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Corporate Practice of Medicine

Allstate's Health Insurance Fraud Claims Revived by N.J. High Court

Allstate Insurance Co. can claim an attorney and chiropractor violated New Jersey civil insurance fraud law by providing advice on how to structure a multidisciplinary medical practice (*Allstate Ins. Co. v. Northfield Med. Ctr., P.C.*, 2017 BL 148804, N.J., No. 076069A-27 September Term 2015, 5/4/17).

The New Jersey Supreme Court May 4 said the two men could be found to have knowingly violated the state's Insurance Fraud Prevention Act (IFPA) because their advice was used by a New Jersey-licensed chiropractor to set up a management company to run a multidisciplinary practice that also employed medical doctors.

New Jersey health-care attorneys told Bloomberg BNA the court's decision left a number of unanswered questions about the level of control allowed for non-medical personnel involved in practice management. They also said the decision could have a chilling effect on health-care attorneys who advise clients on how to set up a health-care company without running afoul of the state's restrictions on the corporate practice of medicine.

The New Jersey State Board of Medical Examiners has established regulations prohibiting the corporate practice of medicine. Under those regulations, a medical doctor with a general scope of practice may not be employed by a licensee with a more limited scope of practice, such as a chiropractor.

Multidisciplinary Practice Structure The case involved Northfield Medical Center PC, a multidisciplinary practice that employed medical doctors and had been incorporated by a New Jersey-licensed chiropractor, John Scott Neuner.

According to the court, Neuner set up the practice based on the advice of Daniel H. Dahan, a California-licensed chiropractor, and Robert P. Borsody, a New York attorney. Dahan and Borsody presented a series of lectures in the late 1990s geared toward chiropractors who were interested in setting up multidisciplinary practices. Neuner attended those lectures in late 1996 and early 1997, before setting up Northfield.

Neuner allegedly structured Northfield in such a way that he retained control of a management company, which in turn contracted with a medical practice owned and operated by a New Jersey-licensed medical doctor. The court said Neuner set up Northfield with the assistance of Dahan, who provided Neuner with draft con-

tracts for structuring the practice that Borsody had drawn up, but that Dahan presented without Borsody's knowledge.

Allstate began to investigate the legality of Northfield's practice structure in late 1998, finally determining that the practice didn't meet the corporate practice of medicine restrictions, and it disallowed \$330,000 in claims for patients treated by Northfield.

The insurer also brought a claim against Neuner, Northfield, Dahan and Borsody for violations of the IFPA. A state trial court found Dahan and Borsody could be found liable under that statute in that they knowingly assisted Neuner in setting up a practice that violated the corporate practice of medicine restrictions.

The state appeals court reversed, finding instead that Allstate couldn't show Dahan and Borsody knew their proposed practice structure violated New Jersey law.

Justice Jaynee LaVecchia, writing for a unanimous court, reversed the appeals court's decision and remanded the case for further consideration. According to the supreme court, the structure of the practice showed an effort by Dahan and Borsody to help in hiding that Neuner was the true owner of the practice, in violation of the corporate practice regulations.

Unanswered Questions According to Michael Schaff and Grace Mack, with Wilentz, Goldman & Spitzer PA in Woodbridge, N.J., the high court's decision leaves a lot of questions unanswered.

"The court says that the law in New Jersey is that the medical doctor has to own 51 percent of a MD/DC multidisciplinary practice," Schaff, who is a member of Bloomberg BNA advisory boards, told Bloomberg BNA. "But except for a nonbinding advisory letter from the medical board, which conflicts with a letter from a deputy attorney general for the medical board, there has not been anything published to that effect. However, there were draft regulations (not published or adopted) years ago, which were never finalized."

"We don't have guidance on how much control is too much," Mack agreed. "The court's decision leaves a lot of unanswered questions, and now we all have to review the relationships between medical doctors and closely allied professionals, as well as practice managers."

Schaff and Mack also said the fact that Borsody was possibly liable for violation of the IFPA could affect the way attorneys advise clients on structuring health-care entities in New Jersey.

"This raises the potential for attorneys to be liable for fraud who never contemplated that while giving advice to a client," Schaff said.

Parties Look to Further Proceedings Thomas Hall of McGill & Hall LLC in Belmar, N.J., attorney for Allstate, told Bloomberg BNA that his client was pleased with the results from the state supreme court.

However, attorneys for both Dahan and Borsody said their clients were looking forward to the continued proceedings in the state appeals court.

“Mr. Borsody is understandably disappointed by Thursday’s decision, which attributes to him a fraudulent intent which he never, ever had,” Lawrence S. Lustberg, Gibbons PC, in Newark N.J., attorney for Borsody, told Bloomberg BNA.

“Fortunately, this decision does not dispose of the matter, but instead remands it for further proceedings, which include the adjudication of his claim that the speech for which he is being unfortunately held liable under the Insurance Fraud Prevention Act is protected by the First Amendment, and his argument that the corporate structure at issue here was created based upon the advice of another lawyer who, unlike Mr. Borsody, was actually retained by the chiropractor at issue to set up the corporate entities at issue,” he said.

In addition, both Lustberg and the attorney for Dahan indicated their clients had been deprived of their rights to a jury trial under the IFPA.

“While the Dahan defendants are disappointed by the supreme court’s reversal and remand to the Appellate Division, they are buoyed by the fact there are other remaining appellate issues which warrant reversal of the judgment—not the least of which is the defendants were denied a jury trial of Allstate’s IFPA claims,” Chris Turcotte of New York, the attorney for Dahan, told Bloomberg BNA.

Allstate is represented by McGill & Hall LLC in Belmar, N.J. Borsody is represented by Gibbons PC, in Newark N.J. Dahan is represented by The Law Office of Christopher B. Turcotte PC in New York.

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The supreme court’s decision is at <http://src.bna.com/oDJ>.