

The Claw Back Scheme of PIP Carriers: Best Practices on How to Win



Patrick M. Causey

Introduction

- I. Insurance Fraud Defined
- II. Claw Back Scheme
- III. Best Practices

Initial Targets of Fraud Claims

Miami Division

[Home](#) • [Miami](#) • [Press Releases](#) • 2013 • [Two More Defendants Sentenced in Staged Automobile Accident Scheme](#)

Info This is archived material from the Federal Bureau of Investigation (FBI) website. It may contain outdated information and links may no longer function.



Twitter



Facebook



Share



Two More Defendants Sentenced in Staged Automobile Accident Scheme

Ninety-Two Defendants Have Been Charged to Date in Operation Sledgehammer I-VI

U.S. Attorney's Office

October 21, 2013

Southern District of Florida

(305) 961-9001

Initial Targets of Fraud Claims

- Between October 2006 and December 2012, the defendants perpetuated a fraud scheme where they staged car accidents.
- Named “Operation Sledgehammer” because they would hit cars with sledgehammers to make the damage look worse.



Initial Targets of Fraud Claims

- Owners of Clinics hired and paid medical doctors to pose as the “owners” of the Clinics.
- Patients stage car accidents, then go to the Clinics for “treatment”.
- 21 clinics participated in this scheme.
- \$20 million was collected over the six-year period from insurance companies
- 92 were charged. Over 50 were convicted. Over \$5 million was ordered in restitution.

Initial Targets of Fraud Claims

\$80 Million in Health Care Fraud Exposed After Patient's Suspicious Death

A chiropractor's office stole from Medicare for years. Here's how crimes like this affect you

By Rene Ebersole, AARP

Published June 06, 2023 • [EN ESPAÑOL](#)



ILLUSTRATIONS BY RYAN INZANA

ADVERTISEMENT

T 5G HOME INTERNET

ONLY \$50/mo.

w/ AutoPay discount using eligible payment method

Initial Targets of Fraud Claims

- Debbie Dillinger was a 47-year old mother of three with chronic neck pain and headaches following car accident.
- Visited Clinic run by two brothers, Jay and Jeff Spina.
- Charles Bagley, M.D. and neurologist, provided her a facet injection.
- Experts say a facet injection should not be done more than 8x in a year.
- This was her third injection in one month.
- She stopped breathing immediately after the injection, and later died.

Initial Targets of Fraud Claims

- Five months later, the FBI showed up to the Clinics.
- One year later, the government announced the owners pled guilty to conspiracy to commit health care fraud.
- \$80 million was defrauded from insurance providers from 2011-2017.
- In 2019, as part of their plea deal, they were ordered to pay \$28 million in total restitution.

Initial Targets of Fraud Claims

- So what did they do wrong?
- For one, they operated numerous healthcare clinics that were not properly licensed.
- They referred patients between their various healthcare clinics for services they did not need.
- Started small: exaggerated billing
- Quickly got greedy: billed for services never provided to patients.
- They would perform a service for a patient, then bill it to multiple insurance companies

Initial Targets of Fraud Claims

- In an email dated in 2013, Jay Spina actually emailed his brother saying “I think you had better keep a closer watch on [the exorbitant billing]. If there is an audit by Medicare, there is no way out of this one.”
- Another doctor emailed Jeff Spina saying: “There are lines of honesty and professionalism in producing documentation that I will not cross, and I want the threats of being fired [coming from Jeff, Jay, and their sister Kimberly] unless I do so to stop immediately.”

Insurers Pivot to Major PI Players

State Farm sues Ask Gary empire, wants money back



Insurers Pivot to Major PI Players

- State Farm and Allstate filed suit, seeking millions paid since 2005 to the Physicians Group accident clinics Ask Gary founded.
- They claimed Ask Gary paid kickbacks in violation of Florida laws, including the Patient Brokering Act, the Anti-Kickback Statute and the Patient Self-Referral Act.




Insurers Pivot to Major PI Players

- People calling 1-800-Ask-Gary after a car accident would be referred to PI attys
- PI attys pay significant \$ to get on list
- In exchange, have to send patients for treatment to clinics owned by Ask Gary
- Affidavit from lawyer Anthony Gadlage, who stated that he lost his job at Winters & Yonker law firm because he refused to participate in a *quid pro quo* referral pact with 1-800-Ask-Gary.
- Case ultimately settled after several years of lengthy, expensive litigation.

Insurers Pivot to Major PI Players

Allstate : Alleged Multi-Million Dollar Fraud Ring Target of Federal Lawsuit

March 06, 2008 at 11:37 am EST

 By The editorial team

 Share

IRVING, Texas, March 6 /PRNewswire-FirstCall/ -- An Arlington, Texas based chiropractic company and its owner lead a list of 66 defendants in a federal fraud lawsuit filed Thursday in Dallas. The suit alleges deception and coercion were used against people involved in automobile accidents at clinics in Texas, Ohio, Indiana, and Alabama.

Insurers Pivot to Major PI Players

- The lawsuit alleged fraud and violations of the federal RICO statute.
- 66 defendants seeking \$10 million
- Chiropractors, medical doctors, attorneys, and a telemarketing company.
- Telemarketing company called people in car accidents and invited them to receive free medical treatment at clinics in Texas, Ohio, Indiana, or Alabama.
- Patients were told they had serious injuries from the car accident (even if they did not) and were convinced to receive treatment.
- The treatment was standardized for every patient, regardless of their injuries.
- The patients were referred to lawyers on the promise that their medical expenses would get paid for.

Insurers Target Smaller Clinics

PREDETERMINED TREATMENT PROTOCOL



Insurers Target Smaller Clinics

BEFORE: Every treatment for every patient is **identical**

NOW: A predetermined and medically unnecessary course of treatment that consists of the **same or substantially similar** combination of at least three passive modalities and one active treatment provided to patients on **almost every visit**, regardless of patients' unique circumstances and needs

Insurers Target Smaller Clinics

- Targeting Solo Shops where 10% of patients are in PI space
 - Overutilization of expensive CPT codes
 - Charging for examinations when injections are performed
 - MRIs don't impact treatment

Insurance Claw Back Scheme

- What is the claw back scheme?
- Insurance carrier attempts to claw back payments made to medical provider years after the fact based on alleged “fraud”

Insurance Claw Back Scheme

- Section 627.736, F.S.: insurance carrier has 30 days to pay claim
- 627.736(4)(i): If an insurer has a reasonable belief that a fraudulent insurance act, the insurer shall notify the claimant, in writing, within 30 days after submission of the claim that the claim is being investigated for suspected fraud. The insurer has an additional 60 days to conduct its fraud investigation.

Insurance Claw Back Scheme

HOWEVER, 627.736 also states:

This paragraph **does not preclude or limit** the ability of the insurer to assert that the claim was unrelated, **was not medically necessary, or was unreasonable** or that the amount of the charge was in excess of that permitted under, or in violation of, subsection (5). **Such assertion may be made at any time**, including after payment of the claim or after the 30-day period for payment set forth in this paragraph.

Insurance Claw Back Scheme

Predetermined Protocol

- Use of same CPT Codes for each patient
 - 97140: Manual Therapy
 - 98940/41: Chiropractic Manipulations
 - 97110: Therapeutic Exercises
 - 97012: Mechanical Traction
 - 97039: Unlisted Modality

Insurance Claw Back Scheme

Predetermined Protocol

- High frequency of MRIs and X-Rays
- High frequency of EMC diagnosis
- Max out PIP benefits
- Discharging Patients with Permanent Injuries and Need for Continued Care

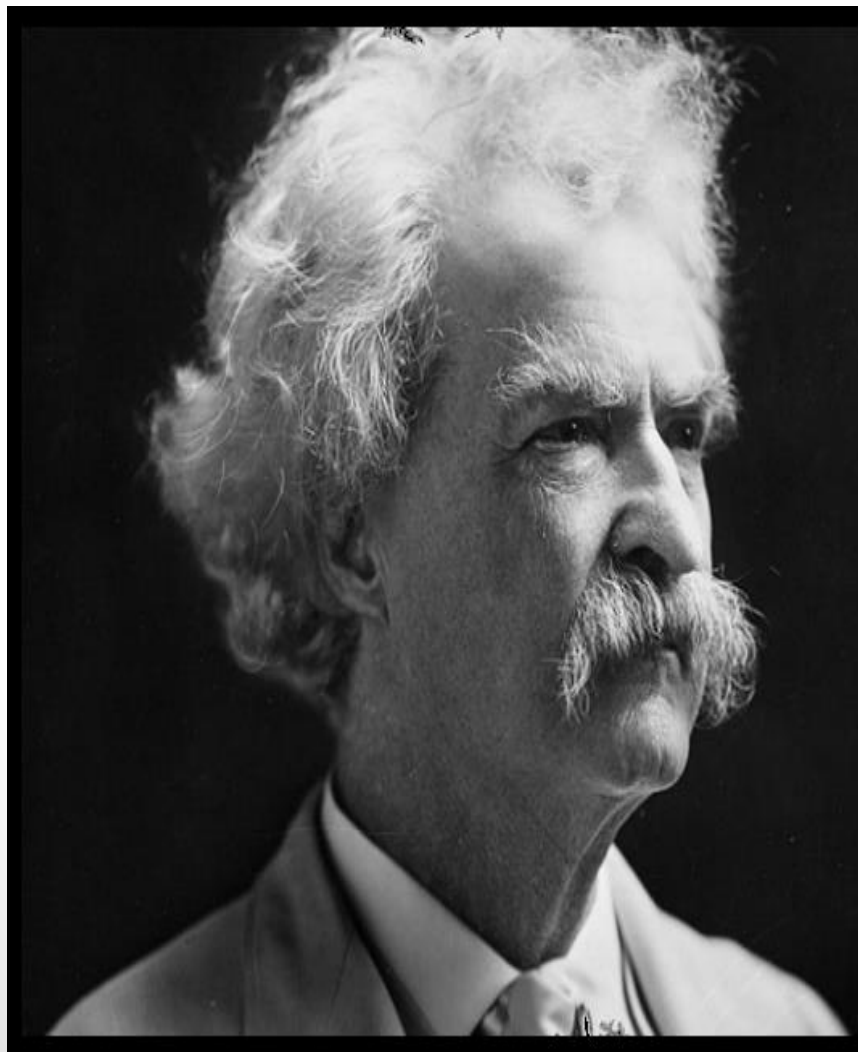
Insurance Claw Back Scheme

Predetermined Protocol

The Defendants document non-credible patterns of patient complaints and examination findings that are designed to justify the predetermined courses of treatment.

For example, the chiropractors document the overwhelming majority of patients ***suffer from neck and/or back pain following their auto accidents.***

Insurance Claw Back Scheme



"There are three kinds of lies: lies, damned lies and statistics."

[Mark Twain's]

State Farm Mutual Automobile Insurance Company v. Lewin

United States District Court, M.D. Florida, Tampa Division. | April 20, 2021 | 535 F.Supp.3d 1247 | RICO Bus.Disp.Guide 13,495 (Approx. 28 pages)

Document

Filings (3)

Negative Treatment (0)

History (2)

Citing References (45) ▾

Table of Authorities

Powered by KeyCite

Return to list

4 of 100 results

Original terms ▾

Show KeyCite® Flags

Go to ▾

Q ▾

A

campaign that urges them to call [1-800-411-7777] purportedly for legitimate legal and medical referrals. (Id. at ¶¶ 4, 65, 67-68). At least some of those callers were then referred to Path Medical clinics. (Id. at ¶¶ 4, 70, 77). Despite these referrals, Defendants allegedly caused these patients to sign forms falsely representing that they were not solicited by any person to seek medical services from Path Medical. (Id. at ¶¶ 4, 78-80).

Once the individuals became Path Medical patients, Defendants allegedly performed services on those patients pursuant to a **"predetermined protocol,"** designed to provide patients with medically unnecessary services so as to exploit their PIP insurance benefits. (Id. at ¶ 5). The **predetermined protocol** allegedly included: (1) "failing to legitimately examine patients to determine the true nature and extent of their injuries;" (2) "documenting a litany of diagnoses for each patient, most often exceeding ten or more diagnoses per patient, including predetermined findings of sprains and/or strains, to justify a predetermined course of medically unnecessary treatment;" (3) "falsely documenting [that] patients had sustained an emergency medical condition ... as a result of their auto accident to maximize Defendants' collection *1254 of [PIP insurance benefits];" (4) "routinely providing medically unnecessary durable medical equipment ... to patients;" (5) "providing the predetermined course of treatment to patients, [consisting] of five or more modalities on virtually every visit;" (6) "ordering medically unnecessary x-rays and [magnetic resonance imaging ("MRIs");]" and (7) "performing final examinations falsely documenting [that] nearly every discharged patient ... suffers from a permanent impairment, despite receiving the extensive battery of services in the **[p]redetermined [p]rotocol.**" (Id.). Path Medical would then submit bills for these services to Plaintiffs. (Id.).

In support of this alleged **predetermined protocol**, Plaintiffs provide examples of individuals who were treated following the same accident and were subject to "the same or nearly identical treatment" and "discharged with impairments on or about the same date." (Id. at ¶¶ 105-06). For example:

State Farm Mutual Automobile Insurance Company v. Elite Health Centers, Inc.

United States District Court, E.D. Michigan, Southern Division. | July 2, 2019 | Not Reported in Fed. Supp. | 2019 WL 2754653 (Approx. 15 pages)

Document

Filings (5)

Negative Treatment (0)

History (17)

Citing References (10) ▾

Table of Authorities

Powered by KeyCite

Return to list

6 of 100 results

Original terms ▾

Show KeyCite® Flags

Go to ▾



Q ▾

AA



the personal injury attorneys with whom Defendants have critically important cross-referral relationships.” (*Id.* ¶ 80.) As discussed in more detail below, State Farm has shown that Morse was involved in the solicitation of accident victims, both for representation by him and for treatment at Defendants’ clinics, through *quid pro quo* cross-referral relationships.

2. The “Predetermined Protocol”

State Farm alleges that the Defendants next proceed pursuant to a **predetermined** treatment **protocol** (the “**Predetermined Protocol**”) whereby the contacted patients are typically evaluated initially by an Elite chiropractor, who makes a list of predetermined findings and diagnoses and then recommends a **predetermined** chiropractic treatment **protocol** (which is not individually tailored to the particular patient), typically consisting of treatment three times per week for up to 12 weeks. During that treatment, patients are sent to one of the Defendant Elite clinics for evaluation by a physician who in turn conducts a fraudulent examination and prescribes physical therapy pursuant to the **Predetermined Protocol** at one of the Defendant physical therapy clinics, while continuing (often duplicative) chiropractic treatment. Defendant chiropractors and doctors also order unnecessary MRIs for patients, performed at one the MRI facilities in which Defendants (and Morse) have an ownership or other financial interest—either Horizon Imaging, LLC (“Horizon”) or Defendant Superior Diagnostics, Inc. (“Superior”). This cycle continues until either the patient voluntarily stops treatment or State Farm stops paying, based on the result of an independent medical examination (“IME”).

The three defendants who owned and controlled the clinics and MRI facilities at issue are: (1) Derek Bittner, D.C.; (2) Mark Radom (Morse’s former brother-in-law); and (3) Jayson Rosett.

3. Morse, Radom, PIF and Bio-Magnetic

According to State Farm, and as set forth in detail in its motion, although not a named defendant in this case, attorney Michael Morse is an



State Farm Mutual Automobile Insurance Company v. Metro Pain Specialists P.C.

United States District Court, E.D. New York | May 20, 2022 | Slip Copy | 2022 WL 1606523 (Approx. 32 pages)

Document

Filings (9)

Negative Treatment (0)

History (5)

Citing References (5) ▾

Table of Authorities

Powered by KeyCite

Return to list

12 of 100 results

Original terms ▾

Show KeyCite® Flags

Go to ▾



The examinations “virtually always conclude patients require a treatment plan consisting of a combination of physical therapy, chiropractic care, and [acupuncture](#), as well as other services,” which “are then performed by physical therapists, chiropractors, and acupuncturists in the clinics, not because they are necessary, but pursuant to ‘pay to play’ financial arrangements with Metro Pain and others who are working with [Metro Pain](#).” (*Id.* ¶ 10.) In particular, some providers are permitted to treat patients of Metro Pain “because they make payments to Metro Pain in exchange for patient referrals, typically disguised as ‘rent’ pursuant to a sublease for space in the clinic.” (*Id.*)

Through this scheme, patients were subjected to a **predetermined** treatment **protocol** (the “**Predetermined** Treatment **Protocol**”) at the gatekeeper locations. (*Id.* ¶ 17.) The **Predetermined** Treatment **Protocol** included: (a) “initial examinations that are not legitimately performed to determine the true nature and extent of patient injuries, but rather are performed as a pretext to justify a variety of unnecessary treatment and services;” (b) “a treatment plan involving physical therapy, chiropractic care, [acupuncture](#), and other services rendered by providers who have financial arrangements with Metro Pain;” (c) treatment by the Physical Therapy Defendants, the Chiropractor Defendants, the [Acupuncture](#) Defendants, the MRI Defendants, and/or the DME Defendants “who have entered into financial arrangements with Metro Pain and who purportedly examine patients, diagnose injuries to support additional treatment, and provide medically unnecessary [services, tests, treatments, and Supplies];” (d) medically unnecessary diagnostic tests, prescription gels and patches, and pain management and orthopedic consultations followed by procedures performed by the ASC Defendants with [anesthesia](#) provided by Citimed Services or Premier Anesthesia. (*Id.*)

State Farm Mutual Automobile Insurance Company v. Injury Care Chiropractic, LLC

United States District Court, W.D. Kentucky, Louisville Division | September 28, 2021 | Slip Copy | 2021 WL 4449996 (Approx. 6 pages)

Document

Filings (1)

Negative Treatment (0)

History (0)

Citing References (1) ▾

Table of Authorities

Powered by KeyCite

Return to list

14 of 100 results

Original terms ▾

Show KeyCite® Flags

Go to ▾

Q ▾

AA

a fraudulent scheme by [Injury Care] to obtain money from [State Farm] by submitting, or causing to be submitted, bills and supporting documentation for chiropractic and therapeutic services purportedly provided to individuals ("patients") who have been involved in automobile accidents and are eligible for Personal Injury Protection ("PIP") benefits under State Farm Mutual and State Farm Fire insurance policies, when, in fact, the services were not rendered because they were medically necessary.

[DE 22 at 815]. State Farm alleges that "the services were rendered pursuant to a **predetermined** treatment **protocol** (the "**Predetermined Protocol**") that is designed and carried out to enrich Defendants by exploiting the patients' eligibility for PIP benefits and not to address the unique circumstances and needs of any individual patient." [DE 22 at 815]. State Farm asserts the **Predetermined Protocol** enables Injury Care "to exploit and collect the patients' available PIP benefits," rather than "legitimately examine, diagnose and treat patients." [DE 22 at 817]. State Farm also alleges the "scheme began at least as early as 2016, and has continued uninterrupted since that time ..." [DE 22 at 817]. Paragraphs ¶¶ 38, 41 and 54, of the Amended Complaint allege three examples in which State Farm alleges "[Injury Care's] patients are not legitimately evaluated or treated for their unique conditions and needs. Instead, they are subjected to the **Predetermined Protocol** ..." [DE 22].

II. DISCUSSION

State Farm Mutual Automobile Insurance Company v. Healthcare Chiropractic Clinic, Inc.

United States District Court, D. Minnesota | October 23, 2015 | Not Reported in Fed. Supp. | 2015 WL 6445324 (Approx. 10 pages)

Document

Filings (4)

Negative Treatment (0)

History (4)

Citing References (16) ▾

Table of Authorities

Powered by KeyCite

Return to list

22 of 100 results

Original terms ▾

Show KeyCite® Flags

Go to ▾



Q ▾

AA



B. The Alleged Fraudulent Scheme

*2 Plaintiffs allege that since at least 2006 and running up to the present day, (*id.* at ¶ 12), Defendants engaged in a multi-faceted fraud (“the Fraudulent Scheme”) related to the Claims, (*see id.* at ¶ 2). The Fraudulent Scheme purportedly consists of three inter-related parts. First, Plaintiffs contend Defendants employ **predetermined (or “cookie-cutter”) diagnosis** and re-examination protocols which lead to medically unnecessary treatments Defendants intentionally misrepresented to Plaintiffs were necessary when seeking reimbursement. (*See id.* at ¶¶ 2, 4–5, 8–9, 30–37, 40, 45, 47, 53–56.) Second, Defendants allegedly billed for services not performed at all or not performed as billed to Plaintiffs.³ (*See id.* at ¶¶ 3, 6, 9, 30, 40–41, 46, 48.) Third, Plaintiffs accuse Defendants of fraudulently modifying patient records and other documentation to support the fraudulent billings sent to Plaintiff.⁴ (*See id.* at ¶¶ 49–50.) According to Plaintiffs, Defendants intended to maximize the Claims they submitted to Plaintiffs under the No-Fault Act, not diagnosis and appropriately treat the actual medical conditions of the insured-patients. (*See id.* at ¶¶ 4–5, 31–32, 40, 52–53.)

To support their allegations about the Fraudulent Scheme, Plaintiffs offer two sources of evidence. The first are statements from two former

per

Ap
Ap

201

Cal

WE

INS

Col

Fet

...A

Sup

rev

v. A

415

Set

State Farm Mutual Automobile Insurance Company v. Slade Healthcare, Inc.

United States District Court, D. Maryland. | March 31, 2019 | 381 F.Supp.3d 536 (Approx. 63 pages)

Document

Filings (11)

Negative Treatment (0)

History (0)

Citing References (120) ▾

Table of Authorities

Powered by KeyCite

Return to list

23 of 100 results

Original terms ▾

Show KeyCite® Flags

Go to ▾



Q ▾

...month." Ins. § 19-508(c); Code of Maryland Regulations 31.15.07.06.

State Farm alleges that the defendants are engaged in a fraudulent medical billing scheme. According to plaintiff, from at least April 2010 through the suit's commencement on December 14, 2017, the Clinics and Providers have provided treatment and submitted medical bills that "exploit patients' insurance benefits rather than address the patients' true unique needs." ECF 1, ¶¶ 7, 17. In particular, State Farm asserts that the medical bills and supporting documentation are "the product of a fraudulent, **predetermined** treatment **protocol** (the 'protocol') provided by the Clinics and Providers to accident victims." *Id.* ¶ 3. According to State Farm, the Protocol is intended to, *id.*:

(a) enable the Defendants to fully exploit and collect the patients' No-Fault Benefits, which were typically \$ 2,500; (b) not refer the patients to any other health care provider for any other reason, including diagnostic testing (e.g., x-rays, MRIs), physical therapy, or consultations by physicians such as orthopedists or neurologists, to avoid potentially having to share the patients' No-Fault Benefits; and (c) keep the total medical expenses to less than \$ 6,000 to "fly under the radar" of, and encourage settlements by, the insurance companies to which claims for payment are made and thereby incentivize the patients' lawyers ("PI Attorneys") to refer more clients to the Defendants.

Allstate Ins. Co. v. Williams

United States District Court, E.D. New York | December 5, 2014 | Not Reported in F.Supp.3d | 2014 WL 6900121 (Approx. 11 pages)

Document

Filings (5)

Negative Treatment (0)

History (4)

Citing References (18) ▾

Table of Authorities

Powered by KeyCite

Return to list

38 of 100 results

Original terms ▾

Show KeyCite® Flags

Go to ▾



Q ▾

AA

"possessed knowledge of only the general contours of the conspiracy." *Gov't Ins. Co. v. Hollis Med. Care, P.C.*, No. 10–CV–4341, 2011 WL 5507426, at *10 (E.D.N.Y. Nov. 9, 2011) (quoting *U.S. v. Applins*, 637 F.3d 59, 75 (2d Cir.2011)).

Allstate alleges that Williams agreed with Tsirlin "to conduct and/or participate, directly or indirectly, in the conduct of Targee enterprise's affairs, through a pattern of racketeering activity consisting of repeated violations of the federal mail fraud statute, 19 U.S.C. § 134" (Compl.¶ 242.) Allstate asserts that Williams and Tsirlin submitted or caused to be submitted hundreds of fraudulent bills on a continuous basis for more than three years, seeking payments that Targee was not entitled to receive under the No–Fault Laws. (*Id.*) Williams and Targee were not eligible for reimbursement on those bills because the bills misrepresented and exaggerated the level and nature of the Fraudulent Services, the services were not medically necessary, the services were performed and billed pursuant to **predetermined billing protocol** designed to enrich the defendants, and/or certain services were performed by independent contractors whose work is not reimbursable under the CPT codes. (*Id.* ¶¶ 239–45.) Specifically, Tsirlin purported to provide consultations and then arrive at a predetermined conclusion that the Insured required EDX testing to rule out cervical and/or **lumbar radiculopathy**, thereby allowing for billing on both the consultation and subsequent EDX Testing. (*Id.* ¶¶ 180–82.) This scheme was designed in order to maximize the profits that Williams could reap from each Insured and, in Tsirlin's case, to "ensure that [Targee] continued to use his services as independent contractor." (*Id.* ¶ 209.)

These allegations, in combination with the detailed layout of the scheme in the complaint, are, as a whole, sufficient to show that Williams knew the general contours of the ongoing scheme: he had knowledge that the scheme would ultimately result in the mailing of fraudulent bills, and agreed with Tsirlin to bill based on a **predetermined fraudulent protocol** that would cause the submission of fraudulent billing to Allstate. See *Hollis Med. Care, P.C.*, 2011 WL 5507426, at *10 (finding that the plaintiffs' allegations regarding a scheme involving the submission of fraudulent billing to GEICO met the "relatively low [civil RICO conspiracy allegation] standard") (quoting *State Farm Mut. Auto. Ins. Co. v. CPT Med. Servs., P.C.*, No. 04–CV–5045, 2008 WL 4146190, at *14 (E.D.N.Y. Sept. 5, 2008)); see also *Allstate Ins. Co. v. Valley Phys. Med.*, No. 05–CV–5932, 2009 WL 3245388, at *7 (E.D.N.Y. Sept. 30, 2009) (explaining that coconspirators in a RICO conspiracy need not be fully informed about each other's specific criminal acts).

Government Employees Insurance Co. v. Ningning He

United States District Court, D. New Jersey | October 29, 2019 | Not Reported in Fed. Supp. | 2019 WL 5558868 | RICO Bus.Disp.Guide 13,246 (Approx. 8 pages)

Document

Filings (6)

Negative Treatment (0)

History (0)

Citing References (21) ▾

Table of Authorities

Powered by KeyCite

Return to list

63 of 100 results

Original terms ▾

Show KeyCite® Flags

Go to ▾



services were claimed to have been provided to Insureds involved in automobile accidents who were eligible for coverage under no-fault insurance policies issued by GEICO. (*Id.* ¶ 2).

*2 GEICO alleges that its payments to defendants were fraudulently obtained for several reasons. Defendants allegedly billed for medically unnecessary treatments, or for treatments that did not occur at all. (*Id.* ¶ 3). Treatments were allegedly provided to Insureds who had only minor accidents. (*Id.* ¶¶ 3, 85-94). In those cases, defendants followed **predetermined protocols** that invented diagnoses and billed for medically unnecessary treatments. (*Id.*; see also ¶¶ 308-18). In many cases the billing codes for services misrepresented and exaggerated the level of service provided. (*Id.* ¶¶ 349-55).

GEICO seeks to recover more than \$5,298,000.00 that it paid in reliance on defendants' allegedly fraudulent billing. (*Id.* ¶ 7). GEICO's complaint asserts eleven causes of action. Of these, seven are relevant to these defendants and these motions to dismiss:

Best Practices

Best Practices:

- Avoid Licensing “Silver Bullets”
- Diagnosis Codes v. Objective / Subjective Complaints
- CPT Codes: Provide Detailed Information on Treatment Provided
- Good Documentation: change in treatment, improvement, and patient referrals.
- Avoid EMR Copy and Paste
- Closely Monitor Emails and Texts
- Watch Marketing Closely

Best Practices

Wishing you ^(But without any assumption of liability on our part) _{reasonably} a Merry Christmas ^(and/or festive period) and a happy ~~new year~~ ^{12 (Twelve) months from the date hereof.}

_{for the avoidance of any doubt}

Season's Greetings from all of us at Clintons.

Avoid Silver Bullets

- What is a silver bullet?
- Method by which insurance carriers can invalidate all claims submitted for reimbursement regardless of legitimacy of treatment
- Remember the foot in the door? **This is what insurance carriers are after!**

Avoid Silver Bullets

- Florida's Health Care Clinic Act (“HCCA”), Fla. Stat. §§ 400.990 *et seq.*, requires that all health care clinics be licensed by the AHCA unless they qualify for an exemption. Fla. Stat. § 400.991.
- The HCCA mandates that “all charges or reimbursement claims made by or on behalf of a clinic that is required to be licensed under this part, but that is not so licensed ... are unlawful charges, and therefore are noncompensable and unenforceable.” Fla. Stat. § 400.9935(3).

Avoid Silver Bullets

- With HCCA License: insurance carriers will typically attack requirements imposed on medical directors:
- Ensure practitioners have active and valid license;
- Review patient referral contracts
- Ensure appropriate certifications and licenses for services provided
- Ensure compliance with record keeping, office surgery, and adverse incident reporting requirements
- Conduct systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful

Avoid Silver Bullets

State Farm Mut. Auto. Ins. Co. & State Farm Fire & Cas. Co. v. B&A Diagnostic, Inc., 145 F. Supp. 3d 1154 (S.D. Fla. 2015)

Under Florida law, **health care clinic's medical directors** failed to meet their obligations under Health Care Clinic Act (HCCA), and thus **services rendered by clinic to automobile insurer's insureds pursuant to their no-fault personal injury protection (PIP) policy coverage were not lawful or compensable**

Avoid Silver Bullets

Director did not:

- Assume legal responsibility for clinic during relevant time period;
- Failed to ensure that all health care practitioners providing health care services to its patients were appropriately licensed and certified;
- Failed to provide necessary oversight of clinic billings;
- Did not perform their daily supervisory requirements.

Recovered: \$1,478,848.40 in damages, and Court held SF did not have to pay \$697,970 in pending charges.

Avoid Silver Bullets

Take away:

Audit your practice

Get your house in order

It **DOES** matter

Favorable settlements possible when we show you are a good medical provider who does things the right way

Diagnosis Codes

- Insurance Companies have enormous resources
- But they are also lazy
- They rely on software and take shortcuts to meet their burden of proof at trial
- One example is diagnosis codes

					CHIROPRACTIC HANDWRITTEN INITIAL EXAMINATIONS								
					SUBJECTIVE SYMPTOMS			OBJECTIVE SYMPTOMS - MUSCLE TENDERNESS			PLAN & GOALS		
Line Number	Claim Number	Patient Initials	Date of Initial Exam	Clinic Location	Neck Pain	Mid-Back Pain	Low Back Pain	Posterior Cervical Paravertebral	Upper Trapezius	Posterior Lumbar Paravertebral	Frequency of Treatment	Absence of Treatment Plan	Absence of Treatment Goals
1	590574486	MAH	1/10/2017	Lakeland	X	X	X	X	X	X	3x/week	X	X
2	5906437N8	AS	1/18/2017	Clearwater	X	X	X	X	X	X	3x/week	X	X
3	5906252F9	JRT	1/27/2017	South St Pete	X	X	X	X		X	3x/week	X	X
4	5906831X5	JM	1/27/2017	North St Pete	X	X		X	X		3x/week	X	X
5	5900G225W	JL	1/30/2017	North St Pete		X					3x/week	X	X
6	5900G225W	JL	1/30/2017	North St Pete	X						2x/week	X	X
7	5900G225W	JCL	1/30/2017	North St Pete	X	X		X	X		3x/week	X	X
8	599S44079	SG	1/30/2017	Clearwater	X	X		X	X		3x/week	X	X
9	5907605F1	TM	2/1/2017	Lakeland	X	X	X	X	X	X	3x/week	X	X
10	5907314N7	MS	2/6/2017	Clearwater	X	X	X	X	X	X	3x/week	X	X
11	5907745W7	CHK	2/8/2017	North St Pete	X		X		X	X	3x/week	X	X
12	5907745W7	JK	2/8/2017	North St Pete	X	X		X	X		3x/week	X	X
13	5907896R3	JB	2/8/2017	North St Pete	X			X	X		3x/week	X	X
14	5907813J5	AFL	2/10/2017	North St Pete	X		X	X	X	X	3x/week	X	X
15	5908381J1	EGG	2/13/2017	North St Pete		X					3x/week	X	X
16	599T39249	MG	2/13/2017	South St Pete	X		X	X	X	X	3x/week	X	X
17	5908102J8	CG	2/17/2017	Holiday	X		X	X	X	X	3x/week	X	X
18	599V12254	MT	2/21/2017	Lakeland	X	X	X	X	X	X	3x/week	X	X
19	5908102J8	EG	2/22/2017	Holiday	X		X	X	X	X	3x/week	X	X
20	599T39249	CD	2/23/2017	North St Pete	X	X	X	X	X	X	3x/week	X	X
21	5908927C1	SR	2/23/2017	South St Pete	X	X	X	X	X	X	3x/week	X	X
22	599V19927	CA	2/23/2017	Lakeland			X			X	3x/week	X	X
23	599T32049	AB	2/28/2017	Lakeland	X	X	X	X	X	X	3x/week	X	X
24	5910609R8	BH	3/1/2017	North St Pete	X	X	X	X	X	X	3x/week	X	X
25	5910213K4	LMT	3/8/2017	Clearwater	X	X		X	X		3x/week	X	X
26	5910165N7	RKK	3/8/2017	Clearwater			X			X	3x/week	X	X
27	599W89270	LM	3/13/2017	North St Pete	X	X	X	X	X	X	3x/week	X	X
28	5910814J1	RS	3/17/2017	North St Pete	X	X	X	X	X	X	3x/week	X	X
29	5911062T9	DB	3/24/2017	Clearwater	X	X	X	X	X	X	3x/week	X	X
30	5911563R4	SB	3/27/2017	South St Pete	X	X	X	X	X		3x/week	X	X
31	5910667N1	WM	3/29/2017	Tampa	X		X	X	X	X	3x/week	X	X
32	5911521H3	TLD	3/29/2017	South St Pete	X		X		X	X	3x/week	X	X
33	599X89749	DK	3/30/2017	South St Pete	X	X	X	X	X	X	3x/week	X	X
34	5914267D2	MR	3/31/2017	Clearwater	X	X	X	X	X	X	3x/week	X	X
35	5912138W5	MG	4/3/2017	Clearwater	X	X	X	X	X	X	3x/week	X	X
36	5911845H5	SL	4/7/2017	Tampa	X			X			3x/week	X	X
37	599Z87727	EB	4/13/2017	Lakeland	X	X	X	X	X	X	3x/week	X	X
38	599Z87727	KB	4/13/2017	Lakeland		X	X				3x/week	X	X
39	5913610S5	KB	4/18/2017	South St Pete	X		X	X	X	X	3x/week	X	X
40	5913956M2	KD	4/21/2017	Clearwater	X	X	X	X	X	X	3x/week	X	X
41	5914004S0	JC	4/24/2017	South St Pete	X	X	X	X	X	X	3x/week	X	X
42	5900K259M	EJL	4/24/2017	Clearwater	X	X	X	X	X	X	3x/week	X	X
43	5916233L5	AV	5/1/2017	Clearwater	X	X	X	X	X	X	3x/week	X	X

Patient	Number of Visits	Symptoms Reported
RB	36	Bruise to left forearm, Cut leg/shin, left knee, neck pain bilaterally, mid and low back pain, left rib
MB	1	Bruises – left hand and right upper arm, left shoulder pain, scrape on left wrist pain, sleep disturbance
DB	11	Minor cut on arm and finger, neck pain with radiation to arm, headaches, ROM decreased – right arm/elbow (unable to straighten and lift, numb upper extremity-neck bilaterally
JB	3	Neck pain with radiation into right shoulder, right shoulder pain, anxiety and sleep disturbance since MVA, dizziness and ringing in the ears since MVA
DB	13	Bruise on wrist and legs, balance disturbance, neck pain with radiation into arm, back pain with radiation into hip, shoulder pain, joint pain/swelling, headaches, right palm of hand tingling
JBB	30	Neck pain with radiation into arm, back pain, numbness and tingling into arms bilaterally (not past the elbow), only comfortable sleeping position on left side, cannot sit, stand or walk without pain, headaches that radiate from the occipital to the frontal region since the MVA
CC	5	Neck pain with radiation into arm, low back pain with radiation into right leg (glute/thigh), shoulder pain, right thumb joint pain into wrist with weakness of grip strength, headache around temples, sleep disturbance, restless legs and anxiety
MDR	21	Severe constant pain in left and right neck area, severe constant pain in the head bilaterally, sever constant upper back pain bilaterally, sever constant pain in the lumbar spine bilaterally
CK	1	Neck pain radiates into right shoulder and numbness to left hand, back pain with radiation to right leg, headache related to MVA, extreme pain lying supine, spasm along right hamstring when lying supine
DD	1	Neck pain with radiation into the arm, low back pain with radiation into the leg, left shoulder pain, left arm pain, right knee pain

CPT Codes v. Actual Treatment

- Another way they try to show a “predetermined treatment protocol” is to say the treatment is cookie cutter
- But they don’t rely on daily notes
- They rely on CPT codes entered in billing
 - 97140: Manual Therapy
 - 98940/41: Chiropractic Manipulations
 - 97110: Therapeutic Exercises
 - 97012: Mechanical Traction
 - 97039: Unlisted Modality

										TREATMENT CHARGED BY THE CLINICS										
										Chiropractic/Physical Therapy Treatments - Total Visits For Which Clinics Submitted Charges					DME - Total Units Charged	Office Exams - Total Exams Charged		X-ray - Total X-rays Charged		
										97140	98940/41	97039	97110	97012	E0730	99201-99205	99211-99215	72050	72100	
Line Number	Claim Number	Patient Initials	Date of Accident	Company	Age on First Visit to Clinics	First Clinics Visit	Last Clinics Visit	Clinic Location	Total Visits to Clinics	Manual Therapy	Chiro Manips	Unlisted Modality (Cold Laser)	Therapeutic Exercises	Mechanical Traction	TENS Unit	Initial Exam	Follow-up Exam	X-ray, cervical; 4+ views	X-ray, lumbosacral; 2 or 3 views	Total Charged by Clinics
1	590574486	MAH	1/9/2017	SFM	34	1/10/2017	2/20/2017		15	15	14	10	14	14	1	2		1	1	\$7,405.00
2	590585966	TB	1/9/2017	SFM	52	1/16/2017	4/24/2018		34	31	31	31	29	30	1	2	4	1	1	\$18,295.00
3	5906437N8	AS	1/13/2017	SFM	18	1/18/2017	3/7/2017		12	11	11	11	10	10	1	3		1	1	\$7,025.00
4	5906252F9	JRT	1/14/2017	SFM	27	1/27/2017	8/28/2017		38	37	37	37	37	37	1	3	2	1	1	\$15,265.00
5	5906831X5	JM	1/22/2017	SFM	33	1/27/2017	3/21/2017		12	11	11	11		10	1	3		1		\$10,390.00
6	59006225W	JL	1/26/2017	SFM	16	1/27/2017	3/27/2017		8	6	6	6			1	2			1	\$2,525.00
7	59006225W	JL	1/26/2017	SFM	13	1/27/2017	3/27/2017		5	3	3	3			1	2		1	1	\$2,100.00
8	59006225W	JCL	1/26/2017	SFM	40	1/27/2017	3/27/2017		9	8	8	8		7	1	2		1		\$3,635.00
9	599544079	SG	1/29/2017	SFM	52	1/30/2017	1/30/2017		1	1	1	1		1	1	1	1	1		\$1,700.00
10	5907605F1	TM	1/31/2017	SFM	24	2/1/2017	7/7/2017		21	21	21	21	20	20	2	1	1	1	1	\$7,420.00
11	5907314N7	MS	1/29/2017	SFM	55	2/6/2017	2/8/2017		2	2	2	2	1	1	1	2	1	1	1	\$2,675.00
12	599545929	TRM	1/30/2017	SFM	56	2/8/2017	6/19/2017		37	37	37	36	35	35	1	2	4	1	2	\$15,715.00
13	5907745W7	CHK	2/3/2017	SFM	40	2/8/2017	10/16/2017		63	63	63	63	62	62	1	1		1	1	\$20,995.00
14	5907745W7	JK	2/3/2017	SFM	68	2/8/2017	10/16/2017		63	61	61	60		27	1	1		1		\$13,450.00
15	5907896R3	JB	2/6/2017	SFM	61	2/8/2017	2/17/2017		3	3	3	3				1	1	1		\$1,820.00
16	5907813J5	AFL	2/5/2017	SFM	53	2/10/2017	5/3/2017		31	29	29	29	28	16	1	2	1	1	1	\$12,960.00
17	5907813J5	EGC	2/5/2017	SFM	32	2/10/2017	5/17/2017		29	28	28	28	28	27	1	2	2	1	1	\$12,100.00
18	5908381J1	EGG	2/9/2017	SFM	29	2/13/2017	7/7/2017		18	18	18	18	13		1	3				\$5,345.00
19	599739249	MG	2/11/2017	SFM	60	2/13/2017	10/19/2017		12	6	6	6	5		1	3		1	1	\$19,800.00
20	5908102J8	CG	2/8/2017	SFM	63	2/17/2017	3/6/2017		5	5	5	5	5	5	1	1	1	1	1	\$3,225.00
21	599V12254	MT	2/17/2017	SFF	36	2/21/2017	6/6/2017		33	33	32	33	32	32	1	3	1	1	1	\$14,065.00
22	5908102J8	EG	2/8/2017	SFM	87	2/22/2017	3/10/2017		6	6	6	6			1	1			1	\$2,315.00
23	599739249	CD	2/11/2017	SFM	31	2/23/2017	2/23/2017		1						1	1				\$1,065.00
24	5908927C1	SR	2/20/2017	SFM	19	2/23/2017	6/23/2017		7	7	7	7	6	6	1	1		1	1	\$3,180.00
25	599V19927	CA	2/21/2017	SFM	40	2/23/2017	2/27/2017		2	2	1	2	2		1	1				\$1,555.00
26	599732049	AB	2/8/2017	SFM	32	2/28/2017	6/16/2017		5	2	2	3	1	2	1	3	1	1	1	\$3,550.00
27	5910609R8	BH	2/28/2017	SFM	23	3/1/2017	10/16/2017		33	32	32	32	32	32	1	2		1	1	\$11,380.00
28	5909524T3	BJ	2/27/2017	SFM	63	3/3/2017	9/15/2017		11	10	10	10	7	9	1	2	2			\$4,935.00
29	5909524T3	NE	2/27/2017	SFM	47	3/3/2017	3/13/2017		3	3	3	3	2	2	1	1	1			\$4,235.00
30	599V61302	RA	2/27/2017	SFM	77	3/8/2017	7/12/2017		33	33	33	28	31	31		2	3	1	1	\$13,725.00
31	5910213K4	LMT	3/5/2017	SFM	62	3/8/2017	7/7/2017		30	29	29	28		28	1	3	1	1		\$9,575.00
32	5910165N7	RKK	3/7/2017	SFM	62	3/8/2017	3/22/2018		25	24	24	21				2			1	\$5,615.00
33	599W89270	LM	3/13/2017	SFM	69	3/13/2017	7/24/2017		43	42	42	41	42	41	1	2	1	1	1	\$15,490.00
34	5910814J1	RS	3/13/2017	SFM	35	3/17/2017	7/10/2017		21	21	21	21	20	20		2		1	1	\$8,385.00
35	5911062T9	DLB	3/19/2017	SFF	23	3/24/2017	5/3/2017		13	13	13	13	13	13	1	2	1	1	1	\$7,185.00
36	5911563R4	SB	3/24/2017	SFM	54	3/27/2017	7/6/2017		15	14	14	14	13	13	1	2	3	1	1	\$7,810.00
37	5910667N1	WM	3/13/2017	SFM	68	3/29/2017	6/26/2017		34	34	33	34	32	33		2	1	1	1	\$12,645.00
38	5911521H3	TLD	3/24/2017	SFM	57	3/29/2017	6/21/2017		31	31	31	30	26	16	1	3	2	1	1	\$14,215.00
39	599X89749	DK	3/20/2017	SFM	58	3/30/2017	6/29/2017		24	23	22	23	23	22	1	2	1	1	1	\$8,715.00
40	5914267D2	MR	3/23/2017	SFM	22	3/31/2017	7/26/2017		30	29	29	29	17	28	1	2	2	1	1	\$9,730.00
41	5912138W5	MG	3/29/2017	SFM	50	4/3/2017	4/10/2017		4	4	4	4	3	3	1		1	1	1	\$2,830.00
42	5911845H5	SL	3/28/2017	SFM	66	4/7/2017	2/12/2018		52	52	51	52		50		3	1	1		\$15,405.00

CPT Codes v. Actual Treatment

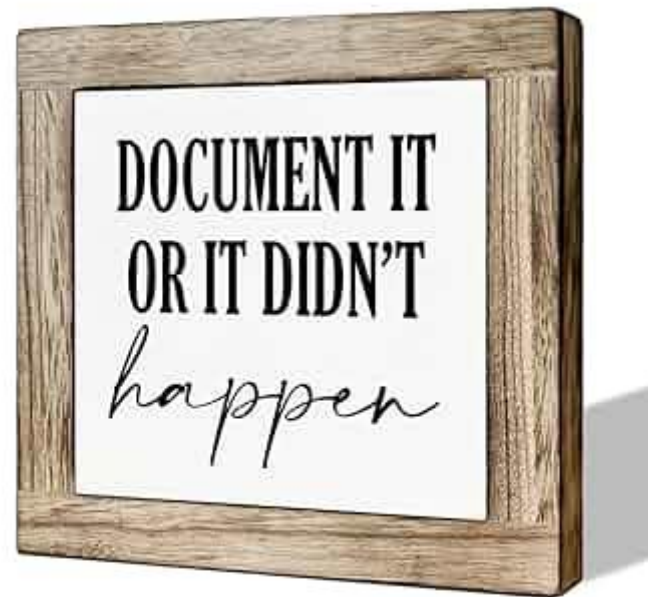
DETAILS MATTER

bossbehaviour

- Doesn't show you what the patient actually did
- Where were the adjustments performed?
- What type of therapeutic exercise did the patient do?
- Can show the variation in the records
- **But the records must be detailed!**

Document Changes in Treatment

- Insurance Carriers exploit continuity in patient records
- Treated patient for 36 visits, never got better, never modified treatment
- How do you combat this?
- **DOCUMENT IT!**



Document Changes in Treatment

- After reevaluations
- After MRIs/X-Rays
- Transitioning from passive to active modalities
- Patient discharge



Good Documentation: Patient Records

Example:

- Trial we just handled: Clients did not document when patients were discharged or why they were discharged
- At best, PRN was circled on daily SOAP note
- Context of lawsuit: State Farm claimed patients *never* got better; they were treated until PIP benefits were exhausted or the patients just stopped showing up
- Without any documentation showing when patients were discharged, it was very difficult to establish when patients were actually discharged.

Bad Documentation: EMR

Copy & Paste

- A recent study said as many as 90% of clinicians report using copy-and-paste
- 81% admit to frequently copying
- 25% agree that it leads to mistakes in patient care

Bad Documentation: EMR

Copy & Paste

- Another study showed that over a recent five-year period, when malpractice cases involved electronic record problems, they were 23% more likely to require payment to a plaintiff than without
- When that problem was copy and pasting, it was 18% more likely to require payment than other EMR issues

Bad Documentation: EMR Copy & Paste

- Insurance companies love going after this.
- To insurers, this is **clear** evidence of fraud.
- It is not credible for objective findings or subjective symptoms to be the same.
- They will argue it is **proof** you are not legitimately treating patients.

Bad Documentation: EMR

Copy & Paste

Visit 1: Objective: There are tense muscles across the C3 to C7, with restricted right rotation. Lateral bending is difficult, and there is also involuntary muscle contractions. Restricted areas are around C3 and C4 particularly. C5 relatively normal functioning.

Visit 2: Objective: Muscle tenseness from C3 to C7, with restricted right rotation. Lateral bending is difficult. Involuntary muscle contractions noted. C3 and C4 are particularly restricted. C5 relatively normal functioning.

Bad Documentation: EMR

Copy & Paste

- Visit 13: Objective: There are tense muscles across the C3 to C7, with restricted right rotation. Lateral bending is difficult, and there is also involuntary muscle contractions. Restricted areas are around C3 and C4 particularly. C5 relatively normal functioning.

Bad Documentation: EMR

Copy & Paste

- Visit 22: Objective: Muscle tenseness across the C3 to C7. Restricted right rotation persists. Lateral bending remains difficult, and the involuntary muscle contractions continue. Restricted areas are around C3 and C4 particularly. C5 relatively normal functioning.

Bad Documentation: Emails & Texts

- In insurance fraud lawsuits, emails and texts are discoverable
- ***Including internal emails and texts between chiropractors and staff***
- Treasure trove of potentially damaging information
- Susceptible to being taken out of context

Bad Documentation: Emails & Texts

- Law firm in Ohio named Kisling, Nestico, and Redick was charged in a RICO conspiracy when a former lawyer turned over emails showing the firm sent chiropractors on lavish tropical vacations for patient referrals.
- In the emails, the lawyers also admitted to sending clients to a particular chiropractor based on a need to reward that chiropractor for referring cases.
- The attorney also said in an email that he knew one clinic provided treatment that was “inherently suspect,” but used that clinic any way because it referred him cases

Bad Documentation: Emails & Texts

- Email: Attorney wants patient to continue treatment, but patient wants to be finalized. Can you please explain importance of continuing treatment?
- Insurance company's **entire case** was that attorneys dictated care. This played right into their theory.
- **Thankfully, we represented a good doctor!** The records showed he discharged the patient that day despite what the email said.

Bad Documentation: Emails & Texts

- Marketer sent multiple emails: “has MRI been ordered. If not, why not?”
- Law Firms sent emails: “can you please finalize this patient so lawyer can send demand?”
- Front desk staff, sent emails stating a patient was “being sent for an EMC” as opposed to “Being sent for an EMC Diagnosis”

Bad Documentation: Emails & Texts

- We had to find specific examples of those emails not influencing decisions.
- Thankfully, we found some in the medical records themselves: MRI was already ordered and appropriate; patient was not finalized, etc.
- **If you receive an email like this, respond!**

Bad Documentation: Emails & Texts

- **Sample response**: “Thank you for your email. I am happy to evaluate the patient to determine if it is medically appropriate to finalize the patient. However, I reserve the right to make that determination based solely on what I deem is medically appropriate. If you have any concerns, do not hesitate to contact me.”
- **Follow up email**: “I evaluated the patient on November 18, 2023. I determined it was / was not appropriate to finalize the patient. The reason for this is _____.”

Bad Documentation: Emails & Texts

Dance like no one is watching;
email like it may one day be read
aloud in a deposition.

Watch Marketing Closely

- Under federal and state anti-kickback and anti-patient brokering statutes, it is illegal to provide ***or even offer*** “anything of value” in exchange for, or in order to induce, a patient referral
- Obvious: lavish trips, cash payments disguised as rent, tickets to sporting events
- Less obvious: Food, alcohol, cookies, donuts
- ***Especially avoid if accepting federal dollars***
- There is **no** exemption for nominal amounts!

Watch Marketing Closely

- Marketer kept detailed notes about what she did each day to show her employer.
- The daily notes were normally innocuous: dropped off pamphlets at law firm; left business card at primary care physician.
- But some daily notes were damaging
- Dropped off Chipotle because they sent patient referral
- Haven't sent case in a while, so bought the office lunch
- If they send another patient, we will do HH
- Came out during lawsuit

Questions?



Patrick M. Causey

pcausey@trenam.com

727-403-2437