

SCHAUM LAW OFFICES

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April, 2020

TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

Many physicians we have successfully defended in OPMC proceedings have expressed the desire to sue those who have registered the initial complaint. A recent case has justified our advice that such action would be futile.

An orthopedist treated automobile injured patients and had a multitude of claims rejected and to add insult to injury the carrier filed a claim with OPMC alleging insurance fraud. The physician was successful before the OPMC and then filed suit alleging a violation of the Public Health Law by the carrier and claiming that the PHL granted him a right to sue under the circumstances as the physician contended that the complaints to OPMC lacked good faith.

Many procedural dances were carried out by both sides and eventually a federal court found that the issue of whether a right to sue was created under the PHL if a claim was unfounded was one which should be determined by New York's highest court.

The Court of Appeals ruled that the physician could NOT pursue a suit under the PHL even if it were to be found that the complaint against the physician was in bad faith. The decision stated that the law was not created for the benefit of physicians and that a private right of action would not promote the reasons for the legislation. The law had been enacted to facilitate disciplinary actions and the consumer of medical services. The law was intended to protect the public from medical misconduct and to encourage reporting of such suspected behavior.

Not content with these findings the Court added that the public was not to be dissuaded from reporting by becoming the targets of litigation from those wrongly accused.

We would like to discuss the issue of legislative intent at this point. You might be interested to know that each bill passed by the New York Legislature has what is referred to as the Governor's bill jacket. The official "jacket" contains all the memos prepared by the sponsors of the legislation as well as correspondence received by the Governor's office from various interested societies and organizations. The "jacket" is housed in the New York State Museum in Albany and fully describes the intent of the legislation.

As a sidebar, some years ago we were involved with a suit which involved the Workers' Compensation Law and medical fee schedules – long the bane of the medical community. Our research took us to the bill jacket dating back to the 1930's when the Workers' Comp Law was initially enacted. The sponsors of the bill had included ads from New York newspapers advertising exceedingly low fees being offered by physicians. Afraid that low fees meant poor service the law created a floor for medical charges – in essence – a minimum fee schedule. As you know with the passage this later in essence became the maximum fee schedules and thus the original purpose of the law was turned upside down!

Respectfully submitted,

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