

NACM Member Sued by Allstate

\$41 MILLION IN BILLING IN QUESTION

Editorial Staff

Thomas Rhudy, DC, began as a chiropractic consultant doing business as Certified Chiropractic Consultants. Dr. Rhudy did reviews for the insurance industry beginning in 1992. During this time, he became a member of the National Association of Chiropractic Medicine (NACM - of which he is currently the Missouri delegate); the Quackwatch Legal Advisory Board; the ChiroBase Legal Advisory Board; and the National Council Against Health Fraud. According to Rhudy's *curriculum vitae*, he also was a member of the now-defunct Orthopractic Manipulation Society of North America and the Orthopractic Manipulation Society USA.¹⁻⁶

In 1998, Robert Smith, the owner of Accident & Injury Pain Center, Inc. (A & I) in Dallas, Texas, appointed Dr. Rhudy as chief of staff and "compliance officer" of A & I. Accident and Injury is a chain of health care facilities specializing in personal injury with 16 offices in Dallas, San Antonio and Houston, all overseen by Rhudy and another doctor. Robert Smith also appointed Dr. Rhudy as compliance officer for North Texas MRI, White Rock MRI, and Rehab 2112.

Late in 2001, Allstate Insurance Company and its related companies filed a lawsuit in the United States District Court, claiming that A & I (and its related companies) illegally billed Allstate for various patient services. Allstate amended the complaint on Jan. 14, 2003, charging A&I, its related entities and various chiropractors, osteopaths and medical doctors with violations of "numerous provisions of the Texas Occupations Code," common-law fraud, common-law conspiracy and unjust enrichment.⁷ Named in the lawsuit were A & I, Robert Smith, Thomas Rhudy, DC; nine associated companies; three medical doctors; 13 chiropractors; two osteopaths; and a pharmacy.

The Allstate plaintiffs are asking the court to declare "that they are not liable for, and do not owe" the following fees billed to the plaintiffs by A & I and its various associated companies:

- Allstate Insurance Company: \$3,432,409.00
- Allstate Indemnity Company: \$17,405,609.00
- Allstate Property & Casualty Insurance Company: \$19,821,750.00
- Boston Old Colony Insurance Company: \$158,035.50
- The Glens Fall Insurance Company: \$255,573.90

Total: \$41,073,377.40

The above includes amounts billed since 1998, the same time Rhudy became the compliance officer for A & I. It does not include amounts billed to other insurance companies. It has been estimated that A & I and its various related entities were billing over \$100 million per year.

According to the complaint filed by Allstate A & I, Smith and Rhudy ran an elaborate system that

employed "a near universal pattern of patient treatment and referrals for diagnostic tests and medical consultations. The referrals are made to co-owned diagnostic entities, or to medical doctors employed by Accident & Injury or its affiliated entities. Defendants also maintain undisclosed standing agreements with cooperative attorneys to 'rebate' or 'discount' medical and chiropractic costs."

Allegedly, when a typical patient first walked in the door, he or she was examined; X-rayed; referred for multiple MRIs (with medical evaluations); and referred for a medical consultation. Original X-ray films also were referred for a second opinion. All this typically occurred on the day of the first visit.

According to the complaint, when the billing was paid for outside services, the bills were transferred to Receivable Finance (reportedly also owned by Smith and another defendant in the case), which paid a small percentage to the provider of the service, and collected the rest from the insurance company.

In the case of the MRI evaluations, "the doctor was paid seven percent (7%) of his medical fee, which equated to \$20 for a \$300 charge." In the case of the medical consultation, "Receivable Finance collected the medical fees, and paid the medical doctors a small percentage (11-18%) or flat fee."

Also in question is the amount of time spent by the medical doctors on their consultations. The complaint refers to previous testimony in which one of the defendants allegedly stated, "he sees 150 to 200 patients per week" for his medical consultations and "personally saw 6,000 to 7,200 Accident & Injury referral patients over the prior year."

Dr. Rhudy apparently exercised authority over these medical consultants. The complaint claims that Rhudy requested a doctor "make standard 'causation' findings in regard to all Accident & Injury patients, attributing their supposed injuries to the particular accident at issue."

In addition to the millions of dollars billed to Allstate and other insurers, the complaint alleges that A & I "purportedly takes an 'irrevocable' assignment and transfer of an undivided interest in any claim or cause of action made by automobile collision patients" themselves. The complaint goes on to state that in "2001 and 2002 state court trials, Accident & Injury chiropractors, including chief of staff Dr. Rhudy and Clinic Directors Dr. Parent and Dr. Fabacher, have admitted that Accident & Injury has a financial interest in the plaintiff's (patient's) lawsuit."

According to state records, Robert Smith, Rhudy's boss, has been making rather serious donations to various Texas state legislators for the last three years.⁸ At the end of 2002, the total amount of these donations exceeded \$270,000.

Among those registered donations was an initial \$25,000 donation made to "Texans for Rick Perry," the current Texas governor. This donation was made on June 1, 2001, and was Smith's first recorded donation to the governor. Rhudy was appointed to the Texas Board of Chiropractic Examiners by Governor Perry less than three months later, on Aug. 23, 2001. However, Texas state law requires each new chiropractic board member to be confirmed by the Texas Senate. And while Rhudy has served on the Texas Board since his appointment, he is still waiting to be confirmed. Confirmation hearings take place from January to May of this year.

In the last quarter of 2002, Robert Smith made numerous additional large donations totaling \$80,000. Among Smith's monetary gifts were \$25,000 more to Governor Perry, \$25,000 for Lieutenant Governor Dewhurst and \$5,000 to Robert Deuell, MD, vice chairman of the Senate

Committee on Nominations.

In Texas, the Lt. Governor is the president of the Senate and controls the Senate legislative agenda. Lt. Governor Dewhurst is nicely positioned, as he appointed the Senate Nominations Committee, which prepares recommendations on Rhudy's confirmation by the full Texas Senate. (Smith initially donated \$5,000 to Lt. Governor candidate John Sharp, just prior to the November elections. When Sharp lost and Dewhurst won, Smith was apparently forced to cover his bets with the \$25,000 donation to Dewhurst in December.) Needless to say, Vice Chairman Deuell (a medical doctor) is also an intricate part of the Senate confirmation process.

In addition to the above, Smith donated \$25,000 more to various state legislators and candidates including \$9,000 to current senators - all in the last quarter of 2002.

Considering the allegations made in the Allstate lawsuit, it is hard to imagine that the Texas Senate would confirm Rhudy without knowing the truth behind those allegations. But politics can sometimes override truth, and Smith has provided a great deal of "encouragement" to key Texas legislators. One way or another, it will be interesting to see if conscience or currency wins out in Dr. Rhudy's nomination.

1. "NACM Seeks to Create New Profession: 'Orthopractors'" *Dynamic Chiropractic*. May 20, 1994. www.chiroweb.com/archives/12/11/10.html.
2. Orthopractic unveiled. *Dynamic Chiropractic*, June 3, 1994. www.chiroweb.com/archives/12/12/12.html.
3. Orthopractic under scrutiny. *Dynamic Chiropractic*, July 29, 1994. www.chiroweb.com/archives/12/16/10.html.
4. Orthopractic declares war on chiropractic pediatrics. *Dynamic Chiropractic*, Sept. 23, 1994. www.chiroweb.com/archives/12/20/06.html.
5. Orthopractic attacks chiropractic pediatrics on Canadian TV. *Dynamic Chiropractic*, Oct. 21, 1994. www.chiroweb.com/archives/12/22/08.html.
6. Chiropractic licensing boards deem 'orthopractic' misleading." *Dynamic Chiropractic*, Nov. 18, 1994. www.chiroweb.com/archives/12/24/11.html.
7. Allstate Insurance Company et al vs. Accident & Injury Pain Centers, Inc. et al. Civil Action No. 3-01-CV2247-N.
8. A report of all donations to Texas legislators is available online at: <http://txprod.ethics.state.tx.us/tx00/>.

A copy of Allstate's entire amended complaint is available at: www.chiroweb.com/rhudy.

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