



# Allstate Insurance Co. v. Northfield Medical Center, 159 A.3d. 412 (NJ 2017)

Topics Covered:      Fraud and Abuse

## **Outcome: Very Unfavorable**

### **Issue**

The issues in this case were (a) whether liability for a health care provider under the New Jersey Insurance Fraud Prevention Act (IFPA) can be based on what the provider should have known, as opposed to what the provider actually knew, and (b) whether a provider of health care services can be held liable under the IFPA under a theory of implied certification.

### **AMA Interest**

The AMA believes health care fraud should be limited to acts of intentional misconduct and opposes the implied certification theory.

### **Case Summary**

A number of chiropractors, with the assistance of several attorneys specializing in health care law, developed a plan to allow chiropractors to derive profit from physicians' performance of medical services. The basic idea was that the chiropractors would form two corporations. One of the corporations, to be known as the management company and owned 100% by the chiropractor, would purchase office equipment and either build a medical office or rent a medical office from an existing building. The office equipment and space would be leased to the second corporation, to be known as the medical practice company.

The medical practice company would hire the physician. The medical practice company would be primarily owned by the physician, but the chiropractor might also have a minority interest (up to 49%). The physician would pre-sign an employment termination agreement and a transfer of ownership of the stock certificates in the medical practice company. The employment termination agreement and the stock certificate transfers would be effective at the option of the management company.

Northfield Medical Center, PC was formed as a medical practice company under this plan, and JSM Management Company, Inc. was the corresponding management company.

As part of a general investigation of possible illegal chiropractic billing practices, Allstate Insurance Company became aware of the relationship between Northfield Medical Center and JPM Management Company. It concluded that the two companies had violated New Jersey law as it applied to the corporate practice of medicine. Thus, it had paid bills to Northfield on behalf of its insureds, who were injured in automobile accidents, assuming that a medical doctor owned Northfield. In fact, Allstate maintained, Northfield was a sham corporation and was for practical purposes owned by a chiropractor.

Allstate sued, among others, Northfield, JPM, the chiropractor who owned JPM, and the attorney who had developed their corporate structure, based on an alleged IFPA violation. Following a bench trial, the court found that Northfield and the other defendants had violated New Jersey law as it applied to the corporate practice of medicine. It accepted Allstate's theory of "implied certification" liability and also found a pattern of IFPA violations. The court held the defendants liable for approximately \$90,000 in compensatory damages and over \$1,200,000 in investigation expenses and attorneys' fees. After trebling the total damages, it entered a total award of just under \$4 million.

The defendants appealed, as a result of which the Appellate Division held for the defendants and reversed. It found that New Jersey law regarding the corporate practice of medicine was unsettled when Allstate paid Northfield. Therefore, the defendants could not have "knowingly" submitted false or misleading information to Allstate and hence could not have violated the IFPA. Allstate appealed to the New Jersey Supreme Court.

On May 4, 2017, the Supreme Court reversed the Appellate Court Division. It held that the IFPA should be given a broad interpretation. Therefore, the defendants violated the IFPA if they should have known that the bills were false or misleading. Further, the defendants had impliedly certified to Allstate that Northfield was structured in accordance with New Jersey law.

### **Litigation Center Involvement**

The Litigation Center and the Medical Society of New Jersey filed an amicus brief in the Supreme Court on behalf of the defendants. The brief argued that IFPA should be narrowly construed, so it should apply only in the case of knowing and explicit misrepresentations.

New Jersey Supreme Court brief