



Selective Insurance Co. v. Rothman, 414 N.J. Super. 331 (N.J. App. Div. 2010)

Topics Covered: Scope of Practice

Outcome: Favorable

Issue

The issue in this case was whether a physician assistant, while acting under a physician's supervision, should be allowed to perform needle electromyography (EMG) testing.

AMA Interest

The AMA believes that health care professionals should provide patient care in accordance with their level of education and training and in accordance with applicable state laws.

Case Summary

The lawsuit arose out of an automobile accident involving an insured of Selective Insurance Company of America. The insured, who suffered bodily injuries as a result of the accident, was examined and treated by a neurologist, Arthur C. Rothman, M.D.

As part of the medical examination, Dr. Rothman's physician assistant, Bracha Mazin, performed a needle EMG test on the insured's right arm. The New Jersey Board of Medical Examiners licensed Ms. Mazin as a physician assistant. The insured assigned his insurance benefits to Dr. Rothman. The bill included a charge of \$568.93 for Ms. Mazin's needle EMG study.

Selective Insurance refused to pay the charge, asserting that New Jersey law restricted performance of the needle EMG examinations to licensed physicians and therefore Ms. Mazin was legally unauthorized to perform the test. The dispute was referred to an arbitrator, pursuant to a statute requiring that such insurance questions be arbitrated. The arbitrator found that Dr. Rothman was entitled to be paid for Ms. Mazin's services. Selective Insurance appealed to the Superior Court of New Jersey, Law Division, asserting that the arbitrator had erroneously applied the law to the facts.

The trial judge, when interpreting the New Jersey Medicine and Surgery Act, conflated the scope of practice of health care practitioners with limited licenses with the scope of practice of health care practitioners allowed to practice medicine and surgery in all its branches. Therefore, the judge held that the Medicine and Surgery Act permitted physician assistants to perform needle EMG testing. Selective Insurance appealed that ruling.

The Appellate Division adopted arguments of the MSNJ/Litigation Center *amicus* brief and reversed the trial court ruling.

Litigation Center Involvement

The Litigation Center along with the Medical Society of New Jersey, filed an *amicus curiae* brief to seek reversal of the trial court ruling. The brief focused on the legal issue of statutory interpretation, rather than questions of proper medical practice. The Litigation Center and MSNJ took this unusual step because, if the Appellate Division were to affirm based on the rationale of the trial court, the case could call into question the scope of limited health care licenses for many allied health care professionals.

Superior Court of New Jersey brief