

SCHAUM LAW OFFICES

600 Old Country Road, Suite 328, Garden City, NY 11530
516-228-8766 Fax: 516-228-3559 SCHAUM@SCHAUMLAW.COM

June, 2020

TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

The following case probably falls under the category of “good try – but.” Here are the facts and circumstances in a rather interesting scenario.

The subject practice was an out of network group for the Empire Plan – the principal option for NYSHIP (New York State Health Insurance Program). Of course, one who selects an out of network physician anticipates paying a greater out of pocket charge and it is the responsibility of the practice to collect copays. One who does not charge and collect is deemed to have inflated the invoice charged to the carrier and exposes the practice to a claim of insurance fraud.

The State Comptroller issued an investigatory subpoena to the practice requesting copies of billings submitted on behalf of various patients. The “good try” referred to in our first sentence highlighted the claim of the physicians that they could not comply with the demand for records without patient authorization.

As a side note this discussion it has been our experience in representing physicians confronted by demands from either the government or private carriers that the practice has not been randomly selected for investigation. The usual is that for one reason or another the billing practices of the professionals have piqued the curiosity of those inquiring and may have been accompanied by investigators posing as patients in the course of a probe of practices.

In the instant case the question of lack of patient authorization went from the lower court through the appeal mechanism to the Court of Appeals, the final arbiter.

The Court of Appeals reviewed the statutes and concluded that the Comptroller was exercising the powers needed to fulfill that Office's duty to review billing records and the insurance of subpoenas was a necessary tool to aid in this function. The Court further stated that there was no infringement of patient privacy in this particular matter.

Respectfully submitted,

Schaum Law Offices