



AAA® INSURANCE REPORTER

2021 YEAR IN REVIEW

2021 Year in Review

As the end of 2021 nears, we would like to share highlights of the New York State Insurance Program (NYSI) as it found new and innovative ways to conduct business, notwithstanding challenges stemming from the pandemic. Thanks to its partnership and collaboration with arbitrators, the Department of Financial Services (DFS), and most importantly the user community, NYSI aims to sustain these successful initiatives, as requests for arbitrations trend again towards exceeding the number of new filings processed in 2020.

Transitioning to Virtual Hearings

In January 2021, the New York No-Fault arbitration program transitioned from administering in-person hearings to utilizing videoconferences. After several months of conducting virtual hearings on a trial basis, the SUM/UM arbitration program followed suit and now also administers hearings using videoconference options. Here are some of the benefits available to the user community:

- De-regionalizing assignments to arbitrators provided a diversity of arbitrators not tied to geographical regions where applicants or claimants reside; and
- Removing the need for in-person hearings reduced exposure to transmittable viruses or infections and eliminated travel time to hearing, which in turn allowed more cases to be heard.

Transitioning to Virtual Work

On the administrative end, NYSI quickly adapted its workforce structure so staff could work from remote locations. For staff who prefer working on site, we designed a safe hybrid work environment and schedule. This relatively seamless adjustment allowed employees to work from remote locations while sustaining the same levels of excellent service to the user community, arbitrators, DFS, and all parties conducting business with NYSI.

New Technology

On the technological front, NYSI implemented a platform for arbitration parties to run and execute data reports and tables illustrating their respective arbitration claims caseload.

Ensuring Best-Practice Cybersecurity Defenses for NYSI Panelists

Cyber threats were a growing problem prior to 2020, but in the wake of COVID-19, enabled by the accelerated adoption of virtual work practices and a broader use of cloud services, cyberattacks have grown exponentially.

The AAA-ICDR are stewards of highly sensitive data and communications, and, as such, takes the need for a rigorous and formal Information Security Program very seriously. Using the National Institute of Standards and Technology



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(NIST) Cybersecurity Framework for guidance, the AAA-ICDR executes on and monitors compliance with best-practice cyber-related policy and process, employs several layers of advanced and best-practice protections against both external and internal cyber threats, and undertakes several information security-related assessments, audits, and security tests annually.

In addition, the AAA-ICDR requires ongoing organization-wide computer-based training in cybersecurity awareness and provides cybersecurity training to all panelists, including those serving the NYSI caseload.

CaseShield by AAA-ICDRSM

As early as 2019, the AAA-ICDR was looking for a way beyond simply providing tips and trainings to assist panelists who use their own technology equipment (laptop, mobile phone, etc.) to do their case work, with their own adherence to best-practice cyber-security protections. From this desire was born the idea of providing a virtual desktop service that included enterprise-grade cyber protections.

Such a service, **CaseShield by AAA-ICDR**, now is live and has been in use by all the NYSI arbitrators since earlier this year.

What is CaseShield?

CaseShield is a virtual desktop solution providing arbitrators and mediators with a uniform, secure, and easy-to-use environment to manage their cases. Subscribers can access CaseShield anytime and anywhere, on any device and browser, via a secure internet connection.

NYSI Arbitrators access the CaseShield virtual desktop using their own devices. Users have access to cloud-based versions of the Microsoft Office Suite, Adobe, and other standard desktop software. They also have access to a Microsoft Office 365-based CaseShield email address. Additionally, files are saved, stored, and protected safely within the virtual desktop.

NYSI Arbitrators are required to use the provided CaseShield email address for all their NYSI communications and must log into CaseShield to access ADR Center.

What are the Benefits of CaseShield?

Security At a time when cybersecurity is extremely important and constantly changing, CaseShield provides multiple layers of security including encryption, Enterprise grade anti-virus/anti-malware protection, and multi-factor authentication. This provides significant defense against most common security threats and vulnerabilities, such as phishing, ransomware, poor access control, poor password management, lack of encryption, and poor patch management.



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CaseShield offers cyber protections consumers cannot purchase/configure on their own, with an easy-to-use standardized desktop environment and on-demand help-desk support. Experts evaluate new security threats and apply the required response, eliminating the need for the arbitrators to vet, acquire, configure, manage, and monitor their own security tools and settings.

Simplicity and Support All of the arbitrators' important case files and information are streamlined into one secure, standardized location that they can access everywhere they go. On-demand desktop technical support is available to the arbitrators 24-7.

Overall, **CaseShield by AAA-ICDR** helps NYSI Arbitrators service the NYSI caseload both safely and efficiently and has become an invaluable addition to the AAA-ICDR's Information Security program.

For more information about the NYSI Panel's use of **CaseShield by AAA-ICDR** or about CaseShield in general, please contact Ben Carpenter at CarpenterB@adr.org.

ADR Center Account Review

Over the past several months, you may have received a message from the AAA asking you to review your ADR Center account or active users associated with your firm's account. Thank you to those who responded (and those who called to make sure this was not some type of phishing email!).

Companies tend to be increasingly proactive in promoting vigilance and training for their employees in recognizing phishing attacks. That is ever more as cybercriminals evolve their ways to overcome the securities we collectively have in place. However, oftentimes when monitoring one point of attack, we fail to see another vulnerability. For example, when employees leave a company, their accounts often are left in an active status for weeks, months, or in some cases even longer.

Inactive accounts may be an unguarded potential access point to critical account and case information for businesses that do not maintain an active review of their account users, or in the case of the AAA, their **ADR Center Users**. According to a recent analysis by cybersecurity Varonis, 26% of all accounts belong to "stale enabled users."

Cybercriminals actively search business and social media sites for employee job movement and target these inactive accounts to access *your* company's information. Deleting these accounts helps prevent cybercriminals from potentially accessing accounts, case, and client information. A routine review of your ADR Center users and comparing the information to your current personnel records may be a good practice to set in place to reduce a potential threat.

As a reminder, each ADR Center account has at least one **Administrator** (Admins). Depending on the size of the firm and the number of users, a company may have several Admins. Admins have the ability to add or delete new users



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to your firm's account. They are the gatekeepers who have access to your firm's information. It is vitally important to remove them from access to ADR Center if they are no longer using their accounts.

Passwords

We tend to fall into patterns and ease-of-use situations regarding passwords. With a raise of hands, how many of us are using the same or very similar passwords across different accounts in different applications? We make passwords simple so we can easily remember them. Cybercriminals can take stolen passwords from one account and apply them to other accounts in your name.

Some simple tips may help protect your passwords:

- Make your password challenging.
- Make your new password between 8-16 characters, the longer the better for safety.
- Use a combination of capital letters, characters, and numbers.
- Use new passwords and do not reuse the old ones.
- Do not just simply add a number after the last password used.
 - *Use a Password Manager when possible.* This avoids concerns about remembering the password and writing passwords down. In the "old days," we used to keep these passwords in our desk drawers or tape them to our computer monitor—those days are long gone! Review "saved" passwords in your browser that will auto-populate when you log into your favorite websites.

We hope the reminder about managing your associated ADR Center user's accounts and tips about passwords help us combat cyber criminals before they can adversely affect any of us.

2021 Q2 Customer Satisfaction Survey Responses

Thank you to all of our customers who participated in our No-Fault Customer Satisfaction Quarterly Survey. We value your business and continue to make decisions based on the feedback we receive in key areas and to respond in a timely manner to all customer inquiries and concerns.

Results from the Q2 survey indicate that 90% of customers would recommend the AAA's services. Eighty percent of customers indicated they were satisfied with AAA's responsiveness to customer inquiries. Here are several positive comments regarding AAA services copied directly from the survey:

- "Always helpful and responsive to all of my questions or concerns"
- "I am very happy with all members of your panel."



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- “I am happy with the overall service.”
- “Great group of people working at AAA”

Constructive feedback regarding the current technology utilized to manage cases online included:

- “The system logs out too quickly.”
- “Lots of slowdowns and issues lately.”

Shortly we will be implementing a real-time party-feedback tool to ensure issues you experience are reported and addressed immediately. We are investing in a more structured/user-friendly approach to surveys that will allow us to identify and address customer needs in a more organized fashion. We also are committed to continual staff training that focuses on enhancing specific skillsets designed to help employees achieve the level of service our customers have come to expect from AAA.

We look forward to continuing to deliver excellence in service and integrity to our valued customers.

Please share your feedback at any time by emailing our customer service team at nysinsurance@adr.org. Please also feel free to reach out to any of your AAA contacts.

AAA's NYSI Case Statistics Portal

Now you can have direct access to your case information in interactive and downloadable files on our secure client portal.

See your Filing Rates by Claim Amount and Medical Provider, Active Cases by Phase and Provider, Closed Cases by Close Type and Over Time, or download the details to Excel or CSV and perform your own analysis.

Information for the last three years includes parties; claim amounts; important dates such as filing, escalation, hearing, and closing; policy, claim, and case file numbers; offer information and more. The detail pages will link to the case in ADR Center. Note that the downloaded detail reports contain more information than appears on screen and can be filtered, pivoted, and otherwise manipulated in Excel to provide various views of the data.

DEVELOPMENTS IN NEW YORK NO-FAULT & SUM ARBITRATION

Recent Arbitration Awards

The intent of this section is to provide a cross section of recent, well-reasoned arbitration awards that are consistent with current New York precedent and address commonly raised issues in no-fault and SUM arbitrations. The awards



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were objectively selected by an editorial board consisting of no-fault and SUM arbitrators with a view toward promoting discussion and analysis of relevant issues.

List of Arbitrator Abstracts

TRIGGER POINT IMPEDANCE MAPPING (“TPIM”) & LOCALIZED INTENSE NEUROSTIMULATION THERAPY (“LINT”) – MEDICAL NECESSITY

- *Sovereign Medical Services, PC & GEICO Ins. Co.*, AAA case no. 17-19-1140-3976 (8/30/21) (Thomas Awad, Arb.)
- *Comfort Choice Chiropractic, PC & GEICO Ins. Co.*, AAA case no. 17-20-1153-9149 (8/20/21) (Frank Marotta, Arb.)
- *Comfort Choice Chiropractic, PC & Allstate Ins. Co.*, AAA case no. 17-19-1139-8277 (8/11/21) (Ellen Weisman, Arb.)
- *Comfort Choice Chiropractic, PC & GEICO Ins. Co.*, AAA case no. 17-19-1144-5653 (7/21/21) (Aaron Maslow, Arb.)

DRUG SCREENING & MEDICAL NECESSITY & FEE SCHEDULE

- *Ridgewood Diagnostic Laboratory & State Farm Mutual Auto. Ins. Co.*, AAA case no. 17-19-1145-9516 (8/27/20) (Drew M. Gewuerz, Arb.)
- *Excell Clinical Lab & State Farm Fire & Cas. Co.*, AAA case no. 17-19-1146-5695 (6/13/21) (Marcie Glasser, Arb.)
- *Excell Clinical Lab & Allstate Fire & Cas. Ins. Co.*, AAA case no. 17-19-1150-4464 (4/15/21) (Hersh Jakubowitz, Arb.)
- *Excell Clinical Lab & MVAIC*, AAA case no. 17-19-1150-4414 (4/27/21) (Pauline Molesso, Arb.)

PRESCRIPTION MEDICATION & MEDICAL NECESSITY

- *Acutus Rx, LLC & GEICO Ins. Co.*, AAA case no. 17-19-1140-8093 (6/8/21) (Sandra Adelson, Arb.)
- *SMK Pharmacy Corp. d/b/a Nature’s First LTC & Compounding & Allstate Fire & Cas. Ins. Co.*, AAA case no. 17-19-1142-1155 (6/28/21) (Maryann Mirabelli, Arb.)
- *NYRX Pharmacy, Inc. & LM General Ins. Co.*, AAA case no. 17-19-1143-6317 (6/30/21) (Mitchell Lustig, Arb.)
- *Albertson Pharmacy, Inc. & Geico Ins. Co.*, AAA case no. 17-20-1159-4190 (7/30/21) (Susan Mandiberg, Arb.)

PROBATIVE VALUE OF REBUTTALS PREPARED BY PHYSICIAN ASSISTANTS

- *Jam Pharmacy Corp. & Integon National Ins. Co.*, AAA case no. 17-19-1143-7330 (7/22/21) (Matthew Brew, Arb.)
- *B & H Pharmacy d/b/a Chelsea Mobility & American Transit Ins. Co.*, AAA case no. 17-19-1141-0897 (8/16/21) (Maria Schuchmann, Arb.)



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- *Greenleaf Chemists, Inc. & GEICO Ins. Co.*, AAA case no. 17-20-1174-6166 (9/15/21) (Frank Marotta, Arb.)
- *B & H Pharmacy d/b/a Chelsea Mobility & Allstate Fire & Cas. Ins. Co.*, AAA case no. 17-19-1140-8276 (9/17/21) (Marina O'Leary, Arb.)

SUM AWARDS: CAUSATION & PREEXISTING CONDITIONS

- *Claimant & Geico Ins. Co.*, AAA case no. 01-20-0015-2375 (9/16/21) (Jodi Zagoory, Arb.)
- *Claimant & New York Central Mutual Fire Ins. Co.*, AAA case no. 01-20-0000-0606 (6/14/21) (Thomas Bogan, Arb.)

Arbitrator Abstracts

TRIGGER POINT IMPEDANCE MAPPING/IMAGING ("TPIM" & "TPII") & LOCALIZED INTENSE NEUROSTIMULATION THERAPY ("LINT") – MEDICAL NECESSITY

Sovereign Medical Services, PC & GEICO Ins. Co., AAA case no. 17-19-1140-3976
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(8/30/21) (Thomas Awad, Arb.) Applicant sought reimbursement for Trigger Point Impedance Imaging (TPII) and Localized Intensive Neurostimulator Treatment (LINT) performed on two dates of service. Respondent relied upon peer reviews authored by Dr. Harry Jackson to establish a lack of medical necessity. Dr. Jackson stated that the standard of care would be 6-12 weeks of therapy. Dr. Jackson also argued that trigger point injections are palliative and not therapeutic. The peer reviewer questioned the efficacy of trigger point injections. The arbitrator found the peer review insufficient to establish how the services were inconsistent with generally accepted medical practices. The arbitrator noted that the peer review discussed "trigger point injections" rather than the specific procedures performed and found that the sources cited by Dr. Jackson lacked authority to establish a standard of care. Ultimately, the arbitrator determined that the rebuttal was credible and sufficient to refute the peer review and establish the necessity of the TPII/LINT. The arbitrator found the procedures medically necessary and entered an award in favor of Applicant.

Comfort Choice Chiropractic, PC & GEICO Ins. Co., AAA case no. 17-20-1153-9149
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(8/20/21) (Frank Marotta, Arb.) Applicant sought reimbursement for Trigger Point Impedance Imaging (TPII) and Localized Intensive Neurostimulator Treatment (LINT) performed on multiple dates of service. Respondent denied the claim based upon a peer review by Kevin Portnoy, D.C., who found the procedures to be medically unnecessary. Dr. Portnoy opined that there was no documentation of circumscribed trigger points and that there was no documented failure of conservative therapy. Dr. Portnoy also argued that LINT is used in stroke rehabilitation but that there is no evidence to support its use to treat chronic pain. The arbitrator found the peer review sufficient to establish a lack of medical necessity of the TPII and LINT. In response, Applicant relied upon a rebuttal authored by Marcello Quiroga,



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D.C. Dr. Quiroga argued that the TPII was performed to confirm a diagnosis of myofascial pain syndrome and identify and localize clinically relevant myofascial trigger points. Dr. Quiroga also argued that a course of conservative treatment had not provided significant improvement. The arbitrator weighed the evidence before him and found the rebuttal persuasive. The arbitrator found the procedure medically necessary and entered an award in favor of Applicant.

Comfort Choice Chiropractic, PC & Allstate Ins. Co., AAA case no. 17-19-1139-8277

<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(8/11/21) (Ellen Weisman, Arb.) In this case, the arbitrator addressed whether Trigger Points Impedance Imaging ("TPII") and Localized Intensive Neurostimulator Treatment ("LINT") were medically necessary. The Respondent relied upon a peer review wherein the peer reviewer concluded that there was no documentation to support the use of lumbar spine LINT or lumbar TPII and that the testing would not have had any impact on the conservative treatment protocols or the assignor's outcome. Applicant's rebuttal doctor opined that trigger points are extremely difficult to objectively diagnose and treat, and that the physical examination is not reliable for the diagnosis of trigger points. TPII objectively identifies the precise location of the trigger points and LINT provides high intensity stimulation focused on the exact areas that were pinpointed by the machine during the impedance mapping phase. After reviewing the evidence, the arbitrator found that Applicant failed to overcome respondent's peer review, noting that the assignor was undergoing standard conservative treatment modalities that were sufficient to treat her mild to moderate soft tissue spinal injuries. The arbitrator further stated that she was not persuaded that LINT added any therapeutic benefit beyond that provided by standard manipulative therapy. Accordingly, the arbitrator held that the TPII and LINT procedures were neither medically necessary nor effective in treating this assignor's injuries.

Comfort Choice Chiropractic, PC & GEICO Ins. Co., AAA case no. 17-19-1144-5653

<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(7/21/21) (Aaron Maslow, Arb.) In this case, the arbitrator determined whether applicant established entitlement to No-Fault insurance compensation for Trigger Point Impedance Imaging (TPII) and Localized Intensive Neurostimulator Treatment (LINT) performed on the assignor. In defense of the arbitration, Respondent relied upon a peer review wherein the doctor concluded that the TPII-LINT services were not medically necessary, as the assignor was receiving in-office myofascial release treatment and the diagnosis of myofascial pain syndrome did not need to be confirmed. According to the peer reviewer, there was no need to identify and localize myofascial trigger points. It was asserted that if the assignor was receiving trigger point therapy occasionally, it was unclear why the TPII-LINT was necessary. In reviewing the Respondent's evidence, the arbitrator found that the peer review set forth a sufficient standard of care and made out a prima facie case of lack of medical necessity, thereby shifting the burden to Applicant, who offered a rebuttal in opposition. However, the arbitrator noted that in weighing the conflicting expert opinion evidence, the Applicant failed to submit treatment notes demonstrating that improvement was not significant as asserted by the rebuttal. The arbitrator also noted that Applicant's treatment notes, which were submitted by Respondent, established that trigger points were clinically diagnosed on various dates, thus rendering electronic testing for them unnecessary. Accordingly, the arbitrator determined that the Applicant failed to rebut Respondent's peer review and Respondent's denial was sustained.



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DRUG SCREENING & MEDICAL NECESSITY & FEE SCHEDULE

Ridgewood Diagnostic Laboratory & State Farm Mutual Auto. Ins. Co., AAA case no. 17-19-1145-9516
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(8/27/20) (Drew M. Gewuerz, Arb.) Applicant sought reimbursement for nine units of drug screening services billed under CPT code 80307. Respondent originally denied reimbursement. However, Respondent subsequently conceded that reimbursement should be allowed for one unit at a rate of \$35.19. In support of its fee schedule defense, Respondent submitted an affidavit by James S. Lee, D.C., CPC. Applicant submitted a rebuttal affidavit by Priti Kumar, CPC. The arbitrator found Ms. Kumar's analysis surrounding the reimbursement rate inconsistent with the Workers' Compensation Fee Schedule. The arbitrator highlighted the fact that Ms. Kumar noted that CPT code 80307 "represents all presumptive procedures that require the use of instrumental chemistry analyzers" and should only be reported "once, irrespective of the number of drug class procedures or results on any date of service." The arbitrator determined that if a CPT code was to be reimbursed by the number of drug class procedures, there would not be any constraint on the number of units billed. The arbitrator pointed out that CPT code 80307 was added to Ground Rule 12 of the Pathology and Laboratory section of the 2018 Medical Fee Schedule, and that the intent of the New York State Workers' Compensation Board was to limit reimbursement of 80307 to one unit due to the fact that the code's description specifies that it covers "any number of drug classes...per date of service." The arbitrator noted that the 2018 Fee Schedule identifies the code's relative value as 30.00, which, when multiplied by the conversion factor in Region IV (\$1.31), the highest rate of reimbursement in New York for services rendered on or after April 1, 2019 for workers' compensation claims is \$39.30. Therefore, the arbitrator determined that Mr. Lee's analysis of the reimbursement rate was more consistent with the Workers' Compensation Board's value of the service than Ms. Kumar's suggested rate of reimbursement and awarded Applicant one unit under CPT code 80307 at a rate of \$35.19.

Excell Clinical Lab and State Farm Fire & Casualty Company, AAA case no. 17-19-1146-5695
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(06/13/2021) (Marcie Glasser, Arb.) Respondent issued partial reimbursement for laboratory drug testing billed under CPT codes 80308, 80323-90, 80345, 80348, 80354, 80356, 80358, 80361, 80362, 80364, 80365, 80367, 80368, 80369, 80370, 80372, and 80373. The Applicant appended modifier 90 ("outside laboratory") to each of the codes billed. Respondent submitted an affidavit by Jeffrey Futoran, CPC, who opined that no additional reimbursement was owed. Mr. Futoran noted that modifier 90 is appended when a clinical diagnostic independent lab refers a specimen to another lab for testing and pointed out that the records reflect that the billed-for procedures were referred to another laboratory. He stated that Ground Rule 3 of the Pathology and Laboratory section of the New York State Workers' Compensation Medical Fee Schedule indicates that when a service or procedure is performed by someone other than the attending physician, such as a hospital, commercial, or other laboratory, only the laboratory rendering the service may bill for the service and that the bill must be submitted directly to the responsible payer. Therefore, Mr. Futoran concluded that Applicant was not entitled to reimbursement. The arbitrator determined that Mr. Futoran did not provide sufficient detail to support his opinion that modifier 90 was improperly applied to the services at issue and



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that Mr. Futoran failed to provide sufficient detail as to the intent of Ground Rule 3. The arbitrator stated that the purpose of modifier 90 is for laboratory procedures or services performed by a party other than the treating or reporting physician. Thus, the arbitrator found Mr. Futoran's affidavit insufficient to sustain Respondent's fee schedule defense and awarded Applicant full reimbursement of its claim.

Excell Clinical Lab & Allstate Fire & Cas. Ins. Co., AAA case no. 17-19-1150-4464
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(4/15/21) (Hersh Jakubowitz, Arb.) Applicant sought reimbursement for drug testing performed. Respondent denied the claim asserting that the testing lacked medical necessity. In support of its defense, Respondent relied upon the peer review report of Regina Hillsman, M.D. Dr. Hillsman concluded the testing was not warranted because there was no documented evidence the claimant was on opioid therapy, nor was there any history of drug or alcohol abuse. In opposition, Applicant submitted a rebuttal, which set forth that the testing was necessary because patients often forget the medications they are taking, and the testing can prevent dangerous drug interactions. The rebuttal further contends that although the testing can be used to identify abuse and misuse, it can also be used to generally monitor patients and detect whether they are taking the correct dosage. The arbitrator noted that although Dr. Hillsman discussed a very narrow use for drug testing, the rebuttal established the testing served several additional roles. Thus, Arbitrator Jakubowitz found the testing medically necessary, and the Applicant was awarded reimbursement of its claim.

Excell Clinical Lab v. MVAIC, AAA case no. 17-19-1150-4414 (4/27/21)
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(Pauline Molesso, Arb.) Applicant sought reimbursement for drug testing performed. Respondent denied the claim on the ground the testing lacked medical necessity. In support of its defense, the Respondent offered a peer review report by Christopher Burrei, D.O. Dr. Burrei asserted the testing was not medically necessary because, inter alia, the patient was not a chronic care patient and was not a candidate for opioid medication. Moreover, the patient was not currently taking any prescription medication let alone narcotics. Applicant submitted a rebuttal, which suggested the testing was necessary to prevent interactions and alter dosage amounts. After reviewing the medical evidence, the arbitrator determined that, although the rebuttal discussed the use of drug screening generally, it failed to articulate why this patient needed to obtain drug screening on two separate occasions in the absence of the use of opioid medication. Thus, the arbitrator denied the claim.

PRESCRIPTION MEDICATION & MEDICAL NECESSITY

Acutus Rx, LLC & GEICO Ins. Co., AAA case no. 17-19-1140-8093
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(6/8/21) (Sandra Adelson, Arb.) The Applicant sought reimbursement for Omeprazole, sodium bicarbonate, and diclofenac sodium gel. The carrier denied the claim based on a lack of medical necessity per a peer review stating there was no evidence "the patient was intolerant of oral NSAIDs or oral analgesics." The arbitrator found this was



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incorrect, noting the records establish the patient was intolerant of Naproxen and that the patient had gastrointestinal problems after taking the medications. On this basis, the diclofenac gel was awarded. Similarly, regarding the Omeprazole and sodium bicarbonate, the arbitrator found that the peer misconstrued the medical records, as the patient had advised his treating physician that he had previously suffered from nausea and abdominal pain. Accordingly, Applicant was awarded reimbursement for the medications provided.

SMK Pharmacy Corp. d/b/a Nature's First LTC & Compounding & Allstate Fire & Cas. Ins. Co., AAA case no. 17-19-1142-1155

<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(6/28/2021) (Maryann Mirabelli, Arb.) The Applicant sought reimbursement for diclofenac gel and Lidoderm patches. The carrier denied the claim based on a lack of medical necessity per a peer review stating the patient should have been given NSAIDs, such as Naproxen, as there was no indication the patient could not tolerate oral medicines and "topical pain medications are not indicated as first-line agents in the treatment of musculoskeletal pain." The peer also questioned the use of Lidoderm patches as they are for relief of pain associated with post herpetic neuralgia and the diclofenac gel is provided for patients with osteoarthritis. The applicant submitted a rebuttal acknowledging, "NSAIDs are recommended as first-line treatment for musculoskeletal conditions," however "topical creams will provide an opportunity to treat patients right at the site of their pain providing higher local concentration and resulting in a greater analgesic effect." The rebuttal went on to discuss some of the advantages of topical medications, noting that they prevent adverse effects and can be beneficial for patients who cannot tolerate oral medications. The arbitrator determined that the treating physician had prescribed both oral NSAIDs and topical medications and that contradicted any arguments made by the Applicant regarding the need for topical medications due to potential adverse effects of oral medications. Thus, the arbitrator found that prescription of the topical medications was medically unnecessary and denied Applicant's claim in its entirety.

NYRX Pharmacy, Inc. & LM General Ins. Co., AAA case no. 17-19-1143-6317

<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(6/30/21) (Mitchell Lustig, Arb.) Applicant sought reimbursement for diclofenac sodium gel, and cyclobenzaprine tablets. Respondent denied the claim based on peer review reports and an independent medical examination (IME) of the injured party performed by Dr. Vijay Sidhwani. According to the peer reviews reports, Dr. Sidhwani reviewed the medical records and stated that the standard of care for treating pain secondary to acute soft tissue injuries is oral anti-inflammatory medications. Dr. Sidhwani stated that topical anti-inflammatories, such as diclofenac sodium gel, are only indicated for chronic pain conditions and when oral NSAIDs cannot be tolerated due to an underlying condition, which was not the case in this instance. Applicant submitted a rebuttal to the peer review by the prescribing physician, Dr. Jordan Fersel, who stated that topical medications have recently been used as a separate modality for pain control, and that the diclofenac sodium gel was medically necessary based on the patient's complaints and examination findings. The arbitrator found the peer reviews demonstrated a factual basis and medical rationale for the denial of the claim for the diclofenac sodium gel based upon a lack of medical necessity. However, the arbitrator found that Dr. Fersel's



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rebuttal refuted the opinions set forth in the peer review reports and established that the diclofenac sodium gel was, in fact, medically necessary. Thus, the denials based on Dr. Sidhwani's peer reviews were vacated. Dr. Sidhwani also performed a pain management IME and determined that further treatment, including prescription medication, was not medically necessary. The arbitrator found that the IME report set forth an adequate factual basis and medical rationale for the denial of the claim for the cyclobenzaprine tablets based upon a lack of medical necessity and that Applicant submitted insufficient medical evidence in rebuttal to refute the opinions of the IME physician. Thus, Respondent's denial based upon the IME was upheld.

Albertson Pharmacy, Inc. & Geico Insurance Company, AAA case no. 17-20-1159-4190
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(7/30/21) (Susan Mandiberg, Arb.) Applicant sought reimbursement for diclofenac sodium gel and lidocaine ointment. Respondent denied the claim based on peer review reports by Dr. Ayman Hadhoud, who reviewed the medical records, opined that topical medications are not indicated for soft tissue musculoskeletal trauma from a motor vehicle accident. Dr. Hadhoud stated that oral non-steroidal anti-inflammatory drugs (NSAIDs) are the standard of care for treating pain and inflammation from acute trauma arising from a motor vehicle accident. Dr. Hadhoud stated that topical anti-inflammatories like Diclofenac sodium gel are only medically necessary when there is a contraindication to the use of oral medications, which was not the case here. Dr. Hadhoud stated that lidocaine ointment typically is used to relieve superficial pain from post-herpetic neuralgia and does not penetrate to the ligaments, muscle, spine, and discs. Applicant submitted a peer review rebuttal by the prescribing physician, who stated that topical medications provide effective pain relief with fewer systemic adverse effects than oral medications. The arbitrator noted that the rebuttal only addressed the lidocaine ointment and that the prescribing physician neglected to mention that he simultaneously prescribed naproxen tablets, an oral NSAID, with the topical medications. The arbitrator found the peer reviews more persuasive than the applicant's evidence and denied the claim.

PROBATIVE VALUE OF REBUTTALS PREPARED BY PHYSICIAN ASSISTANTS

Jam Pharmacy Corp. & Integon Ins. Co., AAA case no. 17-19-1143-7330
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(7/22/21) (Matthew Brew, Arb.) The arbitrator addressed whether Respondent could sustain its denial of claim based upon lack of medical necessity. This case involved conflicting opinions as to the need for the prescribed diclofenac gel 3% in dispute. In support of its defense, Respondent presented a peer review report and addendum by Harold A. Schechter, M.D. Dr. Schechter concluded that the diclofenac gel at issue was not medically necessary. The arbitrator determined that the peer review was sufficient to establish Respondent's lack of medical necessity defense. As a result, the burden of proof shifted to Applicant to rebut the peer doctor's conclusion. Applicant submitted a formal rebuttal report by Yakov Yakubov, P.A. The arbitrator found Applicant's rebuttal conclusory and that Mr. Yakubov misidentified himself as the "treating physician." The arbitrator took particular note that Mr. Yakubov is a physician's assistant, not a physician, and that a physician's assistant does not possess the same expertise as a licensed medical



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doctor. Therefore, according to the arbitrator, Mr. Yakubov's opinion should be afforded less probative value on the issue of medical necessity. The arbitrator further determined that Dr. Schechter provided a persuasive reply to Mr. Yakubov's rebuttal. Accordingly, the arbitrator denied Applicant's claim in its entirety.

B & H Pharmacy d/b/a Chelsea Mobility & American Transit Ins. Co., AAA case no. 17-19-1141-0897
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(8/16/21) (Maria Schuchmann, Arb.) The arbitrator addressed whether Respondent could sustain its denial of claim based on lack of medical necessity and the allegation that the claimant committed a policy violation by failing to appear for an examination under oath (EUO). Regarding Respondent's allegation that the Claimant failed to appear for an EUO, the arbitrator concluded that such defense was unsustainable due to an untimely scheduling letter. Regarding the issue of medical necessity, this case involved conflicting opinions as to the need for the prescribed medications in dispute, namely, Naproxen, Tizanidine, and diclofenac gel. In support of its lack of medical necessity defense, Respondent offered a peer review report by Ajendra Sohal, M.D. Dr. Sohal concluded that the medications at issue were not medically necessary. Regarding the Naproxen and Tizanidine, the arbitrator determined that Respondent did not shift the burden of proof to Applicant, as the peer review failed to establish lack of medical necessity. Regarding the diclofenac gel, the arbitrator concluded that the peer review was sufficient to establish Respondent's lack of medical necessity defense and that the burden of proof then shifted to Applicant to rebut the peer doctor's conclusion. Applicant submitted a formal rebuttal report by Aleksandr Kopach, P.A. The arbitrator considered all of the evidence and found that the rebuttal should be prepared by the supervising medical doctor. The arbitrator concluded that a physician assistant is not the peer of a medical doctor and, therefore, Mr. Kopach's opinion lacked relevance and credibility. Accordingly, the arbitrator denied Applicant's claim for the diclofenac gel in dispute.

Greenleaf Chemists, Inc. & GEICO Ins. Co., AAA case no. 17-20-1174-6166
<https://aaa-nynf.modria.com/loadAwardSearchFilter>

(9/15/21) (Frank Marotta, Arb.) Applicant sought to recover first-party benefits following submission of its bills for various prescription medications given by Applicant to the claimant. Respondent denied the prescription medication at issue based upon the peer review report by Dr. Harry Jackson, which found the prescription medications to be medically unnecessary. Arbitrator Marotta found the peer review report to be insufficient to sustain Respondent's burden with regard to certain medications prescribed. However, the arbitrator did find the peer review report to be sufficient to sustain Respondent's burden with regard to the prescription issued for Omeprazole. In opposition, Applicant offered a formal rebuttal letter by Aleksandr Kopach, P.A., the treating physician assistant. At the hearing, Respondent argued that the rebuttal cannot overcome the opinion of a medical doctor because the level of training and expertise is vastly different between such practitioners. Applicant countered that the rebuttal is not invalid because it was drafted by a physician assistant and not a medical doctor. Specifically, Applicant argued that any difference between the level of training and expertise would go to the weight of the arguments made but would not invalidate the rebuttal. After weighing the evidence presented, the arbitrator found Applicant's evidence insufficient to sustain its burden of persuasion in rebuttal and sustained Respondent's defense predicated upon a lack of medical necessity.



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B & H Pharmacy d/b/a Chelsea Mobility & Allstate Fire & Cas. Ins. Co., AAA case no. 17-19-1140-8276
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(9/17/21) (Marina O’Leary, Arb.) Applicant sought to recover first-party benefits following submission of its bills for various prescription medications given by Applicant to the Claimant. Respondent denied the prescription medication at issue based on the peer review report by Dr. Isandr Dumesh, who found the prescription medications to be medically unnecessary. In response, Applicant offered a formal rebuttal letter by Aleksandr Kopach, P.A., the treating physician assistant, who stated that based upon the patient’s medical history, the Claimant required the prescription medication at issue. Following a discussion of the evidence, the arbitrator found the explanation provided by Mr. Kopach to be persuasive. The arbitrator held that when presented with the opinion of a treating physician versus that of an equally qualified but non-treating physician, greater weight will generally be afforded to the treating professional, which, in this instance, was the physician assistant. The arbitrator noted that, while a physician assistant does not receive the same training as a medical doctor, physician assistants treat patients under the supervision of a physician and are capable of prescribing medications. Therefore, the arbitrator found that Applicant met its burden of persuasion in rebuttal and found the prescription of the medication at issue to be medically necessary.

SUM AWARDS: CAUSATION & PRE-EXISTING CONDITIONS

Claimant & Geico Insurance Co., AAA case no. 01-20-0015-2375
[SUM Award Search](#)

(9/16/21) (Jodi Zagoory, Arb) The Claimant presented an underinsured motorist claim alleging to have injured her neck and back in an accident on December 14, 2016. According to Claimant’s testimony and the description of the accident in the police report, the Claimant was stopped for red light when her vehicle was struck in the rear. The Claimant testified that her car was completely stopped at a red light when she felt a “major explosion,” to the rear of her vehicle, which jarred and stunned her. The driver of the adverse vehicle told the police “[s]he was w/b route 25A when her daughter distracted her attention from the roadway and...collided into the rear of [the claimant’s car].” Photographs of the rear of the Claimant’s vehicle depicted a moderate amount of damage to the trunk, bumper, and taillights, which cost approximately \$5,000 to repair. The police report documented the Claimant’s complaints of neck pain while at the accident scene. Respondent contested liability and the value of the Claimant’s injuries. Following the accident, the Claimant drove to the emergency room, where she presented with complaints of “lower back and upper back with neck pain mostly left side [and] tingling in both hands.” Following examination, Toradol was administered for pain relief, and the Claimant was prescribed Motrin and Valium and discharged with instructions to follow up with her primary care physician. The Claimant subsequently sought medical attention with Dr. G, a physiatrist. Dr. G testified at the arbitration hearing on the Claimant’s behalf. Dr. G testified that the Claimant presented with complaints of neck and back pain that radiated into her left upper extremity and left lower extremity, respectively, buckling legs, and numbness/tingling. Following examination, he instructed the Claimant not to work and prescribed physical therapy, Aleve, and a lumbosacral orthosis. Dr. G subsequently conducted an upper extremity EMG/NCV study, which revealed evidence of left C5-C6 cervical radiculopathy, which he opined was of recent derivation. Dr. G referred the Claimant for an MRI study of the cervical spine, following which he opined that the findings were caused by the trauma of the



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subject accident. An MRI study of the lumbar spine performed on January 24, 2017 revealed various bulges and herniations. Dr. G compared the MRI study with a prior lumbar MRI study performed November 6, 2014, which showed diffuse disc bulges. Dr. G performed an EMG/NCV study of the lower extremities, which revealed evidence of a bilateral L5-S1 radiculopathy, and which Dr. G opined was of recent origin. Dr. G testified the pre-existing lumbar bulging discs at L3-4, L4-5, and L5-S1 depicted on the 2014 lumbar MRI study, were exacerbated by the subject accident and that the L5-S1 disc herniation and the disc bulge at L2-L3 depicted on the 2017 MRI study of the lumbar spine were caused by the subject accident. The Claimant testified that she never previously injured her neck or back, and the records in evidence revealed that the 2014 MRI study had been ordered by the Claimant's primary care physician because the Claimant presented with back pain and nerve symptoms caused by shingles. The Claimant testified that she has remained under the care of Dr. G. According to the records in evidence, Dr. G's treatment included multiple trigger point injections to the neck and back areas, caudal epidural injections to the lower back, sacroiliac joint injections, lumbar facet joint injection, and cervical epidural steroid injections. The Claimant testified she was scheduled to have future epidural injections. Follow-up MRI studies of the Claimant's cervical and lumbar spines revealed additional bulging discs and worsening of the herniated discs depicted on the prior studies. Dr. G testified that the findings on the recent MRI studies were causally related to the subject accident. Dr. G testified that the injuries to Claimant's cervical and lumbar spine were significant and permanent and would worsen, requiring the need for extensive future medical care for the remainder of the Claimant's life, including cervical and lumbar epidural steroid and facet injections, sacroiliac joint injections, lumbar radiofrequency ablation procedures, trigger point injections, physical therapy, additional diagnostic testing, and possible cervical and lumbar discectomies. At the time of the subject accident, the Claimant was employed and continues to be employed as a physical therapist in home settings. Dr. G's records reveal that she was totally disabled through April 25, 2017 and that she returned to work on April 26, 2017 at 50% capacity. The Claimant was reimbursed by her no-fault insurer for lost earnings incurred December 15, 2016 through June 28, 2017 and also received short- and long-term disability payments from Prudential for lost earnings between December 25, 2016 and August 12, 2017. On Respondent's behalf, Dr. RB, an orthopedic surgeon, examined the Claimant on July 20, 2020. Dr. RB noted claimant "presents with complaints of pain in the neck, low back, right ankle, and right foot." Based on his clinical findings and review of various medical records, Dr. RB's impression was resolved sprains/strains of the Claimant's cervical and lumbar spine as a result of the subject accident. He opined that the Claimant was capable of working without restrictions, did not suffer from any orthopedic disability, and did not sustain any permanent injuries. On Respondent's behalf, Dr. F, a radiologist, reviewed only the MRI studies of claimant's lumbar and cervical spines performed January 24, 2017. With respect to the lumbar MRI study, Dr. F opined all the findings were degenerative and chronic. With respect to the cervical MRI study, Dr. F determined that the MRI revealed pre-existing degenerative changes and opined that no posttraumatic changes were identified, nor were there any abnormalities causally related to the accident. Therefore, Respondent argued that the Claimant's injuries were an exacerbation of preexisting conditions worsened by the numerous injections to her cervical and lumbar spines and not a direct result of the trauma from the underlying accident and that the value of the Claimant's injuries did not rise to the level of the SUM policy limits of \$100,000. After carefully reviewing all the medical evidence and considering the testimony of the Claimant and the Claimant's physician, the arbitrator determined that the preponderance of the credible evidence demonstrated that the Claimant suffered from an exacerbation of preexisting asymptomatic conditions to her cervical and lumbar spine and awarded the Claimant the sum of \$100,000 subject to a set off of \$25,000 paid by the underlying tortfeasor for a net award of \$75,000.



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Claimant & New York Central Mutual Fire Ins. Co., AAA case no. 01-20-0000-0606

SUM Award Search

(6/14/21) (Thomas Bogan, Arb.) The Claimant, a 57-year-old female, was involved in a motor vehicle accident on September 16, 2016. Respondent conceded liability. However, Respondent contested the causal relationship of the Claimant's injuries to the accident, as well as the extent of the injuries. The day after the accident, the Claimant sought treatment with Dr. H, her primary care physician, for complaints of headaches, neck, and upper arm pain. Following examination, prescribed ibuprofen and cyclobenzaprine, physical therapy, and a home exercise program. On September 30, 2016, the Claimant sought treatment from her chiropractor, Dr. G, and continued to receive chiropractic treatment from Dr. G for five years post-accident. On October 17, 2016, the Claimant followed-up with Dr. H for a chief complaint of mild left arm pain, which came on "insidiously" following the accident, and he diagnosed lateral epicondylitis of the left elbow. The arbitrator noted that the evidence revealed that the Claimant was involved in a prior motor vehicle accident on April 9, 2012, following which the Claimant developed low back pain, and, two months later, neck pain as well. She eventually sought treatment from a neurosurgeon, Dr. L, who performed a C5-6 and C6-7 anterior discectomy and fusion with plating on December 13, 2012. On October 24, 2016, the Claimant returned to Dr. L, who evaluated her for the first time since the 2016 accident. EMG/NCS testing of the left upper extremity reported positive for mild left ulnar neuropathy at the elbow and negative for any electrodiagnostic evidence of cervical radiculopathy. When the Claimant returned to Dr. L on January 10, 2017, she reported complaints of neck pain, headache, and left arm pain unchanged since her last visit. Dr. L noted that her neck pain and headaches were consistent with a disc injury at C4-5, and he recommended a trial of cervical traction and physical therapy. No follow-up appointment was scheduled, and there was no record of any further treatment by Dr. L for the next year and a half. On September 28, 2018, the Claimant returned to Dr. L for evaluation of neck pain and headaches, including "a painful pins and needles and numbness along both arms/hands predominately at nighttime," "intermittent electric shock type pain along the posterior cervical region," and "a choking sensation when her neck is in certain positions." Dr. L requested updated cervical spine x-rays and MRI, and when she returned again on October 18, 2018, Dr. L opined: [The Claimant] presents with neck pain and cervicogenic headaches with bilateral upper extremity dysesthesias, which likely represents a peripheral nerve entrapment syndrome and a component of radiculopathy....I have discussed a trial of acupuncture and a C7-T1 cervical epidural steroid injection. In the event she fails to improve, I have discussed proceeding with a CT cervical spine and EMG nerve conduction study of both arms for further evaluation. She will be reevaluated in our office on completion of the above treatment." Ten months later, the Claimant returned for "evaluation of neck pain and headaches with bilateral upper extremity painful paresthesias." Dr. L. reviewed a cervical MRI obtained on June 12, 2019, noting C4-5 central disc herniation "worse in comparison to the study from 10/1/2018." He also noted that EMG/NCS testing performed on June 6, 2019 was positive for mild bilateral ulnar neuropathy at the elbow, unchanged since the previous study in 2016, and that there was no electrodiagnostic evidence consistent with bilateral cervical radiculopathy. The arbitrator noted that, nevertheless, Dr. L recommended a C4-5 anterior discectomy and fusion. However, the Claimant advised that she wanted to avoid surgery as long as she could. There were no further treatment records from Dr. L. However, the evidence considered by the arbitrator included an affirmation from Dr. L. dated July 30, 2019, who affirmed that the Claimant had not required orthopedic treatment for several years prior to her 2016 accident, that her left arm symptoms and headaches were much worse when she



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returned to his office that year, and that MRI films in 2016 revealed a new left C3-4 disc protrusion and progression of a pre-existing C4-5 herniation, and left arm ulnar neuropathy, all of which he causally connected to the 2016 accident. Dr. L did not render an opinion with regard to the cause of the Claimant's right arm ulnar neuropathy. At her examination under oath conducted in connection with this claim, the Claimant testified that she did not have any activity restriction immediately prior to the 2016 accident and that from the time period of the earlier arbitration hearing in March 2014 (for the 2012 accident) until the time of her 2016 accident, she did not remember seeing any doctor for her 2012 injuries. In March 2021, the Claimant attended an independent medical examination with Dr. M. Following examination, Dr. M opined that the Claimant's subjective complaints of headache and neck pain could not be authenticated by any objective standard or on her physical examination or imaging and that none of the records document any physical impairment, neurological deficit, or musculoskeletal deficits as a result of the September 16, 2016 accident. He further determined that the imaging studies failed to show any changes in comparing her pre- and post-accident studies. Dr. P performed a file review on March 11, 2021, following which he opined that the appearance of the metallic hardware and disc space bone grafts relative to claimant's C5 to C7 ACDF surgery were well within the realm of expected post-surgical appearance, that there was no evidence of failure or damage to the ACDF plate or screws, and the degree of disc space bone graft resorption was typical to that routinely visualized in non-trauma patients years after the surgery. Therefore, he concluded that there was no evidence of posttraumatic injury of the cervical spine that could be attributed to the September 16, 2016 accident. Having considered the evidence, the arbitrator found the IME by Dr. M and the record review by Dr. P "most credible and most likely to reflect the underlying truth." Therefore, the arbitrator determined that the Claimant did not sustain a causally related "serious injury" as a result of the 2016 motor vehicle accident and, as a consequence, did not render any award in the Claimant's favor.

Editor-in-Chief: Alison M. Berdnik

Editorial Board: Athena Buchanan, Jan Chow, Stephen Czuchman, Michael Korshin, Alan Krystal, Melissa Abraham-Lofurno, Victor Moritz, Michael Rosenberger, Alina Shafranov, Meryem Toksoy, Matthew Viverito, Philp Wolf

Contributors to this issue: Athena Buchanan, Stephen Czuchman, Michael Korshin, Alan Krystal, Melissa Abraham-Lofurno, Victor Moritz, Michael Rosenberger, Alina Shafranov, Matthew Viverito



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