

What Constitutes a 'Prima Facie' Case In No-Fault Practice?

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Perhaps no topic in recent no-fault practice has generated as much debate as the issue of what is necessary to satisfy a plaintiff assignee medical provider's prima facie case.

Plaintiffs in no-fault practice, unlike any other area of New York practice, do not have a definitive answer as to what they must demonstrate to satisfy their prima facie case. This article attempts to discern what the different appellate courts have found constitutes a prima facie case, and whether there is a consensus within the courts as to this issue.

In examining the decisions from the courts since 1997, the date the Court of Appeals decided the groundbreaking matter of *Presbyterian Hosp. in the City of New York v. Maryland Cas. Co.*,¹ the appellate courts during various points in the last 10 years have suggested five distinct yet somewhat interrelated models as to what satisfies a prima facie case. The following represents the models that courts at one point or another have found constitutes a prima facie case for the recovery of no-fault benefits.

- Model 1—A plaintiff must show that a completely filled out claim form is overdue.
- Model 2—A plaintiff must demonstrate that a bill is overdue, period.
- Model 3—A plaintiff must prove that a bill is overdue and the rendered service is medically necessary

• Model 4—A plaintiff must prove that a bill is overdue and that the bill constitutes a business record of the provider of services.

• Model 5—A plaintiff must satisfy any of the above models AND demonstrate standing.

While a prima facie case under the majority approach in no-fault litigation nationwide combines "Model 3," "Model 5" and requires a plaintiff to prove a causal relation between the motor vehicle accident and the injuries,² the current viewpoint in New York is that a prima facie case is satisfied through either "Model 2" or "Model 4." A discussion of the various models ensues.

Model 1—A plaintiff must show that a completely filled out claim form is overdue. From 2001 through 2004, the courts followed an approach consistent with "Model 2," except that the plaintiff as part of its prima facie case needed to also demonstrate that a statutory claim form was completed. This can be described above as "Model 1." The first post Presbyterian case in this regard is *St. Luke's-Roosevelt Hosp. v. American Transit Ins. Co.* where it was held that a properly completed proof of claim was a condition precedent to satisfying a prima facie case. Other cases stood for similar propositions.³

Yet, as will be seen, "Model 1" was only short lived. The case law from 2004 onward, which represents either "Model 2" or "Model

4," eviscerated the precedential value of Model 1 holdings.

Model 2—A plaintiff must demonstrate that a bill is overdue, period. Prior to "Model 1," the courts, beginning in 1994 and lasting through 2001, held that submission of an overdue statutory claim form was sufficient to demonstrate entitlement to judgment as a matter of law. Thus, in *New York & Presbyterian Hosp. v. American Transit Ins. Co.*,⁴ *Mount Sinai Hosp. v. Triboro Coach Inc.*,⁵ and *St. Clare's Hosp. v. Allcity Ins. Co.*,⁶ the Appellate Division, Second Department held that the submission of an overdue claim, regardless of its sufficiency, satisfied a plaintiff's prima facie case.

Besides the two year period from 2001 through 2003, representing the emergence and death of Model 1, the courts from around 2004 through the present time, not only declined to follow Model 1, but firmly re-established the vitality of Model 2 and expanded its scope, when compared with pre-Model 1 jurisprudence. This is best demonstrated in the matter of *New York Hosp. Medical Center of Queens v. AIU Ins. Co.*,⁷ where it was held that the failure to object to certain signatures on a hospital claim form precluded a defense based upon this purported defect.

Following *New York Hosp. Medical Center of Queens*, the Appellate Division included assignment of benefits within the rule that unaddressed defects in the statutory claim

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form are waived.⁸

The definition of what specifically constitutes a prima facie case in no-fault jurisprudence was finally spelled out in the 2004 oft-cited Appellate Division, Second Department matter of *Mary Immaculate Hosp. v. Allstate Ins. Co.*⁹ In this seminal case, the Appellate Division, Second Department stated that a prima facie case was no more than the submission of a bill that was overdue when an action was commenced. This case has been consistently followed by the Appellate Division, Third Department, Appellate Division, First Department and Appellate Term, First Department.

In *LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co.*, the Appellate Division, Third Department explicitly followed *Mary Immaculate*, as did the Appellate Term, First Department and Appellate Division, First Department.¹⁰

The only court that has explicitly disregarded this model is the Appellate Term, Second Department. Based upon a survey of the recent cases, Model 2, represents the majority approach in defining a prima facie case for no-fault benefits.¹¹

Model 3—A plaintiff must prove that a bill is overdue and the rendered service is medically necessary. Prior to the no-fault explosion that began in 2003, two courts held that the medical necessity of a service was part of a plaintiff's prima facie case.¹²

From 2003 onward, the courts have universally shunned this model and have embraced either "Model 2" or "Model 3," wherein the burden to demonstrate a service's lack of reasonableness falls squarely, in the first instance, on the insurance carrier. Many trial decisions affirmed on appeal have reiterated this point of law.¹³

It follows that as of now, "Model 3" does not represent the law in this state, making New York a minority jurisdiction regarding this issue.¹⁴

Model 4—A plaintiff must show that a bill is overdue and that the bill constitutes a

business record of the provider of services. There is a split, the size of a crater, between every Appellate Court and the Appellate Term, Second Department, as to the necessity of a medical provider placing the claim form into evidence in order to satisfy a prima facie case.

The Appellate Term, Second Department, began formally adding this requirement to a provider's prima facie case in *Dan Medical, P.C. v. New York Cent. Mut. Fire Ins. Co.*,¹⁵ and *Fortune Med., P.C. v. Allstate Ins. Co.*¹⁶ This requirement, although not applied in earnest as is the case now, predated the *Dan Medical* and *Fortune Medical* line of cases.¹⁷

Following *Dan Medical*, there have been over 100 reported cases where a prima facie case has not been established due to the failure to place the statutory claim documents into evidentiary admissible form.¹⁸

Most notably, the Appellate Division, Second Department, in the matter of *Art of Healing Medicine, P.C. v. Travelers Home & Mar. Ins. Co.*, upheld the rationale of the *Dan Medical* line of cases, when the Appellate Division observed the following:

The plaintiffs failed to establish their prima facie entitlement to judgment as a matter of law. The plaintiffs' medical service providers failed to demonstrate the admissibility of their billing records under the business records exception to the hearsay rule.¹⁹

Against this model, the Appellate Term, First Department, in *Fair Price Medical Supply Inc. v. St. Paul Travelers Ins. Co.*,²⁰ held that a literal interpretation of the *Mary Immaculate* rule was in all respects proper.

Furthermore, the Appellate Term, First Department has been unwavering in its commitment to following *Fair Price Medical Supply* and in rejecting competing Appellate Term, Second Department precedent. The Appellate Term, Second Department, has likewise rejected competing Appellate Term, First Department precedent.²¹

As seen above, the Appellate Division First Department and Appellate Division, Third

Department, have likewise rejected Appellate Term, Second Department precedent.²²

While the Appellate term, Second Department has continued to predicate its allegiance to *Dan Medical* based upon the Appellate Division, Second Department's holding and affirmance of its decision in *Art of Healing*,²³ the legal moorings behind the Appellate Division, Second Department's holding in *Art of Healing* appear to be waning. For instance, the Appellate Division, Second Department in an opinion and order authored by Justice Mark C. Dillon in the matter of *Kingsbrook Jewish Medical Center v. Allstate Ins. Co.*,²⁴ held that a strict reading of *Mary Immaculate* would be sufficient for a provider to satisfy its prima facie case.

Significantly, *Kingsbrook* appears to represent a clear break with the Appellate Division, Second Department's holding in *Art of Healing*, which was decided approximately three months prior to *Kingsbrook*.

Besides *Kingsbrook*, the rationale behind the holding that a medical provider must lay a business record foundation for the entry into evidence of claim forms has been implicitly rejected in numerous cases subsequent to *Art of Healing*.²⁵

It would thus appear that the Appellate Division, Second Department has abandoned its own position in *Art of Healing* and has consciously decided to follow its former precedent set forth in the *Mary Immaculate* line of cases. In this regard, the Appellate Division, Second Department's jurisprudence is in accord with Appellate Division First Department case law, Appellate Division Third Department case law and Appellate Term, First Department case law.²⁶

With the moorings that support *Dan Medical* abandoned, the Appellate Term, Second Department's allegiance to this model is probably inappropriate. It is only a matter of time before the Appellate Term, Second Department is forced to abandon its allegiance to the *Dan Medical* line of cases. What is somewhat ironic is that Model 4,

quantitatively, is the most widely followed Model since the Appellate Term, Second Department has direct appellate authority over the jurisdictions where a majority of the no-fault filings take place.

Model 5—A plaintiff must perform any of the above models AND demonstrate standing, prima facie. During various periods of our no-fault jurisprudence, and prior to the Court of Appeals holding in *Hospital for Joint Diseases v. Travelers Property Cas. Ins. Co.*,²⁷ the courts were equivocal as to whether a medical provider, who brings an action as assignee of an eligible injured person, must prove standing, prima facie. In 2003, the Appellate Term, Second Department, in *A.B. Medical Services PLLC v. Progressive Ins.*,²⁸ held that standing must be proved prima facie.

Various lower courts followed this case,²⁹ until the Appellate Division, Second Department held in 2004 in *New York Hosp. Medical Center of Queens v. New York Cent. Mut. Fire Ins. Co.*³⁰ that the failure to timely object to the veracity of an assignment of benefits precludes consideration of this defense.

Yet, even following *New York Hosp. Medical Center of Queens*, the Appellate Term, Second Department, in *A.B. Medical Services PLLC v. State Farm Mut. Auto. Ins. Co.*,³¹ continued to hold that something resembling an assignment must be presented as part of a medical provider's prima facie case.

The Court of Appeals in *Hospital for Joint Diseases v. Travelers Property Cas. Ins. Co.*,³² in evaluating the above line of cases explicitly held that a deficiency in an assignment is not a coverage issue, and the failure to timely address a defect in an assignment of benefits deems this defense waived.

The Appellate Division, First Department in *Countrywide Ins. Co. v. 563 Grand Medical, P.C.*,³³ went a step further than the Court of Appeals in *Hospital for Joint Diseases* when it succinctly stated that: "Plaintiff waived its objection to defendant's standing [through failing to timely challenge it]."

Finally, we would be remiss if we did not point out that the failure to timely object to a party's standing estops that party from later raising that defense, both within and outside the realm of no-fault litigation.³⁴

It should be observed that within six years, the appellate courts shifted from a model requiring an assignee medical provider to demonstrate standing prima facie, to a model squarely placing the burden on the objector to timely contest a lack of standing, at peril of being estopped from raising that defense.³⁵

Based upon the current case law, this model does not represent a proper statement of law in this state.

Conclusion

In conclusion, it follows that the law as to what constitutes a prima facie case has ebbed and flowed between all of the above models. While the authors may have their opinions as to what should constitute a prima facie case, it is the province of the Court of Appeals and perhaps the Legislature to have the final say on this issue.

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Endnotes:

1. 90 NY2d 274 (1997).
2. Outside Counsel: New York No-Fault Law: A Comparative Analysis <<http://www.law.com/jsp/nylj/PubArticleNY.jsp?id=900005508556>> , 4/14/2008 NYLJ, 4, col. 4.
3. 274 AD2d 511 (2d Dept. 2000). See *New York, Presbyterian Hosp. v. New York Central Mut. Ins. Co.*, 279 AD2d 616, 617 (2d Dept. 2001).
4. 287 AD2d 699(2d Dept. 2001).
5. 263 AD2d 11 (2d Dept. 1999).

6. 201 AD2d 718 (2d Dept. 1994).

7. 8 AD3d 456 (2d Dept. 2004).

8. *Hospital for Joint Diseases v. Allstate Ins. Co.*, 21 AD3d 348 (2d Dept. 2005); *Nyack Hosp. v. Encompass Ins. Co.*, 23 AD3d 535 (2d Dept. 2005), app. dismissed. 8 NY3d 895 (2007); *New York and Presbyterian Hosp. v. New York Cent. Mut. Fire Ins. Co.*, 31 AD3d 403 (2d Dept. 2006). But see *Westchester Medical Center v. Safeco Ins. Co. of America*, 40 AD3d 984, 984 (2d Dept. 2007).

9. 5 AD3d 742, 742-743 (2d Dept. 2004).

10. *LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co.*, 30 AD3d 727, 728 (3d Dept. 2006). *Countrywide Ins. Co. v. 563 Grand Medical, P.C.*, 50 AD3d 313 (1st Dept. 2008); *Fair Price Medical Supply Inc. v. St. Paul Travelers Ins. Co.*, 16 Misc.3d 8, 8 (App. Term 1st Dept. 2007).

11. This includes the Second Department. See discussion regarding "Model 4." The Appellate Division, Fourth Department, never had the opportunity to evaluate this issue.

12. *Hobby v. CNA Ins. Co.*, 267 AD2d 1084, 1085 (4th Dept. 1999); *Shtarkman v. Allstate Ins. Co.*, 2002 NY Slip Op 50568(U)(App. Term 2d Dept. 2002).

13. *Amaze Medical Supply Inc. v. Eagle Ins. Co.*, 2003 NY Slip Op 51701(U)(App. Term 2d and 11th Jud. Dis. 2003). See e.g. *S.J. Pahng, M.D., P.C. v. Progressive Northeastern Ins. Co.*, 2008 NY Slip Op 51537(U)(App. Term 2d Dept. 2008).

14. Outside Counsel: New York No-Fault Law: A Comparative Analysis, 4/14/2008 NYLJ, 4, col. 4.

15. 14 Misc.3d 44 (App. Term 2d Dept. 2006).

16. 2007 NY Slip Op 50243(U), 14 Misc.3d 136(A)(App. Term 9th and 10th Jud. Dis. 2007).

17. The following are a few of the "Pre-Dan Medical" cases. See e.g. *Careplus Medical*

- Supply Inc. v. Allstate Indem. Co., 2005 NY Slip Op 51527(U)(App. Term 2d Dept. 2005); Ocean Diagnostic Imaging P.C. v. State Farm Mut. Auto. Ins. Co., 2004 NY Slip Op 51032(U)(App. Term 2d Dept. 2004); A.B. Medical Services PLLC v. Phoenix Ins. Co. Div. of Travelers, 2004 NY Slip Op 51294(U)(App. Term 2d Dept. 2004).
18. Great Wall Acupuncture, P.C. v. New York Central Mut. Fire Ins. Co., 2009 NY Slip Op 50294(U)(internal citations omitted)(App. Term 2d and 11th Dis. 2009); A.B. Medical Services, PLLC v. New York Cent. Mut. Fire Ins. Co., 2009 NY Slip Op 50331(U)(App. Term 9th and 10th Jud. Dis. 2009).
19. 55 AD3d 644 (2d Dept. 2008).
20. 16 Misc.3d 838 (App. Term 1st Dept. 2007).
21. Compare Fair Price, 16 Misc.3d at 9, rejecting Empire State Psychological Services, P.C. v. Travelers Ins. Co., 2006 NY Slip Op 51869(U)(App. Term 2d Dept. 2007), with Bajaj v. General Assur., 18 Misc.3d 25 (App. Term 2d Dept. 2007), rejecting Fair Price, 16 Misc.3d at 9.
22. Countrywide Ins. Co., 50 AD3d at 313; LMK Psychological Services, P.C., 30 AD3d at 728.
23. 2007 NY Slip Op 51161(U)(App. Term 2d Dept. 2007), affd 55 AD3d 644.
24. 2009 NY Slip Op 00351 (2d Dept. 2009).
25. Westchester Med. Ctr. v. Clarendon Natl. Ins. Co., 57 AD3d 659 (2d Dept. 2008); St. Barnabas Hosp. v. American Tr. Ins. Co., 57 AD3d 517 (2d Dept. 2008)(same); Westchester Med. Ctr. v. American Tr. Ins. Co. 2009 NY Slip Op 01979 (2d Dept. 2009)(same); Westchester Medical Center v. Lincoln General Ins. Co., 2009 NY Slip Op. 02589 (2d Dept. 2009)(same).
26. 563 Grand Medical, P.C., 50 AD3d at 313; LMK Psychological Services, P.C., 30 AD3d at 728; Fair Price, 16 Misc.3d at 9.
27. 9 NY3d 312 (2007).
28. 2003 NY Slip Op 50790(U)(App. Term 2d Dept. 2003).
29. Advanced Medical Rehabilitation, P.C. v. Travelers Property Cas. Ins. Co., 2004 NY Slip Op 50141(U)(Civ. Ct. Kings Co. 2004); Rizz Management Inc. v. Kemper Ins. Co. 2004 NY Slip Op 50723(U)(Civ. Ct. Queens Co. 2004).
30. 8 AD3d 640, 641 (2d Dept. 2004)(internal citations omitted).
31. A.B. Medical Services PLLC v. State Farm Mut. Auto. Ins. Co., 2004 NY Slip Op 51031(U)(App. Term 2d Dept. 2004). See Siegel v. Progressive Cas. Ins. Co., 6 Misc.3d 888, 889 (Civ. Ct. Kings Co. 2004). See LMK Psychological Services, P.C. v. Liberty Mut. Ins. Co., 30 AD3d 727 (3d Dept. 2006)(singling out Siegel as representing an improper statement of law through a "but see" signal).
32. 9 NY3d 312, 319 (2007).
33. 50 AD3d 533, 534.
34. Wells Fargo Bank Minnesota, Nat. Ass'n v. Mastropalo, 42 AD3d 239 (2d Dept. 2007).
35. Compare Ins Law §5106(a)(no-fault 30-pay or deny rule), with CPLR §3211(a)(3) & (e).

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