

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,  
PENNSYLVANIA CIVIL ACTION - LAW

STATE FARM MUTUAL AUTOMOBILE : NO. 2005-010716  
INSURANCE COMPANY and STATE FARM :  
FIRE AND CASUALTY COMPANY :

v.

ROBERT J. CAVOTO, JR., FISHBONE :  
ADVERTISING, INC., CAVOTO :  
CHIROPRACTORS, P.C., MARGARET :  
FISHER-CATRAMBONE, PENN CENTER :  
PAIN MANAGEMENT, INC., TIPROF, INC., and :  
INTERNATIONAL HEALTH ALLIANCE, INC. :

DECISION

**AND NOW**, this 7<sup>th</sup> day of July, 2017, following a non-jury trial held on April 3, 2017 and April 4, 2017, a thorough review of the pleadings, the trial exhibits admitted in evidence, post-trial submissions and closing arguments held on June 16, 2017, this Court makes the following Findings of Fact and Conclusions of Law and enters the following Decision:

(i) Findings of Fact

1. Plaintiffs are State Farm Mutual Automobile Insurance Company and State Farm Fire And Casualty Company ("State Farm").
2. Defendants Robert J. Cavoto, Jr., Cavoto Chiropractors, P.C., Penn Center Pain Management, Inc., TIPROF, Inc. and International Health

Alliance ("Dr. Cavoto") are doctors of chiropractic or entities offering chiropractic treatment.<sup>1</sup>

3. An Amended Complaint was filed in the Delaware County Court of Common Pleas by State Farm on December 14, 2005.

4. Count I of State Farm's Amended Complaint seeks a declaratory judgment that, under the Chiropractic Practice Act, 63 P.S. § 625.101 *et seq.* (the "Practice Act" or the "Act"), and the Motor Vehicle Financial Responsibility Law, 75 Pa. C.S. § 1701 *et seq.* (the "MVFRL"), State Farm is not obligated to remit payments to Dr. Cavoto and his practices for those treatments and procedures delegated to and performed by chiropractic support personnel without special licenses or certifications.

5. Count I avers that Defendants improperly and unlawfully utilized "unlicensed" chiropractic staff<sup>2</sup> to administer various adjunctive procedures and physical therapy (the "delegation" issue).

6. Count II of State Farm's Amended Complaint seeks a declaratory judgment, that pursuant to 18 Pa.C.S. § 4117 *et seq.* (the "Insurance Fraud Statute"), Dr. Cavoto and his practices violated the Insurance Fraud

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<sup>1</sup> Robert J. Cavoto, D.C. owns and operates the entities offering chiropractic treatment and will be referred to throughout the Decision as Dr. Cavoto.

<sup>2</sup> In Pennsylvania, there is no licensure requirement for chiropractic assistants.

Statute by purchasing lists of motor vehicle accident victims and contacting those injured individuals regarding potential treatment (the "solicitation" issue).

7. On September 2 and 3, 2008, the Honorable George A. Pagano presided over a bench trial addressing Counts I and II.<sup>3</sup>

8. Following trial and upon his consideration of the Amended Complaint, by Order dated July 10, 2009, Judge Pagano ruled against Plaintiffs on Count I, the delegation issue, which sought a declaratory judgment determining Dr. Cavoto's delegation of adjunctive procedures to chiropractic support staff was a violation of the Chiropractic Practice Act, and for this reason any invoices submitted by Defendants to State Farm were not compensable. Judge Pagano ruled in favor of Plaintiffs as to Count II, the solicitation issue.

9. Regarding the delegation issue, Plaintiffs filed an appeal to the Pennsylvania Superior Court with respect to the Court's ruling in favor of Dr. Cavoto on Count I.

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<sup>3</sup> The other three (3) Counts were bifurcated and have not been considered by the trial court. Those Counts include: Count III, Statutory Insurance Violation of 18 Pa.C.S.A. 4117(a)(5) & (6), Count IV Restitution for Mistaken Payment and Count V, Unjust Enrichment.

10. The Pennsylvania Superior Court considered the record below as it concerns the delegation issue and delivered the following directive: "Upon remand, the trial court should make more specialized findings and determine whether any of the procedures allegedly performed by unlicensed personnel required formal chiropractic education or training, including further inquiry by the court as to the scope of those procedures." State Farm Mut. Auto. Ins. Co. v. Cavoto, 34 A.3d 123, 133 (Pa. Super. 2011).

11. 63 P.S. § 625.102 defines "Adjunctive Procedures" as follows:  
Physical measures such as mechanical stimulation, heat, cold, light, air, water, electricity, sound, massage and mobilization.

12. The adjunctive procedures at issue fall within two (2) broad categories: (1) passive modalities and (2) therapeutic procedures.

13. Counsel for State Farm identified the following adjunctive procedures and recorded the procedures on a demonstrative:

Therapeutic exercise;  
Electrical muscle stimulation;  
Mechanical traction;  
Hot packs and cold packs;  
Paraffin wax;  
Ultrasound;

Manual therapy<sup>4</sup>; and  
Hydrotherapy.<sup>5</sup>

Plaintiffs' Exhibit No. 50.

14. During trial, this Court heard testimony from Dr. Cavoto, Plaintiffs' expert, Michael Schneider, D.C. and Defendants' expert, Jonathan McCullough, D.C.

15. Dr. Cavoto testified that, of the eight (8) listed adjunctive procedures, paraffin wax was not offered at his practices during the 2003 through 2005 time period at issue. (4/3/17 N.T., p. 5.).

16. State Farm has submitted no evidence that paraffin wax was offered by Dr. Cavoto's practices during the time period relevant to this civil action.

17. Dr. Cavoto testified that ultrasound was not delegated to support staff at any of his practices. (4/3/17 N.T., p. 52).

18. Thus, of the eight (8) adjunctive procedures identified by State Farm, Dr. Cavoto's practices offered the following passive modalities, which were delegated to unlicensed personnel: (1) electrical muscle stimulation, (2) mechanical traction, (3) hot packs/cold packs, and (4) hydrotherapy.

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<sup>4</sup>The parties stipulate that manual therapy requires formal chiropractic education and training and therefore cannot be delegated to unlicensed support personnel. (4/4/17 N.T., pp. 51-52).

<sup>5</sup>During the 2008 bench trial before Judge Pagano, State Farm had identified massage as another adjunctive procedure at issue. The Pennsylvania Legislature, however, established a State Board of Massage Therapy in late 2008 and as State Farm acknowledges, the procedure is now separately regulated, not at issue herein, and for this reason not included at Plaintiffs' Exhibit No. 50.

19. Dr. Cavoto testified the administration of adjunctive procedures at his practices would only be delegated to support staff after the chiropractor determined the course of treatment or care, which was then communicated to the chiropractic assistant. (4/3/17 N.T., pp. 95-96 and p. 103).

20. Dr. Cavoto testified during a patient's first visit to one of the Defendant practices, the patient would first be examined by a chiropractor, who would then prescribe the treatment plan or "course of care." (4/3/2017, N.T. pp. 56-60).

21. Dr. Cavoto testified after the treatment plan was developed and during the patient's subsequent visit(s), adjunctive procedures may be administered by chiropractic staff prior to the patient's consult with the chiropractor. (4/3/2017, N.T. pp. 56-60).

22. Dr. Cavoto testified that during the delegation of adjunctive procedures, the chiropractor remained "on premises" – within the facility and available to consult with the chiropractic assistant and the patient if and when necessary. (4/3/2017, N.T. pp. 95-96 & 103).

23. Of the adjunctive procedures identified by State Farm the only active, delegated modality offered at Dr. Cavoto's practices was therapeutic exercise. (4/3/2017, N.T. pp. 56).

24. As Dr. Cavoto testified, aspects of the administration of therapeutic exercise were occasionally delegated to the trained chiropractic staff, but only when the chiropractor had first developed a course of care and treatment plan, communicated to a trained chiropractic assistant before the delegation decision was made. (4/3/17 N.T. pp. 56-57 & p. 106).

25. Dr. Cavoto testified the delegation of therapeutic exercise only occurred when the chiropractor had first seen the patient and developed a course of care and treatment plan. (4/3/17 N.T. pp. 56-57 & p. 106).

26. Dr. Cavoto testified the clinical decision making at his practices is made by the chiropractor and not delegated to chiropractic support personnel. (4/3/2017 N.T., pp. 54-56).

27. Dr. McCullough testified the use of unlicensed support personnel for delegation of therapeutic activities is standard chiropractic practice and permitted under the Chiropractic Practice Act. (4/3/17, N.T. pp. 184-185).

28. Dr. McCullough testified it is acceptable under the Chiropractic Practice Act to utilize support personnel in the administration of adjunctive procedures as long as the chiropractor remains "on premises." (4/4/17. N.T. pp. 211-212).

29. Dr. McCullough testified it is immaterial whether the chiropractor sees the patient at the beginning, middle, or end of the follow-up visit (after the initial diagnosis). (4/4/17, N.T. pp. 191-192).

30. Plaintiffs' expert witness, Dr. Michael Schneider, is a licensed chiropractor who has practiced for over thirty years. (4/4/2017, N.T., p. 123). He holds a Ph.D. in rehabilitative science and is currently an Associate Professor in the Department of Physical Therapy at the School of Health & Rehabilitation Sciences at the University of Pittsburgh. (4/4/2017, N.T., pp. 122-123).

31. Chiropractors provide three broad categories of treatment: (1) manual therapy (e.g. chiropractic manipulation and manual therapy), (2) passive modalities (e.g. electrical muscle stimulation, hot/cold packs), and (3) therapeutic procedures (e.g. therapeutic exercises). (4/4/2017, N.T., p. 174).

32. The first and third categories – manual therapies and therapeutic procedures – require formal education and training of a chiropractor. (4/4/2017, N.T., p. 174).

33. Although certain aspects of the second category – passive modalities – are non-specialized and can be delegated to unlicensed support



personnel, other aspects require formal chiropractic education and training; namely, any aspect of passive modalities which involves clinical decision-making (e.g. decisions regarding necessity, frequency, dosage).

(4/4/2017, N.T., pp. 174-175).

34. Therapeutic procedures “require skillful supervision by a licensed healthcare professional” as opposed to general exercise in the gym. This is due to the fact that the purpose of therapeutic exercise is to treat a “painful condition with the goal of restoring function to a patient.”

(4/4/2017, N.T., p. 186).

35. Therapeutic exercises are specifically adapted to specific patients based upon the patient’s unique issues “with the goal of restoring function.” (4/4/2017, N.T., p. 186).

36. “The one-one-one supervision of therapeutic exercise requires constant clinical decision-making and reassessment during that period of time that the exercises are occurring.” (4/4/2017, N.T., p. 196).

(ii) Conclusions of Law

1. The Chiropractic Practice Act, 63 P.S. §§ 625,191 *et seq.* (the "Practice Act" or the "Act"), governs the practice of chiropractic in the Commonwealth of Pennsylvania and established the State Board of Chiropractic (the "State Board" or the "Board") to regulate the practice of chiropractic.

2. The 1996 amendments to the Practice Act established the right of doctors of chiropractic to delegate services to "unlicensed" personnel, as follows:

Nothing in this Act shall prohibit a licensed chiropractor from utilizing the assistance of unlicensed supportive personnel performing under the direct on-premises supervision of a licensed chiropractor, provided that a chiropractor, provided that a chiropractor may not delegate any activity or duty to such unlicensed individuals which requires formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor.

63 P.S. § 625.601.

3. In Pennsylvania, there is no licensure requirement for chiropractic assistants.

4. Under the Practice Act, the chiropractor must make the diagnosis and evaluation and specify the treatment regimen.

5. The Practice Act does not require chiropractors to personally administer all chiropractic treatment.
6. The Motor Vehicle Financial Responsibility Law ("MVFRL") obligates auto carriers to provide medical benefits for reasonable and necessary chiropractic treatment. 75 Pa.C.S. § 1712(1).
7. Auto carriers must reimburse chiropractors for every service that falls within the scope of chiropractic practice. 63 P.S. § 625.102.
8. The Pennsylvania Superior Court has established a liberal construction standard regarding interpretation of the MVFRL, as follows:

The MVFRL was enacted as a means of insurance reform to reduce the escalating costs of purchasing insurance[,] ... the underlying objective of the law is to provide broad coverage to assure the financial integrity of the policyholder. The Law [thus] is to be construed liberally to afford the greatest possible coverage to injured claimants. In close or doubtful cases, it is well established that a court should resolve the meaning of insurance policy provisions or the legislative intent in favor of coverage for the insured.

Tagliati v. Nationwide Ins. Co., 720 A.2d 1051, 1054 (Pa. Super. 998) *citing* Danko v. Erie Insurance Exchange, 630 A.2d 1219, 1222 (Pa. Super. 1993), affirmed, 538 Pa. 572, 649 A.2d 935 (1994) (citations omitted).

9. Non-specialized tasks associated with the performance of passive modalities (e.g. the placement hot/cold packs, turning machines on/off, assisting patients on and off tables) may be delegated to unlicensed

support personnel so long as a licensed chiropractor has made all of the clinical decisions.

10. As such, the following passive modalities may be delegated: (1) electrical muscle stimulation, (2) mechanical traction, (3) hot packs/cold packs, and (4) hydrotherapy.

11. Once a licensed chiropractor has made clinical decisions regarding patient care, these delegable passive modalities may be implemented by unlicensed support personnel prior to a daily examination by a licensed chiropractor.

12. As agreed by the parties and witnesses, the patient's well-being is the most important interest in the field of chiropractic. Because unlicensed staff personnel do not have the education and training to make clinical decisions, the licensed chiropractor must provide therapeutic procedural/exercises in order to meet this most important interest.

(4/4/17, N.T. pp. 67-68).

13. As noted by Dr. Schneider, the key word is "therapeutic" when discussing therapeutic procedures and exercises. The proper application of *therapeutic* procedures involves constant dialogue and observation between a patient and a skilled practitioner. In order to achieve the goal

of effecting change through the application of clinical skills, the practitioner must modify the procedures when necessary based on patient feedback and observation. Responding to patient feedback is an essential element of therapeutic procedures and requires the clinical decision-making of a skilled practitioner. In a chiropractic setting, knowing how and when to make what are often subtle modifications to a patient's care requires the formal education and training of a licensed chiropractor and, for this reason, cannot be delegated to unlicensed support staff.

14. Massage may not be delegated to unlicensed support staff.
15. Manual therapy may not be delegated to unlicensed support staff.
16. Therapeutic exercise may not be delegated to unlicensed support staff.

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(iii) Decision

Pursuant to the Declaratory Judgment Act, 42 Pa.C.S.A. § 7532, Pa.R.C.P. 1038, and the following instruction received from our Superior Court: "Upon remand, the trial court should make more specialized findings and determine whether any of the procedures allegedly performed by unlicensed personnel required formal chiropractic education or training, including further inquiry by the court as to the scope of those procedures." State Farm Mut. Auto. Ins. Co. v. Cavoto, 34 A.3d 123, 133 (Pa. Super. 2011), this Court made the Findings of Fact and reached the Conclusions of Law enumerated herein, and Decides as follows:

On the Amended Complaint, Count I, regarding the delegation of certain adjunctive procedures to unlicensed support personnel by licensed chiropractors in the course of treatment of patients having insurance coverage under the Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. §§ 1701-1799.7 (the "MVFRL"), and determining reimbursement to those licensed chiropractors by insurers under the MVFRL for services rendered in the treatment of those patients, the rights, status and other legal relationships among licensed chiropractors, patients, insureds and insurers under the Chiropractic Practice Act, 63 P.S. §§ 625.101-625.1106 (the

"CPA"), and the MVFRL shall be decided taking into consideration the following declaration of specialized findings:

1. Non-specialized tasks associated with the performance of passive modalities (e.g. the placement of hot/cold packs, turning machines on/off, assisting patients on and off tables) may be delegated to unlicensed support personnel so long as a licensed chiropractor makes all of the clinical decisions.

2. The following adjunctive procedures which are passive modalities may be delegated to unlicensed support personnel so long as a licensed chiropractor makes all of the clinical decisions: (1) Electrical Muscle Stimulation, (2) Mechanical Traction, (3) Hot Packs/Cold Packs, and (4) Hydrotherapy. Once a licensed chiropractor has made the clinical decision regarding a patient's care to utilize one or more of these delegable passive modalities, these delegable passive modalities may be implemented by unlicensed support personnel prior to a daily examination of that patient by a licensed chiropractor.

3. The following adjunctive procedures which are therapeutic procedures may not be delegated to unlicensed support staff: (1) Massage, (2) Manual Therapy, and (3) Therapeutic Exercise.

BY THE COURT:

  
G. Michael Green,

J.

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