

## Chiropractors in Class-Action Lawsuit?

TWO LAWSUITS AGAINST ZT TECHNICAL SERVICES, ET AL., COULD IMPACT THOUSANDS OF DOCTORS

Editorial Staff

The Cook County (Illinois) Action: On July 18, 2003, a lawsuit was filed that now includes ZT Technical Services, Inc., Diagnostic Services America, LLC, Veridian Health, LLC, and a vast number of related plaintiff corporations. The lawsuit seeks "injunctive relief and to recover treble damages and penalties arising from a fraudulent scheme whereby Defendants submitted, and caused to be submitted, over two hundred thirty-four million dollars (\$234,000,000) in false claims for electrodiagnostic testing services (including nerve conduction velocity studies and somatosensory evoked potentials) to private insurers in Illinois and around the country."

The suit alleges the "submission of false claims to private insurers" and violations of the Insurance Claims Fraud Prevention Act, the Consumer and Deceptive Business Practices Act, and the Medical Practice Act. The lawsuit is part of a "whistle blower" action brought by an Illinois board-certified chiropractic neurologist, who was solicited by the defendants. The lawsuit has been taken over by the Illinois and California attorneys general.

The actual activity in question is alleged in the lawsuit as follows:

"Defendants pay illegal inducements or 'kickbacks' to generate referrals for their electrodiagnostic testing services. These services are provided by mobile technicians employed by Defendants that travel around to the offices of chiropractor and primary care physicians (collectively, the 'Referring Physicians') to perform the so-called diagnostic tests. The Referring Physicians [the] Defendants tend to target are generally chiropractors, podiatrists and primary care physicians who are untrained in electrodiagnostic testing.

"In performing the tests, largely untrained technicians place electrodes on the patient's limbs and, in an attempt to stimulate and measure nerve response, send a series of electrical currents or 'shocks' through the patient's body. The electrodiagnostic tests, as performed by Defendants, lack any diagnostic value and the graphic results generated demonstrate clear evidence of the shoddy technique. Despite this, off-site neurologists employed by Defendants purported to 'interpret' them and bill private insurers thousands of dollars per patient.

"Making matters worse, Defendants bill for services and tests they do not even perform, including a somatosensory evoked potential or SSEP of the trunk or head. In fact, these phantom tests generate billings higher than the tests they actually do - to the tune of over \$36 million to date.

"Neurologists employed by Defendants are mere puppets of the fraud and are instructed how to frame their findings and diagnoses by the non-physicians who run these medical corporations. If these neurologists fail to comport their recommendations with ZT's 'business plan,' ZT threatens to terminate the relationship. All of the proceeds of the neurologists' purported 'interpretation' services (other than a salary or 'per test' fee) flow to the non-physicians who control these companies.

"Defendants employ various strategies to conceal their fraudulent billings. Defendants create and

utilize a new medical corporation whenever one 'hits a red flag' and a private insurer stops paying. New medical corporations are 'kept in the drawer' so the billings flow uninterrupted."

The lawsuit was amended on July 8, 2005 to include Mark Sanna, DC, president of Breakthrough Coaching, Inc., as one of the defendants. The second amended complaint alleges:

"In or about 2003, ZT developed a relationship with Breakthrough and Sanna whereby Breakthrough and Sanna would scout for chiropractors to recruit for ZT's diagnostic testing scheme. As part of this, ZT and Sanna entered into a kickback arrangement whereby ZT began paying Sanna to refer patients to ZT for testing. ZT paid Sanna a \$100 fee for each patient one of his chiropractic recruits set up for diagnostic testing with ZT. The \$100 fee was paid to Sanna by ZT exclusively for the patient referral. By May of 2005, Sanna's income from the ZT patient referrals reached \$480,000 per year and was one of ZT's largest operational expenses. The same or similar 'per patient' referral fee applied to other so-called 'coaches' employed by Breakthrough and generated substantial additional cash flow. ZT also paid Sanna a \$50,000 per year fee for membership on the ZT 'advisory board.'"

When contacted, Dr. Sanna made these remarks:

"We were surprised as anyone would be to be named in this complaint. The allegations are completely false. It will only be a matter of time before we are vindicated and the record will show that we do not belong in this lawsuit. We want to thank the members of Breakthrough Coaching and the chiropractic profession for showing their support during this frustrating time. We continue to be completely committed to the chiropractic profession and will continue to serve it to the best of our ability."

The suit seeks the following from the defendants:

- disgorgement of all monies received by defendants;
- three times the amount of each false claim defendants submitted;
- a civil penalty of \$5,000 to \$10,000 for each false claim submitted; and
- reasonable attorneys' fees, prejudgment interest, and all expenses.

The Butte County (California) Action: A second lawsuit filed against ZT Technical Services, Inc., Diagnostic Testing Centers of America, Veridian Health, LLC, other related corporate plaintiffs and a local doctor of chiropractic reportedly has the potential to draw more than a thousand chiropractors as defendants should it achieve defendant class certification. Filed in the California Superior Court in Butte County, the lawsuit is brought by a patient who believes that she was referred by her doctor of chiropractic for "unnecessary" electrodiagnostic testing by a mobile diagnostic lab run by ZT technologies or one of their affiliates.

In its introduction, the third amended complaint alleges:

"This case challenges a massive, unfair and unlawful scheme by the Defendants to fleece patients nationwide of millions of dollars in payments for unreasonably risky, expensive and medically unnecessary electrodiagnostic testing, including nerve conduction velocity testing. In addition, Defendants' testing is subject to worthless interpretation, and is not conducted by technicians under direct physician supervision. Finally, the Defendant's ongoing scheme imposes charges for tests not performed, and for excessive testing billed at an exorbitant rate."

The initial complaint was filed on May 5, 2004. The complaint alleges violations of numerous statutes, including Business and Professions Codes, Insurance Codes, Health & Safety Codes and Labor Codes. Ultimately, the suit requests "disgorgement of each Defendant's unlawfully obtained

monies received in connection with the Defendant's wrongful conduct" (an amount estimated to be "approximately \$234,000,000.00 according to proof at the time of trial.") as well as "reasonable attorney's fees, and the costs of suit, all penalties and expenses of investigation."

In addition, the suit seeks to certify two classes:

1. "Plaintiff Class" - consisting of "(a)ll persons and in the United States who from December 1998 to the present, have been subjected to electrodiagnostic testing performed by and through Defendants or their agents and/or have paid Defendants, their agents, or insurance premiums, for such testing."
2. "Referring Defendant Class" - consisting of "(a)ll doctors of chiropractic, and other medical professionals who, from December 1998 to the present, have referred patients to Defendants' electrodiagnostic testing services..."

As of the press time, the judge presiding over this lawsuit has not certified either class.

The Illinois action only names two doctors of chiropractic: Dr. Sanna and one other who allegedly also was on the ZT Technical Services advisory board. The Butte County action attempts to expand from a single patient suing a single chiropractor (and ZT Technical Services, et al.) to a class of patients suing a class of providers - most of them doctors of chiropractic. And while this is certainly cause for concern, only the individual practicing DC has been named in the Butte County case. Given these two cases, doctors would be wise to review all referral agreements they have with vendors to determine the nature of these agreements and the level of exposure they could face.

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