American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Refuah Diagnostics LLC (Applicant)	AAA Case No.	17-23-1309-8404
	Applicant's File No.	802.935
- and -	Insurer's Claim File No.	0693926362 CCY
Allstate Fire & Casualty Insurance Company (Respondent)	NAIC No.	29688

ARBITRATION AWARD

I, Claire Gallagher, 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 07/31/2024
   Declared closed by the arbitrator on 07/31/2024

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

   Michael Rago, 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 made by the parties regarding the issues to be determined.

   Applicant has established its prima facie case for entitlement to No-Fault compensation for its claim.

   Respondent's denials were timely issued.

   The interest date is 08/01/23.

3. Summary of Issues in Dispute

At issue is whether Applicant has standing to bring the claim, and if not, whether Respondent properly denied the claims at issue based on the "120 Day Rule" for verification responses pursuant to 11 NYCRR 65-3.8 (b)(3).

This dispute arises from the underlying automobile accident which occurred on 11/25/22 in which Assignor, a 25-year-old female, was involved. At issue are claims for autonomous nervous system testing, technical component, Date of Service 12/12/22. Respondent denied the claim based on Applicant's failure to submit the requested verification within 120 days after the initial request.

Respondent further asserts that Applicant, an LLC, is not eligible to receive No-Fault benefits.

4. Findings, Conclusions, and Basis Therefor

I have reviewed all timely submitted relevant documents contained in the ADR Center record maintained by the American Arbitration Association for this case, and have considered the oral arguments presented at the hearing in this matter. As stipulated to by the parties, Applicant has established its prima facie case of entitlement to No-Fault compensation for its claim. *See Mary Immaculate Hosp. v. Allstate Ins. Co.,* 5 AD3d 742 (2d Dept 2004). Once an applicant establishes its prima facie case, the burden then shifts to the insurer to prove its defense. *See CityWide Social Work & Psychological. Servs. v. Travelers Indem. Co*., 3 Misc 3d 608 (Civ Ct, Kings County 2004).

1. Standing Defense

At the hearing of this matter and in its written submission, counsel for Respondent asserted that Applicant, an LLC, is not entitled to recover No-Fault benefits. *"It is well-settled that a defense of improper licensing is non-precludable. See, Medical Polis, PC v. Progressive Specialty Insurance Company, 34 Misc. 3d 153 (A) 2012 NY Slip Op 50342 (U) (App Term 2d, 11 and 13 Districts 2012)." Matter of Titan Diag. Imaging Services, Inc. and Allstate Ins. Co.,* AAA Case No. 17-23-1300-3280 (Arb. Barry 03/19/24).

a. Respondent's Evidence

Respondent submitted a New York State Department of State Division of Corporations search that shows that Refuah Diagnostics is a domestic limited liability company ("LLC").

Respondent also submitted a 06/03/24 search from the New York State Office of the Professions for Applicant in support of its position that there were no licenses associated with this business.

Applicant's form NF 3 for the claim for the Technical Component services at issue does not identify the employee or independent contractor who performed the billed-for technical component of the services. Box 16, which asks *"if treating provider is different than billing provider complete the following"* is blank. The treating provider's name, title, license or certification number are all blank. The business relationship section, which includes *"employee,"* is similarly blank. The provider is listed as Applicant, and the signature is illegible.

As noted above, Respondent denied the claim based on the 120 Day Rule. Respondent issued verification requests dated 01/17/23 and 02/16/23 which sought (1) corporate and business information including information with respect to the names, licenses and/or certifications as well (2) as the same information with respect to whomever supervised the billed-for services.

Contained in Applicant's submission is a verification response from Applicant dated 03/25/23 which states in part:

"1. OBJECTION. Please note, the technicians that performed the billed for service(s) do not need to be licensed or certified. Therefore, the information was not provided in the bill nor will it be provided in this letter because it doesn't exist.

2. OBJECTION. Please note, the technicians that performed the billed for service(s) do not need to be licensed or certified. Therefore, the information was not provided in the bill nor will it be provided in this letter because it doesn't exist."

b. Respondent's Legal Argument

Respondent cited to a 06/11/01 DFS OGC informal opinion which stated in part:

"In order for a service rendered to constitute a reimbursable health service, it must be a covered expense under either (A) or (B) below:

A) It falls under one of the enumerated categories included as expenses incurred pursuant to Section 5102(a)(i)(ii) and (iii), specifically including medical, hospital, surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services; psychiatric, physical and occupational therapy and rehabilitation; or

It falls under the category of "other professional health services" under Regulation 65, 11 NYCRR 65.15(o)(vi). To be covered under this category, the service rendered must be:

A health service licensed under New York law or, when performed out-of-state, required to be licensed under New York law; and

When performed, such health service must fall within the lawful scope of the provider's license."

Respondent cited to a number of Awards by other Arbitrators, including a recent Award by Arbitrator Adelson, which involved these parties, in support of its position.

In Matter of Refuah Diagnostics LLC and Allstate Property and Cas. Insurance Co., AAA Case No. 17-23-1303-7894 (07/15/24), Arbitrator Adelson set forth a detailed factual and legal analysis with respect to the issue of whether this Applicant has standing to bring a claim for No-Fault benefits.

As stated by Arbitrator Adelson:

"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). . . .

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)."

Moreover, as noted above, the services at issue in this case are for the technical component of the testing. In the above Award, Arbitrator Adelson explained:

"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)."

As set forth above, Applicant's bill for the technical component of the services does not identify the individual who performed these services, including whether they were an employee of Applicant. As stated by Arbitrator Adelson, *"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 . . . "*

The Award continued:

"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."

c. Applicant's Position

Counsel for Applicant asserted that the claims were properly reimbursable, noting that the doctor's name is on the medical records. However, I am not persuaded by Applicant's position, and note that the records appeared to be a review by a medical doctor of the services provided by a technician, whose name does not appear on the medical records. Moreover, the doctor's name does not appear on the form NF 3 for this claim. Respondent further noted that the medical doctor would presumably bill separately for the professional component of these services.

As noted above, Respondent issued specific verifications which sought information with respect to the technician and applicable licenses or certification of the same or of the technician's supervisor, and Applicant's verification response letter states that the

technicians do not need to be licensed or certified and that this information *"was not provided in the bill nor will it be provided in this letter because it doesn't exist."*

Applicant also submitted several Awards in support of its position; however, I find that the submitted Awards are inapposite to the facts in this case.

Based on a review of the evidence presented in this case, and upon consideration of the arguments raised by the parties at the hearing of this matter, I find that Respondent has submitted evidence and presented legal argument sufficient to establish its defense that Applicant is not entitled to receive No-Fault benefits on its claim on the grounds that Applicant, an LLC, did not have the proper licenses such that it would be eligible to receive payment of No-Fault benefits and furthermore, that there was no information provided with respect to the technician who performed the services at issue, and that thus Applicant does not have standing to bring the claim. *Accord, e.g., Refuah Diag. LLC and Nationwide Gen. Ins. Co.,* AAA Case No. 17-23-1291-9097 (Arb. Melis 07/20/24).

2. 120 Day Denial Defense

Because I find that Applicant does not have standing to bring the within claim, I find that it is not necessary to determine whether Respondent has established its defense that no payment was due on the claim pursuant to the "120 Day Rule."

Accordingly, Applicant's 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 Westchester

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

08/02/2024
(Dated)

Claire Gallagher

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:
18c7c1d74a6d6dc3a50a1b3e4a513968

Electronically Signed

Your name: Claire Gallagher
Signed on: 08/02/2024