

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Patriot Medical Care (Applicant)	AAA Case No.	17-23-1292-8230
- and -	Applicant's File No.	PMPC 42.05, 06, 07
Progressive Casualty Insurance Company (Respondent)	Insurer's Claim File No.	213166325-02
	NAIC No.	24260

**ARBITRATION AWARD**

I, Kenneth Rybacki, 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 12/04/2023  
Declared closed by the arbitrator on 12/04/2023

Michael Lamond, Esq. from Akiva Ofshtein PC participated virtually for the Applicant

Jake Komor, Esq. from McCormack, Mattei & Holler participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$4,406.34**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount in issue was reduced to \$1,537.60 as per the agreement of counsel for the parties to comport Applicant's claims to applicable fee schedules and account for a withdrawal with prejudice of Applicant's claim for services provided on 1/4/22.

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

Counsel for the parties stipulated that Applicant's claims comported with applicable fee schedules. Applicant's counsel stipulated that statutory interest on any claim would run from the date of Applicant's filing for arbitration.

### 3. Summary of Issues in Dispute

Whether Applicant breached a condition of coverage thereby precluding this action for first-party benefits under Respondent's policy of insurance. Applicant's claims arising from an 8/27/21 accident for extracorporeal shockwave therapy ("ESWT") and physical evaluation performed on 12/7/21 and 12/13/21 of A.B. on the ground that the Applicant failed to attend examinations under oath scheduled in further verification of the claims.

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

This matter was decided on the submissions of the parties as maintained by the American Arbitration Association ("AAA") in its ADR Center and oral argument. No submissions following the close of the record on 6/7/23 were admitted to the evidentiary record, 11 NYCRR 65-4.2 (b); Matter of Mercury Casualty Co. v. Healthmakers Medical Group, P.C., 67 A.D.3d 1017, 888 N.Y.S.2d 762 (2d Dept. 2009). Arbitration procedure contained in the No-Fault regulations, specifically, 11 N.Y.C.R.R. 65-4.2 (b)(3)(iii), provides

*(iii) The written record shall be closed upon receipt of the respondent's submission or the expiration of the period for receipt of the respondent's submission. Documents submitted by either party after the record is closed shall be marked "Late."*

This action for the payment of health services claims for ESWT and physical evaluation performed on 12/7/21 and 12/13/21 arises from an 8/27/21 accident. Respondent denied the claims on the ground that the Applicant breached a condition of coverage by failing to attend examinations under oath on 1/26/22 and 2/15/22 with respect to the claim for date of service 12/7/21 and 2/1/22 and 2/22/22 with respect to the claim for date of service 12/13/21.

An insurer is required to pay or deny a claim within thirty (30) days of the insurer's receipt of the claim, N.Y. Ins. Law Sec. 5106. An insurer can toll the claim-determination period through a reasonable and seasonable request for verification, 11 NYCRR 65-3.8 (a)(1). An insurer must request the verification within fifteen (15) business days from the date that the insurer received the claim, 11 NYCRR 65-3.5. Even if the initial request is not made within the fifteen-business-day period, the request will serve as a toll so long as it is made within the thirty-day period prescribed by Ins. Law Sec. 5106, 11 NYCRR 65-3.8 (l). If after thirty days the insurer has not received a response to the initial request for verification, then, within ten calendar days after the thirty-day period from the initial request, the insurer at a minimum, must make a second request for the documents sought, 11 NYCRR 65-3.6.

The claim for date of service 12/7/21 was received by the Respondent on 12/28/21. Respondent timely issued an initial request for verification in the form of an examination under oath on 1/5/22. However, no follow-up request was issued. The

follow-up was to be made no later than 2/14/22, before any purported breach would have occurred on 2/15/22. Respondent therefore did not get the benefit of additional tolling of the claim-determination period, see 11 NYCRR 65-3.8(l). Breach of the condition must be raised in a timely denial, Westchester Medical Center v. Lincoln General Ins. Co., 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009). Applicant is therefore awarded \$768.80 on its claim for services on 12/7/21.

Applicant is also awarded \$768.80 on its claim for services on 12/13/28 for similar reasons. Respondent's initial request for verification in the form of the examination under oath was made on 1/11/22. Respondent was therefore required to make a follow-up request no later than 2/20/22. However, the request is dated 2/21/22.

Applicant is awarded \$1,537.60.

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
	<b>Patriot Medical Care</b>	<b>12/07/21 - 12/07/21</b>	<b>\$1,468.78</b>	<b>\$768.80</b>	<b>Awarded: \$768.80</b>
	<b>Patriot Medical</b>	<b>12/13/21 -</b>	<b>\$1,468.78</b>	<b>\$768.80</b>	<b>Awarded:</b>

	<b>Care</b>	<b>12/13/21</b>			<b>\$768.80</b>
	<b>Patriot Medical Care</b>	<b>01/04/22 - 01/04/22</b>	<b>\$1,468.78</b>		<b>Withdrawn with prejudice</b>
<b>Total</b>			<b>\$4,406.34</b>		<b>Awarded: \$1,537.60</b>

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/28/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Statutory interest shall run from the date of filing, 3/28/23 to the date of payment by the Respondent.

C. Attorney's Fees

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

Attorney fees are awarded at 20% of the amount of first-party benefits awarded in the aggregate, plus interest, in accordance with the limitations set forth in 11 NYCRR 65-4.6.

- 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 NY

SS :

County of Suffolk

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

12/08/2023  
(Dated)

Kenneth Rybacki

### **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:**  
fcdaf550888bd4be70ee1798b83e2089

### **Electronically Signed**

Your name: Kenneth Rybacki  
Signed on: 12/08/2023