

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Empire State Ambulatory Surgery Center  
(Applicant)

- and -

Progressive Casualty Insurance Company  
(Respondent)

AAA Case No. 17-20-1181-3387

Applicant's File No. 241247

Insurer's Claim File No. 19-2486347

NAIC No. 32786

**ARBITRATION AWARD**

I, Kent Benziger, 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: S.G.

1. Hearing(s) held on 04/12/2021  
Declared closed by the arbitrator on 04/12/2021

Kurt Lundgren, Esq. from Thwaites, Lundgren & D'Arcy Esqs participated by telephone for the Applicant

Jean Schabhutti, Esq. from Progressive Casualty Insurance Company participated by telephone for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 5,889.80**, was NOT AMENDED at the oral hearing.  
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

On December 6, 2019, the Assignor/Eligible Injured Party, a 37-year-old male, was, by history, involved in a motor vehicle accident. On January 28, 2020, Dr. Graziosa performed a bilateral partial meniscectomy, coblation abrasion chondroplasty of the trochlear notch, inflamed medial plica abrading down onto the medial femoral condyle down to the stable subchondral bleeding bone, release and lysis of intra-articular adhesions, excision of an inflamed medial plica abrading down to the medial femoral condyle. The Applicant, Empire State ASC, submitted a claim for the ambulatory surgical fee totaling \$8916.04 consisting of knee arthroscopy (CPT 298800LT, \$3,026.24), Removal of Loose Bodies (G0289 LT 59, \$1472.45), Arthroscopy of Joint (CPT 29999 LT 59, \$1472.45), knee arthroscopy/surgery (CPT 29884 LT 59, \$1472.45)

knee arthroscopy/surgery (CPT 29874 LT 59, \$1472.45). The Respondent has submitted an affidavit from Karen McCauley, a certified coder, utilizing the 3M software and discussing the methodology. The Applicant has submitted a print-out of calculations utilizing 3M software but without any accompanying analysis.

This hearing was conducted using the electronic case folder maintained by the American Arbitration Association. All documents contained in that folder are made part of the records of this hearing. I have reviewed the documents contained in the electronic case folder as of the date of this award as well as any documents submitted upon continuance of the case. Any documents submitted after the hearing that have not been entered in the electronic case folder as of the date of this award will be listed immediately below and forwarded to the American Arbitration Association at the time this award is issued for inclusion in said case folder.

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

On December 6, 2019, the Assignor/Eligible Injured Party, a 37-year-old male, was, by history, involved in a motor vehicle accident. Neither party has submitted extensive medicals regarding the Assignor's complaints and treatment following the accident

On January 28, 2020, Dr. Graziosa performed a bilateral partial meniscectomy, coblation abrasion chondroplasty of the trochlear notch, inflamed medial plica abrading down onto the medial femoral condyle down to the stable subchondral bleeding bone, release and lysis of intra-articular adhesions, excision of an inflamed medial plica abrading down to the medial femoral condyle. The post-operative diagnosis included left knee synovitis, bilateral meniscal tears, Grade 4 chondromalacia of the trochlear notch, inflamed medial plica abrading down onto the medial femoral condyle and intra-articular adhesions. The Applicant, Empire State ASC, submitted a claim totaling \$8916.04 consisting of knee arthroscopy (CPT 29880LT, \$3,026.24), Removal of Loose Bodies (G0289 LT 59, \$1472.45), Arthroscopy of Joint (CPT 29999 LT 59, \$1472.45), Knee arthroscopy/surgery (CPT 29884 LT 59, \$1472.45), and Knee arthroscopy/surgery (CPT 29874 LT 59, \$1472.45).

Denial. Through an NF-10, the Respondent reimbursed \$3,026.24 for the arthroscopy (CPT 29880O) with no reimbursement for the four additional services billed. The Explanation of Reimbursement stated the following grounds for no reimbursement for the two additional procedures:

This service identified as an integral part of a medial visit and associated with professional services and does not warrant separate reimbursement.

Significant procedure Consolidation (refers to the collapsing of multiple related significant procedure APG's

into a single EAPG for the purpose of determining payment) based on the New York Enhanced Ambulatory Patient Grouping (EAPG) Methodology.

Pursuant to the NYS APG Manual, "Grouping Elements of the APG Payment System": multiple related significant procedure APGs are consolidated into a single APG for the purpose of determining payment. "CPT Modifier 59 should be used to designate instances when distinct and separate multiple services with the same APG are provided to the patient on a single date of service (eg. separate encounters, different surgeries, different sites or organ systems, separate incisions)." NY EAPG methodology for reimbursement of ambulatory surgery facility services includes the Hospital Outpatient NCCI edits and Medical Unlikely edits. Services identified in the NCCI edits as an integral component of the significant procedure performed do not warrant separate reimbursement. Documentation submitted supports that the use of Modifier 59 is inappropriate in this instance. Billing has been consolidated into a single APG for reimbursement, which has been paid accordingly.

Significant procedure Consolidation (refers to the collapsing of multiple related significant procedure APG's into a single EAPG for the purpose of determining payment) based on the New York Enhanced Ambulatory Patient Grouping (EAPG) Methodology.

Applicant's Fee Schedule. The Applicant has submitted a 3M Health Information Systems Print-Out. It lists the following:

Procedures 69880 Knee arthroscopy surgery  
Modifier 1: Rev Code: 490  
Place of Service:  
Units: 1  
Date: 1/28/20  
Procedure EAPG: 37 LEVEL 1 ARTHROSCOPY  
Final EAPG: 37 LEVEL 1 ARTHROSCOPY  
Final EAPG Type: 2 Significant Procedure  
Final EAPG Category: 3 Musculoskeletal system procedures  
Discounting Flag: Multiple Procedure Discounting candidate  
Service Line Indicator: 3 Orthopedic Surgery  
Procedures G 0289 Arthro loose body chondro  
Modifier 1: LT  
Modifier 2 59  
Rev Code: 490  
Place of Service:  
Units: 1  
Date: 1/28/20

Procedure EAPG: 37 LEVEL 1 ARTHROSCOPY  
 Final EAPG: 37 LEVEL 1 ARTHROSCOPY  
 Final EAPG Type: 37 2 Significant Procedure  
 Final EAPG Category: 3 Musculoskeletal system procedures  
 Discounting Flag: Multiple Procedure Discounting candidate  
 Service Line Indicator: 3 Orthopedic Surgery  
 Edits: 3178 EAPG - Modifier 59 is reported. Consider reporting  
 modifier XE, XP, XS or XU instead if more applicable.  
 Procedures 29999 Arthroscopy of joint  
 Modifier 1: LT  
 Modifier 2 59  
 Rev Code: 490  
 Place of Service:  
 Units: 1  
 Date: 1/28/20  
 Procedure EAPG: 37 LEVEL 1 ARTHROSCOPY  
 Final EAPG: 37 LEVEL 1 ARTHROSCOPY  
 Final EAPG Type: 2 Significant Procedure  
 Final EAPG Category: 3 Musculoskeletal system procedures  
 Discounting Flag: Multiple Procedure Discounting candidate  
 Service Line Indicator: 3 Orthopedic Surgery  
 Edits: 3178 EAPG - Modifier 59 is reported. Consider reporting  
 modifier XE, XP, XS or XU instead if more applicable.  
 Procedures 69884 Knee arthroscopy surgery  
 Modifier 1: LT  
 Modifier 2 59  
 Rev Code: 490  
 Place of Service:  
 Units: 1  
 Date: 1/28/20  
 Procedure EAPG: 37 LEVEL 1 ARTHROSCOPY  
 Final EAPG: 37 LEVEL 1 ARTHROSCOPY  
 Final EAPG Type: 2 Significant Procedure  
 Final EAPG Category: 3 Musculoskeletal system procedures  
 Discounting Flag: Multiple Procedure Discounting candidate  
 Service Line Indicator: 3 Orthopedic Surgery  
 Edits: 3178 EAPG - Modifier 59 is reported. Consider reporting  
 modifier XE, XP, XS or XU instead if more applicable.  
 Procedures 29875 Arthroscopy of joint  
 Modifier 1: LT  
 Modifier 2 59  
 Rev Code: 490  
 Place of Service:  
 Units: 1  
 Date: 1/28/20  
 Procedure EAPG: 37 LEVEL 1 ARTHROSCOPY  
 Final EAPG: 37 LEVEL 1 ARTHROSCOPY  
 Final EAPG Type: 2 Significant Procedure

Final EAPG Category: 3 Musculoskeletal system procedures  
Discounting Flag: Multiple Procedure Discounting candidate  
Service Line Indicator: 3 Orthopedic Surgery  
Edits: 3178 EAPG - Modifier 59 is reported. Consider reporting  
modifier XE, XP, XS or XU instead if more applicable.

The 3M Print-Out then listed calculations with total payment of \$3,026.24 for 29880 and with \$1,472.45 for G0289, \$1,472.45 for 29999, \$1,472.45 for 29884, \$1,472.45 for 29875. This second through fifth services had reductions for adjuster weight, pay action, EAGP payments and blended payments.

Respondent's Coder. The Respondent has submitted an affidavit from Karen McCauley a certified coder. She first discusses the methodology of New Enhanced Ambulatory Payment Groups (EAPG) Fee Schedule applied to Ambulatory Surgical Centers. She found that through the 3M Grouper Software as well as guidance on the manual calculation of EAPG, the Applicant is entitled to \$3,026.24 which was reimbursed. Her analysis included the following:

The calculation for the maximum amount allowed under the EAPG Fee Schedule is the "APG Code Weight" multiplied by the "New York Workers Compensation Base Rate" which equals the subtotal. The Capital Add-On then gets added where appropriate in order to arrive at the total payment for the primary APG group. APG groups other than the primary APG group do not receive a Capital Add-On.

The APG Code Weight is based on the APG Code and the CPT Code/procedure performed (as followed by Medicaid and the New York Department of Health).

The New York Worker's Compensation Base Rate is derived from 150% of Medicaid's hospital base rate. The NY WCB rate, as well as the Capital Add-On has two regions: upstate and downstate. For the upstate region, the NY WCB rate is \$228.62 and for downstate is \$295.94. For the upstate region, the Capital Add-On is \$109.90 for Ambulatory Surgery Centers and \$108.48 for Hospitals. For the downstate region the Capital Add-On is \$81.37 for Ambulatory Surgery Centers and \$115.70 for Hospitals.

The National Correct Coding Initiative Edits (NCCI Edits), adopted by the Medicare and Medicaid, limits the use of modifier -59 when applied in the context of Arthroscopy. Chapter IV, Surgery: Musculoskeletal System, CPT Codes 20000-29999. Section E (5) reads in part "...With the exception of the knee and shoulder, arthroscopic debridement shall not be reported separately with a surgical arthroscopy procedure when performed on the same joint at the same patient encounter. For knee arthroscopic debridement see the following subsection (6)

CPT codes 29874 (Surgical knee arthroscopy for removal of loose body or foreign body) and 29877 (Surgical knee arthroscopy for debridement/shaving of articular cartilage) shall not be reported with other knee arthroscopy codes (29866-29889). With two exceptions HCPCS code G0289 may be reported with other knee arthroscopy codes. Since CPT codes 29880 and 29881 include debridement/shaving of articular cartilage of any compartment, HCPCS code G0289 may be reported with CPT codes 29880 or 29881 only if reported for removal of a loose body or foreign body from a different compartment of the same knee, HCPCS code 0289 shall not be reported for removal or loss body or foreign body or debridement/shaving of articular cartilage from the same compartment as another knee arthroscopic procedure. For knee arthroscopic (8) Arthroscopic synovectomy of the knee may be reported with CPT codes 29875 or 29876. A synovectomy to "clean up" a joint on which another extensive procedure is performed is not separately reportable. CPT code 29875 may be reported for a medically reasonable and necessary synovectomy with another arthroscopic knee procedure on ipsilateral knee if the synovectomy is performed in other compartments on which another arthroscopic procedure is not performed.

CPT code 29884, 29999 and G0289 do not meet the exceptions above, therefore modifier -59 is not appropriate.

CPT code 29875 shall not be reported with another arthroscopic knee on the ipsilateral knee, therefore modifier -59 is not appropriate.

As set forth in the implementation guide "...Significant procedure consolidation refers to the collapsing of multiple related significant procedure APGs into a single APG for the purpose of determining payment...." Review of the EAPG Schedules in the 3M APG Crosswalk database assigns CPT Codes 29880, 29875, 29999 , 29884, G0289 to APG 37. The application of the predetermined weight, discounts, rate, and capital add on result in CPT Code 29880 being compensated at 100% of the EAPG amount of \$3,026.24. Attached at Exhibits "6" and "7" are copies of the relevant APG Groups from the 3M APG Crosswalk database and 3M Calculation Sheet.

Ms. McCauley concluded that the Applicant was entitled to \$3,026.24 with the remainder of the claim dismissed.

As a finding of fact, Ms. McCauley's calculations and analysis are more persuasive than the Applicant's unexplained 3M printout. Ms. McCauley's has explained EAPG methodology and authoritative sources that guided her calculations utilizing the 3M software. In sum, the Respondent has submitted a fee schedule analysis from a certified professional coder who utilized the 3M Enhanced Ambulatory Patient Grouping (EAPG) system. As a finding of fact, the Respondent's proof is persuasive, and once a Carrier has established that the amounts billed were in excess of the fee schedule, the burden shifts to the provider to show that establish a different interpretation, miscalculation or error. Cornell Medical P.C. v. Mercury Casualty Co., 24 Misc. 3d 58, (App Term 2d, 11<sup>th</sup> & 13 Dist. 2009). The Applicant unexplained 3M printout fails to rebut the thorough analysis of the certified coder. No further reimbursement is due.

Pursuant to 11 NYCRR 65-4.5 (o)(1)(i)(ii), an arbitrator is the judge of the relevance and materiality of the evidence offered.

APPLICANT'S CLAIM IS DENIED IN ITS ENTIRETY.

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 claim is DENIED in its entirety

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

State of New York  
SS :  
County of Orange

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

04/16/2021  
(Dated)

Kent Benziger

**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**

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### **Electronically Signed**

Your name: Kent Benziger  
Signed on: 04/16/2021