

# Unlicensed Services or Treatments not Compensable Under Michigan's No-Fault Act

December 21, 2020

Arturo Alfaro  
(248) 433-2315  
aalfaro@plunkettcooney.com

The Michigan Court of Appeals recently held that an insurance provider is not entitled to No-Fault benefits because MCL 500.3157 only mandates benefit payments for “treatment lawfully rendered,” which encompasses treatment or services provided “in compliance with licensing requirements” in the state.

In *Nadwah Harbi and Merry Kasnona v State Farm Mutual Automobile Insurance Company*, unpublished per curiam opinion on Dec. 10, Docket No. 352139, the appellate court considered whether an alleged No-Fault provider’s unlicensed services are compensable under the No-Fault Act when Michigan’s Public Health Code requires a license at the time the services are provided.

In Michigan, unpublished opinions from the Court of Appeals are not binding precedent but rather persuasive and instructive. See MCR 7.215(C)(1).

## The Facts

Plaintiffs, Nadwah Harbi and Merry Kasnona, received prescribed medications from Dr. Sam Hakki for injuries suffered in a motor vehicle accident. Dr. Hakki used the services of EQMD, Inc.:

... a self-described “pharmacy management organization” that provides “assistance with inventory management and running searches in Michigan Automated Prescription System” to furnish prescription drugs to Harbi and Kasnona. EQMD also assisted Dr. Hakki with billing and collections.

*Id.* at \*1. Initially, State Farm paid a portion of EQMD’s bills submitted on the plaintiffs’ behalf. The plaintiffs later sued State Farm for No-Fault benefits and included the balance amounts State Farm had not paid to EQMD. State Farm moved for summary disposition on the grounds that: (1) EQMD was not licensed in Michigan, and (2) EQMD’s services benefitted Dr. Hakki, not the injured plaintiffs. The plaintiffs assigned their right for payment to EQMD, who in turn moved to intervene and respond to the motion for summary disposition. The trial court denied the motion to intervene and granted State Farm’s

motion. The trial court also denied EQMD's motion for reconsideration.

State Farm's motion included evidence from EQMD's website showing that the company offers "a line of custom compounded topicals" and provides "certain medications" to physicians via a mail order program. Dr. Hakki's deposition testimony confirmed he received prescription medications from EQMD.

In reviewing these decisions, the appellate court remanded to the trial court to grant EQMD's motion to intervene but allowed the trial court to rule on the dispositive motion. EQMD moved to set aside the trial court's order granting partial summary disposition and presented a letter from the Michigan Department of Licensing and Regulatory Affairs (LARA) concluding that "a violation of the Public Health Code could not be established" for EQMD despite its unlicensed status. The trial court then denied EQMD's motion for reconsideration and issued a final order dismissing and closing the case.

### **Intervening Plaintiff's Arguments**

EQMD argued that it was not subject to the licensing requirements because it did not physically handle the medications, and it is not a manufacturer or wholesale distributor. Next, EQMD argued that despite its business arrangement with Dr. Hakki, its services benefitted the injured plaintiffs.

### **Court Analysis**

The appellate court disagreed and explained that the No-Fault Act requires payment of benefits only for "treatment lawfully rendered." MCL 500.3157. Under Michigan's Public Health Code, "a pharmacy, manufacturer, or wholesale distributor, whether or not located in this state, must be licensed" to do business in the state. MCL 333.17748.

Since the licensing statute does not mention physical possession as a factor, the appellate court concluded EQMD's physical handling of the medications is irrelevant to determine if it required a license. However, since EQMD provided physicians with prescription medications and custom compounded topicals, it could not deny its operation as a wholesale distributor of prescriptions and as a manufacturer of "custom" topicals. Even if the website language was only an advertisement, the business arrangement with Dr. Hakki showed that at some point, there was an agreement and sale of medications.

Finally, even if LARA could not determine that a violation of the health code occurred, the code required EQMD to be licensed before doing business in Michigan. Therefore, EQMD was an unlicensed provider in Michigan, and its services were not "lawfully" rendered.

### **Conclusion**

UNLICENSED SERVICES OR TREATMENTS NOT COMPENSABLE UNDER MICHIGAN'S NO-FAULT ACT

For these reasons, EQMD provided unlicensed services in Michigan that are not lawfully rendered to be compensable under the No-Fault Act.

**Suggestions for Claim Handling**

Regardless of their actual location, providers must be licensed in Michigan to engage in business and provide services or treatment under the No-Fault Act. Before issuing any No-Fault benefit payments to unlicensed providers, insurers should verify the licensing status of any medical and service providers who submit bills for payment, and especially for those providers that are newer or unfamiliar.

One way for insurers to do this is to request a copy of the provider's operating license, which many providers already submit as a standard practice. Another way is to search for the provider's name or identification number in LARA's online system.

LARA offers a "Search for a business entity" page where one can verify whether an entity is incorporated or registered to do business in Michigan. The search results will show a list of potential matches that includes addresses and the business entity identification number in the state.

However, to verify an entity's professional license status as a medical provider or wholesale distributor, one must visit a different search page and use the entity's name or trade name to run a search.

If the insurer determines the provider is not licensed to do business in Michigan, then it has a reasonable basis to deny payment of the allegedly owed No-Fault benefits. The provider may sue for payment, but it bears the burden to prove its services were "lawfully" rendered.

If the insurer has already issued payments for bills submitted by an unlicensed provider, and depending on the amount paid, it may be cost-effective to sue the provider for reimbursement.

---

*Rapid Reports are distributed by the firm of Plunkett Cooney. Any questions or comments concerning the matters reported may be addressed to any member of the practice group. The brevity of this update prevents comprehensive treatment of all legal issues, and the information contained herein should not be taken as legal advice. Advice for specific matters should be sought directly from legal counsel. Copyright © 2020. All rights reserved PLUNKETT COONEY, P.C.*