

★ MAY 03 2017 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

ALLSTATE INSURANCE COMPANY, ET AL.,
- Plaintiff(s) -
against

Case No. 14-CV-06756-JBW-RLM

Member Case 15-CV-3639-JBW-RLM

A & F MEDICAL PC, ADVANCED CHIROPRACTIC
OF NEW YORK PC, ALIGNMENT CHIROPRACTIC CARE,
PC, ART OF HEALING MEDICINE, PC, ET ANO.
- Defendant(s)-

**Amended Answer and
Affirmative Defense
by Defendants
Art of Healing Medicine, P.C.**

Defendants ART OF HEALING MEDICINE, P.C. (hereinafter, "Defendant", "AOH") by Alexander Pinkusovich, M.D. and Svetlana Pinkusovich, M.D. individual defendants in the above captioned matter acting *pro se* and for its proposed amended answer for the addition of the affirmative defense of ratification to the Complaint of the Plaintiffs granted by Court (369 in 15-CV-03639-JBW-RLM Objection to Court denied affirmative defenses will be filed on May 8, 2017) hereby incorporate by reference the entirety of the allegations as set forth in the Amended Complaint in *Art of Healing et al. v. Allstate Insurance Company, et al.*, E.D.N.Y, Docket No. 16-CV-04208, and state the following:

AS TO THE PRELIMINARY STATEMENT

1. Defendant denies knowledge or information sufficient to form a belief as to the allegations made as concerned co-defendants named herein as set forth in paragraphs 1 through 45, and refer all questions of law to this Honorable Court.
2. Defendant denies the allegations as they relate to Defendant as set forth in paragraphs 1, 3, 4, 15-16, 18-19, 21-25, 34-37, 40-45, and refer all questions of law to this Honorable Court.
3. Defendant denies knowledge or information sufficient to form a belief as to the allegations as they relate to Defendant as set forth in paragraphs 9-13, 20, 26-33, and

refer all questions of law to this Honorable Court.

4. Defendant denies knowledge or information sufficient to form a belief as to the allegations as they relate to Defendant as set forth in paragraph 7, **except** admits that Defendant use Medi-DX 7000 to selectively deliver an electrical current to a Covered Person's nerve's A-Delta fiber.
5. Defendant denies the allegations as they relate to Defendant as set forth in paragraph 14 **except** admits that Defendant submitted bills and supporting documentation to Plaintiffs seeking reimbursement for VsNCT Testing.
6. Defendant denies the allegations as they relate to Defendant as set forth in paragraph 17 **except** admits that Defendant billed Allstate for VsNCT Testing using Current Procedural Terminology ("CPT") Code 95904.
7. Defendant denies knowledge or information sufficient to form a belief as to the allegations as they relate to Defendant as set forth in paragraph 38, **except** admits that Svetlana Pinkusovich, M.D. and Alexander Pinkusovich, M.D. submitted bills through Defendant, a medical office operating in the New York metropolitan area, to Allstate for reimbursement of VsNCT testing using CPT Code 95904, pursuant to the No-fault Law.
8. Defendant denies knowledge or information sufficient to form a belief as to the allegations as they relate to Defendant as set forth in paragraph 39, **except** admits that Defendant submitted bills for VsNCT testing.

AS TO THE NATURE OF THE ACTION

9. As to the complaint paragraph 46, no response is required.

AS TO THE NATURE OF THE RELIEF SOUGHT

10. Defendant deny knowledge or information sufficient to form a belief as to the

allegations made as they concern co-defendants named herein, and deny all allegations as they relate to Defendant as set forth in paragraphs 47 through 51 of the complaint, and refer all questions of law to this Honorable Court.

AS TO THE PARTIES

11. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 52 through 55 of the complaint.
12. Defendant denies knowledge or information sufficient to form a belief as to the allegations made as concerned co-defendants named herein as set forth in paragraphs 56- 91, 96-117, 120-171, and refer all questions of law to this Honorable Court.
13. Defendant deny the allegations as they relate to Defendant as set forth in paragraphs 93, 95, 119, and refer all questions of law to this Honorable Court.

JURISDICTION AND VENUE

14. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 172-174 of the complaint and refer all questions of law to this Honorable Court.

FACTUAL BACKGROUND

15. Defendant denies knowledge or information sufficient to form a belief as to the allegations made as concerned co-defendants named herein as set forth in paragraphs 175-269, and refer all questions of law to this Honorable Court.
16. Defendant denies the allegations as they relate to Defendant as set forth in paragraphs 182-185, 187-195, 210, 217-220, 224, 244-245, 247-248, 251, 253, 258-260, 262-264, 267-269, and refer all questions of law to this Honorable Court.
17. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 175, 178, 181, 186, 200-209, 227-243, 249-250,

254, 256-257, 261, of the complaint and refer all questions of law to this Honorable Court.

18. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 177 **except** admits that Defendant provided VsNCT Testing to Covered Persons in exchange for assignment of benefits, and submitted claims for payment to No-Fault insurance carrier, in general, and to Allstate, in particular for such services.
19. Defendant denies the allegations set forth in paragraph 222 **except** admits that Current Perception Threshold Testing (“CPT Testing”) and VsNCT Testing are both forms of sNCT testing which are performed by administering an electrical current to specific sites through electrodes placed on the surface of the skin, and identifying the minimum electrical stimulus necessary for the subject to perceive the stimulus and indicate that they feel stimulus.
20. Defendant denies the allegations set forth in paragraph 265 **except** admits that Defendant included the following statement in reports submitted to Plaintiffs in support of claim for reimbursement of VsNCT testing: “Federal Medicare guidelines list voltage-amplitude sensory nerve conduction threshold (VsNCT) as ‘reasonable and necessary’ in wide variety of sensory conditions ranging from diabetic polyneuropathies and peripheral entrapment neuropathies to neck and back pain (radiculopathies).”

DISCOVERY OF THE FRAUD

21. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 270 of the complaint and refer all questions of law to this Honorable Court.

STATEMENT OF CLAIMS

22. Defendant denies knowledge or information sufficient to form a belief as to the allegations made as concerned co-defendants named herein as set forth in paragraphs 271-1193, and refer all questions of law to this Honorable Court.
23. Defendant denies the allegations as they relate to Defendant as set forth in paragraphs 662-691, 1188-1193 and refer all questions of law to this Honorable Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

24. The complaint fails to state a cause of action as against Defendant or otherwise state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

25. Plaintiffs' claims are barred based on breach of contract and/or anticipatory breach.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

26. Plaintiffs' claims are barred by the theory of the Economic Loss Rule.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

27. Plaintiffs' claims are barred by the doctrine of waiver and estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

28. Plaintiffs' claims are barred by the doctrine of accord and satisfaction.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

29. Plaintiffs' claims are barred by the doctrine of unclean hands.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

30. Plaintiffs' claims are barred by Plaintiffs' fraudulent conduct.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

31. Plaintiffs' claims are barred by the doctrine of laches and delay.

AS AND FOR A NINETH AFFIRMATIVE DEFENSE

32. Plaintiffs' claims are barred by the applicable Statute of Limitations.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

33. Plaintiffs failed to mitigate its damages, if any.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

34. Plaintiffs' alleged damages were sustained, in whole or in part, through the acts and omissions of the Plaintiffs and/or through acts and omission of the third parties hired by the Plaintiffs.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

35. Plaintiffs' claims are barred due to Plaintiffs' failure to comply with the applicable laws, rules and regulations of the State of New York pertaining to no-fault insurance, including but not limited to New York Insurance Law 5106 and 11 NYCRR 65.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

36. Plaintiffs' claims are barred, in whole or in part, because no act or omission by Defendant was a cause in fact or the proximate cause of any damages alleged by Plaintiffs.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

37. Defendant are not proper parties under RICO and did not commit any improper acts or omission that may give rise to a valid cause of action under RICO.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

38. Defendant hereby incorporate by reference all of the defenses asserted in the Answers of the other co-defendants in this case to the extent they are not inconsistent with the position of Defendant in this case.

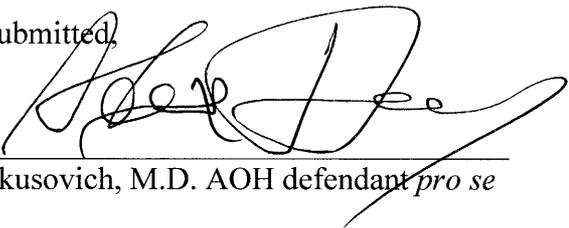
AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

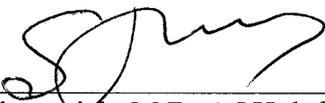
39. Plaintiffs' claims are barred by the doctrines of estoppel by participation/ratification from maintaining this lawsuit as plaintiffs ratified, approved, confirmed and participated in the matters which are the basis of the present complaint. In this case the Allstate companies did all of the foregoing and continue as late as 2016, even after their RICO action was filed and they did so to lure the Providers into believing that Providers were treating patients and billing according to the law, and according to what Allstate believed was proper. The Allstate companies' ruse was nothing more than part of the Allstate fraudulent scheme, as reflected in the *Art of Healing et al. v. Allstate Insurance Company, et al.*, E.D.N.Y., Docket No. 16cv04208 incorporated by reference. The Allstate Plaintiffs needed the claims to reach an aggregate amount in order to make their anticipated R.I.C.O. claim. And to do so, the Allstate companies knew that a certain amount of claims and monies had to be paid in order to justify the anticipated fraudulent lawsuit. The prosecution of Allstate's Original RICO action involves in sum and substance alleged fraudulent billing as according to Allstate, the Defendants billed for VsNCT testing under CPT Code 95904, which Allstate alleges was the improper code, and also Allstate alleges that the billing for VsNCT testing was fraudulent because Allstate alleged that the Defendants knew or should have known that the FDA approved machine that was used for the VsNCT testing could not do what the billing indicated had been done. Yet since these lawsuits were filed, as late as 2016 the Allstate Plaintiffs continued to ratify that the billing was proper. The Allstate Plaintiffs decided approximately nine (9) months after they concede they had "actual" knowledge of the alleged fraud to settle, through their attorneys, and pay a lawsuit, involving the same VsNCT Testing that Plaintiffs' claim as fraudulent

here. Even a year after this lawsuit was filed, Allstate Insurance Company, on September 30, 2015 again settled another lawsuit for the same VsNCT Testing that Plaintiffs were in active litigation as being fraudulent.

WHEREFORE Art of Healing Medicine, P.C. Defendants demand that the Complaint against it be dismissed in its entirety together with such other and different relief as this Court deems just and proper.

Respectfully submitted,

By: 
Alexander Pinkusovich, M.D. AOH defendant *pro se*

By: 
Svetlana Pinkusovich, M.D. AOH defendant *pro se*

May 1, 2017

VIA First Class Registered mail
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*Sworn before me on
1st day of May, 2017
Halyna Smolyar*
HALYNA SMOLYAR
Notary Public - State of New York
No. 01MS6240861
Qualified in Kings County
My Commission Expires May 9, 2019

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1st day of May, 2017
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No. 01MS6240861
Qualified in Kings County
My Commission Expires May 9, 2019

CERTIFIED MAIL

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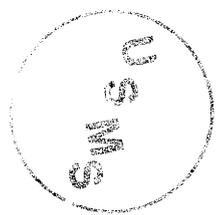
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