

### **Lincoln General Hospital v. Blue Cross/Blue Shield of Nebraska**

(United States Court of Appeals for the Eighth Circuit 963 F. 2d. 1136 (8th Cir. 1992) )

On February 1, 1988, Delores Phillips was injured in a serious automobile accident and was admitted to Lincoln General Hospital (LGH). She developed a blood clot in her leg and eventually lapsed into a coma. On February 3 her ex-husband Roy notified Lincoln Public Schools that he was divorced from Delores on December 9, 1987. He elected COBRA on her behalf and paid one month's premium for her. Blue Cross of Nebraska opened a COBRA continuation file on her. On February 4 a legal guardian was appointed for Delores. On February 15 Blue Cross mailed an invoice for February and March premiums. Also on February 15 LGH called Blue Cross to verify Delores's insurance coverage. They were informed that she was covered.

A \$93,930 interim bill was sent to Blue Cross on March 8. On March 10 Blue Cross approved a two week rehabilitation period at Madonna Nursing Home. Also on March 10 Delores was discharged from LGH.

On April 7, 1988, LGH submitted a final bill to Blue Cross for \$111,217.58. Blue Cross denied payment on the grounds that Delores's coverage had been terminated retroactively to January 31, 1988, due to nonpayment of the premium. The bills submitted by Madonna Nursing Home were paid by Blue Cross, however.

Delores Phillips was not in a position to pay the huge bill, and assigned all her rights to LGH. In its subsequent lawsuit, Lincoln General Hospital claimed that Blue Cross:

1. Failed to provide continuation coverage
2. Breached its fiduciary duty
3. Waived its right to apply the first premium retroactively

The judge disagreed with all three claims. While conceding that the retroactive premium issue was cloudy, the judge held that the invoice for February and March premiums gave Delores Phillips ample notice that the first premium had been applied retroactively.

An additional claim by LGH was that Blue Cross arbitrarily and capriciously denied the claims submitted by LGH, yet paid subsequent claims from Madonna Nursing Home. A Blue Cross letter to the Nebraska State Department of Insurance indicates, "Bills submitted by Madonna were paid through an error in our office."

The judge granted summary judgment to Blue Cross.

In the appeal, Delores's incapacitation was one of the issues raised. LGH's contention was that since she was in a coma, her grace period for the timely payment of premium should have been extended. The court held that, since a legal guardian was appointed, the affected period of time did not have to be tolled. The court pointed out that it was the legal guardian's responsibility to receive Delores's mail and act upon it if necessary, including medical insurance for a person who was in the hospital, in a coma.