

## [Bakersfield.com](#): Kern County news, events, classifieds, shopping, & search

Local News

# Kern Health Systems declares victory in court fight

BY STEVEN MAYER, Californian staff writer

[smayer@bakersfield.com](mailto:smayer@bakersfield.com) | Tuesday, Feb 23 2010 07:34 PM

Last Updated Tuesday, Feb 23 2010 07:34 PM

A Kern Health Systems executive called a judge's ruling a "victory" for the agency Tuesday -- while an opposing attorney characterized the decision as a "bump in the road" for a group of doctors that sued the local Medi-Cal administrator.

In a densely worded ruling released Tuesday, Kern County Superior Court Judge David Lampe granted KHS its demurrer, or motion for dismissal -- with the proviso that Emergency Medical Services Group may amend its complaint within 20 days.

Judging by their reaction, KHS executives viewed the ruling as a big win.

"Today the Superior Court for Kern County ruled in favor of Kern Health Systems on its initial motions to dismiss the EMSG complaint," KHS Chief Compliance Officer Clayton Carlos said Tuesday.

"Each and every cause of action was dismissed, as the Court found that EMSG failed to adequately plead all of its claims, in particular that Kern owed any moneys in addition to the amounts which would have been due under the Medi-Cal Program."

The lawsuit, filed in 2008, prompted Kern Health Systems to hire auditing firm Allied Management Group at a price tag that ultimately reached \$7.8 million. The Californian's disclosure of that cost -- and KHS officials' admission they were unaware of the spending -- has sparked calls for oversight reform from county supervisors, the public and KHS itself.

The impact of the ruling, Carlos said, is to dramatically reduce the amount of damages EMSG may assert.

But Andrew H. Selesnick, the attorney for the emergency room doctors, said KHS executives are "counting their chickens" before the case has been fully reconciled.

First, he said, the doctors' group has already prevailed once when an appeals court reversed an earlier ruling by a local court. The appellate court could again provide a remedy to this ruling, he said.

Second, by filing an amended complaint, it means "at minimum, our case will survive at at least at Medi-Cal rates,"

Selesnick said.

That's at the heart of the issue, he added. "They don't reimburse doctors properly, not even at Medi-Cal rates."

In essence, the ruling found that KHS is, by lawful definition, a county Medi-Cal contractor. As such, it is bound by the Rogers Amendment to the Social Security Act.

Therefore, the court said, the doctors group cannot simply assert in its lawsuit that KHS has failed to "pay a reasonable fee required by state law." Instead the doctors must claim that KHS has not paid as required by the Rogers Amendment or they must argue that the Rogers Amendment is fatally flawed, constitutionally or otherwise.

A second cross-complaint in which KHS claims the doctors' group fraudulently overcharged the Medi-Cal administrator is not affected by Tuesday's ruling.

"It is very real," Carlos said of the allegations of fraud. "And we're going to prove it."

In response, Selesnick said KHS "systematically" underpays doctors.

"We have repeatedly asked them to give us one example of fraud," he said. "They are unable to do so."

Carlos said the ruling will save KHS as much as \$15 million. But Selesnick said it's ridiculous to suggest KHS was ever subject to damages at that level.

"They have to justify paying nearly \$8 million for an audit," he said. He also noted that KHS must also justify holding some \$70 million in its reserve account.

When asked whether he believes KHS was correct in paying \$7.8 million to Santa Ana-based Allied Management Group for an unfinished investigative audit it conducted, Carlos said he could not comment.

## No Comments

## Add New Comment

Please [sign in](#) or [register](#) to comment.

## Showing 0 comments

Sort by    [Subscribe by email](#)  [Subscribe by RSS](#)