

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Syosset Surgicenter  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-24-1362-0827

Applicant's File No. 183203

Insurer's Claim File No. 0725305940

NAIC No. 29688

**ARBITRATION AWARD**

I, Anne Malone, 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: EIP

1. Hearing(s) held on 02/10/2025  
Declared closed by the arbitrator on 02/10/2025

Michael Spector , Esq. from The Odierno Law Firm P.C. participated virtually for the Applicant

Marilyn Oppedisano, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$13,207.13**, was AMENDED and permitted by the arbitrator at the oral hearing.

The amount claimed was amended by the applicant to \$3,902.16 to conform to the appropriate fee schedule.

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

3. Summary of Issues in Dispute

The 66 year old EIP reported involvement in a motor vehicle accident on August 11, 2023; claimed related injury and underwent right knee arthroscopic surgery provided at the applicant's facility on May 3, 2024.

The applicant submitted a claim for the facility services, payment of which was timely denied by the respondent based upon a peer review by Stuart Springer, M.D. dated June 4, 2023.

**The issue to be determined at the hearing is whether the respondent established that the right knee arthroscopy and related services, including the facility services at issue were not medically necessary.**

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

This hearing was held on Zoom and the decision is based upon the documents reviewed from the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

To support a lack of medical necessity defense respondent must "set forth a factual basis and medical rationale for the peer reviewer's [or examining physician's] determination that there was a lack of medical necessity for the services rendered." Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term2d, 11<sup>th</sup> and 13<sup>th</sup> Jud. Dists. 2014.)

The Civil Courts have held that a defendant's peer review or report of medical examination must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review or medical examination report's medical rationale will be insufficient to meet respondent's burden of proof if: 1) the medical rationale of its expert witness is not supported by evidence of a deviation from "generally accepted medical" standards; 2) the expert fails to cite to medical authority, standard, or generally accepted specifics as to the claim at issue, is conclusory or vague. See Nir v. Allstate, 7 Misc.3d 544 (N.Y. City Civ. Ct. 2005.)

To support its contention that the right shoulder arthroscopy and related facility services provided by the applicant were not medically necessary, respondent relies upon the report of the peer review by Dr. Springer, who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to her. Dr. Springer considered possible arguments and justification for the need for the medical services at issue and determined that they were not warranted under the circumstances presented.

Dr. Springer reviewed 30 medical records of treatment for the EIP from August 15, 2024 to May 3, 2024 related to the August 11, 2024 accident. He submitted a comprehensive report in which he discussed the medical services provided on May 3, 2024 and his reasons for determining that they were not medically necessary for this EIP.

Dr. Springer noted that the MRI studies of the right knee performed on December 26, 2023 revealed a tear of the medial meniscus and that the EIP underwent injections and underwent conservative treatment.

He discussed the standard of care for the injury to the EIP's right knee which included a course of conservative treatment. If exercise programs are unable to increase strength and range of motion in the knee after more than one month, surgery should be considered.

Based on Dr. Springer's report, the EIP received conservative treatment from December 22, 2023 and still had complaints of right knee pain, with swelling, tenderness over the medial joint line and decreased range of motion documented at the May 1, 2024 follow up evaluation by Dr. Suratwala. At that time right knee surgery was recommended and was performed on May 3, 2024.

Dr. Springer noted that although the claimant met the conditions in the standard of care based on the evaluations and other medical records he reviewed, he argued that the EIP was not evaluated and did not receive any form of conservative treatment for the right knee for more than 4 months from August 11, 2023 to December 18, 2023. Based on this lack of medical records to confirm treatment for four months post-accident, Dr. Springer determined that the causal relationship between the right knee complaints and the subject accident was not supported.

Dr. Springer supported, with relevant medical literature, his opinion that the right knee surgery and associated services, including anesthesia, pre-operative testing and office visit were not medically necessary.

Respondent has met its evidentiary burden. The peer review adequately sets forth the factual basis and medical rationale to support the conclusion that the medical services at issue were not indicated for this EIP. Therefore, pursuant to Bronx Expert Radiology, *supra* the burden shifts to the applicant, which bears the ultimate burden of persuasion to establish that the services at issue were medically necessary.

The applicant did not submit a formal rebuttal. However, the applicant relies upon the submissions, including the medical records. The applicant's submissions only included the operative report. The submissions from the respondent did not include copies of all of the medical records listed in the peer review.

The applicant's submissions specifically demand that the respondent provide all records reviewed by the peer doctor.

Since only some of the records were submitted, the respondent has failed to establish that the right shoulder arthroscopy and related facility services at issue were not medically necessary.

**Accordingly, the applicant is awarded \$3,902.16 in disposition of this claim.**

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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
	Syosset Surgicenter	05/03/24 - 05/03/24	\$13,207.13	\$3,902.16	Awarded: \$3,902.16
Total			\$13,207.13		Awarded: \$3,902.16

- B. The insurer shall also compute and pay the applicant interest set forth below. 08/22/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month,

calculated on a *pro rata* basis using a 30 day month." See 11 NYCRR §64-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits" calculated pursuant to Insurance Department regulations. Where a claim is untimely denied, or not denied or paid, interest shall accrue as of the 30<sup>th</sup> day following the date the claim is presented by the claimant to the insurer for payment. Where a claim is timely denied, interest shall accrue as of the date an action is commenced or an arbitration requested, unless an action is commenced or an arbitration requested within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the date the denial is received by the claimant. See, 11 NYCRR §65-3.9(c.) The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial was timely. LMK Psychological Servs. P.C. v. State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009.)

C. Attorney's Fees

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

Applicant is awarded statutory attorney's fees pursuant to the no fault regulations. For cases filed after February 4, 2015 the attorney's fee shall be calculated as follows: 20% of the amount of first-party benefits awarded, plus interest thereon subject to no minimum fee and a maximum of \$1,360.00. See 11 NYCRR §65-4.6(d.)

- 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 CT

SS :

County of Fairfield

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

02/12/2025  
(Dated)

Anne Malone

### **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:**  
622007e49be15d8033af6d2f34c75edc

### Electronically Signed

Your name: Anne Malone  
Signed on: 02/12/2025