

Message

From: Greene, Bruce R. [/O=BH/OU=DENVER/CN=RECIPIENTS/CN=BGREENE]
Sent: 8/14/2017 11:13:34 PM
To: Yorai Benzeevi [benny@healthcca.com]
CC: Wolin, Robert [/o=BH/ou=Houston/cn=Recipients/cn=RWOLIN]
Subject: RE: David Phelps vs Tulare

You are indemnified under both the MSA and the Bylaws for anything other than acts of willful misconduct (or in the case of the Bylaws, also actions in bad faith and not within the scope of your authority). The Beta policy has a provision to the effect that the Board must certify to Beta that you were acting in good faith and within your authority in order to invoke insurance coverage.

Frankly, I don't see any justification for the Board not to certify that to Beta, but right now there is no Board to do anything. When the new Board takes control, who knows what they will do. At that point you can tender the defense to them and they are obligated to indemnify (unless they take a strained position that you acted in bad faith), which would usually mean that they would tender to Beta (which means also that they will have to give Beta the required certification). but if they refuse to indemnify or certify to Beta, then you will have to sue the District for breach and for indemnification. Maybe even drag them into the same lawsuit by cross complaint.

Right now we cannot do anything but you have 30 days after you are served to respond to the complaint. We will address it when we must.

Bruce Greene
Partner

BakerHostetler

11601 Wilshire Boulevard | Suite 1400
Los Angeles, CA 90025-0509
T +1.310.442.8834
M +1.310.308.1003

bgreene@bakerlaw.com
bakerlaw.com

