

## Direct Evidence is Necessary to Prove Unlawful Services Under MCL 500.3157

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In *Farm Bureau General Insurance Company v Maple Manor Neuro Center, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued November 16, 2023 (Docket No. 362824), the Michigan Court of Appeals overturned the trial court's granting of Plaintiff's Motion for Summary Disposition based on there being a question of fact regarding whether Defendant was acting as a billing agent only, and whether the insured's care was provided in an unlicensed nursing home. The litigation stemmed from services provided to Veronica Fuentes-Noguez, (hereinafter the insured), after she was admitted to Maple Manor Rehab Center of Novi from February 2017 through December 2017 due to injuries sustained in a motor vehicle accident. The insured was covered under a no-fault policy issued by Farm Bureau General Insurance Company (hereinafter Farm Bureau or Plaintiff).

During this period of time, Maple Manor Neuro Center (hereinafter Maple Manor or Defendant) submitted claim forms to Plaintiff, listing Defendant's name as both the billing provider and signature of physician field, with Maple Manor Novi listed in the field for service facility location. Defendant and Maple Manor Rehab are owned by the same individuals.

In 2019, Maple Manor Rehab underwent a licensure survey by the Michigan Department of Licensing and Regulatory Affairs (hereinafter LARA), where it was found to be in substantial compliance, apart from noncompliance regarding nursing care being provided to seven residents in the Neuro wing without obtaining a license for the beds, with the insured's bed being one of them. In 2020, Maple Manor applied to transfer nine licensed nursing home beds.

Farm Bureau filed its Motion for Summary Disposition claiming that Maple Manor's billing for services rendered to the insured was unlawful due to Defendant not being a licensed nursing home and the treatment was unlawful since the bed was not licensed, and that it was defrauded by Defendant's presentation of the medical bills. The trial court granted Plaintiff's motion, finding that Defendant unlawfully treated the insured and did not have the right to charge for the services.

### SECRET WARDLE NOTES

*Farm Bureau General Insurance Company v Maple Manor Neuro Center, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued November 16, 2023 (Docket No. 362824) holds that evidence of past or future unlicensed services is not enough to show services were unlawful. Insurers must produce evidence showing that, at the time the services were rendered, either the provider or institute was unlicensed.

On appeal, Defendant claimed that it was only acting as a billing agent for the provider, Maple Manor Rehab, making its lack of licensure irrelevant, and that it did not commit fraud. Common-law fraud's elements are "(1) the [party] made a material representation; (2) the representation was false; (3) when the [party] made the representation, the [party] knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the [party] made the representation with the intention that the [opposing party] would act upon it; (5) the [opposing party] acted in reliance upon it; and (6) the [opposing party] suffered damage." *Maurer v Fremont Ins Co*, 325 Mich App 685 (2018) citing *M&D, Inc. v McConkey*, 231 Mich App 22 (1998).

Plaintiff argued that Defendant was not entitled to payment under MCL 500.3157, relying on *Healing Place at Noth Oakland Med Ctr v Allstate Ins Co.*, 277 Mich App 51 (2007), which held:

In our judgment, the plain language of MCL 500.3157 requires that before compensation for providing reasonable and necessary services can be obtained, the provider of treatment, whether a natural person or an institution, must be licensed in order to be "lawfully rendering treatment." If both the individual and the institution were each required to be licensed and either was not, the "lawfully render[ed]" requirement would be unsatisfied. [*Id.* at 59.]

The Court distinguished *Healing Point*, which dealt with the medical provider operating without a proper license, from the instant case, which dealt with Defendant only being the biller, with Maple Manor Rehab as the provider.

The Court then addressed whether the use of a billing agent is permissible under the No-Fault Act, citing two recent unpublished opinions, *Maple Manor Rehab Ctr. of Novi, Inc. v Travelers Cas. & Sur. Co.*, No. 355775, 2022 WL 2900105, at \*1 (Mich. Ct. App. July 21, 2022), appeal denied, 982 N.W.2d 688 (Mich. 2023) and *Maple Manor Rehab Ctr. of Novi, Inc. v Allstate Ins. Co.*, No. 358272, 2023 WL 2543730, at \*1 (Mich. Ct. App. Mar. 16, 2023). Both of these cases involved both Maple Manor Rehab Center and Defendant, with the insurers attempting to dismiss Defendant from the suits as it was not licensed, with both cases finding that the No-Fault Act did not prohibit the use of billing agents.

The Court then moved to the issue of whether Defendant was providing medical care. Defendant produced an affidavit of Maple Manor Rehab's HR Director which claimed the Defendant never provided any type of care or treatment to patients. However, the deposition testimony of one of Defendant's owners indicated that Defendant did provide medical services to patients. As such, the Court found there was an issue of material fact as to whether Defendant was providing medical treatment.

Finally, the Court addressed whether the insured's bed was unlicensed at the time of service. The Court acknowledged that if the bed was unlicensed at the time of service, the services would be considered unlawful, noting MCL 333.21718(2) requires "[a]s a condition of skilled nursing facility certification, a nursing home shall obtain concurrent certification under title 19 of the social security act ... for each bed that is certified to provide skilled care under title 18 of the social security act ...." While Plaintiff produced evidence that the insured was using the subject bed in the last month of her stay, and LARA's finding in its compliance survey, the Court found that this only proved that the insured was cared for in the bed at one point in 2017, and the bed was unlicensed at some point between 2019 and 2020. Even the Director of Admissions of Maple Manor Rehab's statements that

the 72 patient licensed limit was never exceeded did not provide direct evidence of the license status of the insured's bed at the time of her stay.

The Court then overturned the trial court's ruling, finding there remained questions of material fact regarding whether Defendant was acting as a provider and whether the insured's care was provided in an unlicensed nursing home bed.

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