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Late breaking news on medical-legal development affecting physicians and health care professionals

New Jersey Supreme Court Finds Grounds Supporting "Knowing" Violation of Insurance Fraud Prevention Act: In *Allstate Insurance Company v. Northfield Medical Center, P.A.*, No. A-27-15, slip op. (N.J. May 4, 2017), the New Jersey Supreme Court reversed a decision of the Superior Court of New Jersey, Appellate Division, which had held the plaintiff insurance company had not proven the defendants had knowingly violated the Insurance Fraud Prevention Act (the "Act"). The trial court had found a knowing violation, the Appellate Division reversed, and the Supreme Court, in turn, reversed the Appellate Division.

The case turned upon New Jersey State Board of Medical Examiners' ("SBME") regulations which require medical practices to be owned by physicians, and which prohibit a physician holding a plenary license to practice medicine and surgery to be employed by an organization owned by a lay person, or by someone with a license with a more limited scope of practice (such as, for example, a chiropractor or a podiatrist). In this case, Robert P. Barsody, Esq., a New York attorney, and Daniel H. Dahan, a California chiropractor, gave seminars, called "Practice Perfect," which covered numerous medical-legal issues, including multidisciplinary practices. After attending such a seminar, a New Jersey chiropractor, John Scott Neuner, became a client of Practice Perfect and decided to open a medical practice, Northfield Medical Center, P.A., where he was the actual investor, and to hire a physician named Robban A. Sica, M.D. as the nominal owner, as advocated by Practice Perfect. The practice hired several other physicians, and began billing insurance companies, such as the plaintiff, Allstate, for medical treatment. After a time, Allstate challenged Northfield's practice structure as violating SBME regulations and the Act, and Allstate prevailed at trial. The defendants argued, successfully, on appeal, that Allstate could not demonstrate they had "knowingly" violated the Act. The Supreme Court reversed, holding that the entire circumstances surrounding the establishment of Northfield indicated an effort to skirt the law, and that for the purpose of imposing civil liability, demonstrated a knowing violation of the Act.

Anthem Drops Plans for $54 Billion Merger With Cigna: In more health insurance merger news, Anthem will drop its $54 billion purchase of Cigna after losing an application in state court in Delaware seeking a temporary injunction to block for sixty (60) days Cigna's efforts to terminate the deal. The United States Department of Justice, Antitrust Division, had successfully challenged the merger in Federal District Court on antitrust grounds, and recently received a favorable ruling from the United States Court of Appeals for the District of Columbia Circuit. Anthem has recently petitioned the United States Supreme Court for a writ of certiorari seeking review of the D.C. Circuit's opinion. Cigna and Anthem are trading allegations in Delaware state court, each blaming the other for breaches which led to the end of the proposed deal. Anthem has now said that, instead of pursuing efforts to consummate the merger, it will now pursue a lawsuit against Cigna for damages. Cigna is seeking damages itself against Anthem from the court in Delaware, claiming entitlement to a $1.8 billion termination fee and $13 billion in damages, following the federal court's antitrust rulings in favor of the Department of Justice.

United States Supreme Court Issues Significant Ruling Favoring Arbitration: The Federal Arbitration Act ("FAA") mandates that contracts to arbitrate disputes must be enforced, unless such provision runs afoul of state laws which apply to contracts in general. In reliance upon this exception to the FAA, many states have enacted laws or judicial policies intended to help consumers in situations where arbitration clauses are seen as "unfair." However, a ruling issued by the United States Supreme Court on May 15, 2017 has reaffirmed long-standing policy under the FAA that arbitration clauses are to be favored under the law. In Kindred Nursing Centers LP v. Clark, No. 16-32, slip op. (U.S. May 15, 2017), the United States Supreme Court reversed the Supreme Court of Kentucky's ruling refusing to enforce an arbitration clause in a wrongful death action against a nursing home. In that case, two arbitration agreements had been entered into by attorneys-in-fact, holding general powers of attorney giving express authority for them to enter into contracts on behalf of their principals. The Kentucky Supreme Court held that, under state law, a general power of attorney granting the right to execute contracts does not provide a right to enter into arbitration contracts, unless the power of attorney specifically and explicitly mentions arbitration contracts, since an agreement to arbitrate waives the principal's "'sacred,' 'inviolate' and 'God-given' right to a jury trial." The U.S. Supreme Court held, in a 7-1 vote, that the Kentucky ruling stated precisely what the FAA prohibits – "a legal rule hinging on the primary characteristic of an arbitration agreement." This decision provides an additional means of attack against state laws which disfavor agreements to arbitrate disputes.

For more information on the above items, contact Kern Augustine, P.C. at 1-800-445-0954 or via email at info@DrLaw.com.