

VINCENT J. MOCCIO
Admitted in: Minnesota Wisconsin
612-349-8754

* May 2, 2007 *

Richard S. Stempel, Esq.
Stempel & Doty, PLC
41 Twelfth Avenue North
Hopkins, MN 55343

Re: Your Client: Allstate Insurance Company
Allstate's Insureds:
Your File No.: 18944
Our File No.: 124395.0000

Dear Mr. Stempel:

As you are aware, I represent Stand Up Mid America MRI, Inc. ("SUMA MRI") with regard to certain issues stemming from Allstate's failure to pay claims. It has come to my attention that one of the bases of Allstate's refusal is its position that SUMA MRI is engaged in the corporate practice of medicine. However, as explained below, pursuant to the *Isles Wellness* decision, imaging facilities such as SUMA MRI that assist treating physicians in providing medical care are not subject to the corporate practice of medicine doctrine.

Background of SUMA MRI

SUMA MRI provides clients with the opportunity to have MRI scans done in a very large, non-tube, non-claustrophobic scanner. This new MRI technology enables clients to have MRI scans done in the position in which they feel pain so that the client's treating physician can see what is causing the pain. This technological breakthrough provides clients with an alternative to traditional MRI scans.

SUMA MRI is an imaging facility, not a main treatment facility. SUMA MRI accepts clients when referred by a treating physician or equivalent. SUMA MRI does not accept patients for examination, diagnosis or treatment, nor does SUMA MRI direct the care of patients in any way. SUMA MRI is not required to be licensed by the state of Minnesota and is not subject to regulation by a professional organization, nor does it provide any medical service that could be designated a healing art. Instead, SUMA MRI allows clients to use its state-of-the-art diagnostic MRI machine that provides the highest quality scan available, including flexion and extension

designated a healing art. Instead, SUMA MRI allows clients to use its state-of-the-art diagnostic MRI machine that provides the highest quality scan available, including flexion and extension studies (not available on less sophisticated CT scanners and MRI machines). Further, these larger machines are suitable for patients with claustrophobia, or for obese patients who cannot fit in a traditional MRI scanning machine. The larger machine is less traumatic for small children, who may have their MRI taken while seated in a parent's lap. In short, SUMA MRI provides clients with an alternative diagnostic tool to traditional MRIs.

The sophistication of the images arises from the machine's performance and technology, not the owner. The technicians operating the machine must be trained and certified both by the manufacturer as well as by a professional organization such as the American Registry of Radiologic Technologists ("ARRT"), and not the State of Minnesota, before they are permitted to operate it. Technicians must complete a two-year educational program to attain certification. But a medical degree or radiology specialty is not a prerequisite for certification. In turn, medical doctors who read the scans are not required to be certified to operate the machine. Consequently, any certified radiologist may read the scans and provide the treating doctor with the results. SUMA MRI has contracted with a board certified chiropractor and a board certified medical doctor to read the scans. Neither specialist has to own the machine to carry out this function. Each is free to reject scans, or to request additional scans. The results these specialists provide are a function of their training and experience, and the quality of the scan, not the ownership of the machine, itself.

In short, SUMA MRI is an imaging facility, not a healing facility. SUMA MRI does not employ any physicians that diagnose and direct a patient's treatment. Instead, the treatment is directed by the treating physician who made the referral for the service, monitors the service, and ultimately remains responsible for the patient's care. SUMA MRI provides patients with an alternative diagnostic tool that can assist the client's treating physician in providing medical care.

**SUMA MRI Does Not Engage in the Corporate Practice of
Medicine Under Minnesota Law**

Given the above facts, Minnesota law then does not consider SUMA MRI's practice to be the corporate practice of medicine. The Minnesota Supreme Court in *Isles Wellness, Inc. v. Progressive Northern Ins. Co.*, 703 N.W.2d 513 (Minn. 2005) clarified the scope of the corporate practice of medicine doctrine, excluding from the doctrine health care-related professionals who (1) have no state licensing requirements; (2) receive referrals from overseeing physicians and cannot direct treatment for a patient; (3) are not subject to regulation by a professional organization, or (4) does not provide a medical service that could be construed as a "healing art." *Id.* at 522-23.

Isles Wellness affirms a prohibition on the corporate practice of medicine under Minnesota law, but only for health care practitioners who "are members of a state licensed


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that massage therapists and physical therapists do not. *Id.* at 522-23. Most salient is the court's exclusion of physical therapists who "do not enjoy unfettered independent medical judgment." Instead, the physical therapists "may not provide therapy to a patient without an order of referral of a physician, chiropractor, podiatrist, dentist or advance practice nurse." *Id.* at 523. Further, upon beginning treatment, the above care provider "must periodically review the treatment provided by the physical therapist." *Id.* The court concluded that "the corporate practice of physical therapy is not prohibited by the corporate practice of medicine doctrine."

Applying the Court's ruling on physical therapists, health care professionals who do not examine, diagnose and direct a patient's treatment are not subject to the corporate practice of medicine doctrine. Health care professionals such as physical therapists, or in this case, imaging facilities such as SUMA MRI, who merely accept referrals from independent treating physicians, are not subject to the corporate practice of medicine doctrine. In fact, the "imaging" service provided by SUMA MRI to the treating physician is even further removed from what the Supreme Court described as "healing arts" than a physical therapist, since SUMA MRI provides no direct medical treatment to patients. Further, the state of Minnesota has no licensing requirements for providing imaging services and has no professional organization that oversees or regulates imaging services. Consequently, pursuant to *Isles Wellness*, imaging facilities such as SUMA MRI that assist treating physicians in providing medical care are not subject to the corporate practice of medicine doctrine.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Vincent J. Moccio

VJM/rmo

cc: Mark A. Karney
Dr. Wayne Dahl, SUMA MRI