American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Quality Anesthesia Services (Applicant)	AAA Case No.	17-24-1365-8329
	Applicant's File No.	408474
- and -	Insurer's Claim File No.	0745388686 2SJ
	NAIC No.	29688
Allstate Fire & Casualty Insurance Company (Respondent)		

ARBITRATION AWARD

I, Nicholas Tafuri, 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 (SM/SML)

1. Hearing(s) held on 04/24/2025
   Declared closed by the arbitrator on 04/24/2025

   Neil Menashe, Esq. from Neil Menashe Attorney at Law P.C. participated virtually for the Applicant

   Kasey Cranwell, Esq. from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$5,000.00**, was AMENDED and permitted by the arbitrator at the oral hearing.

   The amount claimed was amended, on consent of the parties, pursuant to the fee schedule, to $297.10.

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

3. Summary of Issues in Dispute

EIP (SM/SML), is an 18-year-old female, who was involved in a motor vehicle accident on January 30, 2024. Following the accident, EIP sought medical treatment. On July 18, 2024, EIP underwent surgical arthroscopy of the right shoulder.

Applicant's reimbursement claim, for the anesthesia services, is denied by Respondent based on the peer review report dated August 21, 2024, by Dr. Ronald L. Mann.

The issue presented: Whether Applicant is entitled to no-fault reimbursement for health services denied based on a peer review? Whether collateral estoppel is applicable?

4. Findings, Conclusions, and Basis Therefor

I have reviewed the documents contained in the ADR Center Record as of the date of the hearing and this Award is based upon my review of the Record and the arguments made by the representatives of the parties at the Hearing. Pursuant to 11 NYCRR 65-4 (Regulation 68-D), §65-4.5 (o) (1), an 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 case was decided on the submissions of the Parties as contained in the ADR Center Record maintained by the American Arbitration Association, and the oral arguments of the parties' representatives. There were no witnesses.

EIP (SM/SML), is an 18-year-old female, who was involved in a motor vehicle accident on January 30, 2024. Following the accident, EIP sought medical treatment. On July 18, 2024, EIP underwent surgical arthroscopy of the right shoulder.

It is well settled that an applicant establishes its *prima facie* showing of entitlement to No-Fault benefits by submitting evidentiary proof that the prescribed statutory billing forms had been mailed, received by the respondent and that payment of no fault benefits were overdue. Mary Immaculate Hospital v. Allstate Insurance Company, 5 A.D. 3d 742, 774 N.Y.S.2d 564 (2d Dept. 2004). I find that applicant established its *prima*

facie case of entitlement to No-Fault compensation for its claim. The burden then shifts to Respondent to prove that the bills in question were properly denied.

Applicant's reimbursement claim, for the anesthesia services, is denied by Respondent based on the peer review report dated August 21, 2024, by Dr. Ronald L. Mann.

Medical Necessity

In order 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." See Provvedere, Inc. v. Republic Western Ins. Co., 2014 NY Slip Op 50219(U) (App. Term 2d, 11th and 13th Jud. Dists. 2014.) Respondent bears the burden of production in support of its lack of medical necessity defense, which, if established, shifts the burden of persuasion to applicant. See Bronx Expert Radiology, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 52116 (App. Term 1st Dept. 2006).

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); See also, All Boro Psychological Servs. P.C. v. GEICO, 2012 Slip Op 50137(U) (N.Y. City Civ. Ct. 2012.) "Generally accepted practice is that range of practice that the profession will follow in the diagnosis and treatment of patients in light of the standards and values that define its calling." Nir, *supra.*

In a prior award (AAA Case No.: 17-24-1373-6569), involving EIP, the subject accident, the physician assistant fee for the shoulder arthroscopy performed by Dr. Feliciano, and Respondent's defense based on a peer review dated 8/21/24, by Ronald Mann, M.D., I found, in pertinent part, the following:

…Applicant's reimbursement claim, for the Physician Assistant fees associated with the surgical procedure, is denied by Respondent based on the peer review report dated August 21, 2024, by Dr. Ronald L. Mann. Respondent also asserts a fee schedule defense.

In support of its defense that the right shoulder arthroscopy, performed on 7/18/24, and all associated services, were not medically necessary, Respondent relies on a peer review by Dr. Ronald Mann, dated August 21, 2024. Dr. Mann reports that EIP injured her right shoulder in the accident of 1/30/24. On 3/27/24, EIP presented to Dr. Feliciano with right shoulder pain. The exam revealed positive objective findings, a recommendation for physical therapy, and a referral for an MRI. The right shoulder MRI of 4/2/24 revealed a torn tendon. A follow up evaluation on 4/23/24 by Dr. Feliciano revealed EIP with persistent right shoulder pain, and objective examination findings. Continued physical therapy was recommended. On 6/5/24, a follow up exam with Dr. Feliciano revealed EIP with continued right shoulder complaints, and positive findings. EIP was recommended to undergo right shoulder arthroscopy. On 7/1/24, Respondent's IME by Dr. Renzoni revealed EIP with no positive objective findings. On 7/18/24 EIP underwent a right shoulder arthroscopic labral repair, subacromial decompression, limited debridement, and synovectomy. In finding a lack of medical necessity, Dr. Mann asserts that there was an inadequate attempt at conservative treatment. Dr. Feliciano should have considered continuous physical therapy for at least 3 to 6 months prior to recommending surgery. In addition, Dr. Mann avers that the treating physician should have considered 3 cortisone injections in one year before considering the surgical intervention. The MRI did not reveal a complete tear of the rotator cuff. Citing medical authority, Dr. Mann states that surgery for this type of damage is reserved for people who cannot recover their function with less invasive treatments. Dr. Mann further bases his opinion on the IME by Dr. Renzoni. Based on all of the foregoing, Dr. Mann concludes that the right shoulder arthroscopy and all associated services were not medically necessary.

In addition to arguing that the peer review fails to establish a medical standard of care that was not adhered to by EIP's surgeon, Applicant relies on medical records, and the operative report, to establish medical necessity for the operative procedure.

As stated previously, based on its late submission, Applicant's rebuttal is precluded.

The surgical report by Dr. Feliciano reveals that EIP is an 18-year old female with a history of right shoulder pain, which was treated non-operatively. EIP failed conservative treatment. Surgical versus non-surgical treatment options were discussed. Given the symptoms, EIP elected to have surgical treatment. The arthroscopic surgery on 7/18/24, revealed synovitis, tearing of the glenoid labrum, and bursitis.

I note that every peer review requires individual scrutiny to determine whether the burden should be shifted back to the claimant to submit contrary expert proof. If the claimant can demonstrate, through references to the medical records or otherwise, that the peer review doctor's opinion lacks a sufficient basis and/or medical rationale because it is conclusory, or because it fails to address essential factual issues or is

based upon disputed or apparently incorrect facts, the insurer has fallen short of its burden of proof. Novacare Medical P.C. v. Travelers Property Casualty Ins. Co., 31 Misc.3d 1205(A), 927 N.Y.S.2d 817 (Table), 2011 N.Y. Slip Op. 50500(U) at 4, 2011 WL 1226956 (Dist. Ct. Nassau Co., Michael A. Ciaffa, J., Apr. 1, 2011).

With respect to Dr. Mann's peer review, I find that after such scrutiny, the burden does not shift back to Applicant to submit contrary expert proof. I find that the peer review is factually insufficient to meet the burden of persuasion. The peer review is conclusory with bald assertions which have been rejected by the Appellate Courts as insufficient to support a lack of medical necessity defense. No authority is cited to support the medical standards for the performance of a shoulder arthroscopy, or for the adequate performance of conservative care prior to surgery. The authority cited by Dr. Mann does not establish a requisite amount of physical therapy prior to the performance of arthroscopy. "Your doctor may recommend shoulder arthroscopy if you have a painful condition that does not respond to non-surgical treatment". EIP's medical records clearly indicate continued subjective complaints and objective examination findings, despite a course of physical therapy. Further, no authority is cited to establish a medical standard that administering corticosteroid injections are required prior to a shoulder arthroscopy. In this case, the surgery was conducted over 5½ months after the subject accident occurred. EIP was given the option of surgical versus non-surgical treatment, and she elected to undergo arthroscopy.

Based on the foregoing, I do not find that the peer review established a medical standard of care that was not adhered to by EIP's surgeon-Dr. Feliciano.

I further note that the peer review is based on an IME conducted by Dr. Renzoni. However, a review of the NF-10/EOB in this case reveals that the denial is based solely on the peer review by Dr. Mann. The denial is devoid of any mention that it is also based on an IME conducted by Dr. Renzoni.

A denial must "promptly apprise the claimant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated." General Accident Ins. Co. v. Cirucci, 46 N.Y.2d 862, 414 N.Y.S.2d 512 (1979). I find that the language contained in the subject denial, only establishes Respondent's defense based on the peer review by Dr. Mann. Since the denial fails to contain any mention of an IME by Dr. Renzoni, I am not persuaded by the content of an IME that purportedly found no medical necessity for further treatment.

Based on all of the foregoing, Applicant's reimbursement claim is granted…

It is well settled that res judicata and collateral estoppel are applicable to arbitration awards, including those rendered in disputes over no-fault benefits, and will bar re-litigation of the same claim or issue. Collateral estoppel bars a party from litigating again in a subsequent action or proceeding an issue raised in a prior action or proceeding and decided against that party or those in privity. See, Buechel v. Bain, 97 N.Y.2d. 295, 303 (2001). Two requirements must be met before collateral estoppel can

be invoked: (1) There must be an identity of issue, which has necessarily been decided in the prior action and is decisive of the present action; and (2) there must have been a full and fair opportunity to contest the decision now said to be controlling. Id. at 303-304, Comprehensive Med. Care of NY v. Hausknecht, 55AD3d 777(2008). The party invoking collateral estopped has the burden of establishing that the issue litigated is identical to the issue on which preclusion is sought. See Concord Delivery Service, Inc. v. Syosset Props, 19 Misc3d 40 (App Term, 9 & 10 Jud Dists 2008).

I am persuaded that the doctrine of collateral estoppel is applicable herein. It mandates that a party may not reassert an issue that has been determined in a prior arbitration, whether or not the tribunals or causes of action are the same. See, Ryan v. New York Telephone, 42 N.Y.2d 494, 478 N.Y.S.2d 823, 467 N.E.2d 487 (1984). Further, the Court of Appeals has held that issues resolved by earlier arbitration are subject to the doctrine of collateral estoppel. Rembrandt Industries, Inc. v. Hodges International, Inc., 38 N.Y.2d 502, 381 N.Y.S.2d 451 (1976).

I find that the issues are the same as those resolved in the prior arbitration (AAA Case Nos.: 17-24-1373-6569). The issue in the prior arbitration involved the same EIP and subject accident, the same issue of medical necessity for the shoulder arthroscopy performed by Dr. Feliciano on 7/18/24, and the same defense by Respondent based on the peer review by Dr. Mann. I find that Respondent had a full and fair opportunity to contest the determination. As such, I find, based upon my review of the record in this case, and the prior arbitration decision noted above, that the health services provided by Applicant were medically necessary.

Accordingly, based on all of the foregoing, and upon a preponderance of the evidence in the electronic case file and following consideration of the arguments raised at the hearing, Applicant's reimbursement claim is granted.

For date of service 7/18/24, Applicant is awarded the amended amount of $ 297.10.

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**
	Quality Anesthesia Services	**07/18/24 - 07/18/24**	**$5,000.00**	**$297.10**	**Awarded: $297.10**
Total			**$5,000.00**		**Awarded: $297.10**

B. The insurer shall also compute and pay the applicant interest set forth below. 09/18/2024 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall compute and pay to Applicant the amount of interest from the filing date of the Request for Arbitration, at a rate of 2% per month, simple interest (i.e. not compounded) 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).

C. Attorney's Fees

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

For cases filed on or 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 fee of $1,360.00. 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 Putnam

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

04/25/2025
(Dated)

Nicholas Tafuri

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:
b654dbf57d1dac8a149a3bf0a22b41f4

Electronically Signed

Your name: Nicholas Tafuri
Signed on: 04/25/2025