

# Cancer killed Kathleen Valentini, but prior auth shares the blame

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Kathleen Valentini had crucial medical care delayed as she awaited prior authorization from eviCore, a third-party administrator that her health plan contracted with for prior authorization reviews. It was a delay that caused her immense suffering and, ultimately, her life.

Now, physicians tell the court, the company must be held responsible for how its actions affected the patient.

“EviCore asserts that, contrary to its own representations, its duty was only to the insurance companies that contracted with it and not to Mrs. Valentini. EviCore is wrong. Under the New York law of negligence, eviCore had a duty to Mrs. Valentini, and it should be held to its promises. EviCore, not Mrs. Valentini, should bear the consequences of its misrepresentations,” says an amicus brief from the Litigation Center of the American Medical Association and State Medical Societies, the Medical Society of the State of New York, the Vermont Medical Society and the Connecticut State Medical Society to the 2nd U.S. Circuit Court of Appeals.

Physicians at Memorial Sloan Kettering Hospital said eviCore’s delay meant that a less radical, and possibly more successful, chemotherapy treatment was no longer an option for Valentini. By delaying care, her cancer went undetected. She was in pain and her leg, hip and pelvis were amputated. She ultimately died.

“No one can ever know how Mrs. Valentini’s fate would have been different if eviCore had not deceptively designed its website. But eviCore should bear the burden of that uncertainty,” the brief says. “Allowing eviCore to escape liability would be illogical and immoral.”

Fixing prior authorization is a core element of the AMA Recovery Plan for America’s Physicians. You took care of the nation. It’s time for the nation to take care of you. It’s time

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Prior authorization is overused and existing processes present significant administrative and clinical concerns. Find out how the AMA is tackling prior authorization with research, practices resources and reform resources.

## A company's patient promises

The promises and misrepresentation the brief refers to come from the claims eviCore made on its website where, among other things, the company's CEO in a video told visitors that "the patient comes first" and that eviCore is there "really to assure that the patient gets the best care."

Other areas of eviCore's website claimed that the company's approach is:

- "Not to deny care that is needed but rather to redirect providers and patients to more appropriate testing and treatment options."
- To apply "up-to-date evidence-based guidelines and advanced technologies to ensure that the right evidence-based care is delivered."
- To "address the full spectrum of potential care and treatment, from holistic and conservative approaches to more advanced and invasive procedures."

The website further said that the "strong evidence supporting our criteria allows us to make appropriate decisions on patients' behalf."

Valentini had every reason to believe the review company would employ sound medical judgment as to what medical tests she should undergo, says the AMA Litigation Center's brief in the case, *Valentini et al. v. Group Health Inc. et al.*

But eviCore "did exactly the opposite of what it promised on its website" and delayed an MRI Valentini's physician ordered, according to the brief, which urges the court to find that the company and other defendants had a legal duty to—in fact—put patients' needs first, just as it promised on their website. That's in addition to the duty of care the company owed Valentini because of "the seriousness of her medical condition and the evident need for prompt treatment," the brief says.

## Prior authorization hurts patients

Valentini's case is an extreme example of how prior authorization harms patients. But the practice commonly harms patient care, physicians tell the court, citing an AMA survey of physicians (PDF) that

found prior authorization often negatively affects patients and the practice of medicine. For example, in that survey, 34% of physicians reported that prior authorization has led to a “serious adverse event” for a patient, such as hospitalization, disability or even death.

In late May, the AMA released additional physician survey results (PDF) showing that despite mounting evidence that insurer-imposed authorizations for drugs and medical services can be a hazardous and burdensome administrative obstacle to patient-centered care, the health insurer industry continues to show apathetic or ineffectual follow-through on mutually accepted reforms.

“Although this practice may save money for insurance companies, it is deleterious to patient health and causes substantial inconvenience and frustration to patients and to health care providers, including physicians,” says the physicians’ brief in the *Valentini* case. “As evident from this case, the prior authorization requirement can endanger health and even lead to loss of life. This case presents an especially egregious case of prior-authorization abuse. Amici seek to ensure that such abuses are minimized and that, when they occur, insurance companies are properly held responsible.”

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.