

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

ORIGINAL

Present: HONORABLE JANICE A. TAYLOR IA Part 15  
Justice

V.S. MEDICAL P.C., et al. x

Petitioner,

Index  
Number 26604/2002

Motion  
Date 03/18/03

- against -

Motion  
Cal. Number 12

STATE FARM INSURANCE COMPANY, et al.

Respondent.

x

The following papers numbered 1 to 7 read on this motion by the petitioner for an Order declaring the rights of the parties in connection with a claim for benefits pursuant to Article 51, specifically, the rights of the parties concerning proof of claim and verification of facts via examination before oath.

QUEENS COUNTY CLERK  
FILED  
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03 APR 25 AM 10:30

	<u>Papers Numbered</u>
Notice of Petition-Petition-Exhibits.....	1 - 3
Service.....	4
Verified Answer and Affirmation in Opposition.....	5 - 7

Upon the foregoing papers it is ordered that the motion is decided as follows:

Petitioner seeks a declaration of its rights with regard to the respondent's request for verification of claims, provider eligibility, and proof of facts under examination under oath ("EUO") pursuant to the applicable regulations governing no-fault benefits in the State of New York, to wit, 11 N.Y.C.R.R. §65 et seq., and to defer payment of claims until such verification has been provided.

After reviewing the relevant regulations, the published decisional case law, and the cases submitted by respondent, the Court holds that the respondent has established the right to conduct the aforesaid EUO, pursuant to, *inter alia*, 11 N.Y.C.R.R. §§65-3.2(c), 3.5, 3.11, and 3.16. Specifically, respondent has

established good cause to demand verification of facts as to the legal structure of the petitioner's business in order to insure that, as a condition precedent to payment, the petitioner's services were performed by duly licensed individuals within the scope of their practice. (See, 11 N.Y.C.R.R. §65-3.16[a][6]). Issues regarding the ownership, licensing, and lawful scope of the petitioner's services also would be properly addressed by the inquiry sought to be undertaken by the respondent. Moreover, respondent has raised issues regarding the medical necessity of the services provided and the propriety of the charges therefor, which are also properly the subject of the respondent's verification requests. The Court finds that the factual predicate set forth by the respondent does not contravene 11 N.Y.C.R.R. §65-3.2(b), and in fact, sets forth good and cogent reasons for the inquiry.

As the Court stated in *Valley Phys. Med. and Rehab., P.C. v. N.Y. Central Mutual Ins. Co.*, 193 Misc.2d 675 [App. Term. 2d Dept. 2002]):

Cases in New York have held that proper licensing of a medical provider is a condition precedent to payment (see *GEICO v Southern Medical Devices*, Sup Ct, NY County, Nov. 5, 1993, Ciparick, J., Index No. 118101/93; *North Bx. Med. v State Farm*, Sup Ct, NY County, May 8, 2001, Lebedeff, J., Index No. 105274/01; *Advanced Care of N.Y., Inc. v John Friscia, et al.*, Sup Ct, Kings County, Feb. 22, 2000, Hall, J., Index No. 32528/99). In light of the Insurance Law's requirement that insurers enact fraud prevention plans (Insurance Law § 409), and the New York State Department of Insurance's Opinion Letters urging insurers to be more vigilant about potential fraud, discovery requests pertaining to plaintiff's license status and corporate structure, which are related to allegations of fraudulent billing, are proper discovery subjects (see *Valley Physical Medicine v Progressive Ins Co.*, Sup Ct, Nassau County, Nov. 2, 2001, Franco, J., Index No. 16993/99). (*Emphasis as in original.*)

As held Judge Wexler in *Great South Bay Medical Care, P.C. v. Allstate*, 204 F.Supp. 492 (E.D.N.Y., 2002), this Court similarly finds that *State Farm Mutual v. Mallela*, 175 F.Supp. 401 (E.D.N.Y. 2001) is not dispositive of the facts at bar, since it dealt with a distinct and limited factual scenario wherein nonpayment was predicated upon corporate formation alone. As such, *State Farm* stands for the narrow proposition that corporate formation alone is not a proper basis for denial of payments. The case at bar, as in *Great South Bay*, *supra*, presents more expansive allegations implicating the petitioner's billing practices and the performance of unnecessary procedures. (See, *Great South Bay*, *supra* at 499).

To the extent that petitioner contends that a delay of payment would be violative of 11 N.Y.C.R.R. §65-3.8(b)(1), that claim is

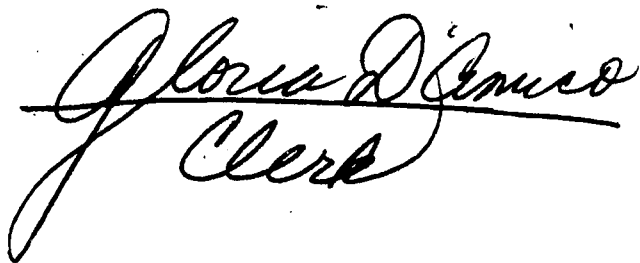
without merit, since by its express terms, that section prohibits a delay in payment pending the administration of a medical examination. (*Emphasis supplied.*)

Pursuant to 11 N.Y.C.R.R. §65-3.5(d), the EUO is to be held at a time and place reasonably convenient to the insured/applicant. However, having failed to respond to respondent's request, or propose an alternative venue, the Court holds that the aforementioned EUO shall be held at the offices of the attorneys for the respondent. The purported owner of the facility, Leonid Rosin, the office manager, Alex Finkelstein, and any other individuals deemed necessary shall be produced. Pursuant to 11 N.Y.C.R.R. §65-3.5(d), petitioner will be reimbursed for lost earnings and reasonable travel expenses incurred in complying with the request.

Accordingly, the motion by the petitioner is decided in accordance with the foregoing. The petition is dismissed.

Dated: March 31, 2003.

  
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JANICE A. TAYLOR, J.S.C.

  
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Clerk

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