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Was It Confusion or Just Good Politics?
Sen. John Edwards and the Nataline Sarkisyan Story

By Rhonda D. Orin

This primary season, Democratic presidential candidate John Edwards made a cause celebre of the Nataline Sarkisyan story: a 17-year-old leukemia patient who died while awaiting a liver transplant. Sen. Edwards announced at multiple press conferences — often accompanied by Nataline's bereaved parents — that CIGNA Corp. had wrongfully denied coverage for the transplant surgery and relented after a public protest, but the reversal came too late for Nataline.

Sen. Edwards proclaimed that this story illustrated a profound flaw with "health insurance" in this country. Celebrity attorney Mark Geragos joined in the clamor, vowing to make CIGNA pay millions for its "bad faith" denial of Nataline's "coverage claim."

Sen. Edwards was right that this story was illustrative. But what it illustrated was not CIGNA's failings as a "health insurer." It illustrated the extent of the public misunderstanding about how most health benefits are provided in this country.

Here are some of the things that that were missed by Sen. Edwards, along with the media outlets that carried his press conferences on this issue without further comment.

First, he missed that CIGNA was not the Sarkisyans' "health insurer." According to CIGNA's web site, CIGNA was just the administrator of Nataline's health plan, which was sponsored by her father's employer. As a participant in a self-funded health plan, Nataline did not have "health insurance" at all. Thus, she was not entitled to "insurance coverage" in the first place and CIGNA had no exposure to a claim for a "bad faith" coverage denial.

Second, Sen. Edwards missed that Nataline's family lacked contractual privity to sue CIGNA for anything. Their only legal relationship was with Nataline's father's employer, which, in turn, had an administrative contract with CIGNA. So the Sarkisyan family could sue the employer and the employer could sue CIGNA – but it would be extremely difficult, if not impossible, for them to sue CIGNA directly.

Third, a lawsuit by the Sarkisyans against the employer would be subject to all the limitations of ERISA. Among other things, they would be limited to federal court, not state court. They would be limited to statutory causes of action under ERISA, not common law. Their possible recovery would be the cost of the denied procedure and perhaps their le-

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gal fees. They would be legally precluded under ERISA from suing for bad faith, and from seeking recovery of punitive or exemplary damages from anyone.

It's impossible to know whether Sen. Edwards appreciated these distinctions, but found them too complex for a national stage, or whether he was genuinely confused by the structure of self-funding. But the uncritical acceptance of this story as a "health insurance debacle" suggests that, if Sen. Edwards was confused about the legal distinctions between health insurance and self-funding, he has a lot of company.

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