

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

JR Medical PC  
(Applicant)

- and -

Allstate Insurance Company  
(Respondent)

AAA Case No. 17-24-1338-8103

Applicant's File No. DK23-433477

Insurer's Claim File No. 0649401312

NAIC No. 29688

**ARBITRATION AWARD**

I, Veronica K. O'Connor, Esq., 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 03/20/2025  
Declared closed by the arbitrator on 03/20/2025

Evan Polansky, Esq. from Korsunskiy Legal Group, P.C. participated virtually for the Applicant

Omid Khani, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,416.74**, 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 Assignor, a 36-year-old female, sustained injuries as a passenger in a motor vehicle involved in an accident that took place on April 28, 2022.

The issue presented is whether the Applicant is entitled to reimbursement for an evaluation and EMG/NCV study of the upper extremities performed on July 28, 2022.

The Respondent issued a denial based upon the Respondent's investigation, Applicant's examination under oath testimony, the services being performed by an independent contractor.

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

**Pursuant to 11 NYCRR 65-4 (Regulation 68-D), Section 65-4.5(o)(1), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary.**

**The decision below is based upon a review of all documents on file in the ADR Center maintained by the American Arbitration Association as of the date of this hearing, as well as any oral arguments of the parties and any testimony given during the hearing.**

The Assignor was involved in a motor vehicle accident on 4-28-22. The documentation submitted indicates that the Assignor was a passenger in the vehicle when the accident occurred.

The Applicant submission indicates that the \$1,416.74 amount in dispute is for an evaluation and EMG/NCV study of the upper extremities performed on 7-28-22.

On 4-28-23, the Respondent issued a denial indicating the following:

These bills are denied based upon Allstate's investigation into this claim, which included, in part, the examinations under oath of JR Medical conducted on December 9, 2022 and review of documentation that revealed patient referrals were obtained in violation of New York State law, including Public Health Laws 238-a and 238-d, as well as 8 NYCRR 29.1 (Unprofessional Conduct) and Education Law Title VIII, Article 131-A NY CLS Educ. 6530, Paragraphs 17 and 18. In addition, for services that were performed by persons other than Joseph Raia, M.D., the services were not properly supervised and were performed by independent contractors in violation of No-fault Regulation 11 NYCRR 65-3.11.

Based upon a thorough review of the evidence presented, the following has been determined:

The Respondent's investigation, the Applicant's examination under oath testimony and the issue regarding the services being performed by independent contractors has been addressed by numerous arbitrators.

In AAA Case No. 17-23-1287-9192 and 17-23-1301-5314, Arbitrator Nancy Kramer Avalone addressed the Respondent's investigation, the Applicant's examination under oath testimony and the issue regarding the services being performed by independent contractors. The pertinent portions of Arbitrator Avalone's awards are as follows:

***...Defense of Violation of NYS Public Health Laws & Education Law.***

*Respondent's denied the claim asserting the following:*

*These bills are denied based upon Allstate's investigation into this claim, which included, in part, the examinations under oath of JR Medical conducted on December 9, 2023, and review of documentation that revealed patient referrals were obtained in violation of New York State law. Including Public Health Law 238-A Parentheses barring financial relationships between certain providers and parentheses; Public Health Law 238-D requiring notice to patients of any financial relationships between. Providers; And Rules of the Board of Regents, Part 29. Unprofessional conduct. (8 NYCRR 29.1 providers); and Education Law Title VIII, Article 131-A NY CLS. Educ. In addition, for services that were performed by s persons other than Joseph Raia, MD, the services were not properly supervised and were performed by an independent contractors in violation of No fault Regulation 11. NYCRR 6--3.11.*

*In (Matter of Allstate Prop. & Cas. Ins. Co. v New Way Massage Therapy P.C., 134 AD3d 495 [1st Dept 2015]) the court concluded "...[W]hether or not the fee-sharing arrangement at issue constitutes unprofessional conduct (see 8 NYCRR 29.1 [b] [4]), it does not constitute a defense to a no-fault action." It further stated that "[I]t is solely a matter for the appropriate state licensing board. (citations omitted). Id. at 495.*

*Additionally, the issue with respect to Public Health Law Section 238 has been arbitrated numerous times. In rejecting the defense I am accompanied by other fellow arbitrators. See, See, e.g.: AAA Case Nos.: 17-16-1037-8989, 17-19-1123-7391, 17-17-1075-8956, 17-18-1097-4620, 17-19-1133-3638, and 17-16-1047-1539. In these matters, the respective Arbitrators determined that such a defense, even if adequately demonstrated, would not preclude an Applicant from receiving No-Fault benefits.*

### ***Findings of Fact.***

*Regarding the Education law violation, I find that the Respondent failed to submit sufficient evidence to support the assertion that the services were performed by an independent contractor. Therefore I deem Respondent's asserted defense was insufficient to deny reimbursement to Applicant for the services at issue herein....*

In AAA Case No. 17-23-1301-5317, Arbitrator Yael Aspir addressed the Respondent's investigation, the Applicant's examination under oath testimony and the issue regarding the services being performed by independent contractors. The pertinent portions of Arbitrator Aspir's award are as follows:

*Respondent's defense is based on an investigation of the claim, including the 12/09/23 EUO of Dr. Raia for JR Medical PC which revealed patient referrals were obtained in violation of New York State law. Additionally, Respondent relies on Public Health Law 238-A which financial relationships between certain providers, and Public Health Law 238-D requiring notice to patients of any financial relationships between Providers. "And Rules of the Board of Regents, Part 29. Unprofessional conduct. (8 NYCRR 29.1 providers); and Education Law Title VIII, Article 131-A NY CLS. Educ. In addition, for services that were performed by*

*persons other than Joseph Raia, MD, the services were not properly supervised and were performed by an independent contractors in violation of No fault Regulation 11. NYCRR 6-3.11".*

*In Matter of Allstate Prop. & Cas. Ins. Co. v New Way Massage Therapy P.C., 134 AD3d 495 [1st Dept 2015]) the court concluded "...[W]hether or not the fee-sharing arrangement at issue constitutes unprofessional conduct (see 8 NYCRR 29.1 [b] [4]), it does not constitute a defense to a no-fault action." It further stated that "[I]t is solely a matter for the appropriate state licensing board. (citations omitted). Id. at 495.*

*Additionally, the issue with respect to PHL Section 238 has been arbitrated numerous times. In rejecting the defense I am accompanied by other fellow arbitrators. See, e.g.: AAA Case Nos.: 17-16-1037-8989, 17-19-1123-7391, 17-17-1075-8956, 17-18-1097-4620, 17-19-1133-3638, and 17-16-1047-1539. In these matters, the respective Arbitrators determined that such a defense, even if adequately demonstrated, would not preclude an Applicant from receiving No-Fault benefits.*

*Additionally, regarding the Education law violation, I find that the Respondent failed to submit sufficient evidence to support the assertion that the services were performed by an independent contractor.*

*Accordingly, I find Respondent's defenses insufficient to deny reimbursement for the services at issue in this matter. Applicant's amended claim is awarded.*

I find the decisions issued by Arbitrator Avalone and Arbitrator Aspir to be a thorough review of the issues raised by the Respondent. I find the conclusions to be very persuasive. I am therefore in agreement with their determination that the Respondent has failed to submit sufficient evidence to support its asserted defenses. As such, the Applicant is entitled to reimbursement for the evaluation and EMG/NCV study of the upper extremities performed on 7-28-22.

**Accordingly, Applicant is awarded \$1,416.74.**

(25-300)

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	Status
	JR Medical PC	07/28/22 - 07/28/22	\$1,416.74	Awarded: \$1,416.74
Total			\$1,416.74	Awarded: \$1,416.74

- B. The insurer shall also compute and pay the applicant interest set forth below. 03/04/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

**The insurer shall compute interest from the above arbitration request date, at the rate of 2% per month, simple (not compounded), on a pro rata basis using a 30-day month, and ending with the date of payment of the award, subject to the provisions of 11 NYCRR 65-3.9(c).**

**Pursuant to the Court of Appeals decision in LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., decided April 2, 2009 cited as 2009 NY Slip Op 02581, interest shall be calculated from the date listed above, regardless of whether the particular denials were issued timely or untimely.**

C. Attorney's Fees

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

**As the demand for arbitration was filed after February 4, 2015, this matter is subject to the provisions promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D). Accordingly, the insurer shall pay the Applicant an attorney's fee, in accordance with 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 NY

SS :

County of Suffolk

I, Veronica K. O'Connor, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

04/21/2025

(Dated)

Veronica K. O'Connor, Esq.

### **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:**  
d3b9c77ecb5d53dddaf3bda06f3acee3

### **Electronically Signed**

Your name: Veronica K. O'Connor, Esq.  
Signed on: 04/21/2025