

Office Based Surgery Facilities Permitted to Bill Under No-Fault Claims Reimbursement without Article 28 Licensure

Upper E. Side Surgical, PLLC v State Farm Ins. Co.

In the above entitled No-Fault action, an Office Based Surgery facility (OBS), which was represented by Abrams, Fensterman, et al defeated Defendant State Farm's motion for Summary Judgment with regard to payment for the medical services it provided. State Farm denied Plaintiff's claim for No-Fault benefits on the basis that the fees claimed were not in compliance with the New York Workers' Compensation Board Schedule of Medical Fees and/or Regulation 68, Appendix 17-C, in that the Plaintiff is not listed as a Public Health Law Article 28 facility. Defendant argued that Plaintiff is not entitled to reimbursement because they are not registered as a Public Health Law Article 28 facility.

Plaintiff in this matter concedes that they are not an Article 28 facility but are, however, a properly accredited (OBS). It is Plaintiff's contention that the Regulations do not require Article 28 licensure as a prerequisite for No-Fault Claims reimbursement. The current applicable OBS law that was passed on July 14, 2007 (Public Health Law § 230-d) or requires merely that an office-based surgery facility must obtain and maintain full-accredited status by a nationally recognized accrediting agency approved by the New York State Commissioner of Health. In the instant matter, Plaintiff is both nationally accredited and approved by the New York State Commissioner of Health.

In its holding the Court found, "Plaintiff is not authorized to be reimbursed for the medical/surgical services it provided under the 'facility fee' schedule in accordance with The Products of Ambulatory Surgery (PAS) classification system because it is not an Art. 28 facility. Plaintiff is, however, entitled to reimbursement under Insurance Law § 5102(a)(1) for the medical/surgical services it provided (c.f. [*Great Wall Acupuncture v. GEICO Gen. Ins. Co.*](#), 16 Misc 3d 23 (App. Tm., 2d Dept, 2007))".

This case will proceed to trial for a determination of the fee which Plaintiff is entitled to receive under Ins Law Sec 5102 (a) (1).

For any questions pertaining to the No-Fault issues, Workers' Compensation, OBS or issues relating to insurance and/or health care reimbursement, please contact our No-Fault department at (516) 248-2929 or your attorney contact in our Firm.