

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Macintosh Medical, P.C.  
(Applicant)

- and -

Nationwide Affinity Insurance Company Of  
America  
(Respondent)

AAA Case No. 17-21-1195-9385

Applicant's File No. JL20-121503

Insurer's Claim File No. 330074-GK

NAIC No. 26093

**ARBITRATION AWARD**

I, Pamela Hirschhorn, 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: Injured Person

1. Hearing(s) held on 06/07/2022  
Declared closed by the arbitrator on 06/07/2022

Jeanine Oberster, Esq. from The Licatesi Law Group, LLP participated for the Applicant

Brian Kaufman, Esq. from Hollander Legal Group PC participated for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,692.70**, was AMENDED and permitted by the arbitrator at the oral hearing.

\$1,341.57.

Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

The injured person was a 46-year-old female who was involved in the subject motor vehicle accident of March 13, 2020. The claim for services rendered July 22, 2020, was denied based upon a 120-day defense in that the verification requested was not complied with within 120 calendar days

from the date of the issuance of the initial verification request. The issue to be decided is whether respondent established its 120-day defense.

4. Findings, Conclusions, and Basis Therefor

The injured person was a 46-year-old female who was involved in the subject motor vehicle accident of March 13, 2020. The claim for services rendered July 22, 2020, was denied based upon a 120-day defense in that respondent's verification requests were not complied with within 120 calendar days from the date of the initial verification request letter. See, 11 NYCRR 65-3.8 (b) (3). The issue to be decided is whether respondent established its 120-day defense. Applicant amended the amount in dispute to \$1,341.57. It is undisputed that the verification request letters were issued following the EUO of Jonathan Landow, M.D., which was conducted on April 30, 2020.

At the time of hearing, it was conceded by the parties that in the prior case of *Macintosh Medical, PC & Nationwide Gen. Ins. Co.*, AAA Case no. 17-21-1219-9072 (5/9/22) (Pamela Hirschhorn, Arb.), the same post-EUO verification request letters were issued, and the same responses were provided by applicant. In the prior award, this arbitrator noted that applicant's initial response was dated August 13, 2020, and applicant's response letter dated March 31, 2021, referred to the initial response. In the prior award of *Macintosh Medical, PC & Nationwide Gen. Ins. Co.*, *supra*, this arbitrator noted that applicant provided the following documentation and information:

In response to respondent's demand for copies of fully executed lease agreements, applicant provided copies of fully executed lease agreements.

In response to respondent's request for rent payments, applicant objected.

In response to respondent's demand for copies of employment agreements entered into between applicant and numerous individuals including Viviane Ettienne, M.D., and Alex Kopach, PA, applicant advised that these documents did not exist.

In response to respondent's demand for fully executed IRS Form W-4 with respect to Macintosh Medical and numerous individuals including Viviane Etienne, M.D. and Alex Kopach, PA, applicant provided W-4s.

In response to respondent's request for a copy of the fee-for-service fee schedule between applicant and numerous individuals, applicant annexed a payroll summary.

In response to respondent's demand for a copy of the schedule for Dr. Viviane Etienne indicating the dates and locations where she either saw patients or was physically present on behalf of applicant, applicant advised that the service location of each service billed was identified in the NF-3 submitted and submitted a list of Macintosh Medical P.C. locations.

In response to the demand for a copy of the schedule of Dr. Jonathan Landow maintained by Macintosh Medical P.C. indicating the dates and locations where he either saw patients or was physically present on behalf of Macintosh Medical P.C., applicant annexed a list of Macintosh Medical, PC locations.

In response to the demand for proof of any travel to New York State by Dr. Landow, applicant advised that the provider was not in possession of these documents.

In response to respondent's demand for a copy of the signature card for the bank account of Macintosh Medical P.C. at TD Bank, applicant objected.

In response to respondent's demand for a copy of applicant's banking statements from January 2020 through the present, applicant objected.

In response to respondent's request for a copy of the agreement entered into between applicant and Green Bills, applicant provided a copy of that agreement.

In response to respondent's demand for a copy of invoices provided to applicant by Green Bills for the year 2020, applicant referred to its previous response.

In response to respondent's demand for a copy of forms utilized by applicant on the letter head of the P.C., for referrals for MRIs, applicant objected.

In response to respondent's demand for a copy of forms utilized by applicant on the letterhead of the P.C., for referrals for DME, applicant objected.

In response to respondent's demand for a copy of forms utilized by applicant on the letterhead of the P.C., for referrals for any other services or testing, applicant objected.

In response to respondent's demand for a copy of literature or studies in support of the NSAIDs or Diclofenac 3% prescribed, applicant objected.

In response to respondent's request for a copy of the Workers' Compensation Declarations pages for policy maintained by applicant, applicant annexed a copy of the Workers' Compensation policy declarations.

In response to respondent's demand for proof of any loans made to applicant by any other PC for which Dr. Landow maintains an ownership interest, applicant objected.

In response to respondent's demand for a copy of the agreement entered into between applicant and Dynamic Solutions, applicant objected.

In response to respondent's demand for proof of all loans made to applicant by Dynamic Solutions including proof of any checks and or electronic transfers made to the PC, applicant objected.

In the prior award of *Macintosh Medical, PC & Nationwide Gen. Ins. Co., supra*, this arbitrator noted that respondent replied to applicant's response dated March 31, 2021, on April 2, 2021, advising that verification remained outstanding. The claim was ultimately denied based upon a 120-day defense. See, 11 NYCRR 65-3.8 (b)(3).

In the prior award of *Macintosh Medical, PC & Nationwide Gen. Ins. Co., supra*, this arbitrator noted that numerous arbitrators have addressed whether respondent's verification requests were complied with and found that although there was a response by applicant, post-EUO verification requests remained outstanding. See, *Macintosh Medical, PC & Nationwide Ins. Co.*, AAA Case no. 17-20-1181-1008 (Jeffrey Silber, Arb.), aff'd 99-20-1181-1008 (Richard Ancowitz, Master Arb.); *Macintosh Medical PC & Nationwide Mut. Ins. Co.*, AAA Case no. 17-20-1184-3759 (Darren Sheehan, Arb.), aff'd 99-20-1184-3759 (Richard Ancowitz, Master Arb.); *Macintosh Medical PC & Nationwide Ins. Co.*, AAA Case no. 17-21-1189-7902 (Brian Rudolph, Arb.); *Macintosh Medical, PC & Nationwide Affinity Ins. Co. of America*, AAA Case no. 17-21-1189-7849 (Teresa Girolomo) aff'd 99-21-1189-7849 (Richard Ancowitz, Master Arb.); *Macintosh Medical PC & Nationwide Gen. Ins. Co.*, AAA Case no. 17-21-1189-7875 (Eylan Schulman, Arb.). In *Macintosh Medical PC & Nationwide Ins. Co.*, AAA Case no. 17-20-1172-3427 (Diane Flood Taylor, Arb.) aff'd 99-20-1172-3427 (Richard Ancowitz, Master Arb.), Arbitrator Flood Taylor found that the affidavit of Linda Arnold and the EUO transcript provided a reasonable basis and justification for seeking the subject verification and tolling the claim. Arbitrator Flood Taylor found that respondent properly tolled the claim, timely served requests for additional verification, and ultimately, properly denied the claim based upon a 120-day defense in that the verification requests were not complied with.

In the prior award of *Macintosh Medical, PC & Nationwide Gen. Ins. Co., supra*, this arbitrator concurred with the above arbitrators that respondent's verification requests were not fully complied with and thus verification remained outstanding. This arbitrator concurred with Arbitrator Flood Taylor that the verification requested was reasonable and necessary in the processing of the claim and that the claim was properly denied based upon a 120-day defense in that the verification requests were not complied with. See, 11 NYCRR 65-3.8 (b) (3). Although in the instant case, applicant's counsel cited to the recent master arbitration award of *Macintosh Medical, PC &*

*Nationwide Ins. Co. of America*, AAA Case no. 99-20-1172-9159 (Victor J. D'Ammora, Master Arb.), in which the arbitration award of Arbitrator Hyland was vacated, this arbitrator notes that Master Arbitrator Richard Ancowitz in the following Master Arbitration awards affirmed the decisions of the lower arbitrators who found that respondent's verification requests were not fully complied with and thus verification remained outstanding. See, AAA Case no. 99-20-1181-1008 (Richard Ancowitz, Master Arb.); AAA Case no. 99-20-1184-3759 (Richard Ancowitz, Master Arb.); AAA Case no. 99-21-1189-7849 (Richard Ancowitz, Master Arb.). Accordingly, since verification was not fully complied with, the 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 Nassau

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

06/08/2022  
(Dated)

Pamela Hirschhorn

### **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:**

14af61c1a48aa61ff21f194530ef8651

### **Electronically Signed**

Your name: Pamela Hirschhorn  
Signed on: 06/08/2022