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California Court Slams Allstate for "Abuse of Process"

By Editorial Staff

One of the newest insurance company strategies for rejecting legitimate chiropractic care rendered to victims of personal injury or workers' compensation injuries is to refuse to pay for the care if it was rendered in a group clinic in conjunction with a medical doctor.

Allstate has led the charge with blanket refusals to reimburse this care. Allstate has also engaged in abusive litigation tactics designed to burden DCs who work with MDs.

For the last two years, Allstate has routinely subjected DC/MD group practices to additional discovery demands during workers' compensation and personal injury litigation. Allstate has been demanding production of employment contracts, corporate documents, and pay records. All of these documents are protected by existing privacy laws.

Allstate has apparently expected chiropractors to roll over and accept little or no reimbursement for their services, knowing that a lawsuit against the insurance giant for a single personal injury or workers' compensation case would cost much more than the value of the doctor's services.

Allstate, however, did not bargain on encountering a brick wall named I. Frank Huljev, DC. Dr. Huljev conducts a thriving group practice in Fresno, California, which is the occupational clinic of choice for large companies such as Home Depot and K-mart. Dr. Huljev was not about to let Allstate, or any other large insurance company, abuse him and his good reputation without a fight.

"I felt like somebody needed to stand up to Allstate or else they would keep going on abusing the chiropractic profession," Dr. Huljev explained. "They tried to put my back against the wall, but I saw it as a chance to make a difference. Other chiropractors have backed down and personal injury attorneys do not always think our cases are big enough to put out the effort. It's not about the case. It's about our abilities and our right to help the public, and definitely not Allstate's right to paw through employment records and cry fraud every time they don't want to pay a claim."

Dr. Huljev not only went to his local attorney, Thomas Pedreira, but also hired Michael Schroeder, a Southern California attorney who had defeated Allstate twice on similar motions. "I was really pleased to hear from Dr. Huljev," said Mr. Schroeder. "I had been looking for an opportunity to litigate this issue against Allstate for some time. I felt that Allstate's tactics were abusive and unwarranted."

Allstate brought a motion to exclude all evidence of Dr. Huljev's treatment at trial, asserting that they were rendered in a DC/MD group practice that was illegally structured. (Lillian Metzger, et al. v. Jessica Weiner, et al., Fresno County Superior Court Case No. 601098-7.) This tactic, according to Mr. Schroeder, is part of a standard Allstate practice: to attempt to taint the doctor's reputation before the judge by alleging fraud. "I wasn't going to allow Allstate to gain the moral high ground with this tactic," explained Mr. Schroeder.

The brief contended that Allstate was attempting to act like a state regulatory agency solely for the purposes of enriching itself; that Allstate lacked standing to function as a private attorney general; that if Allstate felt that anything improper had occurred, it had the same remedy as any other citizen of the State of California: to file a complaint with the appropriate regulatory agencies.

"Allstate had already filed a complaint on this very case with the medical board, which dismissed the matter and found nothing wrong. Of course, the clinic is functioning legally and Allstate knows it," observed Dr. Huljev.

The second strategy was to argue that if the issue of the legal structure of a chiropractic practice and the legal scope of chiropractic practice was litigated in every single personal injury and workers' compensation case, the entire system would grind to a halt. The third prong of attack was to present a meticulously researched brief on the legal history of chiropractic and the legal scope of chiropractic in California. The brief exceeded 70 pages.

Dr. Huljev noted that Allstate hired the "local defense chiropractor" to try to confuse the judge about chiropractic scope of practice. Dr. Huljev reported that Mr. Schroeder was able to set the record straight in that regard.

The court rejected Allstate's motion. The judge said on the record that he considered it "abuse" for the motion to have been brought before the court.

"This is unusually harsh language to find in a judicial opinion, but it is clearly justified in this case by Allstate's outrageous behavior," said Mr. Schroeder. Mr. Schroeder noted that judges usually accept or reject a motion without commentary.

Mr. Schroeder commended Dr. Huljev for taking Allstate to task. "This ruling can now be used in other similar cases as persuasive evidence of Allstate's motives and tactics," concluded Mr. Schroeder.

Editor's note: Michael Schroeder is counsel for Hart, King & Coldren, and vice president and general counsel for the National Chiropractic Council, the second largest provider of chiropractic malpractice insurance in California. Mr. Schroeder was the general counsel for the California Chiropractic Association for 10 years, and has been the vice president of the National Association of Chiropractic Attorneys for the last 12 years. He has formed over 300 DC/MD practices since 1982.



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