

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Star Medical Diagnostic, PC
(Applicant)

- and -

Geico Insurance Company
(Respondent)

| | |
|--------------------------|------------------|
| AAA Case No. | 17-24-1338-1555 |
| Applicant's File No. | M09168 |
| Insurer's Claim File No. | 8775107850000001 |
| NAIC No. | 35882 |

ARBITRATION AWARD

I, Evelina Miller, 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: MJ

1. Hearing(s) held on 12/31/2024
Declared closed by the arbitrator on 12/31/2024

Ashley Andrews-Santillo Esq from Munawar Law Firm, PLLC participated virtually for the Applicant

Samantha Bibbo Esq from Rivkin & Radler LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,933.08**, was AMENDED and permitted by the arbitrator at the oral hearing.

At the time of the hearing Applicant amended amount in dispute to \$1,691.45.

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

3. Summary of Issues in Dispute

The dispute arises from the underlying automobile accident of May 5, 2023, in which the Assignor (MJ), a 41-year-old-female was involved. Thereafter, Assignor sought private medical attention, and was eventually recommended to undergo MRIs of the knee and shoulder which were performed on 7/6/23. Respondent conducted MRIs of the knee and shoulder which were performed on 7/6/23. Upon completion of the EUO on

11/18/22 Respondent sought verification requests from the provider to verify the claim. Thereafter, Respondent denied Applicant's bills for failure to comply with outstanding verifications within 120 days.

The issue presented at the hearing is whether Applicant's responses to verification requests were arguably responsive to the Respondent's initial requests for verification.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the submissions contained in MODRIA which are maintained by the American Arbitration Association. These submissions are the record in this case. My decision is based on my review of that file, as well as the arguments of the parties at the hearing. All the parties at this hearing appeared via ZOOM

I find that Applicant establishes its prima facie showing of entitlement to recover first-party no-fault benefits by submitting evidentiary proof that the prescribed statutory billing forms, setting forth the fact and amount of the loss sustained, had been mailed and received and that payment of no-fault benefits were overdue. See *Mary Immaculate Hospital v. Allstate Insurance Co.*, 5 A.D.3d 742, (2d Dept., 2004). Once an applicant establishes a prima facie case, the burden then shifts to the insurer to prove its defense. See *Citywide Social Work & Psy. Serv. P.L.L.C v. Travelers Indemnity Co.*, 3 Misc. 3d 608, 2004, NY Slip Op 2403.

Respondent conducted an EUO of the Applicant on 11/18/22. Upon receipt of Applicant's bills for dates of service of 7/6/23 Respondent issued post-EUO verification requests on 8/22/23 and 9/28/23. Thereafter, Respondent denied Applicant's bills for failure to comply with outstanding verifications within 120 days. Respondent sought the following:

"1. Lease agreement to which Star Medical is a party and proof of each payment Star Medical made thereunder regarding the location, 234-28A Merrick Blvd, Rosedale NY, 11422, at which Star Medical] purportedly rendered services during the time period of April 2021 through the present;

GEICO acknowledges that Star Medical provided a lease agreement and proof of payment from May 2022 to November 2022 but did not provide proof of payment for the time period of April 2021 through April 2022.

2. Purchase contract or agreement to which Star Medical is a party and proof of payment regarding the location, 234 West Merrick Rd. Valley Stream, NY 11580, at which Star Medical purportedly rendered services during the time period of February 2020 through the present;

GEICO acknowledges that Star Medical provided a lease agreement between PRQ Properties LLC and Star Medical and proof of payment from April 2022

through September 2022 but did not provide proof of payment for the time period of April 2020 through April 2022 or a purchase agreement as testified to by Dr. Qureshi (page 32, line 7).

3. Documents relating to the income and expenses of Star Medical, such as bank statements from Star Medical 's corporate Chase bank account including deposit and withdrawal logs from January 1, 2020 through the present, canceled checks (front and back) that evince payments from this account, and corporate tax returns (including quarterly reports); 4. A complete list of all the employees who are employed with Star Medical, and who provide or who have provided services on behalf of Star Medical, documents identifying the relationship between each individual and Star Medical (i.e., W-2s, 1099s, and/or K-1s);

4. A complete list of all the employees who are employed with Star Medical, and who provide or who have provided services on behalf of Star Medical, documents identifying the relationship between each individual and Star Medical (i.e. W-2s, 1099s, and/or K-1s);

GEICO acknowledges that Star Medical previously provided a complete list of all employees but indicated that Star Medical is not in possession of W-2s, 1099s, or K-1s for 2022. However, Dr. Qureshi testified that many employees have been employed with Star Medical since 2021 (page 48, line 22) (page 55, line 11), (page 56, line 17) (page 57, line 7) (page 60, line 4) (page 63, line 6). Accordingly, GEICO reiterates its demand for the documents previously requested as part of item #4.

Respondent's contentions regarding the need for such verification is supported by an affidavit by Amanda Smith, an employee and investigator in the company's Special Investigative Unit (SIU). She explains that respondent's investigation into the applicant concerned whether the services provided were the result of an unlawful referral relationship with other medical practices; whether applicant is engaged in an unlawful or otherwise improper fee-splitting and kickback scheme; and whether the services were necessary and were performed and billed pursuant to a pre-determined, fraudulent treatment and billing protocol designed solely to enrich the applicant.

She contends that respondent's investigation revealed evidence that:

- Applicant may be engaged in an unlawful or otherwise improper referral relationship with other medical practices;
- applicant may be engaged in unlawful or otherwise improper fee splitting; and
- applicant may be performing services pursuant to a predetermined fraudulent and billing protocol.

She explains that applicant is owned by Dr. Pervaiz Qureshi (Qureshi) and that applicant renders MRI services at 234 W. Palmeri Road in Valley Stream. The applicant's

incorporation documents initially listed Naiyer Imam (Imam) as a co-owner. They were involved in a prior lawsuit brought by the respondent which alleged that Excel Imaging was not owned and operated by Dr. Qureshi and Imam but by non-physicians. (She does not detail the results of that lawsuit and its allegations).

She contends that Imam had a medical malpractice claim filed against him in 2017 due to an MRI reading and there are consequences to him as a result of that claim. She further contends that the applicant has been the subject of other investigations where the ownership of the provider has been questionable. Imam has purported to be the owner of another MRI practice, American Medical Initiatives, which has demonstrated behavior calling into question whether the provider was eligible to collect no-fault benefits.

She explains that a review of patient files revealed that the majority of patients treated at a multidisciplinary facility and received an identical course of care which included chiropractic care, physical therapy, acupuncture and diagnostic testing and referrals to the applicant for MRI exams. She argues that the treatment was "cookie-cutter" and indicative of a predetermined protocol.

She further explained that many patients who underwent MRI studies at the applicant received referrals from multidisciplinary medical practice offices or "clinics" which is suspected of being owned or controlled by laypersons. She also argues that most of the MRI exams were referred before the patient's respective conservative therapy regimens were completed, further evidence of a pre-determined protocol and contends they were in exchange for kickbacks or other some other form of consideration.

Applicant is not listed as accredited by the American College of radiology. She says the lack of accreditation raises suspicion that the equipment did not meet specific quality guidelines.

Dr. Qureshi appear for the EUO on November 18, 2022. At the EUO he explained that:

- He had two different co-owners in the span of two years and that Dr. Solomon took over as co-owner after Imam left in September 2021;
- he was not aware of Imam's professional misconduct and license revocation;
- has a written ownership agreements with Robert Solomon;
- the applicant operates from two locations and he purchased the building where the Valley Stream office is located in cash for \$1.2 million;
- he purchased the MRI machines at both locations from prior owners;

- he has a maintenance contract with Numar medical which had the contract with the prior MRI facility;
- he supervises number of offices including two MRI locations and three other medical businesses concurrently;
- he is not a licensed radiologist;
- has approximately 15 employees including MRI technicians and one radiologist but does not have written employment agreement or some memorialization regarding the rate of pay;
- he does all of his own marketing and physically went to many offices in Long Island, Queens and Brooklyn to market his services;
- he received referrals from "all over";
- he does not know who created the boilerplate MRI questionnaire used by the applicant;
- he does not review any patient medical records prior to providing MRIs;
- he does not review MRI prescriptions;
- he has no idea if Robert Solomon reviews MRI reports;
- Robert Solomon is not physically present at the location;
- applicant is not listed on the American College of Radiology Accreditation list;
- he is a salaried employee, compensated at \$10,000 per week;
- he is not sure whether the applicant filed taxes for 2021 or for file quarterly taxes;
- he does not know the applicant's gross revenue, total expense or profits. Following the EUO respondent requested additional verification as a result of the testimony including:
 - a lease agreement for the Merrick Boulevard location and acknowledges receipt of the lease agreement and proof of payment for May, 2022 to November, 2022 but applicant did not provide proof of payment for the time period, from April, 2021 through April, 2022;
 - a purchase contract or agreement to which the applicant is a party, and acknowledges that receipt of a lease agreement between PRQ Properties LLC and Star Medical and proof of payment from April, 2022 through September, 2022 but no proof of payment for the period April 2020 to April, 2022 or a purchase agreement for the property;

- documents related to income and expenses of the applicant such as bank statements from the applicant's Chase Bank account;
- a complete list of all employees who were employed by the applicant and provided services on behalf of the applicant, and acknowledges receipt of a complete list of employees but applicant indicated it is not in possession of W-2s, 1099s or K-1's for 2022. Many employees have been employed by the applicant since 2021.

Applicant submitted responses to respondent's verification requests but objected to the following items:

- (i) proof of payments made in 2021 pursuant to the applicant's lease agreements for both the Rosedale and Valley Stream offices;
- documents related to the income and expenses of the applicant from January, 2020 to the present; and
- W-2s for all applicants employees.

Applicant contends that the information requested was not necessary to verify the claims as:

- proof of payments made in 2021 were not relevant to the reimbursement of services performed in 2022;
- documents related to the income and expenses of Star Medical are outside the scope of what an insurer may obtain through the verification process, and (iii) W2's from 2021 are not relevant to the reimbursement of services performed in 2022;
- at the time of respondent's requests, W2's from 2022 were not yet available.

Applicant responds to respondent's arguments that the verification request is appropriate by arguing that:

- respondent has failed to provide any evidence that the practice is engaged in unlawful or improper referral relationships, fee splitting or kickbacks. Dr. Qureshi was asked about referral agreements at the EUO and answered that he has none.;

- The SIU affidavit incorrectly states that Dr. Qureshi was unable to state the name of the physician or facility that refers patients to the applicant. In fact, Dr. Qureshi said that instead of receiving referrals from a specific facility or medical doctor he received them from "all over";
- Dr. Qureshi personally conducted all marketing on behalf of applicant by physically visiting other medical offices, and that there is nothing improper about such action;
- The SIU affidavit discusses a number of allegations and legal actions against Dr. Naiyer Imam, a previous owner of Star Medical, and points out that Dr. Qureshi was not aware of a 2022 license revocation for Dr. Imam, but that Dr. Imam was not a co-owner at that time, having left the company in September, 2021. Further, any misconduct leading to the revocation of Dr. Imam's license did not occur within the scope of his ownership of the applicant or during his employment as radiologist at the applicant. Finally, any misconduct by Dr. Imam is irrelevant to whether the applicant is eligible for reimbursement for services performed after he left the practice;
- the new owner, Dr. Robert Solomon, has a written shareholder agreement executed in September, 2021 which was provided to the respondent;
- the standard of care for musculoskeletal injuries is treatment with conservative care such as chiropractic, acupuncture and physical therapy followed by referral for MRI exams if there is not resolution of the symptoms. Therefore, there is nothing unusual about the referrals for MRI exams here, and refers to the following references to support that argument: New York Workers' Compensation Board Guidelines (2014); the 2014 NIA Standard Clinical Guidelines; and the American College of Radiology Guidelines, ACR Appropriateness Criteria (2018);
- because all of applicant's patients are referred from other elegant medical offices, treatment that happens before the patient is referred to the applicant is outside of applicant's control;
- although Dr. Qureshi testified that the applicant is not accredited by the American College of Radiology, he did testify that applicant is accredited by the Intersocietal Accreditation Commission (IAC) which has a very lengthy detailed process that MRI facilities must offer undergo in order to obtain accreditation, and that there is no requirement for accreditations for the collection of no-fault benefits;
- Star Medical employs Numar Medical to provide preventative maintenance on the MRI machines to maintain the quality of images.

GEICO acknowledges that Star Medical previously provided a complete list of all employees but indicated that Star Medical is not in possession of W-2s, 1099s, or K-1s for 2022. However, Dr. Qureshi testified that many employees have been employed with Star Medical since 2021 (page 48, line 22) (page 55, line 11), (page 56, line 17) (page 57, line 7) (page 60, line 4) (page 63, line 6). Accordingly, GEICO reiterates its demand for the documents previously requested as part of item #4."

11 NYCRR § 65-3.2 Claim practice principles to be followed by all insurers, which reads:

- (a) Have as your basic goal the prompt and fair payment to all automobile accident victims.
- (b) Assist the applicant in the processing of a claim. Do not treat the applicant as an adversary.
- (c) Do not demand verification of facts unless there are good reasons to do so (emphasis added).

The propriety of a request for additional verification must hinge on the Regulation, "Do not demand verification of facts unless there are good reasons to do so". The burden must fall upon the respondent to show that something about the operation of the applicant is amiss.

Applicant's counsel argued that Applicant is in full compliance with these requests as its office submitted the majority of the documents requested by the Respondent. Applicant's counsel asserted that voluminous responses have been provided and the remaining items have been objected to by the Applicant as improper. She argued that the remaining items were overbroad, burdensome and unreasonable, and that such demands for these documents exceeded the bounds of permissible requests under the Regulations. Applicant's responses dated December 19, 2022, provided: medical records, Certification of Incorporation and Shareholder Agreement, a list of employees along with the licenses/certifications for the MRI technicians and licenses for the physicians, lease agreement for the Rosedale office along with proof of payment for the time period in dispute, lease agreement between PRQ Properties LLC and the applicant along with proof of payment for the time period in dispute, documentation identifying the make and model of the MRI machines used by [the applicant] and purchase agreements for the machines, Copy of the service agreement with Numar Medical, and documentation that establishes the accreditation of [the applicant] with the Intersocietal Accreditation Commission. She noted that the Applicant also responded to follow-up verification requests in a letter dated January 10, 2023, the letter stated as follows:

"Proof of lease payments prior to the dates of service in dispute are irrelevant to [the respondent's] investigation into [the applicant's] current eligibility for reimbursement of No-Fault claims. Similarly, W2's, 1099's, and/or K-1's for previous years have no relevance to services rendered in 2022."

Applicant's counsel highlighted that the Applicant also responded to the verification requests for this specific claim on 10/8/23.

Respondent denied Applicant's bill on 12/29/23 for failure to comply with Respondent's verification requests within 120 days.

Based on the evidence presented neither party ignored the verification requests or response. The Applicant communicated that verification is deemed closed and it was not required to submit any further information as the Respondent's requests were not proper. Based on Applicant's position Respondent in turn issued a denial. The question is whether Applicant's response to Respondent's verification requests would be considered arguably responsive, and whether the Respondent's requests were beyond the scope of the verification process and therefore would be considered improperly requested materials.

"The regulations do not give the insurer the right to ask an assignee to produce documents relating to the corporate structure or finances of a medical provider. Upon receipt of the completed verification form, the insurer can request additional verification. The regulations only permit the insurer to obtain written information to verify a claim." See *Dynamic Medical Imaging, P.C. v. State Farm Mut. Auto. Ins. Co.*, 2010 Slip Op 20285 (Dist. Ct. Nassau Co. July 15, 2010) (Emphasis added). See also, *Brownsville Advance Medical, P.C. v. Country-Wide Ins. Co.*, 33 Misc. 3d 1236(A), 941 N.Y.S.2d 536, 2011 N.Y. Slip Op. 52255(U) at 3 (Dist. Ct. Nassau Co. 2011) ("The demand for information relating to a Mallela defense is not obtainable through verification."); *Island Chiropractic Testing, P.C. v. Nationwide Ins. Co.*, 35 Misc. 3d 1235(A), 953 N.Y.S.2d 550 (Dist. Ct. Suffolk Co., C. 2012)("Permitting an insurer to obtain written documents such as tax returns, incorporation agreements or leases regarding a potential fraudulent incorporation 'Malella' defense as part of the verification process defeats the stated policy and purpose of the no-fault law and carries with it the potential for abuse.")

After thorough review and consideration of all submissions, I find that based on the evidence presented, Applicant has satisfied its obligation to respond to Respondent's verification requests. The responses provided are found to meet Applicant's burden as they are arguably responsive. Applicant has responded to these requests providing the majority of the verification materials requested and asserting legitimate legal objections with respect to the financial documents. I further find that Respondent has not come

forward with sufficient proof establishing a good faith basis and need for the financial documentation requested. Applicant complied by responding to most of the verification requests and asserting legitimate objections to the remaining documents.

The information elicited, however, does not establish the need for the additional verification requested after the EUO. That information, and the contentions of the respondent establish, instead, that Dr. Qureshi is a medical doctor who owns a medical practice and runs it as a business, as he is entitled to do. MRI facilities can be expected to perform MRI exams based on referrals from other medical providers and little, if any, MRI exams any other way. The purported treatment protocols that are of concern to the respondent are not the treatment protocols of the applicant but of referring medical providers. If there is some improper relationship between the applicant and some other medical providers, it is not demonstrated here.

At the time of the hearing Respondent argued that the claim was premature for Arbitration at the time it was filed. As more than 30 days elapsed from the date that applicant provided the verification requested, by letter dated January 11, 2024, the claim is ripe for adjudication as of February 10, 2023, and the filing is not premature.

Finally, Applicant argued that Respondent's first verification request dated October 20, 2023, was issued thirty-one (31) days after the receipt of the bill.

For the reasons set forth above, this claim is awarded.

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 |
|--------------|-----------------------------|---------------------|-------------------|----------------|----------------------------|
| | Star Medical Diagnostic, PC | 07/06/23 - 07/06/23 | \$966.54 | \$966.54 | Awarded: \$966.54 |
| | Star Medical Diagnostic, PC | 07/06/23 - 07/06/23 | \$966.54 | \$724.91 | Awarded: \$724.91 |
| Total | | | \$1,933.08 | | Awarded: \$1,691.45 |

B. The insurer shall also compute and pay the applicant interest set forth below. 02/27/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Since the motor vehicle accident occurred after April 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a). In accordance with 11 NYCRR 65-3.9c, interest shall be paid on the claims totaling \$1,691.45 from the date the arbitration was commenced.

C. Attorney's Fees

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

Respondent shall pay Applicant an attorney's fee upon the amount awarded plus the interest, as calculated in section "B" above, and in accordance with 11 NYCRR 65-4.6(e), i.e., 20 percent of the amount of first party benefits, plus interest thereon. The minimum attorney's fee payable shall be in accordance with 11 NYCRR 65-4.6c. For cases filed after February 4, 2015, there is no minimum attorney's fee but there is a maximum fee of \$1,360.00. However, if the benefits and interest awarded thereon is equal to or less than the respondent's written offer during the conciliation process, then the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6(b)."

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 Kings

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

01/30/2025

(Dated)

Evelina Miller

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:
9fd702ffa08a54ccf0b66b22f68c9019

Electronically Signed

Your name: Evelina Miller
Signed on: 01/30/2025