

Michael Kissling v. UnitedHealthcare

I. EXECUTIVE SUMMARY

Plaintiff: Michael Kissling (32-year-old above-knee amputee)

Defendant: UnitedHealthcare

Case Type: Medicare Advantage Bad Faith, ERISA Bad Faith, Medical Malpractice, Disability Discrimination, Continuing Tort, Retaliatory Conduct

Core Issue: Multi-year pattern of systematic endangerment causing catastrophic harm including limb loss, ongoing disability, and profound loss of parental protective capacity

Key Case Strengths

1. Immediate IRE Overturn validates wrongful denial with summary judgment-like finality
2. Life-threatening medical progression with physician confirmation of emergency necessity
3. Multi-year continuing tort with clear causation chain across different treatment types
4. Regulatory violations of Medicare LCD requirements with no defensible position
5. Systematic endangerment pattern with documented impact on family safety and parental capacity
6. Strong expert testimony from multiple medical professionals and specialists
7. Substantial damages with Lehigh County precedent supporting high valuations

II. FACTUAL BACKGROUND

2017-2019: The Pattern of Treatment Denials (Continuing Tort Origin)

Initial Stent Denial

- **December 2017:** First medical consultations recommend stent for blood flow issues related to May-Thurner syndrome handled by the Lehigh Valley Health Network.
- **2018:** Two physicians recommended stent with MRA imaging supporting medical necessity, high patency rates (80-95%) for May-Thurner stenting

- **2018:** UHC denied stent after extracting out-of-pocket maximum for testing that proved medical necessity

Apligraf Treatment Delays

- **2018-2019:** UHC repeatedly delayed approval of Apligraf treatment for non-healing wounds over 17 months
- Wound care specialists Dr. Michael Hortner and NP Dr. Callie Richardson documented medical necessity
- When finally approved, Apligraf healed in weeks what couldn't heal in months of delay
- **Second round of wounds:** UHC again delayed Apligraf for nearly a year until wound became infected and patient no longer qualified

Forced Alternative Treatment

- **Hyperbaric Oxygen Therapy:** Forced into ineffective HBO therapy (5 days/week, 5 hours daily) when Apligraf denied

Life-Threatening Consequences

- **Life-Threatening Progression:** Pathology from amputation revealed bone demineralized to the point of being "cuttable with a scalpel" - indicating severe osteomyelitis/necrotizing infection caused by prolonged wound care delays
- **Physician Confirmation:** Treating physician confirmed amputation would NOT have been "elective" with prior pathology knowledge; patient was "one bad step from compound fracture and death by bleeding out" due to anticoagulant therapy
- **Systemic Pattern:** Physician indicated multiple patients affected by UHC interference, stating doctors' "hands need to be untied by insurance companies"
- Led to educational disruption at Kutztown, emergency amputation (mischaracterized as "elective"), and permanent disability

2021-2025: Medicare Advantage Coverage Period

- UHC Medicare Advantage plan coverage from approximately 2021-2024
- Subject to Medicare LCD L33787 and Policy Article A52496 requirements
- Medicare rules state once K-level established, "ongoing need assumed to be met"

2023: The Prosthetic Denial (Primary Claims)

Timeline of Events

- **February 1, 2023:** Amputation Left Above Knee
- **March 16, 2023:** PT evaluation establishes K3 level (AMPnoPRO score: 35)
- **March 22, 2023:** UHC changed plan making all existing doctors/PT out-of-network, forcing scramble to new healthcare network
- **July 19, 2023:** Dr. Stockhausen documented learner prosthetic knee unlocking randomly, causing multiple falls and exertion headaches when heart rate exceeded 150 BPM
- **August 21, 2023:** PT documented soreness at femur tip and socket fit issues (circumference decreased from 72cm to 55-60cm, weight loss from 265 to 210 lbs)
- **September 13, 2023:** Initial prosthetic denial citing six criteria, all of which were actually met
- **September 19, 2023:** Updated PT evaluation shows K4 level (AMPnoPRO score: 44/47) - achieved despite broken knee mechanism that prevented stair use points
- **September 27, 2023:** UHC final denial letter contains potentially fraudulent statement referencing Medicare guidelines incorrectly, signed by Christopher Toland, Senior Appeals Representative
- **October 2, 2023:** Independent Review Entity (Maximus) immediately overturns denial with summary judgment-like finality

The Human Cost: Loss of Parental Protective Capacity

The Park Incident

- While using inadequate learner prosthetic at park with autistic daughter, she became upset and bolted toward parking lot
- **Failed Protective Response:** Attempted to run after her, nearly fell, had to remove prosthetic entirely - physically unable to reach her in time
- **Near-Tragedy Averted:** Another parent intervened to save daughter from oncoming vehicle while plaintiff was "trapped in his own body"
- **Lasting Impact:** Has never taken daughter outside alone since incident; UHC's denial removed fundamental parental protective capacity

- **Viral Interview:** Story gained national attention highlighting real-world impact of insurance denials on families

2024: Retaliatory Coverage Cancellation Attempt

- UHC attempted to cancel plaintiff's insurance effective the DAY he was discharged from revision amputation surgery
- Initial notice provided deadline until February 2025
- Subsequent notice claimed change already implemented, requiring new deductibles/copays
- UHC retroactively denied prior authorization for the revision surgery they caused through their initial wrongful denial
- Congressional intervention (Rep. Susan Wild's office) and Medicare Ombudsman confirmed plaintiff's qualification, forcing UHC to restore coverage
- This retroactive denial could only be legally justified by criminal fraud referral - highlighting UHC's bad faith

2025: Ongoing Safety Concerns During Litigation

- **Timeline:** Safety issues emerged during active UHC litigation period
- **Pattern Recognition:** Multiple incidents targeting plaintiff's safety as disabled person
- **Systemic Targeting:** Continued threats to equipment and safety systems plaintiff depends on

III. LEGAL THEORIES OF LIABILITY

A. Medicare Advantage Bad Faith Claims

Legal Standard: Medicare Advantage plans must follow Medicare coverage rules and cannot arbitrarily deny covered services

Evidence of Bad Faith:

1. **Medicare LCD Violation:** LCD L33787 states ongoing prosthetic need "assumed to be met" once K-level established

2. **Policy Article Contradiction:** A52496 explicitly supports coverage for established K-levels
3. **Objective Evidence Ignored:** AMPnoPRO scores clearly documented K4 qualification, plus UHC had prior knowledge they accepted plaintiff was K3 on AmpNoPRO for the learner leg
4. **Discriminatory Application:** Used non-Medicare criteria (wheelchair usage) for denial; UHC refused to hand over recordings or records without subpoena
5. **Retaliatory Conduct:** Attempted coverage cancellation immediately upon hospital discharge

B. ERISA Bad Faith Claims (Historical Coverage)

Legal Standard: Arbitrary and capricious standard under ERISA 502(a)(1)(B)

Evidence from Earlier Coverage Period:

- **2017-2018 Stent Denial:** Pattern of denying medically necessary care leading to catastrophic outcomes despite high success rates and clear imaging evidence

Supporting Case Law:

- Firestone Tire & Rubber Co. v. Bruch (1989) - arbitrary and capricious standard
- Recent AI denial cases establishing appeals exhaustion not required when internal processes cause harm

C. Medical Malpractice by UHC Physician

Elements Present:

1. **Duty:** UHC physician owed duty to provide competent medical review under Medicare standards
2. **Breach:** Failed to consider relevant objective medical evidence (AMPnoPRO scores) and violated Medicare LCD requirements
3. **Causation:** Direct link between wrongful denial and patient harm, including loss of parental protective capacity
4. **Damages:** Documented physical injuries, pain, disability, traumatic brain injury symptoms, family impact

Standard of Care Violation:

- Ignoring standardized, objective functional assessments (AMPnoPRO) deviates from accepted medical practice
- Applying non-Medicare criteria contradicts Medicare Advantage plan requirements
- The fact that plaintiff was hospitalized only 2 days for both original amputation AND revision surgery contradicts UHC's claim that he wasn't physically capable enough for MPK

D. Retaliatory Conduct Claims

Theory: UHC's attempt to cancel coverage immediately upon discharge constitutes retaliation for pursuing legitimate claims

Evidence:

- Timing: Cancellation effective on discharge date
- Retroactive denial of revision surgery UHC's own conduct necessitated
- Only legal justification would be criminal fraud referral - demonstrating bad faith

E. Disability Discrimination (ADA)

Theory: Using wheelchair usage as disqualifying factor constitutes disability-based discrimination

Evidence: During peer-to-peer review, UHC physician cited wheelchair use despite Medicare LCD policy recognizing "motivation to ambulate" and documented mechanical failure of prosthetic

F. Continuing Tort Theory

Legal Basis: Pattern of denials from 2017-2025 constitutes single, ongoing course of conduct

Significance: Could revive statute of limitations on 2017 stent denial that led to limb loss

Supporting Evidence:

- Consistent pattern of denying medically necessary care across multiple years and treatment types
- Same defendant, same type of conduct (denying proven treatments)

- Causally connected outcomes (stent denial → wound care denials → limb loss → prosthetic denial → loss of parental protective capacity → bone spur, neuropathy, traumatic brain injury, ongoing endangerment)
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IV. DAMAGES ANALYSIS

A. Medical Damages

- **Life-threatening bone destruction:** Pathology revealed bone demineralized to "scalpel-soft" consistency, indicating severe osteomyelitis caused by treatment delays
- **Mischaracterized amputation:** Called "elective" when pathology proves it was emergency limb salvage to prevent life-threatening systemic infection
- **Bone spur formation:** Requiring surgical revision
- **Chronic neuropathy:** Documented in medical records, worsened after bone spur development
- **Multiple falls:** Due to unstable prosthetic, documented in medical records
- **Traumatic brain injury symptoms:** Exertion headaches triggered when heart rate exceeded 150 BPM, documented by PT, resolved after proper prosthetic provided
- **Non-healing wounds:** 17 months of documented wounds due to Apligraf delays
- **Hyperbaric Oxygen Therapy:** 5 days/week, 5 hours daily - ineffective treatment forced when Apligraf denied
- **Ongoing pain management:** Requiring medication and treatment

B. Economic Damages

Lost Education: Forced withdrawal from TWO university programs:

- **Kutztown University:** Public Administration degree with paralegal minor (3.92 GPA) - limb loss
- **Full Sail University:** Video Game Design degree (4.0 GPA, Course Director Award in Programming) - prosthetic denial complications (Bonespur, Neuropathy, Focus and Concentration Issues, PEM)

Lost Earning Capacity: Advanced degrees in public service and technology innovation, with specific focus on developing VR/omni-directional treadmill rehabilitation therapy for amputees

Additional Economic Losses:

- Extended wound care costs: 17 months of treatment, HBO therapy, hospitalization costs
- Medical expenses: Past and future treatment costs, revision surgery
- Educational debt/costs: Over \$4K required to return to Full Sail despite medical withdrawal
- Prosthetic replacement: Ongoing equipment needs over lifetime
- Housing: Forced relocation to accessible home due to disability, mortgage liability increased from \$382K to \$882K due to high interest rates and accessibility modifications

C. Non-Economic Damages

- **Pain and suffering:** Chronic neuropathy and bone spur pain, traumatic brain injury symptoms
- **Mental anguish:** Documented mental health treatment, partial hospitalization
- **Loss of parental capacity:** Unable to protect daughter, cannot take her outside alone, psychological trauma from near-tragedy
- **Loss of enjoyment:** Unable to participate in previous activities, educational pursuits interrupted
- **Disability impact:** Permanent functional limitations, ongoing safety threats
- **Fear and anxiety:** Living with compromised safety and inability to fulfill parental protective role

D. Family Impact Damages

- **Loss of Consortium:** Impact on family relationships and activities
- **Parental Incapacity:** Fundamental inability to protect child in emergency situations
- **Psychological Trauma:** Lasting mental imagery of near-tragedy, ongoing fear and hypervigilance

- **Social Isolation:** Unable to engage in normal parent-child activities outside the home, or other normal family activities. Especially with leg limits as it is less than what my doctor ordered originally.
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V. KEY EVIDENCE

A. Medical Records

1. **PT Evaluations (3/16/23, 9/19/23):** Clear AMPnoPRO score progression (35-44)
2. **Physician Notes (Dr. Stockhausen):** Documents peer-to-peer review details, exertion headaches, falls
3. **Pathology Reports:** Bone demineralization evidence proving life-threatening condition
4. **Physician Testimony:** Treating physician confirmation of emergency necessity, pattern affecting multiple patients
5. **Wound Care Documentation:** Dr. Hortner and Dr. Richardson records of Apligraf necessity and delays
6. **Treatment Timeline:** Shows progression from denial to injury to ongoing complications

B. Insurance Documentation

1. **Denial Letters:** Show shifting rationales and Medicare LCD violations, signed by Christopher Toland
2. **IRE Overturn:** Validates wrongfulness of initial denial with summary judgment-like finality
3. **Medicare Policy Language:** LCD L33787 and Policy Article A52496 supporting coverage
4. **Coverage Cancellation Attempts:** Documents showing retaliatory timing and retroactive denials

C. Public Documentation

1. **Viral Interview:** National media coverage highlighting real-world family impact
2. **Congressional Intervention:** Rep. Susan Wild's office involvement demonstrates severity

3. **Medicare Ombudsman Confirmation:** Official validation of plaintiff's qualification for coverage

D. Expert Testimony Available

1. **Prosthetist:** Available to testify regarding denial process abnormalities
 2. **Medical Experts:** Can establish standard of care violations, life-threatening progression
 3. **Vocational Expert:** Can quantify lost earning capacity
 4. **Family Impact Expert:** Can testify to parental capacity loss and family trauma
 5. **Physician Witnesses:** Treating physician willing to testify about emergency necessity, pattern affecting multiple patients
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VI. LEGAL PRECEDENT AND SUPPORTING AUTHORITY

A. Medicare Advantage Bad Faith

- Medicare LCDs are binding on MA plans - violations constitute per se bad faith
- Retroactive coverage denials without fraud findings are prohibited
- Pattern of ignoring Medicare coverage criteria demonstrates systematic violations

B. ERISA Bad Faith

- High overturn rates by independent reviewers indicate systematic problems
- Courts increasingly scrutinizing insurance company medical reviews
- Pattern evidence strengthens arbitrary and capricious claims

C. Family Impact Precedent

- Courts recognize loss of parental protective capacity as significant non-economic damage
- Inability to ensure child safety constitutes fundamental loss of life enjoyment
- Psychological trauma from near-tragedy creates lasting mental anguish damages

D. Continuing Tort Doctrine

- Applicable when defendant's conduct constitutes ongoing course of action

- Single pattern of behavior can extend limitations period
- Particularly relevant in insurance bad faith contexts spanning multiple treatment types