American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

United Pharmacy NYC Inc. (Applicant)	AAA Case No.	17-25-1410-1171
	Applicant's File No.	25-0118
- and -	Insurer's Claim File No.	A00006280016
	NAIC No.	16233
Erie Insurance Company Of New York (Respondent)		

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 06/29/2026
   Declared closed by the arbitrator on 06/29/2026

   Peter Coritsidis, Esq. from The Bangiyev Law Firm PLLC participated virtually for the Applicant

   Tori Buttrum, Esq. from Robyn M. Brilliant, P.C. participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$2,305.32**, 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 40 year old EIP reported involvement a motor vehicle accident on October 7, 2024; claimed related injury and received Naproxen Sodium, Cyclobenzaprine and Lidocaine ointment on October 13, 2024 and Naproxen Esomeprazole and Cyclobenzaprine provided by the applicant on November 15, 2024.

   The applicant submitted a claim for this oral and topical prescription medication, payment of which was denied by the respondent based upon a peer review by Douglas Unis, M.D. dated January 31, 2025. In response, the applicant submitted a rebuttal dated May 22, 2026 by Gaetan Jean Marie, DNP,FNP who was not the prescribing medical provider.

The issue to be determined at the hearing is whether the respondent established that the prescription medication at issue was not medically necessary for this EIP at the time it was provided.

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, 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.)

To support its contention that the Naproxen and Cyclobenzaprine prescription medication provided by the applicant was not medically necessary, respondent relies upon the report of the peer review by Dr. Unis who reviewed the medical records of the EIP and noted the injuries claimed and the treatment rendered to her. Dr. Unis considered possible arguments and justification for the need for the oral prescription medication at issue and determined that it was not warranted under the circumstances presented.

Dr. Unis determined that this medication was not medically necessary for this EIP and also found that the left shoulder arthroscopic surgery provided on December 16, 2024 was not necessary. He supported this opinion with a detailed

review of the criteria for determining the medical necessity for the type of surgery performed and the treatment rendered to this particular EIP.

Dr. Unis noted that the left shoulder MRI documented an interstitial tear with no tendon rupture from trauma. He also noted subjective complaints of pain and weakness with no relief from physical therapy approximately one month post-accident. An examination revealed no deformity or edema with tenderness, positive Neer's test and muscle weakness.

He discussed the American Academy of Orthopedic Surgeons (AAOS) standard of care for what he considered to be contusion/sprain/strain injuries to be conservative management and NSAIDs. He discussed in detail the appropriate treatment for these types of injuries and determined that the EIP did not meet these criteria.

Dr. Unis discussed in detail the AAOS Appropriate Use Criteria (AUC) to determine the appropriateness of treatment for rotator cuff tears and concluded based on this documentation that there was no medical necessity for the surgery or derivative services, including supplies and the prescription medications at issue provided to this particular EIP. Dr. Unis supported this opinion with relevant medical literature.

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

In opposition to the peer review, the applicant presented a rebuttal by Gaetan Jean Marie, DNP-FNP, who was not one of the EIP's treating or prescribing medical provider. According to the rebuttal he reviewed the EIP's medical records, disagreed with the conclusions reached by Dr. Unis and identified subjective and objective findings based upon unspecified evaluations.

There is no indication that this was at least the third claim for this medication since the date of the subject accident.

The rebuttal contains information regarding each of the medications prescribed for this EIP with citations related to the general uses and benefits of each one without specifying why each was medical necessity for this particular EIP at the time it was provided.

The conclusion of the rebuttal was that the Naproxen and Cyclobenzaprine were "medically, reasonable, appropriate and necessary" for the claimant's injuries.

The applicant did not submit a rebuttal which refers to and rebuts the findings of Dr. Unis. In addition, the medical reports submitted do not contradict the assertions made by him.

Under these circumstances, the applicant has failed to meet the burden of persuasion in rebuttal.

Based on the foregoing, I find that the respondent established that the prescription medication at issue was not medically necessary for this particular EIP at the time it was provided.

Accordingly, the claim is dismissed with prejudice.

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 claim is DENIED in its entirety

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.

07/28/2026
(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:
cfa0e34b89401abadf2a2d2e0b1ccbb2

Electronically Signed

Your name: Anne Malone
Signed on: 07/28/2026