

New York and New Jersey Courts Hand Down Key Rulings

GUARDING LEGALITY OF INTEGRATED FACILITIES

Editorial Staff

Within the space of 13 days, courts in New Jersey and New York handed down decisions on the legality of certain types of joint chiropractic/medical practices.

The New York Ruling

In a case that had been watched by many commentators in the industry, the U.S. District Court in New York dismissed a massive lawsuit filed by State Farm Insurance against more than 50 defendants involved in joint chiropractic/medical practices. It was State Farm's contention that it did not have to pay for services rendered by these group practices if there were defects in the group practices' contracts or corporate structure.

The group practices contended that State Farm was required to reimburse all health care services that were properly billed and medically necessary. The group practices further contended that State Farm had no standing to refuse to pay for such properly rendered medical care, even if the group practices did have some defect in their corporate, contractual, or licensing structures. The group practices argued that an insurance company's sole remedy, if there was a legal defect in the health care provider's structure, was to file a complaint either with the appropriate state licensing board or with the state attorney general's office.

Judge Sifton agreed, ruling: "No where does the no-fault law or regulations indicate that an insurer only need pay an assignee provider of services if that provider is lawfully licensed pursuant to New York law."

Judge Sifton added: "Moreover, the alleged fraudulent ownership of the PC defendants does not affect the question of whether (State Farm's) insureds incurred and incur a basic economic loss that (State Farm) is required to compensate." Judge Sifton stressed that there were "no allegations that services were provided to noncovered persons or arose or arise out of noncovered accidents; that they were not medically necessary; or that the providers of the services did not or do not have lawfully obtained licenses to provide the services." Judge Sifton found it would be a "windfall" to State Farm to allow them to refuse to pay for covered necessary health care services solely because there was a defect of corporate structure or licensing. Judge Sifton concluded by holding that an insurance company does not have the right to act as a private attorney general, and does not have standing to bring such a lawsuit civilly.

Michael Schroeder, a Santa Ana, California attorney, and a leading legal expert on the formation of integrated health care facilities, commented on the judge's decision:

"Judge Sifton's decision is clearly correct. His ruling is consistent with a ruling against Allstate in Fresno where the court there also held that an insurance company cannot serve the role of the attorney general or the state licensing board. Many doctors' professional corporations have some defect in their corporate minutes. These technical

corporate paperwork defects have absolutely nothing to do with whether or not the patient should receive the health care insurance coverage the insurance company has been paid to provide that patient."

The New Jersey Ruling

A very different reaction to integrated health care arrangements occurred in a New Jersey state court case. In *Allstate Insurance Company v. Daniel H. Dahan and Robert Borsody*, a New Jersey Superior Court judge considered a request from practice management consultant Daniel Dahan and attorney Robert Borsody for partial summary judgment in their favor on certain factual and legal issues. The facts presented to the New Jersey state court judge were very different than those presented to the federal judge in New York. In New Jersey, the medical doctor was a figurehead. The New Jersey State Court judge pointed out that it was questionable if the medical doctor even owned the stock in the medical corporation, as each of Dr. Dahan's chiropractic clients had the MD pre-sign an undated letter of resignation, and pre-sign an undated stock assignment letter so that the stock in the medical corporation could be transferred at any time from the MD.

The trial judge also pointed out that Dr. Dahan's clients entered into a management agreement between the management company owned by the chiropractic doctor and the medical corporation that:

1. allowed the management corporation to determine each month how much it would charge the medical corporation;
2. the management agreement automatically renewed at the end of each year; and
3. prohibited the medical doctor and the medical corporation from ever canceling the management agreement even if there were cause to do so.

"Most knowledgeable health care attorneys have long been critical of group practice arrangements that employ absentee medical doctors or pre-signed letters of resignation," said Mr. Schroeder.

As additional evidence of the sham nature of this transaction, the New Jersey trial court judge pointed out that the medical doctor had never visited the health care facility for which the medical doctor was supposedly the "medical director." The medical doctor never supervised any of the employees at the health care facility, never had any signature authority over any bank account, and made no capital contribution to the establishment of a business that the medical doctor supposedly owned.

Finally, the trial judge was harshly critical of a related arrangement between Dr. Dahan and his chiropractic clients wherein Dr. Dahan provided diagnostic tests at the offices of the group practice through a company owned by Dr. Dahan at \$106.50 per test. The group practices then marked up the tests to insurance companies to between \$1,400 and \$2,150 per test.

Unlike the U.S. District Court in New York, the trial judge in New Jersey ruled that Allstate had the right to refuse to pay for medical services if there were defects in the corporate structure or paperwork, even if the services were medically necessary, and even if they were rendered by properly licensed providers. The trial judge also held that Allstate had standing to bring a private action to enforce these corporate and licensing defects.

Mr. Schroeder commented:

"The judge's unpublished opinion does not constitute legal precedent in New Jersey. This is only a ruling rejecting a motion brought by Dr. Dahan. It is important to understand that this is only a denial of partial summary adjudication and does not constitute a final ruling by the New Jersey trial court. Nonetheless, it is clear that this judge was appalled by what he believed to be the obviously sham nature of the group practices as they were presented to him. While I disagree with the trial judge's determination that Allstate had standing to raise the corporate defects, there is little question that his ruling was colored by the sheer enormity of the evidence that there was simply no medical doctor involved at all. Reputable chiropractic attorneys and I have been saying for years that integrated facilities that have absentee medical doctors or that have medical doctors sign resignation forms in blank are clearly exposing themselves to substantial civil and criminal liability. The trial judge's opinion in the New Jersey case simply confirms this longstanding advice."

Mr. Schroeder had some final advice:

"Management contracts that do not preset the compensation for the year and equipment lease agreements that provide for dramatic markups also expose doctors to substantial liability. Anyone who is engaging in these types of arrangements should see competent legal counsel immediately."

(Editor's note: Michael Schroeder has represented many chiropractic associations over the last 18 years, forming over 400 integrated health care practices since 1982. He is the vice president and general counsel for the the National Chiropractic Council, and for the last 14 years has been vice president of the National Association of Chiropractic. In 1995, National Association of Chiropractic Attorneys named him "Attorney of the Year." He is counsel for the law firm of Hart, King and Coldren.)

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