

<b>Unitrin Advantage Ins. Co. v Avanguard Med. Group, PLLC</b>
2017 NY Slip Op 30562(U)
March 21, 2017
Supreme Court, New York County
Docket Number: 150235/15
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 12

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UNITRIN ADVANTAGE INSURANCE COMPANY,

Plaintiff,

-against-

Index No. 150235/15

Motion seq. no. 001

**DECISION AND ORDER**

AVANGUARD MEDICAL GROUP, PLLC, HU'S ACUPUNCTURE & MASSAGE, P.C., KENNETH MCCULLOCH, M.D., LEXINGTON FAMILY CHIROPRACTIC CARE, P.C., MANJOORSA PHYSICAL THERAPY, P.C., MCCULLOCH ORTHOPAEDIC SURGICAL SERVICES, PLLC, METROPOLITAN MEDICAL & SURGICAL, P.C., MONARCH ANESTHESIA - JERSEY CITY, MT. VERNON MEDICAL SERVICES, P.C., NEW WILSON MEDICAL, P.C., OMEGA 18, INC., PERFECT DRUGS, INC., RAI A MEDICAL HEALTH, P.C., SURGICARE SURGICAL ASSOCIATES OF JERSEY CITY, WESTCHESTER RADIOLOGY & IMAGING, P.C., LINDA HINES, and RYAN HINES,

Defendants.

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BARBARA JAFFE, J.

**For plaintiff:**

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By notice of motion, plaintiff moves for leave to renew and reargue the previous denial of its motion for a default judgment against defendant medical providers Hu's Acupuncture & Massage, PC, Kenneth McCulloch, M.D., Lexington Family Chiropractic Care, P.C., Manjoorsa Physical Therapy, P.C., Mt. Vernon Medical Services, P.C., Monarch Anesthesia-Jersey City, McCulloch Orthopaedic Surgical Services, P.C., New Wilson Medical, P.C., Perfect Drugs, Inc.,

and Surgicare Surgical Associates of Jersey City, and for an order discontinuing the action against defendants Avanguard Medical Group, PLLC, Metropolitan Medical and Surgical, P.C., Omega 18 Inc., and Raia Medical Health, P.C..

In the decision, dated December 7, 2015, I denied plaintiff's motion on the following grounds:

- A. Plaintiff failed to offer proof that the treatments allegedly provided were medically unnecessary, as it relied on "the affidavit of its claims representative, who offers conclusory and speculative assertions, unsupported by competent medical evidence";
- B. Plaintiff failed to establish that it scheduled examinations under oath (EUO) of the medical providers within the time period set forth in 11 NYCRR 65-3.5; and
- C. Plaintiff set forth no factual basis for its assertion that the providers lack standing to file claims, and otherwise conceded that the providers treated the claimants and were assigned their right to benefits.

(NYSCEF 35).

#### I. PERTINENT FACTS

In this action, plaintiff seeks a declaration that it has no obligation to pay no-fault benefits for treatment rendered to claimants and plaintiffs Ryan and Linda Hines by defendant medical providers. Submitted on the prior motion were the following:

The affirmation of plaintiff's counsel, who states that letters scheduling the EUOs of Hu's Acupuncture & Massage, P.C., Manjoorsa Physical Therapy, P.C., Monarch Anesthesia-Jersey City, New Wilson Medical, P.C., Omega 18, Inc., Perfect Drugs, Inc., and Surgicare Surgical Associates of Jersey City, were "generated and mailed out of [his] office under [his] supervision," that the letters were sent to the addresses listed on the submitted bills and were not returned as undeliverable, and that EUOs were scheduled throughout the day on December 10,

2013, at counsel's office. After fruitlessly waiting for the providers to appear on December 10, 2013, on December 19, 2013, he supervised the generation and mailing of letters rescheduling the EUOS to January 2, 2014, when again, the providers failed to appear. (NYSCEF 28).

The EUOs of Kenneth McCulloch, M.D., McCulloch Orthopaedic Surgical Services, PLLC, and Mt. Vernon Medical Services, were scheduled by letters mailed on November 26, 2013, for an EUO to be held on December 11, 2013; for Lexington Family Chiropractic Care, P.C. a letter was sent on December 6, 2013, for an EUO to be held on December 23, 2013.

When no providers appeared on their scheduled dates, letters rescheduling the EUOs to January 3, 2014, and January 21, 2014, respectively, were mailed on December 19, 2013, and on January 7, 2014. The affirmation is submitted based on counsel's personal knowledge and review of notes he kept on the matter. (*Id.*).

Letters from plaintiff's counsel's law firm addressed to the medical providers were also submitted, with accompanying affidavits of service all explaining that one Robert Colon served them by regular mail in postpaid, properly addressed wrappers, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York. (NYSCEF 32).

By affidavit dated June 23, 2015, an employee of plaintiff's claim handler, Kemper Services Group, states that although claimants Linda and Ryan Hines appeared for their EUOs, their testimony raises issues as to the legitimacy and medical necessity of the medical treatment they received. She annexes copies of the EUO transcripts, as well as an uncertified copy of a police event report of the accident. (*Id.*).

Submitted for the first time on this motion is an affidavit dated November 22, 2016, from

the same Kemper employee who states that she is fully familiar with plaintiff's processes for handling and processing no-fault claims, and has personal knowledge of the facts recited in the affidavit based on her review of the files maintained by plaintiff and her personal work in connection with the claims at issue. She annexes copies of bills received by plaintiff, and verification letters and denials sent by plaintiff, which she contends confirm that "all requests for examinations under oath were made within 15 business [days] of receipt of claims or were made before claims were submitted." (NYSCEF 37).

The following documents are submitted for the first time for each of the pertinent medical providers:

A. Hu's Acupuncture & Massage, P.C.

1. verification of treatment form from Hu's Acupuncture, dated November 19, 2013, stamped received by Kemper on December 9, 2013; and
2. denial of claim, dated January 24, 2014, reflecting that final verification was requested on December 19, 2013, and received on January 2, 2014, and that the denial is apparently based on Hu's failure to appear for EUOs, although the sheet further explaining the denial is not submitted.

B. Manjoorsa Physical Therapy, P.C.

1. verification form dated November 4, 2013, marked received on November 12, 2013; and
2. denial dated January 29, 2014, reflecting that final verification was requested on November 15, 2013, and received on January 2, 2014, and that the claim was apparently denied based on Manjoorsa's failure to appear for EUOs, although the sheet further explaining the denial is not submitted.

C. Monarch Anesthesia - Jersey City

1. health insurance claim form dated October 3, 2013, marked received on November 1, 2013;

2. denial dated January 24, 2014, reflecting that final verification was requested on November 7, 2013, and received on January 2, 2014; and
3. reason for the denial is: (1) Monarch's failure to appear for EUOs on December 10, 2013, and January 2, 2014; (2) an investigation revealing that injuries were not and could not have been caused by the accident; (3) services rendered were not medically necessary; and (4) the referring physician, Kenneth McCulloch, MD, failed to appear for EUOs on December 11, 2013, and January 3, 2014, and Surgicare Surgical Associates failed to appear for EUOs on December 10, 2013, and January 3, 2014.

D. New Wilson Medical, P.C.

1. verification form dated October 3, 2013 and received on October 8, 2013;
2. letter from Kemper to New Wilson, dated October 10, 2013, requesting certain documentation and noting that EUOs of the claimants were scheduled for October 18, 2013;
3. same letter from Kemper to New Wilson, dated November 9, 2013, labeled second request, and noting the observation that the claimants' EUOs are scheduled for November 15, 2013;
4. same letter from Kemper to New Wilson, dated December 9, 2013, again labeled second request, and noting that New Wilson's EUO is scheduled for December 10, 2013;
5. same letter, from Kemper to New Wilson, dated January 8, 2014, again labeled a second request, and noting that New Wilson's EUO was scheduled for January 2, 2014; and
6. denial, dated January 29, 2014, providing that final verification was requested on October 10, 2013, and received on January 2, 2014, and the reasons for the denial are that New Wilson did not appear for its EUOs, that the injuries were not caused by the accident, the services were not medically necessary, the treatment rendered was "considered overlapping, excessive and/or concurrent care," the "claimed loss is not proven," and the claim has been referred to various fraud and crime bureaus.

E. Perfect Drugs, Inc.

1. letter from Kemper to Perfect Drugs, dated August 21, 2013, requesting certain documentation;

2. The same letter, dated September 20, 2013 and labeled a second request, again requesting the documents; and
3. A denial dated January 24, 2014, providing that the claim was dated August 13, 2013, and received on August 19, 2013, and that final verification was requested on August 21, 2013, and received on January 2, 2014. The claim was denied based on Perfect Drugs's failure to appear for EUOs on December 10, 2013, and January 2, 2014, and as the injuries were not caused by the accident, the services were not medically necessary, the claimed accident was fraudulent, and the referring physician did not appear for its EUOs.

F. Surgicare Surgical Associates of Jersey City

1. undated claim form received on November 1, 2013;
2. letter from Kemper to Surgicare dated November 7, 2013, requesting documentation, and noting that EUOs of claimants were scheduled for November 15, 2013;
3. same letter from Kemper to Surgicare, dated December 7, 2013, labeled a second request, advising that Kemper had received one of the requested documents but was missing the other document, and that Surgicare's EUO was scheduled for December 10, 2013;
4. The same letter, dated January 6, 2014, again labeled a second request, advising that the document was still missing and that Surgicare's EUO had been scheduled for January 2, 2014; and
5. A denial dated January 24, 2014, reflecting that final verification was requested on November 7, 2013, and received on January 2, 2014, and that the claim was denied as Surgicare did not attend its EUOs, the injuries were not related to the accident, the services were not medically necessary, the claimed accident was fraudulent, and the referring provider also failed to attend its EUOs.

G. Lexington Family Chiropractic Care

1. Re: Linda Hines:
  - a. denial dated January 24, 2014, reflecting that the claim was dated November 20, 2014, and received on December 3, 2013, that final verification was requested on December 19, 2013, and received on January 21, 2014, and that the denial was based on Lexington's failure to appear for EUOS on December 23, 2013, and January 21, 2014, and that the

injuries bore no relation to the accident, the treatment was not medically necessary and was excessive and/or concurrent with other care, and the claimed accident was fraudulent.

2. Re: Ryan Hines:

- a. verification form dated November 19, 2013, and received on December 3, 2013;
- b. letter dated December 19, 2013, requesting information and noting that Lexington's EUO was scheduled for December 23, 2013;
- c. denial dated January 29, 2014, reflecting that final verification was requested on December 19, 2013, and received on January 21, 2014, and that the denial was based on Lexington's failure to appear for EUOs on December 23, 2013, and January 21, 2014, and that the injuries were not caused by the accident, the treatment was not medically necessary and was excessive and/or concurrent with other care, and the claimed accident was fraudulent; and
- d. a denial, dated February 28, 2014, reflecting that another claim was submitted dated February 13, 2014 and received on February 19, 2014, that final verification was requested and received on February 19, 2014, and that the the denial was based on those set forth in the January 29, 2014 denial, and that all no-fault benefits for chiropractic treatment were denied based on an examination by Albert Claps, who determined that no further chiropractic treatment was required.

H. Kenneth McCulloch, M.D./McCulloch Orthopaedic Surgical Services, PLLC

1. claim form dated October 22, 2013, and received on December 11, 2013;
2. facsimile transmission by McCulloch to Kemper, dated December 11, 2013, including "corrected claims" and Linda Hines's assignment of benefits;
3. letter from Kemper to McCulloch, dated December 19, 2013, requesting a signed assignment of benefits, and noing that McCulloch's EUO was scheduled for January 3, 2014; and
4. denial dated January 24, 2014, reflecting that final verification was requested on December 19, 2014, and received on January 3, 2014, and that the denial was based on McCulloch's failure to appear for EUOs on December 11, 2013, and January 3, 2014, and that the injuries were not caused by the accident, the

treatment was not medically necessary and was excessive and/or concurrent with other care, the claimed accident was fraudulent, and Surgicare failed to appear for its EUOs.

I. Mt. Vernon Medical Services, P.C.

1. Re: Linda Hines
  - a. verification form dated November 25, 2013, and received on November 29, 2013;
  - b. letter dated December 5, 2013, requesting additional documents, and advising that Mt. Vernon's EUO was scheduled for December 11, 2013;
  - c. same letter, dated January 4, 2014, advising that the EUO had been scheduled for January 3, 2014; and
  - d. denial dated January 24, 2014, reflecting that final verification was requested on December 5, 2013, and received on January 3, 2014, and that the claim was denied based on Mt. Vernon's failure to appear for its EUOs, and that the injuries were not caused by the accident, the treatment was medically unnecessary, and the claimed accident was fraudulent.
2. Re: Ryan Hines
  - a. verification form dated November 25, 2013, and received on November 29, 2013;
  - b. letter dated December 5, 2013, requesting documents and advising that Mt. Vernon's EUO was scheduled for December 11, 2013;
  - c. same letter, dated January 4, 2014, labeled a second request, advising that the EUO had been rescheduled for January 3, 2014; and
  - d. denial dated January 29, 2014, reflecting that final verification was requested on December 5, 2013, and received on January 3, 2014, and that the denial was based on Mt. Vernon's failure to appear for its EUOs, and that the injuries were not caused by the accident, the treatment was medically unnecessary, and the claimed accident was fraudulent.

(NYSCEF 40).

Also submitted for the first time are four affirmations affirmed on November 23, 2016, by

Audrey Eisenstadt, MD, DABR, who states that she reviewed MRI scans/films for Ryan Hines's right and left knees and Linda Hines's right shoulder and right knee, and opines that any damages or injuries seen on the scans were not caused by the accident but are degenerative changes. (NYSCEF 41).

## II. TIMELINESS OF VERIFICATION REQUESTS AND DENIALS

Plaintiff contends that it is entitled to renewal of this portion of its motion in light of a change or clarification of existing law between the filing of the prior and instant motions, relying on *Ntl. Liability v Tam Med. Supply Corp.*, 131 AD3d 851 (1<sup>st</sup> Dept 2015), to the extent that it requires proof that requests for EUOs were timely made in the no-fault context. Plaintiff now submits copies of its verification requests and relies on a new affidavit from the Kemper employee to establish that the requests were made timely.

### A. Applicable law

#### 1. Pertinent no-fault timeframes

Pursuant to 11 NYCRR 65-3.5(a), within 10 business days after receipt of a completed application for no-fault benefits or other substantially equivalent written notice, and before payment of the claim, the insurer must forward prescribed verification forms to the parties required to complete them. Then, pursuant to section 65-3.5(b), after receipt of one or more of the completed verification forms, any additional verification requested by the insurer must be requested within 15 business days of receipt of the completed verification forms. A request for an EUO constitutes an additional request for verification, and is thus subject to the 15-day deadline. (*O & M Med., PC v Travelers Indem. Co.*, 47 Misc 3d 134[A], 2015 NY Slip Op 50476[U] [App Term, 2d, 11<sup>th</sup>, & 13<sup>th</sup> Jud Dists 2015]; *Sure Way NY, Inc. v Travelers Ins. Co.*,

42 NYS3d 631, 2016 NY Slip Op 26413 [Civ Ct, Kings County 2016]).

If a requested verification is not provided to the insurer within 30 days after the original request, the insurer must, at a minimum, within 10 calendar days, follow up with the party from whom the verification was requested. (11 NYCRR 65-3.6[b]). This provision is interpreted as requiring that an insurer reschedule an EUO after a person has failed to appear for the first EUO within 10 days of that failure, meaning that the next scheduling letter must be sent within 10 days of the failure to appear. (*Mapfre Ins. Co. of New York v Manoo*, 140 AD3d 468 [1<sup>st</sup> Dept 2016]).

However, the timeframes for sending verification requests under 11 NYCRR 65-3.5 and 3.6 do not apply to EUOs that are scheduled before an insurance company receives a claim. (*Id.* at 469-470). Thus, only when an insurer receives a claim, must it comply with the follow-up provisions of 11 NYCRR 65-3.6(b). (*Id.*).

## 2. Proof of mailing

The mailing of notices or verification requests may be established by proof of actual mailing or a standard office practice or procedure designed to ensure that items are properly addressed and mailed. (*Progressive Cas. Ins. Co. v Metro Psych. Svces, P.C.*, 139 AD3d 693 [2d Dept 2016]; *Am. Transit Ins. Co. v Lucas*, 111 AD3d 423 [1<sup>st</sup> Dept 2013]). Actual mailing may be shown by a proper certificate of mailing or an affidavit based on personal knowledge. (*J.M. Chiro. Svces., PLLC v State Farm Mut. Ins. Co.*, 36 Misc 3d 135[A], 2012 NY Slip Op 51348[U] [App Term, 2d, 11<sup>th</sup> & 13<sup>th</sup> Jud Dists 2012]). The office practice “must be geared so as to ensure the likelihood that the item is always properly addressed and mailed.” (*Progressive Cas. Ins. Co.*, 139 AD3d at 694).

In *Interboro Ins. Co. v Perez*, the Court held that the insurer failed to establish that it

properly mailed its EUO letters as the insurer's affidavit of service was insufficient to show that the letters were mailed in accordance with the no-fault regulations. (112 AD3d 483 [1<sup>st</sup> Dept 2013]). The motion papers reflect that the insurer had submitted an affidavit from an employee who averred that she personally mailed the letters via regular mail and certified mail, which the trial court rejected absent any demonstration of the affiant's personal knowledge of the customs, practice or procedures for the mailing of EUO letters. (*Id.*).

### 3. Burden and proof on summary judgment

In *Ntl. Liability, supra*, the Appellate Division, First Department, held that although the failure of a person eligible for no-fault benefits to appear for an EUO constitutes a breach of the condition precedent to coverage and therefore vitiates coverage, it also determined that the insurer's motion for summary judgment had been properly denied absent evidence that the EUO at issue had been requested within the timeframes set forth in the no-fault regulations. (131 AD3d at 851). In another case decided the same day, the Court held that an insurer must establish, *prima facie*, that it scheduled Independent Medical Examinations (IME) within the no-fault timeframes before it may deny a claim based on a failure to appear for the IME, relying on *Unitrin Advantage Ins. Co. v Bayshore Phys. Therapy, PLLC*, 82 AD3d 559 (1<sup>st</sup> Dept 2011), *lv denied* 17 NY3d 705, in which the Court found that an insurer was properly granted summary judgment as it satisfied its *prima facie* burden of showing that it requested IMEs "in accordance with the procedures and time-frames set forth in the No-Fault implementing regulations." (*Am. Transit Ins. Co. v Longevity Med. Supply, Inc.*, 131 AD2d 841 [1<sup>st</sup> Dept 2015]).

Most recently, in *Kemper Indep. Ins. Co. v Adelaida Phys. Therapy, P.C.*, the Appellate Division, First Department, held that the insurer's summary judgment motion should have been

denied as the evidence was insufficient for the court to determine whether the EUO notices it served on the claimants were subject to no-fault timeliness requirements and if so, whether the notices had been served in conformity therewith, absent copies of completed verification forms it may have received from the medical providers or any other evidence reflecting the dates on which it received verification forms, or any denial of having received the forms. The insurer thus did not meet its burden of establishing that the EUOs were not subject to the applicable no-fault procedures and timeframes or that the EUOs were properly noticed. ( \_\_ AD3d \_\_, 2017 NY Slip Op 00916 [1<sup>st</sup> Dept]).

### B. Analysis

#### 1. Leave to renew

As *Ntl. Liability* was decided on September 15, 2015, and plaintiff's first motion was e-filed and served on September 11, 2015, plaintiff would not have had the benefit of the decision in drafting its motion. And while the Court set forth in the earlier *Unitrin Advantage* decision an insurer's *prima facie* burden in terms of denying a claim based on a failure to appear for IMEs, which includes the burden of producing proof that the IMEs were requested timely, the decision addresses IMEs, not EUOs. It was not until 2015 when the Court in *Ntl. Liability* applied the same rule to the failure to appear for EUOs. Thus, to the extent that the Court set forth a new rule by which an insurer may satisfy its burden of proof on a motion for summary judgment based on a failure to appear for EUOs, the decision constitutes a change in the law.

#### 2. Was there sufficient proof of mailing?

Plaintiff counsel's affirmation is fatally conclusory absent mention of counsel's office's practice and procedure for the mailing of EUO letters or verification requests, much less one

designed to ensure that the letters were addressed to the proper party and properly mailed. (*See Progressive Cas. Ins. Co. v Metro Psych. Svces, P.C.*, 139 AD3d 693 [2d Dept 2016] [plaintiff failed to establish, *prima facie*, that it timely and properly mailed EUO letters, as affirmation of plaintiff's counsel was conclusory regarding his office's practice and procedure and did not demonstrate that practice and procedure was designed to ensure that letters were properly addressed and mailed]; *compare Liberty Mut. Ins. Co. v Five Boro Med. Equip., Inc.*, 130 AD3d 465 [1<sup>st</sup> Dept 2015] [counsel's affirmation set forth mailing procedures of EUO letters and that he personally verified mailing process for every EUO letter sent from office, thus proving that EUO letters were mailed]; *Hertz Corp. v Active Care Med. Supply Corp.*, 124 AD3d 411 [1<sup>st</sup> Dept 2015] [although counsel did not state that he personally mailed EUO letters or describe office's practice and procedure for mailing such letters, plaintiff offered objective proof of mailing by submitting EUO letters and certified mail return receipts with matching certified mail numbers and Postal Service "track and confirm" reports showing receipt]).

Moreover, absent evidence of the office's practice and procedure for mailing EUO letters, the affidavits of service of the EUO letters, unaccompanied by an affidavit of the person who mailed them describing the practice and procedure used to mail them, do not prove that plaintiff properly addressed and mailed the letters. (*Interboro Ins. Co. v Perez*, 112 AD3d 483 [1<sup>st</sup> Dept 2013] [insurer's affidavit of service insufficient to establish that EUO letters were mailed in accordance with no-fault regulations]). In *Progressive Cas. Ins. Co. v Infinite Ortho Prods., Inc.*, the Appellate Division, Second Department, held that a representative's affidavit of mailing was inadequate absent a description of how envelopes were addressed to ensure that the addresses were correct or who addressed them, nor was it explained how and when the envelopes were

transferred to the care and custody of the Postal Service or other delivery service. (127 AD3d 1050 [2d Dept 2015]). Thus, plaintiff fails to meet its *prima facie* burden of demonstrating that the EUO letters were properly mailed.

### 3. Were the EUO requests timely?

Even had plaintiff submitted sufficient proof of mailing, it did not timely schedule the EUOs for Perfect Drugs, as it received the claim on August 19, 2013, but did not send its EUO letter until November 25, 2013. To the extent that plaintiff relies on the verification letters submitted on this motion to toll or extend any of the applicable timeframes, it provides no evidence that the letters were timely and properly mailed to defendants. And to the extent plaintiff seeks a judgment against defendant Westchester Radiology and Imaging, P.C., it provides no evidence that it mailed it EUO letters.

### 4. Conclusion

For these reasons, renewal is denied as plaintiff fails to establish that it requested the EUOs according to the no-fault procedures and timeframes.

## III. LACK OF CAUSATION

Plaintiff offers no reason why it did not or could not submit an expert's affirmation as to whether the claimants' injuries were causally related to the accident on its prior motion. Consequently, it fails to establish entitlement to leave to renew. (*See Jones v City of New York*, 146 AD3d 690 [1<sup>st</sup> Dept 2017] [leave to renew properly denied as plaintiff provided no explanation as to why he did not submit expert and witness affidavits on prior motions]).

## IV. INJURIES DID NOT ARISE FROM INSURED ACCIDENT

Plaintiff's motion for leave to reargue on the ground that I misinterpreted its claim as one

relating to the lack of medical necessity for the treatment rendered rather than one relating to a founded belief that the claimants were not injured or even involved in a legitimate loss is granted, as the December 2015 decision reflects that I did not address plaintiff's claim related to fraud. I now address it.

The uncertified police report submitted by plaintiff is inadmissible (*Progressive Advanced Ins. Co. v McAdam*, 139 AD3d 691 [2d Dept 2016]), the supporting affirmations and affidavits rely on inadmissible evidence, and the affiants have no personal knowledge of the facts surrounding the collision. (*Id.* at 692). Claimants' failure to appear for EUOs does not warrant an inference that the accident was staged, nor does their failure to sign their EUO transcripts, absent evidence that plaintiff complied with CPLR 3116(a) by mailing or providing the transcripts to them for their signature. Indeed, it may be argued that claimants' appearance for their EUOs warrant the opposite inference.

Without the inadmissible evidence and unwarranted inferences on which plaintiff relies, the only allegations it offers in support of its assertion that the accident was staged are that the claimants were receiving elaborate and virtually identical courses of treatment, and did not understand what treatment they were receiving and why they were receiving it. (NYSCEF 37). Such facts are insufficient to establish, *prima facie*, that the accident was staged or fraudulent.

#### V. CONCLUSION

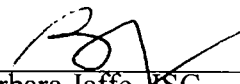
Accordingly, it is hereby

ORDERED, that plaintiff's motion is disposed of as follows:

- (1) Leave to renew on the issue of the mailing of the EUO letters is granted, and upon renewal the motion is denied on this issue; it is further

- (2) Leave to renew on the issue of the medical necessity of the treatment rendered is denied; it is further
- (3) Leave to reargue on the issue of a fraudulent or staged accident is granted, and upon re-argument the motion is denied on this issue; and it is further
- (4) Plaintiff's motion to discontinue is granted and the action is discontinued against defendants Avanguard Medical Group, PLLC, Metropolitan Medical & Surgical, P.C., Omega 18 Inc., and Raia Medical Health, P.C.

ENTER:

  
\_\_\_\_\_  
Barbara Jaffe, JSC

**HON. BARBARA JAFFE**

DATED: March 21, 2017  
New York, New York