American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Refuah Diagnostics LLC (Applicant)	AAA Case No.	17-23-1303-7894
	Applicant's File No.	802.934
- and -	Insurer's Claim File No.	07030323592AG
	NAIC No.	17230
Allstate Property and Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Sandra Adelson, 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: the patient

1. Hearing(s) held on 05/09/2024
   Declared closed by the arbitrator on 06/24/2024

   Sakrit Srivastava, Esq. from Tsirelman Law Firm PLLC participated virtually for the Applicant

   Juliya Khodik, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$318.94**, 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

   The patient was a 31-year-old male driver who was involved in a motor vehicle accident which took place on 2/15/22. The patient sustained accident related injuries and came under the care of applicant. Applicant performed autonomous nerve testing of the upper and lower extremities and seeks payment for said services performed on 4/19/23.

Respondent issued a denial based on the peer review report of Dr. Robert Sohn, D.C.

Due to the fact that this applicant was identified as an LLC in the caption of the claim, the arbitrator was concerned if applicant was a PLLC or LLC and requested that this issue be clarified as a post hearing submission in three claims -AAA Case No. 17-23-1303-7894, AAA Case No. 17-22-1278-1911, AAA Case No. 17-22-1279-2652.

Applicant did not respond to this directive.

Respondent provided a written response, to the same post hearing directive, with regard to two other arbitration claim-AAA Case No. 17-22-1278-1911 and AAA Case No. 17-22-1279-2652, involving this applicant and stated the following: "In response to the inquiry regarding whether Applicant, Refuah Diagnostics, LLC ("Refuah") is an LLC or PLLC, attached to this submission is a New York State Department of State Division of Corporations search that shows that Refuah Diagnostics is a domestic limited liability company ("LLC"). As noted, the same post hearing directive was also issued for this claim.

4. Findings, Conclusions, and Basis Therefor

The record consisted of claimant's submission, respondent's submission, as well as documents not enumerated within this decision but which are contained in the case file maintained by the American Arbitration Association. The arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations. Based on a review of the documentary evidence, this claim is decided as follows

It is now well-settled that a medical provider establishes a prima facie case of entitlement to payment of no-fault benefits upon the submission of a proper claim form setting forth the fact and amount of the losses sustained as well as the additional fact that that the payment of no-fault benefits was then overdue. Insurance Law 5106(a); Mary Immaculate Hospital v. Allstate Insurance Co., 5 A.D.3d 742; Amaze Medical Supply, Inc. v. Eagle Insurance Co., 2 Misc 3d 128(A).

The burden then shifts to the respondent. The respondent's denial for lack of medical necessity must be supported by a peer review or other competent medical evidence which sets forth a clear factual basis and medical rationale for denying the claim. Healing Hands Chiropractic, P.C. v. National Assurance Co., 5 Misc 3d 975; Citywide Social Work, et. al. v. Travelers Indemnity Co., 3 Misc 3d 608.

The defendant must prove there is a factual basis and medical rationale for the opinion of the its expert. Prime Psychological Services v. Progressive Cas. Ins. Co., 24 Misc 3d 1244[A], 901 N.Y.S.2d 902, 2009 NY Slip Op 51868[U] (Civil Ct. Richmond Co. 2009); and Nir v. Allstate Ins. Co., 7 Misc 3d 544, 796 N.Y.S.2d 85 . Respondent relies on the peer review report of Dr. Robert Sohn, Md.

The denial in this claim asserts an issue as to whether autonomous nerve testing performed on 4/19/23 was medically necessary. However, in a linked award, AAA Case No. 17-23-1306-7104, Touch Stone Chiropractic PC and Allstate Property & Casualty Insurance Company, this arbitrator found that the EMG/NCV studies of the upper and lower extremities performed on 4/17/23 (upper extremities)and 4/19/23 (lower extremities) were medically necessary. It is necessary to point out that the EMG/NCV studies were denied based on Dr. Robert Sohn, DC's peer review report. This was the same peer review report which was submitted for the instant claim involving the medical necessity of upper and lower sympathetic skin response testing totaling $318.94. The aforenoted services were performed by applicant.

Peer review report of Dr. Robert Sohn, D.C.:

In the prior award involving Touchstone Chiropractic, Dr. Sohn noted that "There continues to be no evidence of neurological abnormalities in the upper and lower extremities that would indicate or suspect that a true active neuropathy or radiculopathy did exist." However, this statement is clearly disputed by the EMG/NCV diagnosis which established that the patient had a right cervical C5/6 radiculopathy and evidence of right ulnar axonal motor neuropathy as well as a L4/5 radiculopathy. It, therefore, is clear that Dr. Sohn's statement, that there was no evidence of neurological abnormalities

which would indicate neuropathy or radiculopathy, was refuted by the very fact that the EMG/NCV studies established that the neurological testing diagnosed evidence of both neuropathy and radiculopathy in the cervical spine and radiculopathy in the lumbar spine. The peer review report discussion therefore ignored the foregoing." Although I disagreed with Dr. Sohn's peer review report as it applied to the EMG/NCV studies, I agree with this peer review report as it applies to the autonomous nerve testing in issue.

Dr. Sohn also pointed out that the autonomous nerve testing was essentially duplicative to the EMG/NCV studies due to the fact that EMG/NCV studies had already been performed on 4/17/23 (upper extremities) and 4/19/23 (lower extremities). Dr. Sohn argued that that the patient had already undergone the EMG/NCV studies on 4/17/23 and 4/19/23. The EMG/NCV test reports established that the patient had been diagnosed by Dr. DiMaggio with both radiculopathy and neuropathy in the cervical and lumbar spine. Therefore, why would Dr DiMaggio refer the patient for additional testing if his own testing by EMG/NCV resolved the issue as to the presence of radiculopathy and neuropathy. I find that applicant's performance of the autonomous nerve testing on 4/19/23 was duplicative and medically unnecessary to the EMG/NCV studies in issue.

Upon reading and reviewing Dr. Sergey Zhivotenko, MD's rebuttal report, I did not find it persuasive. He refers to many medical reports even though applicant's submission did not include said reports. Furthermore, Dr. Zhivotenko does not meaningfully address the issue as to why applicant performed autonomous nervous system testing of the upper and lower extremities on 4/19/23 when Touchstone Chiropractic PC had already performed an EMG/NCV of the upper extremities on 4/17/23 and on 4/19/23 an EMG/NCV of the lower extremities. Both tests diagnosed neuropathy and radiculopathy. Dr. Zhivotenko therefore failed to explain why the autonomous testing was performed by applicant and why it was not duplicative. I do not find that the studies in issue were medically indicated. Dr. Zhivotenko failed to explain why the duplicative testing would have been necessary.

Additionally, I have reviewed the underlying medical records and I find that with regard to the issue of medical necessity for autonomous nervous system testing that Dr. Sohn, DC's peer review report established lack of medical necessity.

Based upon a review of the credible evidence, respondent has met the burden of production, and applicant has failed to credibly rebut the lack of medical necessity. Therefore, the claim is denied.

Issue of standing:

The parties were requested through the same post hearing directive to provide information about applicant's standing as a PLLC or LLC in three claims (noted above_ involving this applicant. Respondent in Case No. 17-22-1278-1911 provided a written response and stated the following: "In response to the inquiry regarding whether Applicant, Refuah Diagnostics, LLC ("Refuah") is an LLC or PLLC, attached to this submission is a New York State Department of State Division of Corporations search that shows that Refuah Diagnostics is a domestic limited liability company ("LLC")."

Furthermore, upon a review of the arbitration record, there was no evidence that the applicant was licensed as a professional service limited liability company or a professional corporation pursuant to Section 1503 Business Corporations Law of New York.

As noted above, the Department of State for New York lists applicant Refuah Diagnostics LLC. as a Domestic Limited Liability Corporation licensed by New York State. The foregoing is significant due to the fact that applicant is an "LLC.."

Regulation 65-3.16(12) provides that a provider of health care services is not eligible for reimbursement under Section 5102(a) of the Insurance Law if the provider fails to meet any applicable NYS or local licensing requirement necessary to perform such service in New York, or meet any applicable licensing requirement necessary to perform such service in any other state in which such service is performed.

Section 1501(c) of the BCL defines "professional service" as "any type of service to the public which may be lawfully rendered by a member of a profession within the purview of his or her profession", and subsection (b) defines "profession" in relevant part as "…those occupations designated in title eight of the education law."

The practice of medicine is among those occupations designated in Title 8 of the Education Law. It is to be noted that there is no subsection of BCL §1503 specifically permitting the formation of a general business corporation to provide medical services under BCL §201.

Additionally, if a licensed professional, such as a doctor, wishes to practice as a corporation it must form a professional corporation in accordance with the requirements set forth under Article 15 of the New York Business Corporation Law in conjunction with the requirements under Article 131 of the education Law. (BCL 1503-1507). Therefore based upon the evidence if the services in issue are medical services in the state of New York and the provider must file as a Professional Corporation(PC) or Professional Limited Liability Company (PLLC) not just an Inc. or PLLC.

When performing medical services an entity must file with NYS Education Department to establish that there is the licensing of the professional. The applicant Refuah only filed with NYS DOS as a Limited Liability Company (LLC). Clearly if applicant is listed as a Domestic Business Corporation and not as a Domestic Professional Corporation (PC) or Domestic Limited Liability Company (PLLC) as required by the New York State, applicant is practicing medicine in violation of Regulation 64-3.16(12).

Therefore if applicant is performing the technical component of a medical service, the performance of the service cannot be performed by a non-licensed individual. The terms "any other professional health services" is limited to those services that are required to be licensed by the State of New York. A provider of healthcare services is not eligible for reimbursement of assigned first-party No-Fault benefits "under section 5102(a)(1) of the Insurance Law if the provider fails to meet any applicable

New York State or local licensing requirement necessary to perform such service in New York." 11 NYCRR § 65-3.16(a)(12). See State Farm Mut. Auto. Ins. Co. v. Mallela, 4 N.Y.3d 313, 321 (2005).

No-Fault benefits cannot be awarded to a health care provider who is not licensed to perform the disputed service; this is true even if the insurer fails to raise the defense in a timely denial. See Bath Medical Supply, Inc. v. Allstate Indemnity Co., 27 Misc.3d 92 (App Term 9th & 10th Dists. 2010).

In United Calendar Mfg. Corp. v Huang, 94 AD2d 176, [2d Dept 1983), the fact pattern involved a corporation which was a medical and dental office. The doctors were required to perform their own billing services and remit 30 percent of their total fees to the corporation. The doctors left the corporation and allegedly copied patient lists and mailed announcement card to patients that advised of their new address. The corporation filed an action against the doctors, seeking a permanent injunction preventing the doctors from rendering services to these patients and money damages. The trial court ruled against the corporation, holding that the corporation was not licensed under N.Y. Edu. Law § 6522 and therefore could have no patients, and was in violation of N.Y. Comp. Codes R. & Regs. tit. 10, § 751.4, 751.6. The court agreed with the trial court's decision but held that the doctors were entitled to a grant of summary judgment. Not only could the corporation not legally have patients, but the court refused to assist the corporation in carrying out its illegal contract with the doctors.

The Court in United, supra held that "While the defendants who participated in the illegal arrangement when it suited their purposes to do so are not entirely without blame, "[it] is the settled law of this State (and probably of every other State) that a party to an illegal contract [in this case the plaintiff corporation] cannot ask a court of law to help him carry out his illegal object, nor can such a person plead or prove in any court a case in which he, as a basis for his claim, must show forth his illegal purpose" (Stone v Freemen, 298 NY 268, 271; see, also, Barker v Kallash, 91 AD2d 372; Braunstein v Jason Tarantella, Inc., 87 AD2d 203). The denial of relief to the plaintiff in such a case is not based on any desire of the courts to benefit the particular defendant. That the defendant may profit from the court's refusal to intervene is irrelevant. What is important is that the policy of the law be upheld. Where the parties' arrangement is illegal "the law will not extend its aid to either of the parties * * * or listen to their complaints against each other, but will leave them where their own acts have placed them". (United Calendar Mfg. Corp. v Huang, 94 AD2d 176 [2d Dept

1983]). The importance of United Calendar, supra. established that the policy of the cited law must be upheld.

Prior Awards:

Therefore, I abide by the prior arbitration award of Arbitrator Laura Yantsos in TBFW Services Inc. and Geico Insurance Company, AAA Case No. 17-22-1280-3976. Arbitrator Yantsos noted the following:

"The Applicant provider, while he submits an NF-3 form which is a "verification of treatment by attending physician or other provider of health services," the Applicant is not a physician nor can Applicant be deemed a "provider of health services." Applicant corporation is an "Inc" which means it is a Domestic Business Corporation, unlicensed to perform medical services. It is further noted that the individual providing the service and signing the NF-3 has no title, and no license number, and also shows himself to be unlicensed to perform medical services. Even if the individual performing these medical services were licensed, the Applicant Business Corporation for whom he works, may not seek reimbursement for the medical services performed.

Regulation 65-3.16(12) provides that a "provider of health care services is not eligible for reimbursement under Section 5102(a) of the Insurance Law if the provider fails to meet any applicable NYS or local licensing requirement necessary to perform such service in New York, or meet any applicable licensing requirement necessary to perform such service in any other state in which such service is performed.

The services provided hereunder, i.e., nerve conduction studies, are medical services, which may be performed by a medical doctor, or a chiropractor. I find it exceedingly troubling even if the Applicant is billing for only a technical component, applicant did not show this on his NF-3 with the abbreviation "TC" next to the code, and billed more than $4200 for these medical services. In failing to use such an abbreviation, the Applicant is publishing that he is billing for both professional and technical component. But whether Applicant is billing for only the technical component, or the professional component, or both, the technical services as well as the professional services are both medical services, for which the Applicant shows itself to be unlicensed to perform.

Without producing one iota of Malella material, the Applicant shows on its claim form itself to be unlicensed to perform the medical services herein.

The claim is denied."

I concur with Arbitrator Yantsos' analysis. It must additionally be noted in reviewing applicant's bill, it stated that the services were for the technical component. The individual employee or independent contractor who performed the technical component of the services was not identified on applicant's bill. Furthermore, the bill specifically stated under the box to check if the individual technician was an employee, the proof of claim was blank. Therefore as the individual who performed the services was not shown to be an employee, this applicant has not established standing to bring this claim. The test reports also failed to identify the Technician who was involved in said testing performed on 4/26/22.

Additionally, in the arbitration award of Arbitrator Camille Nieves, AAA Case No. 17-23-1311-6461, Titan Diagnostic Imaging Services, Inc. and Geico Insurance Company, also found that for no fault purposes, the service, technical and professional must be provided by a licensed medical professional or an employee of a professional corporation and that an independent contractor cannot provide a service under the license of another provider because he/she is not accountable to the other provider.

"…Respondent first argues the provider, a general corporation, lacks standing to seek no fault benefits. Applicant argues the provider has standing because applicant only seeks reimbursement for the technical component for the services and not for professional services.

Respondent submits awards by other Arbitrators who have dealt with the same applicant provider and the same issue and decided against applicant and against reimbursement.

The standing argument was addressed first as the other issue becomes moot if the provider lacks standing.

Regulation 11 NYCRR 65-3.16 (a) (12) provides: A provider of health care services is not eligible for reimbursement under section 5102(a)(1) of the Insurance Law if the provider fails to meet any applicable New York State or local licensing requirement necessary to perform such service in New York or meet any applicable licensing requirement necessary to perform such service in any other state in which such service is performed.

As noted by other Arbitrators "With limited exceptions, a general business corporation may not provide professional services to the public, have employees who offer professional services to the public; hold itself as offering professionalservices, or share profits or split fees with licensed professionals."

See 17-23-1322-8822, 17-23-1302-1612, 17-23-1306-6563.The integral facts are whether the person providing the services whether technical or professional is qualified to do so. Even if the individual is a "technician," if not qualified or acting under the direction of a medical practitioner, the services are jeopardized. The crux of the service is a medical service and separating the technical from the professional does not change that fact.

For no fault purposes, the service, technical and professional must be provided by a licensed medical professional or an employee of a professional corporation.

For the same reason, an independent contractor cannot provide a service under the license of another provider because he/she is not accountable to the other provider.

As noted by other Arbitrators, "Even if the individual performing these medical services were licensed or permitted under the law to perform such services, under the supervision or not under supervision of a medical doctor, the Business Corporation for whom he is employed, and who is billing for these services as the medical provider, may not seek reimbursement for medical services performed as it is not a professional medical corporation, and as such, it is not a licensed medical provider." Id.

I am in agreement with the other Arbitrators. The claim is denied."

The applicant, in the instant arbitration, was not a medical professional corporation or professional limited liability company (PLLC) which would provide New York licensed professional services. Due to the fact that applicant was an "LLC," applicant cannot render professional services or the "technical component" of a professional service. There is nothing in the No-Fault Regulation that permits this applicant to bill for the technical component of a professional service. While an applicant may argue that

New York State does not require a technician to have a license, this fails to refute the licensing requirements for a provider to be qualified to receive No-Fault benefits as set forth in the Insurance Regulation.

Although the New York Workers' Compensation Fee Schedule allows for services to be split into a professional component and a technical component, the fee schedule's allowance for splitting a service into a professional component and technical component does not contradict the fact that a provider must be licensed to qualify for No-Fault benefits.

Based on the foregoing, Respondent's defense is sustained.

The claim is denied.

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 NY
SS :
County of Suffolk

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

07/15/2024
(Dated)

Sandra Adelson

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:
7c9464cc1717712a24a6cc849cf68d27

Electronically Signed

Your name: Sandra Adelson
Signed on: 07/15/2024