

STATE OF MINNESOTA		DISTRICT COURT
COUNTY OF HENNEPIN	09 NOV - 5 PM 2:28	FOURTH JUDICIAL DISTRICT
Stand Up Mid America MRI, Inc., Plaintiff,	CLERK OF DISTRICT COURT ADMINISTRATOR	Case Type: Contract Judge Susan N. Burke
v.	<u>AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT</u>	
Allstate Insurance Company, Defendant.		File No.: 27-CV-08-4290

This matter came before the Court on November 11, 2008. Mark Karney, Esq. appeared for Plaintiff. Richard Stempel, Esq. appeared for Defendant. The parties submitted written arguments on December 12, 2008.

INTRODUCTION AND BACKGROUND

Plaintiff Stand Up Mid America MRI (SUMA) brings this lawsuit against Allstate Insurance Company (Allstate), seeking payment for MRI services SUMA provided to Ms. Sarah Coe, one of Allstate's insured. Allstate argues SUMA's billings are void and not compensable because SUMA was practicing medicine and healing in violation of the corporate practice of medicine doctrine.

The Court finds that SUMA's diagnostic imaging itself did not violate the corporate practice of medicine doctrine. However, SUMA's practice of paying Dr. Yochum to interpret the MRI images did violate the corporate practice of medicine doctrine. SUMA could not have known, however, that they were violating the corporate practice of medicine doctrine until September 15, 2005, when the Minnesota Supreme Court held that the doctrine applied in the State of Minnesota. See Isles Wellness Inc. v. Progressive Northern Insurance, 703 N.W.2d 513

(Minn. 2005). Because SUMA's violation could not have been knowing or intentional, the billings are not void as a matter of public policy. SUMA is entitled to judgment against Allstate in the amount of \$2,040.00 plus \$1,214.28 in interest and late charges.

FINDINGS OF FACT

SUMA owns an MRI machine. Chiropractors refer patients to SUMA to get MRI scans. Following the MRI scans, SUMA sends the MRI images to an experienced radiologist, Dr. Terry Yochum, Doctor of Chiropractic, (D.C.). Dr. Yochum reads the MRI images and creates a report interpreting those images. SUMA then delivers Dr. Yochum's report back to the referring chiropractor. SUMA is owned and operated by Dr. Wayne E. Dahl, D.C. Wayne Dahl is a doctor of chiropractic and has been licensed in the State of Minnesota since 1977.

On May 16, 2005, Ms. Coe began receiving chiropractic treatment from a chiropractor, Dr. Alvin Stachowski, D.C., at Brook West Chiropractic Clinic in Brooklyn Park, Minnesota. (Ex. 2, 4) Ms. Coe visited Brook West Chiropractic Clinic regularly, and was treated by Dr. Stachowski for the next several weeks. Id.

On August 19, 2005, Dr. Stachowski referred Ms. Coe to SUMA for a spinal/cervical MRI. Id. On August 22, 2005, Ms. Coe executed an Assignment and Authorization of Insurance Benefits and Attorney's Lien (Assignment) in favor of SUMA. (Ex. 8) That same day, SUMA performed a MRI on Ms. Coe's cervical spine. (Ex. 2)

On August 23, 2005, SUMA sent the MRI images to Dr. Yochum. Dr. Yochum reviewed Ms. Coe's MRI images and provided a written report, which included "Imaging Findings," to SUMA. (Ex 2) Yochum's "findings" include the following:

The intervertebral discs are normal in stature and exhibit no evidence of degeneration. There is no disc bulge or herniation. The dimensions of the spinal canal and deural foramina are adequate. The spinal cord is normal

in caliber and signal intensity. No abnormal marrow is detected. The sagittal curve is satisfactory.

Id. SUMA billed \$1,600.00 for the cervical MRI and \$400.00 for Dr. Yochum's cervical MRI reading and report. (Ex. 3) The total bill, including tax, came to \$2,040.00. Id.

Dr. Yochum holds the following degrees B.S., D.C., D.A.C.B.R. F.C.C.R. (Canada), F.I.C.C. (Hon.), and Fellow, A.C.C.R. He is a chiropractor and radiologist. Id. Dr. Yochum's CV indicates that he is licensed in Minnesota. (Ex. 1) Dr. Yochum is based in Colorado, and is currently the director of the Rocky Mountain Chiropractic Radiological Center, in Denver. Id. SUMA includes Dr. Yochum's name on its letterhead followed by his chiropractic degree, D.C. (Ex. 2)

On September 15, 2005, the Minnesota Supreme Court held that the corporate practice of medicine doctrine applied in the State of Minnesota. Isles Wellness, Inc. v. Progressive Northern Ins. Co., 703 N.W.2d 513, 517 (Minn. 2005) (Isles Wellness I).

On May 23, 2006, Allstate and Ms. Coe executed a Hold Harmless and Indemnity Agreement, in which Allstate agreed to hold Ms. Coe harmless for any of the charges allegedly incurred and due to SUMA, and specifically reserving its rights and defenses against SUMA. (Ex. 9) In March 2007, SUMA initiated this lawsuit against Allstate for the outstanding balance of Ms. Coe's billings and interest.

ANALYSIS

I. Diagnostic Imaging Alone Does Not Violate the Corporate Practice of Medicine Doctrine

The corporate practice of medicine doctrine generally prohibits the corporate employment of licensed health care professions, based on the corporation's inability to satisfy the training and licensure requirements set out in state statutes and related public policy considerations. See Isles

Wellness, Inc. v. Progressive Northern Ins. Co., 703 N.W.2d 513, 517 (Minn. 2005) (Isles Wellness I). The public policy considerations underlying the corporate practice of medicine doctrine include concerns raised by lay control over professional judgment, commercial exploitation of health care practice, and the possibility that a health care practitioner's loyalty to a Ms. Coe and an employer will be in conflict. Id. at 517.

At the time Dr. Stachowski referred Ms. Coe to SUMA, on August 19, 2005, Isles Wellness I had not yet been decided. It was therefore an open question as to whether the corporate practice of medicine doctrine existed in Minnesota, and how it was to be applied. Isles Wellness I contains a detailed analysis of the rationale for the prohibition of corporate practice of medicine, and applies the doctrine, with varying results, to the practices of massage therapy, physical therapy, and chiropractic. See id. at 522-24.

The Isles Wellness I court recognized that:

A prohibition on the corporate practice of health care arises not simply because particular health care practitioners are engaged in "healing," but also because the individual practitioners are members of a state licensed profession, must undergo significant training and education, and enjoy independent professional judgment.

703 N.W.2d at 522.

Minnesota Statute Section 146.01 defines the practice of healing in Minnesota. That statute says:

The term "practicing healing" or "practice of healing" shall mean and include any person who shall in any manner for any fee, gift, compensation, or reward, or in expectation thereof, engage in, or hold out to the public as being engaged in, the practice of medicine or surgery, the practice of osteopathy, the practice of chiropractic, the practice of any legalized method of healing, or the diagnosis, analysis, treatment, correction, or cure of any disease, injury, defect, deformity, infirmity, ailment, or affliction of human beings, . . . or examination into the fact, condition, or cause of human health or disease, or who shall, for any fee,

gift, compensation, or reward, or in expectation thereof, suggest, recommend, or prescribe any medicine or any form of treatment, correction, or cure thereof; also any person, or persons, individually or collectively, who maintains an office for the reception, examination, diagnosis, or treatment of any person for any disease, injury, defect, deformity, or infirmity of body or mind, or who attaches the title of doctor, physician, surgeon, specialist, M.D., M.B., D.O., D.C., or any other word, abbreviation, or title to the person's name indicating, or designed to indicate, that the person is engaged in the practice of healing.

Id.

SUMA maintains an office for the examination of a person for an injury. Thus, it appears that the taking of the diagnostic images would fall within the practice of healing. M.S.A. Section 144.565 governs diagnostic imaging facilities. The statute does not require a license for engaging in diagnostic imaging. Thus, the Court finds that the technicians are not members of a state licensed profession as contemplated in Isles I.

There was not a lot of evidence regarding whether the imaging technicians had to undergo significant training or education. Although the Court acknowledges that there must be some training involved, there is no evidence that the imaging technicians require significant training and education required of other members of state licensed professions, such as doctors and chiropractors, or even physical therapists.

Finally, the diagnostic imaging technicians do not exercise any independent professional judgment. The images are useless without analysis by a chiropractor, radiologist or doctor. There is no judgment to exercise. In considering these factors, the court concludes that the taking of the diagnostic images does not violate the corporate practice of medicine doctrine.

II. Dr. Yochum's Interpretation and Analysis of the Diagnostic Images Violates the Corporate Practice of Medicine Doctrine

It is clear that Dr. Yochum was engaged in the practice of healing. Dr. Yochum engaged in the analysis of an injury of a human being. Dr. Yochum also attached the title of doctor to his name which was designed to indicate that he was engaged in the practice of healing.

Dr. Yochum clearly was a member of a state licensed profession. He was a radiologist and doctor of chiropractic. His profession required years of significant training and education. Most importantly, as a radiologist and chiropractor, Dr. Yochum enjoyed independent professional judgment. For these reasons, the Court concludes that the corporate practice of medicine doctrine applies to Dr. Yochum's reports.

SUMA argues that there is no statutory requirement that diagnostic imaging facilities be licensed and that Dr. Yochum's licenses are only being used as a marketing device. The Court disagrees. Dr. Yochum's "findings" include the following:

The intervertebral discs are normal in stature and exhibit no evidence of degeneration. There is no disc bulge or herniation. The dimensions of the spinal canal and deural foramina are adequate. The spinal cord is normal in caliber and signal intensity. No abnormal marrow is detected. The sagittal curve is satisfactory.

(Ex. 2) This type of analysis is exactly the type of analysis that chiropractors and radiologists do. Minnesota Statute Section 148.01 defines the practice of chiropractic in Minnesota. In relevant part, that statute says:

Chiropractic practice includes those noninvasive means of clinical, physical, and laboratory measures and analytical x-ray of the bones of the skeleton which are necessary to make a determination of the presence or absence of a chiropractic condition. The practice of chiropractic may include procedures which are used to prepare the Ms. Coe for chiropractic adjustment or to complement the chiropractic adjustment. The procedures may not be used as independent therapies or separately from chiropractic adjustment.

Minn. Stat. § 148.01, subd. 3.

Dr. Yochum's analysis of SUMA's MRIs falls squarely within the definition of the practice of chiropractic. Chiropractors are members of a state licensed profession. M.S.A. 319B.02, subd. 19.

SUMA further argues that Dr. Yochum does not really enjoy independent professional judgment, because he has to give his report to Dr. Stachowski. SUMA argues that Dr. Yochum is more like a physical therapist than like a chiropractor. Patients are referred to SUMA from chiropractors, and SUMA returns Dr. Yochum's analysis to the chiropractor, just like the physical therapists.

If there was a statutory provision, as there is for the physical therapists, requiring an order of referral from a doctor and periodic review by a doctor, the court might agree that perhaps the corporate practice of medicine doctrine should not apply to Dr. Yochum's reports. That is not the case, however.

The Isles I court noted:

Statutes pertaining to physical therapy provide that, with the exception of an initial 30-day period, physical therapists may not provide therapy to a Ms. Coe without an order of referral of a physician, chiropractor, podiatrist, dentist, or advance practice nurse. Minn. Stat. § 148.76, subd. 2(1) (2004); see also Minn. R. 5601.1800(2005). Moreover, if a Ms. Coe is diagnosed with "an ongoing condition warranting physical therapy treatment," the health care professionals listed above must periodically review the treatment provided by the physical therapist. Minn. Stat. § 148.76, subd. 2(1). Because of these restrictions, the practice of physical therapy—and consequently, the exercise of a physical therapist's independent judgment—is more limited than the practice of medicine or chiropractic. Thus, the public policy concerns regarding a conflict of interest between the health care provider and the lay person or entity are lessened as the physical therapist is treating under the order of referral or

periodic review of other specified health care providers. Accordingly, we conclude that the corporate practice of physical therapy is not prohibited by the corporate practice of medicine doctrine.

703 N.W.2d at 523.

In this case, however, no such statutory safeguard exists for the practice of healing performed by Dr. Yochum.

Although in this case there was a doctor's referral and a periodic review, there is no statutory requirement that there be either. A statutory safeguard appears to be required by Isles I. There is no statutory safeguard prohibiting an injured person from hiring SUMA to make an MRI, and from having Dr. Yochum analyze the MRI for the injured person, without a referral from a doctor or review by a doctor. There is also no statutory safeguard to keep the injured person from acting on the information he or she gets from Dr. Yochum. This is exactly the danger that the corporate practice of medicine doctrine addresses. Thus, public policy considerations require the application of the corporate practice of medicine doctrine to SUMA's practice of paying Dr. Yochum to analyze the MRI images.

Finally, SUMA argues that the corporate practice of medicine doctrine should not apply because Dr. Dahl is a chiropractor licensed in the State of Minnesota. Dr. Dahl is not, however, incorporated under the Minnesota Professional Firms Act, M.S.A. Sections 319B.02, .03, and .07, which allows chiropractors to form corporations. The Act requires professional corporations to register with the Secretary of State's Office. Id. The Act also provides oversight and review of those professional firms. Id. Instead, Dr. Dahl incorporated SUMA as a general business corporation.

The Isles Wellness I court did recognize that an optometrist could be employed by a corporation, where there was a specific statutory provision allowing such employment. 703

N.W.2d at 521. In this case, however, there is no statutory provision carving out an exception to the corporate practice of medicine doctrine. In the absence of such a statute, the doctrine prohibits a chiropractor from being employed by a corporation. Id.

III. SUMA's Violation of the Corporate Practice of Medicine Doctrine Was Not Knowing or Intentional

Having determined that SUMA's practices are prohibited by the corporate practice of medicine doctrine, the Court must next consider whether the fees for those services are nonetheless collectible.

In Isles Wellness, Inc. v. Progressive Northern Insurance, 725 N.W.2d 90, 95 (Minn. 2006) (Isles Wellness II), the Minnesota Supreme Court held that the plaintiff, a layperson, had violated the corporate practice of medicine doctrine by operating several health clinics under a corporate structure. In addressing the enforceability of the corporations' contracts, the Court stated, "[w]e will not void a contract unless it is established that the corporation's actions show a knowing and intentional failure to abide by state and local law." 725 N.W.2d at 95.

The Isles Wellness II court declined to void the contract of a chiropractic clinic operating in violation of the corporate practice of medicine doctrine. 725 N.W.2d at 95. It did so because of the "lack of clarity regarding the applicability of the corporate practice of medicine doctrine before this court's decision in Isles Wellness I." Id. The clinics had previously sought the Minnesota Board of Chiropractic's determination as to the permissibility of its practices, as well as consulted with the clinic's own attorney. Id.

SUMA's services to Ms. Coe likewise predate the Isles Wellness I decision. Given the uncertainty of the doctrine's applicability pre-Isles Wellness I, SUMA could not have knowingly violated the holding of that case. Therefore, the Court finds that Allstate must pay SUMA for Dr. Yochum's imaging findings.

IV. SUMA's Charges Were Reasonable and Necessary

Allstate also argues that Ms. Coe's MRI was medically unnecessary, not supported by the treatment notes of the chiropractor, not reasonable within the standard of the medical community, and not related to symptoms Ms. Coe had from the accident.

Therefore, SUMA's burden of proof at trial is to prove that its service to Ms. Coe was medically necessary and reasonable in cost. The Court finds that SUMA met its burden through the testimony of Dr. Stachowski and Dr. Dahl. Dr. Stachowski testified Ms. Coe had symptoms of cervical pain and headaches from her auto accident, and that she suffered an increase in symptoms in August 2005. Dr. Stachowski ordered an MRI to determine if there was any pathology present that would alter his course of chiropractic care. Ms. Coe's medical file, attached as an exhibit to his deposition, supported this testimony.

Dr. Stachowski further testified that, within a reasonable degree of chiropractic certainty, the MRI he ordered was medically necessary, aided him in his ongoing treatment of Ms. Coe, and was causally related to the symptoms Ms. Coe suffered in her auto accident. Dr. Stachowski's opinion on medical necessity was credible and not contradicted by the medical opinion of any other doctor.

Dr. Dahl testified that before setting the price for scans on Ms. Coe he compared them to the prices of his competitors in the community. He felt the charges to be within the range of his competitors in the Minneapolis community (higher than some, lower than others). Dr. Dahl's testimony regarding the reasonableness of the charge for the MRI was credible and not contradicted by the opinion of any other medical professional.

Additionally, Minn. Stat. § 62Q.75, subd. 2(d) provides that the rate of interest paid by a health plan company shall be 1.5 percent per month. In accord with section 62Q.75, subd. 2(d),

SUMA charged Allstate interest and late fees in the amount of \$1,086.07 through November 5, 2008. See (Ex. 2) The Court has supplemented this amount to include \$128.81 in interest and late charges accruing through the date of this order, March 12, 2009. See (Appendix A.) Because the Court finds this interest amount is in accord with section 62Q.75, subd. 2(d), the Court also awards SUMA \$1,214.28 in interest and late charges.

Because Dr. Stachowski's testimony demonstrates the medical necessity of Ms. Coe's MRI, and because Dr. Dahl's testimony shows that SUMA's charge for the MRI was reasonable in the Minneapolis community, the Court finds that Ms. Coe's MRI was medically necessary and SUMA's charges for the MRI were reasonable. Furthermore, because the interest SUMA charged Allstate is in accord with Minn. Stat. § 62Q.75, subd. 2(d), the Court finds that Allstate owes SUMA \$2,040.00 for the full amount of the services SUMA provided to Ms. Coe plus \$1,214.28 in interest and late charges.

CONCLUSION

The Court finds that although SUMA violated the corporate practice of medicine doctrine when it paid Dr. Yochum to interpret the MRI images, SUMA could not have known that it was violating state or local law, since the corporate practice of medicine doctrine was not applied in Minnesota until September 15, 2005. The Court further finds that the charges are reasonable and necessary and not void as a matter of public policy. The Court finds that Defendant owes SUMA \$3,254.28. This amount includes \$2,040.00 for the full amount of the services SUMA provided to Ms. Coe plus \$1,214.28 in late and interest charges.

Upon the presentation of counsel and all files, records and proceedings herein,

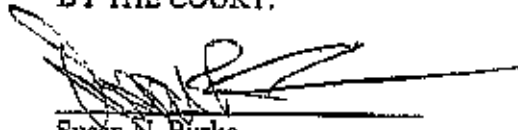
IT IS HEREBY ORDERED:

1. Defendant Allstate Insurance Company shall pay Plaintiff Stand Up Mid America MRI, Inc. \$3,254.28. This amount includes \$2,040.00 for the full amount of the services SUMA provided to Ms. Coe plus \$1,214.28 in late and interest charges.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated 7/4/09

BY THE COURT:



Susan N. Burke
Judge of District Court

APPENDIX A - INTEREST CALCULATION

<u>TIME PERIOD</u>	<u>INTEREST AND LATE CHARGES</u>
September 30, 2005 - November 5, 2008	\$1,086.07
November 5, 2008 - December 5, 2008	\$30.60
December 6, 2008 - January 5, 2009	\$30.60
January 6, 2008 - February 5, 2009	\$30.60
February 6, 2008 - March 5, 2009	\$30.60
March 6, 2008 - March 12, 2009 (6/31 = .19%)	\$5.81
<u>TOTAL</u>	\$1,214.28