

Allstate Wins Suit Against Texas Chiropractic Chain

LATEST EXAMPLE OF MULTIDISCIPLINARY INSURANCE FRAUD

Editorial Staff

IRVING, Texas - A Dallas jury has found the state's largest chain of chiropractic clinics, Accident and Injury Pain Center, Inc. (A&I), guilty of fraud and conspiracy to commit fraud against Allstate Insurance Company and one of its subsidiaries. In a decision issued Sept. 29, the jury ruled that A&I and its related entities knowingly and willfully conspired to commit numerous violations of state law based on overtreatment of accident patients and unnecessary referrals to health care providers. As a result, A&I and its entities, including Thomas Rhudy, DC, A&I's chief of staff and "compliance officer," must pay Allstate more than \$5.9 million in actual and punitive damages.

Allstate initially filed the complaint in U.S. District Court late in 2001, alleging that A&I and its related entities illegally billed Allstate for various patient services. Allstate amended the complaint on Jan. 14, 2003, charging A&I; nine related companies; Robert Smith (A&I's owner and president); Dr. Rhudy; 13 other chiropractors; three medical doctors; two osteopaths; and a pharmacy with violating "numerous provisions of the Texas Occupations Code," along with common-law fraud, conspiracy and unjust enrichment.

In its complaint, Allstate and one of its subsidiaries, Encompass Insurance, charged that A&I treated a large volume of patients who made bodily injury claims as a result of automobile accidents. While treating accident victims is quite legal, Allstate asserted that "claims made by these patients to automobile insurers, such as plaintiffs, show a near universal pattern of patient treatment and referrals for diagnostic tests and medical consultations," and that referrals were made to "co-owned diagnostic entities, or to medical doctors employed by Accident & Injury or its affiliated entities."

Allstate also accused the defendants of maintaining "undisclosed standing agreements with cooperative attorneys to 'rebate' or 'discount' medical and chiropractic costs." The costs to be paid by these attorneys to the defendants were "significantly less than the fee cited in itemized billing statements and HCFA-1500 forms generated by the defendants."

According to the complaint, "virtually all motor vehicle accident patients" received X-rays at an A&I clinic during their initial visit, even in cases in which the patient had already been X-rayed at another facility. The "vast majority" of X-rays taken of A&I's automobile accident patients were referred to an entity called Lone Star Radiology. While Lone Star appeared to be acting as an independent company, it was located in the same building as A&I's corporate headquarters, and the same person - Robert Smith, owned both agencies. Allstate also alleged that patients were routinely referred to one of four Lone Star facilities for MRIs on their first visit - all of which were owned by Mr. Smith.

In addition, the medical doctors to whom accident patients were referred conducted "second opinion examinations" at A&I. Many of the exams were conducted by Marlon Padilla, MD, who admitted under testimony to not maintaining an examination office of his own, but that he typically

conducted such exams at various A&I clinics throughout the state. According to Allstate's allegations, the doctors had devised an arrangement with an entity called Receivable Finance Company - also owned by Mr. Smith, and also located within A&I's corporate office. Under the arrangement, the MDs sold or "kicked back" their medical bills for the second opinion exams in exchange for a small percentage or flat fee.

As A&I's chief of staff, Dr. Rhudy apparently exercised authority over the medical consultations and various other aspects of the organization's practices. In fact, in 2001, one of the defendants testified that Dr. Rhudy gave him a template to use for patient examinations, and then pressured him to "include standard 'causation' findings in his reports, attributing injuries to the particular accident at issue. Reports generated by Accident & Injury often contained additions not included in his templates or dictation, particularly concerning causation and future medical needs."

Evidence provided by Allstate and Encompass also showed that a wife of one of the MD defendants was allegedly receiving \$10,000 a month for "marketing services" from a pharmacy where many of the A&I patients received their prescriptions.

The plaintiffs asked the court to declare that they "are not liable for, and do not owe, any sum of money for alleged chiropractic, diagnostic, medical, or other health care fees of bills orchestrated through the combination between defendants" from Jan. 1, 1999 to the present. At the time the complaint was filed, the total amount billed to Allstate had reached more than \$41 million. However, this did not include amounts billed to other insurance companies; it has been estimated that A&I and its entities were billing insurers more than \$100 million per year.

Based on the evidence presented in court, the jury found "clear and convincing evidence" that the harm caused to Allstate and Encompass resulted from malice and fraud on the part of the defendants, and found A&I and its entities guilty of fraud and conspiracy to commit fraud. The defendants were found to be operating as a single business enterprise. A&I and its entities were ordered to pay Allstate and Encompass Insurance just over \$5.9 million - \$2.845 million in actual damages and \$3.058 million in punitive damages. The largest punitive damage awards were against Robert Smith (\$1 million), Steven Smith (\$750,000), Dr. Padilla (\$250,000 individually and \$250,00 against his medical corporation), and Dr. Rhudy (\$125,000).

The other chiropractors involved in the case were levied personal damages ranging from \$100 to \$85,000.

While the case of A&I may appear to be an isolated incident, a glance at previous issues of *Dynamic Chiropractic* suggests otherwise. In the April 8, 2002 issue, *DC* first reported on legal issues regarding Dr. Ron Halstead. (The latest update on the case can be found in the Sept. 1, 2004 issue.) Dr. Halstead was sentenced to 10 years in prison after he allegedly aided, abetted, and conspired with a client to commit health care fraud. Along with Dr. Halstead, two of his associates were each sentenced to three years in prison for health care fraud, mail fraud and aiding and abetting. In the ongoing case of the UnclePaul Corporation, reported on in the Sept. 27, 2004 issue of *DC*, an 18-page complaint was filed with Kentucky Board of Chiropractic Examiners against Paul R. Hollern and James P. Stapleton for multiple violations of Kentucky law governing the practice of chiropractic

Unfortunately, high-profile cases like these continue to impede chiropractors' efforts to gain true acceptance and respect with the public and in the medical community. DCs should always take care when getting involved in multidisciplinary situations to ensure that they are protecting themselves - and the people they treat - from possible fraud.

Resources

1. *Allstate Insurance Company, et al., plaintiffs, v. Receivable Finance Co., L.L.C., et al, defendants*. Civil Action No. 3:01-CV-2247-N. Decision rendered in U.S. District Court, Northern District of Texas, Dallas Division.
2. A chiropractic cautionary tale. *Dynamic Chiropractic*, Sept. 1, 2004. www.chiroweb.com/archives/22/18/08.html.
3. Consultant Ron Halstead, DC, indicted on conspiracy and health care fraud. *Dynamic Chiropractic*, Apr. 8, 2002. www.chiroweb.com/archives/20/08/05.html.
4. NACM member sued by Allstate. \$41 million in billing in question. *Dynamic Chiropractic*, Feb. 24, 2003. www.chiroweb.com/archives/21/05/01.html.
5. UnclePaul accused. Board complaint against Dr. Paul Hollern alleges numerous violations in up to 20 states. *Dynamic Chiropractic*, Sept. 27, 2004. www.chiroweb.com/archives/22/20/14.html.

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