Malik v Heritage N.Y. IPA, Inc.
2018 NY Slip Op 31697(U)
July 13, 2018
Supreme Court, New York County
Docket Number: 652583/2017
Judge: Shlomo S. Hagler
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

---------- X

Index No. 652583/2017

ABDUL Q. MALIK M.D. and
ABDUL MALIK, PHYSICIAN P.C.,

Plaintiffs,

- against -

HERITAGE NEW YORK IPA, INC., d/b/a HEALTHCARE PARTNERS, IPA

DECISION AND ORDER

Defendant.

---------- X

HON. SHLOMO S. HAGLER, J.S.C.:

This is an action to recover damages for, among other things, aiding and abetting fraud and breach of contract. Defendant Heritage New York IPA, Inc., d/b/a Healthcare Partners, IPA ("HCP") moves to dismiss the complaint pursuant to CPLR 3211(a)(7). HCP also asks this Court to impose sanctions upon plaintiffs pursuant to 22 NYCRR 130-1.1.

BACKGROUND

On December 2, 2011, plaintiff Abdul Q. Malik, M.D. ("Dr. Malik" or "plaintiff"), a cardiologist and internist, entered into a Provider Agreement with defendant HCP, pursuant to which Dr. Malik agreed to become a member of HCP's network of health care providers. Defendant HCP is an independent practice association ("IPA") formed for the purpose of arranging, by contract, for the delivery of health care services to enrollees of managed care organizations ("MCOs"). HCP contracts with MCOs

to provide health care services to the MCO's enrollees and to be responsible for certain functions such as the processing and payment of claims and the credentialing of health care providers. HCP enters into contracts with health care providers, such as Dr. Malik, pursuant to which the health care provider agrees to render services on behalf of HCP to the enrollees of the MCOs that contract with HCP. Essentially, HCP acts as an intermediary between the MCOs, the MCO's enrollees, and the health care providers in HCP's network who provide services to those enrollees.

On March 25, 2015, a Kings County grand jury voted to indict Dr. Malik on three counts of petit larceny, eight counts of falsifying business records in the first degree, and one count of health care fraud in the fifth degree, in connection with his alleged participation in a massive fraud scheme that involved, among other things, billing Medicaid and Medicaid managed care providers (i.e., health maintenance organizations that provide services to Medicaid recipients), for unnecessary medically services or for services that were never rendered to patients. The indictment alleged that Dr. Malik co-conspired to defraud Medicaid managed care provider Amerigroup New York, LLC d/b/a Amerigroup Community Care d/b/a Health Plus ("Amerigroup"), by seeing inflated numbers of patients at a clinic located in Brooklyn, and falsifying their medical records in order to fraudulently bill and receive payment from Amerigroup for

unnecessary medically, frequently costly treatments, and by billing for patients that he never saw.

On April 3, 2015, HCP suspended Dr. Malik from its network of providers upon his indictment for Medicaid fraud. As a result of the indictment, the New York State Office of Medicaid Inspector General ("OMIG") also excluded Dr. Malik and his physician group, plaintiff Abdul Malik Physician, P.C. ("the P.C."), from participating in the Medicaid program effective May 7, 2015.

On November 30, 2016, the Kings County District Attorney dismissed the indictment against Dr. Malik. On December 7, 2016, OMIG reinstated Dr. Malik and the P.C. retroactive to the date the Medicaid exclusion went into effect. Thereafter, HCP also reinstated Dr. Malik.

THE INSTANT ACTION

On or about May 12, 2017, Dr. Malik and the P.C. commenced this action against HCP, alleging that HCP aided and abetted the above fraudulent scheme by recklessly permitting third parties to misuse his name, billing credentials, and network accounts without his knowledge or authorization. Specifically, the complaint alleges that Dr. Malik's billing credentials were used without his knowledge by Ultraline Medical Testing, P.C. ("Ultraline Testing"), to submit fraudulent claims to HCP, which HCP then processed and paid without confirming the fraudulent

billing credentials or performing any due diligence in this regard, thereby facilitating the fraud by Ultraline Testing that ultimately resulted in Dr. Malik's erroneous indictment and suspension from the Medicaid program. In addition, the complaint alleges that Dr. Malik's suspension/termination from HCP's network violated various statutes and regulations, as well as Dr. Malik's agreement with HCP because, among other things, Dr. Malik did not receive proper notice of his termination and did not receive the opportunity for a hearing.

The complaint asserts the following 11 causes of action against HCP: aiding and abetting fraud; violation of Insurance Law § 4803(b); violation of Public Health Law § 4406-d(2); violation of Public Health Law §§ 4403(6)(e)(1) and 4408(4); violation of Insurance Law § 4804(e)(1); breach of contract; negligence; failure to comply with 11 NYCRR 86.6 and 10 NYCRR 98-1.21; violation of General Business Law §§ 349 and 350; and Racketeer Influenced and Corrupt Organizations Act ("RICO") causes of action brought under 18 USC § 1962© and (d). Plaintiffs have since withdrawn the tenth and eleventh causes of action seeking damages under RICO.

HCP now moves, pre-answer, to dismiss the complaint pursuant to CPLR 3211(a)(7). HCP also asks this Court to impose sanctions pursuant to 22 NYCRR 130-1.1. It is noted that this is one of several related actions brought by plaintiffs in connection with

Dr. Malik's indictment and exclusion from the Medicaid program. This court heard oral argument on the instant motion, in combination with oral argument in two of the related actions in which the defendants moved pursuant to CPLR 3211 to dismiss the complaint. The motions in those related actions are decided in separate decisions and orders herewith (*see* Decision & Order dated July 13, 2018, *Malik v Ultraline Med. Testing, P.C.*, Index No. 651250/2017 [decided herewith]; Decision & Order dated July 13, 2018, *Malik v Excelsior Medical IPA, LLC*, Index No. 652581/2017 [decided herewith]).

DISCUSSION

Motion to Dismiss Standard

"On a motion to dismiss the complaint pursuant to CPLR 3211 (a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Breytman v Olinville Realty, LLC*, 54 AD3d 703, 703-704 [2d Dept 2008]; *see Leon v Martinez*, 84 NY2d 83, 87 [1994]). "When evidentiary material is considered the criterion on a CPLR 3211(a)(7) motion is whether a plaintiff has a claim, not whether he or she has stated one" (*Weksler v Weksler*, 81 AD3d 401, 402 [1st Dept 2011]; see *Guggenheimer v Ginzburg*, 43 NY2d

268, 275 [1977]).

The Arbitration Clause

In moving to dismiss the complaint insofar as asserted by Dr. Malik, HCP relies on the arbitration clause in the agreement between Dr. Malik and HCP which states:

> "8.4 Binding Arbitration: PROVIDER and HCP agree to meet and confer in good faith to resolve any problems of disputes that may arise under this Agreement. Such negotiation shall be a condition precedent to the filing of any arbitration demand by either party, and no arbitration demand may be filed until the exhaustion of HCP's internal grievance and appeal procedures.
>
> 8.4.1 *The parties agree that any controversy or claim arising out of or relating to this Agreement or the breach thereof, whether involving a claim of tort, contract or otherwise, shall be settled by final and binding arbitration. The parties waive their right to a jury or court trial.*
>
> 8.4.2 The arbitration shall be conducted in Nassau County, New York by a single, neutral arbitrator who is licensed to practice law. These arbitration proceedings are initiated by the complaining party serving a written demand for arbitration upon the other party. . . . *Arbitration must be initiated within six (6) months after the alleged controversy or claim occurred by submitting a written demand to the other party. The failure to initiate arbitration within that period constitutes an absolute bar to the institution of any proceedings*. . . .
>
> 8.4.3 Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The decision of the arbitrator shall be final and binding upon the parties"

(Provider Agreement at 25 [Exhibit "A" to Affirmation of Daniel A. Hoffman in Support of Motion to Dismiss][emphasis added]).

HCP argues that since the arbitration agreement governs any

controversy between Dr. Malik and HCP and because Dr. Mailk failed to initiate arbitration within the six months proscribed by the arbitration agreement, Dr. Malik has no cause of action against HCP and the complaint must be dismissed.

"The parties may cut back on the Statute of Limitations by agreeing that any suit must be commenced within a shorter period than is prescribed by law" (*John J. Kassner & Co. v City New York*, 46 NY2d 544, 550-551 [1979]). "Thus, an agreement which modifies the Statute of Limitations by specifying a shorter, but reasonable, period within which to commence an action is enforceable . . . provided it is in writing" (*id.* at 551 [internal citations omitted]). "Absent proof that the contract is one of adhesion or the product of overreaching, or that [the] altered period is unreasonably short, the abbreviated period of limitation will be enforced" (*Incorporated Village of Saltaire v Zagata*, 280 AD2d 547, 547-548 [2d Dept 2001][internal quotation marks and citation omitted]). "Where the party against which an abbreviated Statute of Limitations is sought to be enforced does not demonstrate duress, fraud, or misrepresentation in regard to its agreement to the shortened period, it is assumed that the term was voluntarily agreed to" (*John v State Farm Mut. Auto. Ins. Co.*, 116 AD3d 1010, 111 [2d Dept 2014][internal quotation marks and citation omitted]).

In this case, the 6-month limitations period found in the

arbitration agreement expired prior to the commencement of this action. There are no allegations in the complaint demonstrating duress, fraud, or misrepresentation in regard to Dr. Malik's agreement to the shortened period. Therefore it is assumed that the term was voluntarily agreed to. Moreover, "courts regularly enforce six month contractual statute of limitations clauses" (*Structural Contr. Servs., Inc. v URS Corp. - N.Y.*, 31 Misc 3d 1208[A], 2011 NY Slip Op 50532[U][Sup Ct, Westchester County 2011]; *see Hunt v Raymour & Flanigan*, 105 AD3d 1005, 1006 [2d Dept 2013]). Accordingly, HCP established that it is entitled to dismissal of the complaint insofar as asserted by Dr. Malik (*see Berger-Vespa v Rondack Bldg. Inspectors*, 293 AD2d 838, 839-840 [3d Dept 2002][relevant provision stated that claims were subject to mediation or, failing that, arbitration with "any such claim . . . waived unless the demand . . . shall be made within two (2) years from the inspection date"; court affirmed pre-answer dismissal of complaint insofar as asserted against defendant inspector on ground that there existed no basis to render the provision unenforceable, and plaintiffs did not demand arbitration of claim within the two years of the inspection]).

In opposition to HCP's motion, plaintiffs argue that HCP should be estopped from asserting the limitations period in the arbitration agreement since it did not bring the arbitration clause to Dr. Malik's attention at the time he entered into the

agreement. Further, when Dr. Malik requested a copy of the Provider Agreement from HCP on September 14, 2015, HCP did not provide a copy until October 8, 2015, five days *after* the expiration of the 6-month limitation period. Plaintiffs assert that HCP had an affirmative duty to speak and failed to do so and therefore, it should be estopped from asserting the limitation period as a basis for dismissal of the complaint. These contentions lack merit.

"Equitable estoppel is appropriate where the plaintiff is prevented from filing an action within the applicable statute of limitations due to his or her reasonable reliance on deception, fraud or misrepresentations by the defendant" (*Putter v North Shore Univ. Hosp.*, 7 NY3d 548, 552-553 [2006]). However, it is "fundamental to the application of equitable estoppel for plaintiffs to establish that subsequent and specific actions by defendants somehow kept them from timely bringing suit" (*Zumpano v Quinn*, 6 NY3d 666, 674 [2006]). "Where concealment without actual misrepresentation is claimed to have prevented a plaintiff from commencing a timely action, the plaintiff must demonstrate a fiduciary relationship . . . which gave the defendant an obligation to inform him or her of facts underlying the claim" (*id.* at 675).

In this case, plaintiffs do not allege any subsequent and specific actions taken by HCP which kept them from timely

initiating the claim. There is no basis from any of the allegations to infer that HCP did anything to conceal the fact that the arbitration agreement in the contract included a 6-month limitations period. Furthermore, plaintiffs fail to demonstrate the existence of a fiduciary relationship which gave HCP an obligation to remind/inform plaintiffs of the 6-month limitations period in the arbitration agreement. Equitable estoppel is therefore inapplicable to this case.

Further, "a party who signs a document is conclusively bound by its terms absent a valid excuse for having failed to read it" (*Par Fait Originals v ADT Sec. Sys., Northeast, Inc.*, 184 AD2d 472, 472 [1st Dept 1992] [internal quotation marks and citation omitted]; *see Metzger v Aetna Ins. Co.*, 227 NY 411, 416 [1920]; *Nerey v Greenpoint Mtge. Funding, Inc.*, 144 AD3d 646, 648 [2d Dept 2016]). Therefore, plaintiffs' allegation that Dr. Malik was unaware of the 6-month provision is unavailing.

In opposition to the motion, plaintiffs also assert that the arbitration agreement is unenforceable because it prevents them from vindicating their statutory claims under Public Health Law § 4406-d and Insurance Law § 4803. However, "[i]t is by now clear that statutory claims may be the subject of an arbitration agreement . . . that by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral,

rather than judicial forum" (*Gilmer v Interstate/Johnson Lane Corp.*, 500 US 20, 26 [1991]). It is true that where an arbitration agreement's provision for the payment of arbitration costs precludes a party from pursuing his or her statutory rights in the arbitral forum, the arbitration agreement and/or the costs provision may be rendered unenforceable (*see Matter of Brady v Williams Capital Group, L.P.*, 14 NY3d 459, 467-468 [2010]). However, in this case, plaintiffs do not allege that they were unable to bear the costs of arbitration, or that the cost of litigating their claims against HCP in court would be less expensive than in an arbitral forum.

Next, plaintiffs assert that the arbitration agreement constitutes a contract of adhesion and is unconscionable. This argument is also without merit. "The doctrine of unconscionability contains both substantive and procedural aspects, and whether a contract or clause is unconscionable is to be decided by the court against the background of the contract's commercial setting, purpose and effect" (*Sablosky v Gordon Co.*, 73 NY2d 133, 138 [1989]). Substantively, "[an] unconscionable contract [is] one which is so grossly unreasonable or unconscionable in the light of the mores and business practices of the time and place as to be unenforceable according to its literal terms" (*id.* [internal quotation marks and citations omitted]). "It has been suggested that an unconscionable contract is one such as no man in his senses and not under a

delusion would make on the one hand, and as no honest or fair man would accept, on the other" (*Mandel v Liebman*, 303 NY 88, 94 [1951] [quotation marks and citations omitted]). That is not the case here.

Plaintiffs' allegations also do not indicate procedural unconscionability in the contract formation process. "Such claims are judged by whether the party seeking to enforce the contract has used high pressure tactics or deceptive language in the contract and whether there is inequality of bargaining power between the parties" (*Sablosky v Gordon Co.*, 73 NY2d at 139). Dr. Malik is a medical doctor licensed to practice medicine in New York State and has practiced for many years as a cardiologist and internist. There is nothing in the record to suggest that he was prevented from reading the agreement or asking that its contents be explained to him. There are no allegations that HCP subjected Dr. Malik to deceptive or high pressure tactics.

Contrary to plaintiffs' contention, the provision stating that "[a]rbitration must be initiated within six (6) months after the alleged controversy or claim occurred" and that "failure to initiate arbitration within that period constitutes an absolute bar to the institution of any proceedings" is clear and unambiguous. As such, there are no allegations on this record that the arbitration provision is unconscionable (*see also Nayal v HIP Network Services IPA, Inc.*, 620 F Supp 2d 566, 571-572 [SDNY 2009]["even if the Agreement was a form contract offered on

a 'take-it-or-leave-it' basis and HIP refused to negotiate the Arbitration Provision, this is not sufficient under New York law to render the provision procedurally unconscionable"; "(plaintiff) does not dispute that the services offered by HIP were available from another HMO"]).

Lastly, plaintiffs assert that HCP waived its right to invoke the contractual statute of limitations by offering to reconsider Dr. Malik's suspension after the contractual limitations period had expired. They point out in this regard that Dr. Malik was initially suspended by HCP on April 3, 2015. Therefore, any claim based upon that suspension needed to be initiated before October 3, 2015. Plaintiffs highlight that in a letter to Dr. Malik, dated October 23, 2015, HCP stated: "It is our understanding that Dr. Malik is currently still on the New York State Inspector General's list of excluded providers. Nevertheless, if you have any information that you wish to provide that might cause us to reconsider our action suspending his participation with [HCP], please feel free to provide it at your earliest convenience" (Exhibit "G" to Affirmation of Linda Clark in Opposition to Heritage's Motion to Dismiss Complaint). Plaintiffs also highlight an e-mail, dated January 6, 2016, in which HCP responded to the request for an appeal/hearing of his suspension as follows: "until Dr. Malik's listing as an excluded provider by the NYS OMIG is lifted, our view is that there is no point to conduct a hearing to reconsider his suspension inasmuch

as his current non-participation status would not change. We would, however, be willing to reconsider our action once Dr Malik is no longer on the exclusion list" (Exhibit K to Affirmation of Linda Clark in Opposition to Heritage's Motion to Dismiss Complaint). Plaintiffs assert that these offers to reconsider Dr. Malik's suspension and the request for supporting documentation, at the very least, raise an issue of fact as to whether HCP waived its right to rely on the contractual statute of limitations. However, these actions cannot be construed as a waiver because they are not inconsistent with an intent to rely on the arbitration provision in the contract. The fact that HCP did not invoke the arbitration provision prior to this litigation also does not constitute a waiver (*see Matter of Haupt v Rose*, 265 NY 108, 110-111 [1934]). Further, even assuming the January 6, 2016 correspondence restarted the 6-month clock, Dr. Malik was required to initiate arbitration on or before July 6, 2017. Therefore, by the time plaintiffs initiated the instant action, the contractual statute of limitations had already expired.

In light of the foregoing, the statute of limitations in the arbitration clause conclusively establishes the absence of any cause of action insofar as asserted by Dr. Malik. In addition, for the reasons that follow, dismissal of the complaint is warranted insofar as asserted by both plaintiffs.

Aiding and Abetting Fraud

In the first cause of action, the complaint alleges that

Ultraline Testing used Dr. Malik's name and billing credentials to submit false claims to healthcare providers and that it received payments for those claims based upon documents containing Dr. Malik's forged signature. The complaint states that HCP knowingly induced and participated in this fraud by "(a) failing to use reasonable care to safeguard Plaintiffs' credentialing information and to confirm that any changes submitted under Plaintiffs' name were valid; (b) failing to cross-reference fraudulent documents upon information and belief submitted by the Ultraline against the valid documentation submitted by Plaintiffs; [and] © failing to contact Plaintiffs' office to inquire whether. . . Ultraline's documents were valid" (Complaint at 13, ¶ 83). Due to HCP's failure to cross-reference the documents or to contact plaintiffs' office regarding the documents, Ultraline Testing was able to submit fraudulent bills and to receive payments for them under Dr. Malik's account, without Dr. Malik's knowledge, resulting in Dr. Malik's erroneous indictment and plaintiffs' exclusion from the Medicaid program. These allegations are inadequate to support a claim for aiding and abetting fraud.

For the reasons stated in the decision and order deciding the motions in the related action of *Malik v Ultraline Med. Testing, P.C.* (Index No. 651250/2017), these allegations are insufficient to permit a reasonable inference as to HCP's knowledge of the fraud. At best, the allegations imply that HCP

should have known of the fraud, which "is insufficient to support an aiding and abetting fraud claim" (*Lumen at White Plains, LLC v Stern*, 135 AD3d 600, 600 [1st Dept 2016]; *see Gregor v Rossi*, 120 AD3d 447, 448 [1st Dept 2014]; *Oikonomos, Inc. v Bahrenberg*, 48 Misc 3d 1228[A], 2015 NY Slip Op 51300[U][Sup Ct, Suffolk County 2015]; *cf. Global Mins. & Metals Corp. v Holme*, 35 AD3d 93, 101-102 [1st Dept 2006]).

In addition, the complaint includes allegations implying that, due to its failure to ascertain the authenticity of the information in the documents submitted to them by Ultraline Testing, HCP was, in fact, a victim of the fraud. This contradicts any assertion that it had actual knowledge of such fraud. Since plaintiffs failed to adequately allege that HCP had actual knowledge of the underlying fraud, it is not necessary to reach the issue of whether the complaint fails to plead substantial assistance.

Violation of the Notification standards set forth in Insurance Law § 4803(b) and Public Health Law § 4406-d(2)

In the second and third causes of action, plaintiffs allege that HCP violated the notification standards set forth in Insurance Law § 4803(b) and Public Health Law § 4406-d(2). Based on the reasoning in this Court's decision and order in the related action of *Malik v Ultraline Med. Testing, P.C.* (Index No. 651250/2017), plaintiffs cannot establish that the notification and review standards set forth in Insurance Law § 4803(b) and

Public Health Law § 4406-d(2) applied in this case.

Violation of Public Health Law §§ 4403(6)(e)(1) and 4408(4) and Insurance Law § 4804(e)(1)

In the fourth cause of action, plaintiffs allege that HCP violated Public Health Law § 4403(6)(e)(1) by not permitting Dr. Malik's patients to continue an ongoing course of treatment with him for 90 days after his disaffiliation with the network. The fourth cause of action also alleges that the HFM defendants violated Public Health Law § 4408(4), by not providing notice to Dr. Malik's patients undergoing an ongoing course of treatment within 15 days of his termination, informing them of the procedures for continuing care. In the fifth cause of action, the complaint alleges that HCP violated the patient rights embodied in Insurance Law § 4804(e)(1). As set forth the decision and order deciding the motions in the related action of *Malik v Ultraline Med. Testing, P.C.* (Index No. 651250/2017), these causes of action are subject to dismissal pursuant to CPLR 3211(a)(7). Public Health Law § 4403(6)(e)(1) and Public Health Law § 4408(4) clearly express that they are intended to benefit/protect "enrollees" and Insurance Law § 4804(e)(1) clearly expresses that it is intended to benefit/protect "the insured." As such, these provisions do not give rise to a private right of action in favor of health care providers such as plaintiffs in this case (*see generally Burns Jackson Miller Summit & Spitzer v Lindner*, 59 NY2d 314, 325 [1983] ["Whether a

private cause of action was intended will turn in the first instance on whether the putative plaintiff is one of the class for whose especial benefit the statute was enacted"][internal quotation marks and citation omitted]).

Breach of Contract

The sixth cause of action alleges that plaintiffs entered into a provider agreement with HCP on or about December 22, 2011 and that HCP violated the termination clause in such agreement in the manner and timing of HCP's suspension/termination of Dr. Malik from its network of providers.

In support of its motion, HCP submits a copy of the agreement it entered into with Dr. Malik, which states in relevant part:

> "The New York State Department of Health Standard Clauses of HMO and IPA Provider Contracts, attached to this Agreement as Exhibit F are expressly incorporated int this Agreement and are binding upon the parties to this Agreement. In the event of any inconsistent or contrary language between the Standard Clauses and any other part of this Agreement, including but not limited to appendices, amendment and exhibits, the parties agree that the provisions of the Standard Clauses shall prevail"

(Provider Agreement at 29, ¶ 8.17 [Exhibit "A" to Affirmation of Daniel A. Hoffman in Support of Motion to Dismiss]).

Section E(5) of the Standard Clauses provides:

> "Notwithstanding any other provision herein, to the extent that the provider is providing health care services to enrollees under the Medicaid Program and/or Family Health Plus, the . . . IPA retains the option to immediately terminate the Agreement when the provider has been terminated or suspended from the Medicaid Program"

(Provider Agreement at F-6 [Exhibit A to Affirmation of Daniel A. Hoffman in Support of Motion to Dismiss]). Since in this case, Dr. Malik was suspended from the Medicaid program, HCP had the option to immediately terminate the agreement with Dr. Malik pursuant to this section of the agreement. Therefore, the Provider Agreement conclusively establishes plaintiffs have no cause of action sounding in breach of contract.

Negligence

In the seventh cause of action, plaintiffs allege that HCP had a duty to them to use reasonable care to safeguard Dr. Malik's credentialing information and to confirm that any changes submitted under Dr. Malik's name were valid. It breached that duty by failing to cross-reference fraudulent documents submitted by Ultraline Testing against the valid documentation submitted to HCP by plaintiffs, and by failing to contact plaintiffs' office to inquire whether the documents submitted by Ultraline Testing were valid. As a result of HCP's failure to cross-reference the documents and contact plaintiffs' office to confirm their validity, Ultraline Testing was able to submit fraudulent bills to HCP and to receive payment for these bills under Dr. Malik's account without his knowledge or authorization. Plaintiffs allege that the Ultraline fraud resulted in Dr. Malik's erroneous indictment, which damaged his reputation, career, professional relationships, and income.

For the same reasons stated in the decision and order in the related action of *Malik v Ultraline Med. Testing, P.C.* (Index No. 651250/2017), HCP did not owe plaintiffs a duty to cross-reference every document submitted to it using Dr. Malik's name and credentialing information before paying a claim. Plaintiffs cite no case law or statute creating such a duty and this court declines to impose such an onerous duty. In the absence of such a duty, the complaint does not state a cause of action to recover damages for negligence.

Violation of 11 NYCRR 86.6 and 10 NYCRR 98-1.21

In the eight cause of action, plaintiffs assert that the HCP violated 11 NYCRR 86.6 and 10 NYCRR 98-1.21 by not having an effective fraud and abuse prevention plan. On the authority and reasoning relied upon in the related decision and order in the related action *of Malik v Ultraline Med. Testing, P.C.* (Index No. 651250/2017), a violation of these regulations does not give rise to a private right of action.

Violation of General Business Law §§ 349 and 350

In ninth cause of action, plaintiffs assert that HCP violated General Business Law §§ 349 and 350, by engaging in deceptive practices and false advertising. On the authority and reasoning relied upon in the decision and order in the related action *of Malik v Ultraline Med. Testing, P.C.* (Index No. 651250/2017), this Court holds that plaintiffs fail to state a

cause of action for violation of these statutes.

HCP's Request for Sanctions pursuant to 22 NYCRR 130-1.1.

HCP's request for the imposition of sanctions upon plaintiffs pursuant to 22 NYCRR 130-1.1 is denied. Plaintiffs' actions do not rise to the level of being "completely without merit in law," nor were they "undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another" (22 NYCRR 130-1.1 [c] [1], [2]).

Plaintiffs' Request for Leave to Re-plead

Lastly, plaintiffs' request for leave to re-plead is denied as the complaint is deficient as a matter of law and it is not susceptible to a procedural correction.

CONCLUSION

In accordance with the foregoing, it is hereby

ORDERED that defendant's motion to dismiss the complaint is granted, and the complaint is dismissed; and it is further

ORDERED that defendant's request for sanctions is denied; and it is further

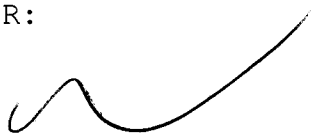
ORDERED that plaintiffs' request for leave to re-plead is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated : July 13, 2018

ENTER:



J.S.C.

SHLOMO HAGLER
J.S.C.