



February 6, 2008

Ms. Hillarie Levy  
2958 Chippewa Avenue  
Simi Valley, CA 93063

**RE: Findings Related to Your Claim of Probate Code  
Violations by a Kaiser Physician**

Dear Ms. Levy:

The Department of Managed Health Care (the Department) has concluded its investigation into your claim that a Kaiser physician breached the organ donor protocol by inappropriately requesting that you consider authorizing the donation of your daughter's corneas, an alleged violation of the California Probate Code.

The Department acknowledges your dissatisfaction with the Department's efforts on your behalf. However, the Department's statutory authority is to regulate the conduct of health care services plans pursuant to the Knox-Keene Act. The Department's jurisdiction does not extend to the enforcement of the California Probate Act. Nor is the Department authorized to take or direct disciplinary action against licensed physicians. Nonetheless, and on your behalf, the Department undertook extensive efforts to investigate your claim.

During our in-person meeting with Chief Deputy Director, Ed Heidig, on November 27, 2007, you raised the following concerns and made the following allegations:

- 1) In 2005, a physician involved with your daughter's care at the Kaiser's Woodland Hills Medical Center ignored or failed to honor: 1) your daughter's Medical Directive indicating her desire not to donate her organs and 2) your daughter's designation of someone, other than yourself, to act as her official surrogate.
- 2) The physician's action violated the Probate Code Section 4733, by having an improper conversation with you (an unauthorized agent) regarding the donation of your daughter's corneas, and in disregard to your daughter's wishes expressed in her Medical Directive.
- 3) The physician breached Kaiser's Woodland Hills Medical Center's organ donor protocol by approaching you directly rather than arranging for an independent organ procurement organization to make the organ donor inquiry.
- 4) The Kaiser Health Plan improperly refused to file a complaint against the physician with the California Medical Board seeking disciplinary action.
- 5) The California Medical Board has failed to take action on the complaint that you personally filed against the physician.

Following our meeting on November 27, 2007, the Department conducted the following investigation:

On the afternoon of November 27, 2007, the Department faxed the material you provided in support of your claims (including copies of closing letters and medical record entries) to Kaiser Health Plan and arranged a meeting to discuss the Plan's handling of your complaint.

On November 28, 2007, the Department requested the Vice President of Health Plan Regulatory Services to investigate the handling of your complaint and to respond to your claim that the Plan's response to your grievance lacked a clear and concise explanation of its findings and conclusions. The Department also directed the Plan to review the peer review activities of the physician in issue and explain why the Plan had not filed a complaint with the Medical Board.

On November 30, 2007, during the Department's monthly meeting with Kaiser Health Plan to monitor the Plan's implementation of quality of care improvements resulting from a recent survey, Plan representatives provided the following briefing:

- The Plan confirmed that the Woodland Hills Medical Center reviewed your complaints. In view of the two year lapse of time since treating your daughter, the physician could not recall that he had any conversation with you concerning potentially donating your daughter's corneas. But stated that his standard of practice was to abide by the organ donor protocol.
- The Plan was unable to locate any other reported instances where someone claimed that this physician breached the organ donor protocol or attempted to inappropriately inquire into a patient's availability for organ donation.
- The Plan instituted a re-education process for the Woodland Hills Medical Center staff on the subject of the organ donor protocol.
- The Plan did not file a complaint with the California Medical Board because its investigation was unable to clearly document that the physician engaged in any inappropriate activity.

On December 12, 2007, the Department called you to discuss the results of the Plan's investigation and corrective actions. During the call, you asserted that the medical record entry, dated February 15, 2005, clearly evidenced a conversation occurred between yourself and the physician. The medical entry is a nurse's note, rather than the physician's statement. The nurse's note indicates that the physician called the organ procurement organization (as required by the Medical Center's protocol) and you. Unfortunately, the entry does not indicate the substance of either conversation. The entries immediately following indicate that the physician provided "psychological support" and called a chaplain. There is no way to rule out that the purpose of the physician's conversation with you was to provide psychological support and alert you of the availability of the chaplain services. The next entry indicates that the Organ Procurement Organization contacted you and that you refused to authorize the donation of your daughter's corneas. There are no further entries relating to organ donation in the records provided.

On December 14, 2007, the Department had a follow up conference call with Kaiser Health Plan to determine whether the individual who made the medical entries was available and had a recollection of the incident. Because the author of the medical entries was no longer employed at the Kaiser Medical Center, further amplification of the medical entries was not obtained. The Plan explained that considering the physician's description of his usual practice and the fact the medical entries were not made by the physician, it did not have a good faith basis to refer the issue to the California Medical Board for further investigation.

Nevertheless, the Department agreed to:

- 1) Contact the California Medical Board to discuss the handling of your complaint.
- 2) Explore your legal options for pursuing alleged violation of the California Probate Code.

The California Medical Board provided the Department with a detailed overview of its investigation and concluded that there was insufficient evidence to establish the Physician violated the law. Based on the Board's findings no disciplinary action against the physician was instituted.

The California Probate Code, under proper circumstances, recognizes a private cause of action for improper organ procurement activities. However, the Department is not authorized to provide legal representation for individuals wishing to pursue private civil litigation. If you wish to explore whether potential civil remedies exist, you should retain private counsel as soon as possible since there are limitations on the length of time that an individual has to file civil claims.

Ms. Levy, the Department is keenly aware that are you dissatisfied with the investigation and conclusions of Kaiser Health Plan, the California Medical Board and our Department. Unfortunately, the Department does not have a mechanism to conclusively resolve factual disputes or the authority to discipline physicians. The Department's regulatory responsibility is to verify whether licensed health plans properly investigate member grievances and timely institute corrective action when necessary. The Department has concluded that the Kaiser Health Plan has thoroughly investigated your complaint and has instituted re-training of its staff to ensure that appropriate organ procurement protocols are followed in the future.

Based on the foregoing, the Department has completed its review of your complaint and the file will be closed. The Department's review is not a substitute for any other formal or informal legal proceedings or remedies that may be available to you or you wish to pursue through assistance of private legal counsel.

If we can be of further assistance to you on other matters, please call our consumer help line at (888) HMO – 2219. You may also visit our website at [www.hmohelp.ca.gov](http://www.hmohelp.ca.gov) for additional information regarding patient's rights in California.

Sincerely,

Marcy Gallagher, RN, MPA, JD  
Chief of the Division of Plan Surveys  
Department of Managed Health Care

cc: Cindy Ehnes, Director  
Ed Heidig Chief Deputy Director  
Bobbie Reagan, Assistant Deputy Director, HMO Help Center  
Kevin Donohue, Assistant Chief Counsel, HMO Help Center