health care services to apply pressure in their protracted labor negotiations with Kaiser Permanente," read the statement sent by spokesman Won Ha. "NUHW's behavior does nothing to further the negotiations that should be taking place at the table."

The DMHC findings also focused on penalizing Kaiser's non-urgent appointment system, according to Kaiser. The Kaiser statement said the company "took the findings seriously" and has submitted a plan to correct the inefficiencies.

The lawsuit alleges unfair business practices, breach of contract, breach of good faith dealing, and violation of the Unruh Civil Rights Act, a state law enacted in 1959 in order to combat discrimination.

"If someone had suffered a heart attack, would Kaiser tell them they can't get an appointment for three weeks? Five? Six?" said Malkani, a partner with Siegel, LeWitter & Malkani in Oakland. Her partner Jonathan H. Siegel is the lead attorney on the lawsuit.

Siegel said Kaiser has previously

accused his firm of having ulterior motives, but his "duty is to the class."

"We wouldn't file this lawsuit as a ploy," he said. "I think Kaiser provides the least amount of mental health services that they think they can get away with."

His firm represents the union in a Sacramento County Superior Court petition filed last month, asking that Kaiser be removed from the California Health Benefit Exchange, part of the Affordable Care Act that allows people to cross-compare medical insurance. The writ petition asks that Kaiser be removed from the exchange because of its "woefully inadequate mental health services." *National Union of Healthcare Workers et al. v. California Health Benefit Exchange et al.*, 80001629 (Sacramento Co. Super. Ct., filed Sept. 4, 2013).

In the Alameda County lawsuit, the plaintiffs claim Kaiser violated the state Knox-Keene Health Care Service Plan Act of 1975, which dictates what services must be offered by health care providers in California. The DMHC based its investigation on the Knox-Keene Act.

Susan Futterman, one of the plaintiffs, had a husband who suffered a psychotic break in April last year, according to the complaint. She claims he committed suicide two months later after several unsuccessful attempts to make an appointment with a psychiatrist. According to the lawsuit, his psychiatrist called two weeks after his death.

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