

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Excel Surgery Center, LLC  
(Applicant)

- and -

Country-Wide Insurance Company  
(Respondent)

AAA Case No.	17-16-1042-0405
Applicant's File No.	GTLEXC060916.444
Insurer's Claim File No.	000311774-002
NAIC No.	10839

**ARBITRATION AWARD**

I, Alina Shafranov, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: Assignor

1. Hearing(s) held on 10/11/2017  
Declared closed by the arbitrator on 10/28/2017

George T. Lewis, Esq. from Law Offices of George T. Lewis, Jr., PC participated in person for the **Applicant**

Jamin Koo, Esq. from Jaffe & Koumourdass LLP participated in person for the **Respondent**

2. The amount claimed in the Arbitration Request, **\$ 5,169.30**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the hearing, Applicant's counsel reduced the total amount claimed to \$4,615.18 in accord with the New Jersey Fee Schedule ("fee schedule"). The Demand for Arbitration is hereby amended accordingly.

Stipulations WERE made by the parties regarding the issues to be determined.

Parties stipulated that the amended amount was proper as per fee schedule.

3. Summary of Issues in Dispute

The Assignor, "AS", a 26 year old male was involved in a motor vehicle accident as a passenger on December 18, 2015. He sought treatment for his injuries sustained in the MVA, and eventually underwent manipulation under anesthesia (MUA) procedures on 3/4/16. Applicant seeks reimbursement for an office visit, anesthesia services and a facility fee associated with the MUA services. Respondent timely denied the claims based on Applicant's failure to provide requested verification within 120 days from the date of the original request. Applicant's counsel amended the claim to properly reflect the fee schedule.

#### 4. Findings, Conclusions, and Basis Therefor

This case was decided on the submissions of the Parties as contained in ADR Center maintained by the American Arbitration Association and the oral arguments of the parties' representatives. There were no witnesses present at the hearing. I reviewed the documents contained in the ADR Center for both parties and make my decision in reliance thereon.

Applicant has established a prima facie case of entitlement to reimbursement of this claim. See, Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004).

According to 11 NYCRR 65-3.8(c), "within 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part." This 30-day time frame can be extended by submission of a demand for further verification in accordance with 11 NYCRR 65-3.5. When proper verification is demanded, a claim need not be paid or denied until all such items are provided. [See, Nyack Hospital v. General Motors Acceptance Corp., 27 A.D.3d 96, 808 N.Y.S.2d 399 (2d Dept., 2005).] Moreover, as stated in 11 NYCRR 65-3.5(c), an "insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested." According to 11 NYCRR 65-3.8(b), a claim need not be paid until all verification requested has been provided; [see also, Westchester County Med. Center v. New York Central Mutual Fire Ins. Co., 262 A.D.2d 553, 692 N.Y.S.2d 665 (2d Dept., 1999), (No-Fault benefits are deemed overdue if not paid within 30 calendar days from the date of receipt of all verification; 11 NYCRR 65-3.8(a)(1).]

In accordance with the 4th Amendment to the No-Fault Regulation, 11 NYCRR 65-3.5(o), which is effective for claims for medical services rendered on or after April 1, 2013, an Applicant is required to submit all verification under its control or to provide written proof providing reasonable justification for its failure to comply. This section of the Regulation also mandates that in its denial Respondent shall inform Applicant that the claim may be denied if the verification requested is not provided within 120 calendar days from the date of the initial request.

Notice is taken that Yan Moshe Leviyev, attended an Examination Under Oath ("EUO") on November 10, 2015. Respondent's counsel argued that following the EUO,

Respondent issued verification requests to the Applicant on May 10, 2016 and June 10, 2016 which remain outstanding to date. Specifically, the Respondent requests are as follows: "

" Foreign Business Corporation Certificate License with the Secretary of State

- Ambulatory Care Facility Operating Certificate License - please submit the Operating Certificate License from February 2014 to January 2015.
- W-4 (Employee's Withholding Allowance Certificate)- we are in receipt of your submission in writing requesting individual names. Please submit the W-4s for all employees from inception to present including but not limited to Isaac Abramchayev, Peter Albis, Gary Barr, Raafat Beshara, Diana Beynin, Nachmy Bronstein, Abbe Cami, Donghui Chen, Jay Cohen, Mamdouh Dawoud, Natalia Diaz, Randall Ehrlich, Danny Fuzaylov, Boris Glukhovskiy, Amit Goswami, Nickhil Gupta, Mamdouh Hanna, Ronald Hayek, Jan Henricksson, Corey Hunter, Siew Jackson, Tony Jacob, Bruce Jacobson, Dory David Jewelewicz, Boris Khaimov, Alexander Klyastorny, Todd Koppel, Mark Kramer, Nav Rajan Kukreja, Nick Maglakelidze, Michele Malay, Nadeem Mir, Dolores Murphy, Ross Nochimson, Dipti Patel, Mukti Patel, Jyoti Pirlamarla, Vincentiu Popa, Michael Eric Rhodes, Anthony Riotto, Aron Rovner, Peter Sansone, Cristina Santini, Teralee Seprich, Leonid Shapiro, Mikhail Solomonov, Norman Sveilich, Diana Vavikov, Larisa Yitovska, Raz Winiarsky, and Gerlando Zambuto..
- All documents in connection with the agreement of the real estate holding company, Gabriella Hevitz and/or Michael Hevitz for the physical location of Excel Surgery Center
- All property ownership documents of 321 Essex Holdings in connection with the location of 321 Essex Street, Hackensack, NJ
- All lease agreements between Excel Surgery Center LLC and 321 Essex Holdings
- An onsite inspection of the premises located at 321 Essex Street, Hackensack, NJ-an investigator from our Special Investigations Unit will contact you to set up this appointment within the next 20 days for a mutually agreeable date at time for your facility.
- A full list of all current medical directors and former medical directors (with the periods of time those individuals were employed) attached with copies of all professional licenses, credentials, medical certifications, and Education Department Registration Certificates
- A full list of all current employees, (medical and non-medical professionals), outside medical providers/professional corporations and former employees (medical and non-medical professionals) including the periods of time those individuals were employed attached with copies of all professional licenses, credentials and certifications- we are in receipt of medical professional licenses and credentials for only Peter Albis, Abbe Carni, Donghui Chen, Mamdouh Dawoud, Randall Ehrlich, Amit Goswami, Nickhil Gupta, Corey

Hunter, Bruce Jacobson, Dory David Jewelewicz, Boris Khaimov, Alexander Klyastorny, Todd Koppel, Nav Rajan Kukreja, Ross Nochimson, Dipiti Patel, Vincentiu Popa, Michael Eric Rhodes, ARon Rovner, Leonid Shapiro, Michael Solomonov, Diana Vavikov and , Raz Winiarsky. Please submit all pending professional licenses and credentials for all other remaining former and current employees licensed to render medical services from inception to present. We are in receipt of the NJ current and executed (signed) registration certifications for only Natalia Diaz, Danny Fuzyllov, Siew Jackson, Nick Maglakelidze, Michele Malay, Mukti Patel and Christina Santini. All other submitted NJ and NY professional registration certifications are not current and expired, Please note all Registration Certificates must be legible, current and executed, (signed). Please submit all remaining pending professional registration certifications (NY & NJ) for all the former and current employees licensed to render medical services from inception to present.

- Workers' compensation endorsements listing employees covered from inception to present
- Workers' compensation applications with schedule of employees from inception to present
- ADP payroll list for all employees from inception to present
- Federal and State Tax filings with all schedules from inception to present
- K-1, 1099-DIV or 1099 Form the owner uses to pay himself his draws from inception to present
- Any and all agreements pertaining to the leasing of any office and medical equipment currently entered into by Excel Surgery Center LLC from inception to present
- Any and all agreements pertaining to transportation services retained by Excel Surgery Center LLC from inception to present
- Any and all agreements with outside marketing companies and individuals from inception to present."

Respondent's counsel alleges that despite receiving some items that were initially requested as verification, many items still remain outstanding. Respondent's counsel argued that the testimony at the EUO raised "Mallela" type issues. She further argued that Respondent had a good faith basis for requesting the documentation, and that the information sought was relevant and necessary in order to process the claim. In support of these assertions Respondent has submitted the Affidavit of Irene Desimone, an employee from Respondent's Special Investigation Unit (SIU), sworn to on September 21, 2016. Ms. Desimone stated that a review of Applicant's billing and testimony at the EUOs revealed a pattern consistent with fraud. Respondent has also submitted an Affidavit of Jessica Mena-Sibrian, employed by Respondent as a No-Fault Litigation/Arbitration Supervisor, sworn to on September 26, 2016. In her Affidavit Ms. Mena-Sibrian stated that she personally reviewed all of the "Claim Mail Entries" for the Assignor for documents received in connection to the accident, and there is no record of

receiving the following documents from the Applicant in response to the Respondent's verification requests:

- "Foreign Business Corporation Certificate License with the Secretary of State
- Ambulatory Care Facility Operating Certificate License - please submit the Operating Certificate License from February 2014 to January 2015.
- W-2 (Wage and Tax Statement) OR W-4 (Employee's Withholding Allowance Certificate) for all employees-we are in receipt of W-4s for some employees, but not all. In addition, several doctors are listed as employees on the bills submitted to us from Excel Surgery Center LLC that are not listed as employees in your submission of W-4s. Please submit the W-2s or W-4s for all employees from inception to present, including but not limited to Isaac Abramchayev, Peter Albis, Gary Barr, Raafat Beshara, Diana Beynin, Nachmy Bronstein, Abbe Cami, Donghui Chen, Jay Cohen, Mamdouh Dawoud, Randall Ehrlich, Danny Fuzaylov, Boris Glukhovskiy, Amit Goswami, Nickhil Gupta, Mamdouh Hanna, David Hansen, Ronald Hayek, Jan Henricksson, Corey Hunter, Tony Jacob, Bruce Jacobson, Mitsu Jalando, Dory David Jewelewicz, Boris Khaimov, Alexander Klyastorny, Tiffany Kodare, Todd Koppel, John Kouvaras, Mark Kramer, Nav Rajan Kukreja, Catalin Lampon-Paz, Tai Levy, Inna Moshinsky, Nadeem Mir, Yan Moshe, Dolores Murphy, Ross Nochimson, Dipti Patel, Mukti Patel, Jyoti Pirlamarla, Yincientiu Popa, Michael Eric Rhodes, Anthony Riotto, Gary Ritzholz, Aron Rovner, Norman Rowe, Peter Sansone, Leonid Shapiro, Mikhail Solomonov, Jacyln Soltys, Norman Sveilich, Diana Vavikov, Larisa Yitovska, Raz Winiarsky, Zuk Wung Wu, Gerlando Zambuto, and Alexander Zhuravkov.
- All documents in connection with the agreement of the real estate holding company, Gabriella Hevitz and/or Michael Hevitz for the physical location of Excel Surgery Center
- All property ownership documents of 321 Essex Holdings in connection with the location of 321 Essex Street, Hackensack, NJ
- All lease agreements between Excel Surgery Center LLC and 321 Essex Holdings
- A full list of all current employees, including medical directors and former medical directors, with the periods of time those individuals were employed - we are in receipt of a list of all current employees, however the list does not indicate any medical directors nor does it provide the periods of employment of the employees.
- Professional licenses and registration certificates from the State of New Jersey (and New York, if applicable) for the following nurses and examiners: Isaac Abramchayev, Peter Albis, Gemma Araneta, Nancy Balino, Charon Bandayrel, Gary Barr, Raafat Beshara, Diana Beynin, Nachmy Bronstein, Abbe Cami, Donghui Chen, Jay Cohen William Concho, Malgorzata Czaja, Mamdouh Dawoud, Maureen Denis, Natalia Diaz, Randall Ehrlich, Olivier Falcon, Danny Fuzaylov, Boris Glukhovskiy, Aiye Goco, Rene Goco, Amit

Goswami, Nickhil Gupta, Mamdouh Hanna, David Hansen, Ronald Hayek, Jan Henricksson, Jeanett Hernandez, Michael Higa, Corey Hunter, Siew Jackson, Tony Jacob, Bruce Jacobson, Mitsuo Jalandro, Dory David Jewelewicz, Boris Khaimov, Alexander Klyastorny, Tiffany Kodare, Todd Koppel, John Kouvaras, Mark Kramer, Nav Rajan Kukreja, Margaret Lamb, Catalin Lampon-Paz, Tai Levy, Tetiana Lihin, Nick Maglakelidzem, Michelle Malay, Ashia Martin, Joan Mercurio, Susan Moran, Inna Moshinsky, Nadeem Mir, Dolores Murphy, Kelly Nunez, Ross Nochimson, Jamie Obrero, Dipti Patel, Mukti Patel, Jorge Peguero, Alexander Philip, Jyoti Pirlamarla, Vincentiu Popa, Michael Eric Rhodes, Anthony Riotto, Gary Ritzholz, Shelley Roberts, Jackelin Rodriguez, Maria Rosel, Aron Rovner, Norman Rowe, Noelen Sabado, Peter Sansone, Cristina Santini, Teralee Seprish, Leonid Shapiro, Mikhail Solomonov, Jaclyn Soltys, Katrina Sopot, Stephan Splendorio, Norman Sveilich, Noreen Jean Tadeo, Diana Vavikov, Jaclyn Visaggio, Larisa Vitovska, Raz Winiarsky, Zuk Wung Wu, Gerlando Zambuto, and Alexander Zhuravkov.

The submitted NJ and NY professional registration certifications are not current. Please note

Registration Certificates must be legible, current, and executed (signed). Please submit fill remaining pending professional registration certifications (NY & NJ) for all the former and current employees licensed to render medical services from inception to present.

- Any and all agreements pertaining to transportation services retained by Excel Surgery Center LLC from inception to present - since there are no such documents, your client does not have the agreement(s) on file, and/or the agreement(s) were not reduced to writing, please provide the complete and detailed terms of the agreement(s)
- Any and all agreements with outside marketing companies and individuals from inception to present - since there are no such documents, your client does not have the agreement(s) on file, and/or the agreement(s) were not reduced to writing, please provide the complete and detailed terms of the agreement(s)
- Federal and State Tax filings with all schedules from inception to present - to be reviewed during an on-site inspection. Please contact our SIU Investigator, Irene DeSimone at 516-238-0156 if you still wish to setup a mutual date and time for the on-site inspection.
- K-1, 1099-DIV or 1099 Form the owner uses to pay himself his draws from inception to present - to be reviewed during an on-site inspection. Please contact our SIU Investigator, Irene DeSimone at 516-238-0156 if you still wish to setup a mutual date and time for the on-site inspection.
- An onsite inspection of the premises where services are rendered - upon receipt of some or all of the above documentation, an on-site inspection of your facility may be required. This notice hereby specifically reserves our right to this on-site

inspection. An investigator from our Special Investigations Unit has previously contacted you numerous times by phone, email, and mail to arrange for a mutually agreeable time and date to conduct an on-site inspection of your facility. However, to this date, your office has been uncooperative. An on-site inspection was previously agreed upon off the record at the EUO on 11/10/2015, with permission from the owner and counsel. In addition, a correspondence from Russell Friedman & Associates, LLP, dated 1/29/16, indicated that Country-Wide Insurance Company would be allowed to view Excel Surgery Center LLC's 2011-2014 corporate tax returns on the premises, and to contact your office to schedule an appointment for the inspection. Please contact our SIU Investigator, Irene DeSimone, at 516- 238-0156 to arrange an on-site inspection at a mutually agreed upon time and date. Please be advised that your failure to allow us entry into your facility to conduct the on-site inspection may result in further delay or denial of payment of claims submitted by your medical facility."

Applicant's counsel argued that Respondent's verification requests were overbroad, burdensome and unreasonable, and that such demands exceeded the bounds of permissible requests under the Regulations, nevertheless he asserts that voluminous responses have been provided. He argued that the remaining items have been objected to by the Applicant as improper. Applicant's counsel further argued that Respondent has breached the tenets of 11 NYCRR 65.15(d)(1), which state that in obtaining all necessary items of verification, an insurer is obligated to act in good faith in connection with its claim practices as follows: (1) Have as your basic goal the prompt and fair payment to all automobile accident victims; (2) Assist the applicant in the processing of a claim. Do not treat the applicant as an adversary; (3) Do not demand verification of facts unless there are good reasons to do so. When verification of facts is necessary, it should be done as expeditiously as possible; and (4) Clearly inform the applicant of the insurer's position regarding any disputed matter. [See, 11 NYCRR 65.15].

Respondent's counsel countered that Respondent had a good faith basis for requesting the documentation, after the EUO was conducted, and that the information sought was relevant and necessary in order to process the claim and investigate possible "Mallela" type violations.

"The regulations do not give the insurer the right to ask an assignee to produce documents relating to the corporate structure or finances of a medical provider. Upon receipt of the completed verification form, the insurer can request additional verification. The regulations only permit the insurer to obtain written information to verify a claim." Dynamic Medical Imaging, P.C. v. State Farm Mut. Auto. Ins. Co., 2010 Slip Op 20285 (Dist. Ct. Nassau Co. July 15, 2010)(Emphasis added). See also, Brownsville Advance Medical, P.C. v. Country-Wide Ins. Co., 33 Misc. 3d 1236(A), 941 N.Y.S.2d 536, 2011 N.Y. Slip Op. 52255(U) at 3 (Dist. Ct. Nassau Co. 2011) ("The demand for information relating to a Mallela defense is not obtainable through verification."); Island Chiropractic Testing, P.C. v. Nationwide Ins. Co., 35 Misc. 3d

1235(A), 953 N.Y.S.2d 550 (Dist. Ct. Suffolk Co., C. 2012)("Permitting an insurer to obtain written documents such as tax returns, incorporation agreements or leases regarding a potential fraudulent incorporation 'Malella' defense as part of the verification process defeats the stated policy and purpose of the no-fault law and carries with it the potential for abuse.")

In State Farm Mutual Insurance Co. v. Mallela 4 N.Y.3d 313, 794 N.Y.S.2d 700 in addressing the Respondent's right to investigate a provider's license status, the Court of Appeals held: "Indeed, the Superintendent's regulations themselves provide for agency oversight of carriers, and demand that carriers delay the payment of claims to pursue investigations solely for good cause (see 11 NYCRR 65-3.2 [c]). In the licensing context, carriers will be unable to show "good cause" unless they can demonstrate behavior tantamount to fraud."

In AAA Case No. 17-15-1019-8164, Arbitrator Glen Wiener found:

*"11 N.Y.C.R.R. §65-3.16(a)(12) was not promulgated for insurers to act as a surrogate for the New York State Office of Professional Misconduct by looking everywhere for any other types of violations in an attempt avoid its contractual and statutory obligation to pay medical expenses for those individuals injured in automobile accidents."*

Based upon the records submitted, it is clear that Applicant did not ignore Respondent's communications. Applicant's counsel has responded to the requests of the Respondent providing the verification materials requested on January 29, 2016 and August 29, 2016, and asserting legitimate objections. Furthermore, while in her Affidavit Ms. Mena-Sibrian articulated the nature of the outstanding documents, she failed to address the previous responses to the identical requests which were issued by the law firm of Russell Friedman & Associates dated January 29, 2016 and August 29, 2016 on behalf of this Applicant. In those responses, many documents were provided which are responsive to these verification requests. Having ignored those responses, Respondent improperly availed itself of the 120-day defense which is applicable where an Applicant has entirely ignored those requests. Also, although in her credible Affidavit Ms. Desimone alleges suspicion of billing discrepancies and fraudulent activities, no evidence or supporting documentation of these suspicions has been submitted by the Respondent. Without the underlying proof relied upon by Ms. Desimone in her Affidavit, Respondent has not established that Applicant demonstrated behavior that was tantamount to fraud.

I further find that the awards of Arbitrators Frank Marotta and Lisa Capruso upon which Respondent relies in arguing that the doctrine of collateral estoppels applies, are distinguishable from this matter. In this matter, Applicant's counsel responded by letter dated August 29, 2016 providing detailed information and documentation to these particular verification requests. That letter serves to distinguish this matter and to render the 120-day defense inapposite. As a result, Respondent's counsel's argument that collateral estoppel mandates denial is found to be invalid. This case mandates a de novo review of the evidence, and based on that review, I am convinced that there has been substantial compliance and that Applicant has acted in good faith in attempting to



provide the requested documentation. As a result, the defense is found to be improper under these circumstances and the claim is awarded to the extent the amount in dispute still remains on the policy.

After reviewing all of the documents on file in the ADR Center maintained by the American Arbitration Association, and considering the arguments set forth by both sides, I find in favor of the Applicant to the extent the amount in dispute still remains on the policy.

5. Optional imposition of administrative costs on Applicant.  
Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**

- ☐ The policy was not in force on the date of the accident
- ☐ The applicant was excluded under policy conditions or exclusions
- ☐ The applicant violated policy conditions, resulting in exclusion from coverage
- ☐ The applicant was not an "eligible injured person"
- ☐ The conditions for MVAIC eligibility were not met
- ☐ The injured person was not a "qualified person" (under the MVAIC)
- ☐ The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
- ☐ The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Amount Amended	Status
	Excel Surgery Center, LLC	03/04/16 - 03/04/16	\$5,169.30	\$4,615.18	Awarded: \$4,615.18
Total			\$5,169.30		Awarded: \$4,615.18

- B. The insurer shall also compute and pay the applicant interest as set forth below. (The filing date for this case was 08/25/2016, which is a relevant date only to the extent set forth below.)

Based on the submission of a timely denial, interest shall be paid from August 25, 2016, the date of filing, until the date that payment is made at a rate of 2% per month.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

As this matter was filed **after** February 4, 2015, this case is subject to the provisions promulgated by the Department of Financial Services in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the applicant an attorney's fee, in accordance with newly promulgated 11 NYCRR 65-4.6(d).

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York

SS :

County of Nassau

I, Alina Shafranov, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

11/04/2017  
(Dated)

Alina Shafranov

**IMPORTANT NOTICE**

*This award is payable within 30 calendar days of the date of transmittal of award to parties.*

*This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon*

*which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.*

## **ELECTRONIC SIGNATURE**

**Document Name:** Final Award Form  
**Unique Modria Document ID:**  
bd6837e724b4a0699555fd689038c67c

### **Electronically Signed**

Your name: Alina Shafranov  
Signed on: 11/04/2017