American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Sedation Vacation Perioperative Medicine PLLC (Applicant)	AAA Case No.	17-26-1448-1538
	Applicant's File No.	26-11758
	Insurer's Claim File No.	1151497-02
- and -	NAIC No.	16616
American Transit Insurance Company (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 09/08/2026
   Declared closed by the arbitrator on 09/08/2026

   Vijay Gupta, Esq. from The Law Office of Thomas Tona, PC participated virtually for the Applicant

   Peter Famuyide from American Transit Insurance Company participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$207.97**, 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 34 year old EIP reported involvement in a motor vehicle accident on June 26, 2025 ; claimed related injury and underwent a lumbar percutaneous discectomy with anesthesia provided by the applicant on June 26, 2025.

   The applicant submitted a claim for these medical services, payment of which was timely denied by the respondent based on the IME of the EIP by Aruna Seneviratne, M.D. which was performed on September 30, 2024. The IME cut-off was effective on October 16, 2024.

Payment was also denied based on the peer review by Michael Tawfellos, M.D. dated July 25, 2025.

The issue to be determined at the hearing is whether the respondent established that the lumbar percutaneous discectomy and related anesthesia services provided by the applicant 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 in 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 respondent must "set forth a factual basis and medical rationale for the IME doctor'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 medical evidence must set forth more than just a basic recitation of the expert's opinion. The trial courts have held that a peer review 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 medical practice as a medical rationale for his/her findings; and 3) the peer review report fails to provide 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.)

IME

To support its contention that the medical services provided to the EIP were not medically necessary, the respondent relied upon the report of the independent medical examination of the EIP by Dr. Seneviratne which was objectively negative and unremarkable. Range of motion was determined with the assistance of a goniometer. The report presents a factually sufficient, cogent medical rationale in support of respondent's lack of medical necessity defense. Dr. Seneviratne performed a complete and comprehensive examination of the EIP

which did not identify objective positive findings and determined that there were no residual objective findings and that her injuries related to the subject accident were resolved.

Based upon the physical examination and medical records reviewed, Dr. Seneviratne determined that despite his subjective complaints, the EIP was not disabled and that he could perform his activities of daily living and working without restrictions. It was Dr. Seneviratne's opinion that there was no medical necessity for further orthopedic treatment, physical therapy, massage therapy, injections, surgery, diagnostic testing, durable medical equipment, household help or special transportation.

Peer

In support of its contention that the lumbar percutaneous discectomy and related anesthesia service provided by the applicant were not medically necessary, respondent also relies upon the report of the peer review by Dr. Tawfellos, who reviewed the medical records of the EIP, noted the injuries claimed and the treatment rendered to him. Dr. Tawfellos 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. Tawfellos discussed the standard of care for the injuries sustained by the EIP and determined that he did not meet these criteria. He noted that after receiving treatment for injuries sustain as a result of the July 6, 2024 accident, the EIP was not evaluated from January 21, 2025 to April 29, 2025. During this period there was no documentation of complaints of pain, records of conservative treatment, radiographic imaging or diagnostic evaluations to assess his spine.

Absent this documentation, Dr. Tawfellos determined that the absence of this information makes it unclear whether there was a causal relationship between the subject accident and the lumbar spine surgery.

Dr. Tawfellos supported, with relevant medical literature, his opinion that the lumbar percutaneous discectomy and related anesthesia services provided to the EIP were not medically necessary as related to the subject accident.

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

The applicant did not provide a rebuttal to the peer review or IME. It relied upon its submission of medical records which only included the Pre-OP report and an

evaluation of the EIP on June 26, 2025, the day of the surgery. This evaluation indicated that the EIP had undergone one LESI with temporary relief and physical therapy 2-3 times a week for 4 months.

The respondent also relied upon lumbar MRI studies which were performed on August 12, 2024. The MRI report was not submitted but according to the respondent's submissions the impression was normal alignment of lumbar lordosis, broad-based central disc herniation at L5-S1, with compression and impingement on the ventral thecal sac.

The IME and peer review indicate that in the evaluation report dated 7/18/24 the EIP complained of lower back pain with tenderness and muscle spasm with decreased range of motion and positive straight leg raise test un July of 2024.

However, there were no reports submitted by the applicant until the pre-op report and evaluation dated the day of the lumbar percutaneous discectomy with anesthesia on June 26, 2025 to support the medical necessity for the medical services at issue.

A review of the applicant's submissions reveals that it has failed to meet the burden of persuasion in rebuttal. The medical records submitted in opposition to the findings of Dr. Seneviratne and Dr. Tawfellos are insufficient to overcome the burden of production established by respondent.

Based on the foregoing, I find that the respondent has established that the lumbar percutaneous discectomy and related anesthesia services at issue were not medically necessary.

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.

09/16/2026
(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:
51664fc47c24341072917fcb0a509bed

Electronically Signed

Your name: Anne Malone
Signed on: 09/16/2026