

## Doctors - Beware of Consequences of Insurance Fraud

08/22/13

Healthcare practitioners face the potential of substantial financial penalties and sanctions when they engage in fraudulent activity. [Healthcare claims fraud](#) is a serious criminal offense, and can also result in the imposition of civil sanctions. In addition, practitioners who are found guilty of fraudulent activity risk the potential revocation or suspension of their license to practice. A [recent decision](#) by an [Administrative Law Judge](#) sets out the range of potential consequences.

The [New Jersey State Board of Medical Examiners](#) filed an administrative complaint in 2011 seeking to suspend or revoke the license to practice medicine of Dr. Monica Mehta, described as a specialist in the treatment of neuro-musculoskeletal disorders and injuries. Count One of the administrative complaint alleged that the doctor submitted fraudulent documents to the patient's insurance company related to treatment, stating that the patient had no prior injuries. It was alleged, however, that the doctor was well aware of the patient's prior injuries because the doctor had treated the same patient for similar injuries arising from prior auto accidents. Count Two of the administrative complaint alleged a series of allegedly false and misleading statements contained on bills for treatment for the same patient. The State again alleged that the doctor failed to disclose prior accidents. Count Three alleged that, regarding a different patient, the doctor maintained separate billing ledgers for different insurance carriers covering treatment during the same period and charged different carriers for the same service on the same day and at different rates, and that her records for the patient were incomplete and did not support the necessity of the services billed. Count Four accused the doctor of having charts for patients that contained illegible and deceptive preprinted forms, and also that she allegedly submitted claims under the names "Center for Treatment" and "Physical Medicine and Rehabilitation" without the signatures of licensed provider physicians. Additionally, Count Four also alleged that the doctor failed to include quantity and dosage of prescribed medications in patient notes, and that she directed patients to sign deceptive, misleading, and/or oppressive authorizations. Count Five alleged that the doctor billed for services that were not actually rendered. Finally, Count Six alleged that the doctor provided documentation to the Board of Medical Examiners containing numerous misrepresentations and inaccuracies regarding the treatment and instructions provided to a particular patient.

The Administrative Law Judge heard extensive testimony and reviewed voluminous documentation presented by the Board and by the physician. After weighing all of the evidence, the ALJ concluded that the Board had only established two facts potentially warranting action being taken against the doctor's medical license. First, the ALJ ruled that the doctor had committed a violation of the Insurance Fraud Prevention Act by submitting misleading documents to the patient's insurance carrier. In making this finding, the ALJ placed great weight on the fact that, in a related civil case involving the same patient and the doctor, a Superior Court Judge ruled that the doctor had violated the Insurance Fraud Prevention Act, and that finding by the Superior Court Judge would be given preclusive or binding effect in this administrative regulatory action. Second, the practice, by submitting bills for services rendered by the doctor's physical therapist employees without identifying the provider of the services rendered, and his or her degree on those claims, were in violation of regulations. The ALJ next considered what penalty, if any, was warranted by these findings.

The ALJ concluded that the prior finding of the Superior Court Judge that the doctor had violated the Insurance Fraud Prevention Act did not, by itself, warrant the imposition of discipline. In making this finding, the ALJ placed great weight on the fact that the Superior Court Judge "made no determination as to whether those acts were so egregious as to constitute misconduct in the magnitude of gross malpractice." Therefore, the ALJ

found, the violation of the Insurance Fraud Prevention Act was technical in nature, and because suspension or revocation of a physician's license to practice medicine is still discretionary, the ALJ concluded that no sanction was warranted. With regard to the other violations, the ALJ noted that the regulations that were violated were enacted to insure that services were rendered by licensed staff, and there was no evidence or suggestion that the physical therapists were unlicensed when they treated the patients. Consequently, while the doctor "may have technically failed to identify the staff by degree or credential on her claim forms", the ALJ found that her technical violations did not warrant the impositions of any sanction. Therefore, although the doctor was found to have violated several administrative regulations governing the practice of medicine, the ALJ determined that no sanction was warranted.

[Pursuant to New Jersey Law](#), the decision of the ALJ is considered to be a non-binding recommendation. Once issued, the ALJ's decision is then transmitted to the administrative entity, in this case, the Board of Medical Examiners, for final action. The Board of Medical Examiners may accept, reject, or modify the decision of the ALJ. The Board of Medical Examiners considered Dr. Mehta's case at its meetings in July and August of this year, but as of this posting, has not made a final decision in the matter. As of today's date, the case remains pending.

This matter should be reviewed by all healthcare practitioners in New Jersey for a variety of reasons. It presents the issue of whether a finding in a civil case that a practitioner has violated the Insurance Fraud Prevention Act should automatically result in administrative discipline against the healthcare practitioner's license to practice. In many cases, adverse findings that a practitioner engaged in insurance fraud result in automatic disciplinary action. In this case, the ALJ found that although there was a violation of the Insurance Fraud Protection Act, no sanction was warranted. It will be interesting to note whether the Board of Medical Examiners accepts this recommendation or modifies it in some respect. Additionally, healthcare practitioners should be interested in the outcome of this matter insofar as the ALJ found that the doctor had violated Board regulations by omitting required information from billings for services. As noted, the ALJ found it was merely a technical violation that did not require the imposition of discipline. How the Board of Medical Examiners handles this recommendation from the ALJ should be of particular interest. As many healthcare providers know, it is sometimes impossible, or at least greatly impracticable, to comply with each and every regulation governing patient records and billings to insurance companies. Whether the Board of Medical Examiners technical violations as warranting the imposition of administrative sanctions in this case may dictate how the Board treats future violations.

The Monitor will continue to "monitor" this case to assess what impact the final determination by the Board of Medical Examiners may have upon practitioners going forward.

#### **Attorney**

- Darren M. Gelber

#### **Practices**

- Criminal Defense
- White Collar Crime & Investigations