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N.J. Supreme Court Decision Adversely Impacts Multidisciplinary Practices and "Friendly PC" Arrangements

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In *Allstate Insurance Company v. Northfield Medical Center, P.C.*, the New Jersey Supreme Court handed Allstate Insurance Company a victory over certain co-defendants who actively promoted a model whereby a chiropractor would effectively own and control a medical practice, despite the existence of guidance that required that the plenary licensed provider (i.e., the MD or DO) own a majority of and control the professional entity. Despite the co-defendants' efforts to escape liability under the New Jersey Insurance Fraud Prevention Act (the "IFPA") on, among other bases, their lack of knowledge of the illegality of the structure, the Supreme Court held that the co-defendants knew that the structure they had promoted violated the law. To Allstate and other PIP carriers, suing providers, lawyers, management companies, investors and others under the IFPA is an excellent investment that has yielded significant returns for many years in the form of Treble Damages, attorneys' fees, professional board administrative actions, and even criminal prosecutions. As the Northfield Case just made this investment a lost safer, PIP carriers are now likely to more aggressively target "Friendly PC" arrangements and multidisciplinary practices.

To providers, management companies and non-physician investors in the State of New Jersey and neighboring states, the Northfield Case should be the impetus for evaluating and, potentially, restructuring "Friendly PC" arrangements and multidisciplinary practices. The risk of violating the IFPA is real, and could result in devastating consequences for a defendant, both directly (e.g., Treble Damages, attorneys' fees) and indirectly (e.g., collateral damages, such as licensure action, if the defendant is a licensee of sorts, an avalanche of recoupment actions by other payors or even criminal prosecution, as the Office of Insurance Fraud Prosecutor closely monitors IFPA actions). In light of the Supreme Court's holding, many "creative" models for structuring Friendly PC or multidisciplinary practices should be considered suspect. These models include, without limitation:

I. Arrangements whereby a management company or a non-plenary licensed provider (e.g., a D.C. or D.P.M.) exercises control over a plenary licensed provider, e.g., by virtue of being able to hire or fire such provider, control their finances or ability to practice, including, without limitation, through leases, management contracts, promissory notes, etc.

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II. Arrangements whereby the plenary licensed provider serves only as "paper" partner of the Friendly PC or multidisciplinary practice.

III. Arrangements whereby the plenary licensed provider, who serves as the owner of the Friendly PC, is paid a salary (versus a profit distribution), while the management company or non-plenary licensed provider-partners sweep the practice's accounts of all remaining profits.

To those in the industry who previously found safety in the ambiguity and inconsistency of the laws and guidance governing acceptable practice structures in New Jersey, or even in legal opinion letters (notably, a co-defendant in the Northfield Case was an attorney), the Northfield Case demonstrates that such perception of safety is only illusory, as the Supreme Court inferred knowledge of a violation of the IFPA from the circumstances, despite the existence of potentially exculpating evidence (e.g., a conflicting Opinion from a Deputy Attorney General in New Jersey opining that a plenary licensed provider need not hold a majority position in the practice).

While a management company's, non-plenary licensed provider's or investor's business interest in controlling the Friendly PC or multidisciplinary practice may be justified (since, often times, these parties contribute the capital required to develop and carry the practice), given the highly-regulated nature of the healthcare industry, and the aggressive litigation and enforcement climate, protecting the management company's, non-plenary licensed provider's or investor's business interests may require a more balanced approach. Restructuring problematic arrangements to remove illegal elements may be achieved relatively easily. However, the same may result in loss of essential protections for the management company, non-plenary licensed provider or investor. Where restructuring is prohibitive from a business perspective, abandoning the problematic structure in favor of the "Direct Ownership" structure may be prudent. In New Jersey, the Direct Ownership structure may be achieved by structuring the medical practice or multidisciplinary practice as an Ambulatory Care Facility licensed by the Department of Health. As an Ambulatory Care Facility, the entity (e.g., LLC or Inc.) may, under the ownership of a non-physician or non-plenary licensed provider, employ a plenary licensed provider in its own right and control the assets and finances of the entity.

While the Direct Ownership structure may require more initial capital outlay, it is certainly the more durable option for management companies, non-plenary licensed providers and investors, and would enable them to profit from the provision of healthcare services without the fear that all revenues they derived from such venture, plus a three times multiple, will one day be repayable by them to Allstate or another carrier under the theory of violation of the IFPA due to a defective corporate structure.

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