Court Rules that No-Fault carrier cannot terminate medical benefits solely because insured has reached "maximum medical improvement"

By Michael G. Bersani

Michaels & Smolak, P.C. has recently won an important No-Fault decision. In a case of first impression, Hobby v CNA, on November 14, 1998, the Hon. Charles T. Major (Onondaga Co. Sup. Ct.) held that a No-Fault insurance carrier cannot terminate an insured's chiropractic treatment, physical therapy and other medical benefits, solely on the grounds that the insured has reached "maximum medical improvement" (hereinafter "MMI"). The no-fault insurer must continue to pay for medical treatment, even if such treatment has no hope of improving the insured's overall medical condition, and its sole goal is to help the insured cope with a residue of pain and discomfort.

Despite the importance of this ruling, the Judge has apparently declined to publish an Opinion. He did, however, read an oral Decision into the record, which we will publish on this Web Page shortly.

The facts of the case were as follows: The insured sustained "soft tissue" neck injuries in a motor vehicle accident. Upon her treating physician's recommendations, she was treating with a chiropractor and with a physical therapist a few times a week. The no-fault insurer paid for this treatment for approximately a year and a half.

The no-fault carrier then had its insured examined by an IME doctor, who found that the insured had reached MMI, that is, that she had reached a point where the medical treatment was no longer improving her condition, but was at best alleviating residue discomfort and pain. Based on the IME report, the carrier terminated plaintiff's no-fault medical benefits.

Plaintiff had two options available for challenging the termination of her no-fault benefits: bring an arbitration pursuant to Insurance Law 5106(b) or bring an action in Supreme Court. She chose the latter option.

At deposition, plaintiff testified that the physical therapy and chiropractic sessions helped "loosen" her stiff neck, and gave her relief for several days after each session, but admitted that she noted no overall improvement in her condition. The carrier's adjuster testified that she terminated plaintiff's benefits because she had reached MMI.

Plaintiff then moved for summary judgment. Plaintiff agreed to assume, for the purpose of the motion, that plaintiff had reached MMI. Plaintiff's sole argument was that "maximum medical improvement" did not constitute valid grounds for terminating no-fault benefits. Neither the no-fault Statute (Insurance Law § 5102) nor the no-fault regulations mention the term "maximum medical improvement". Indeed, a careful reading of the relevant statutory and regulatory language leads to the conclusion that a no-fault carrier is required to pay continued medical treatment, even where plaintiff has reached MMI.

The Statute provides that the insurer must pay for "all necessary expenses incurred for: medical, hospital . . . service . . . any other professional health services" up to $50,000 (Insurance Law §5102; See also, 11 NYCRR §65.12). The insurance regulations promulgated by the Superintendent of Insurance provide that the term "any other professional health services" is "limited to those services that are required, or would be required, to be licensed by the State of New York if performed within the State of New York [e.g., chiropractic and physical therapy treatment] (11 NYCRR §65.15[o][1][vi]). The regulations further provide that "professional health services should be necessary for the treatment of the injuries sustained . . ." (11 NYCRR §65.15[o][1][vi]).

Since neither the Statute nor the regulations mention the term "MMI", but rather refer to "necessary" treatment, the real issue is whether medical treatment which relieves pain symptoms and helps make a motor vehicle accident victim's day-to-day life more bearable, but does not improve her overall medical condition, is medically "necessary" within the meaning of the no-fault law.

The intent of the drafters of a statute or regulation can be ascertained from the words and language used (McKinney's Cons Laws, Statutes, Book 1, § 94, p. 188). The drafters of Section 5102 used the adjective "all" in conjunction with the term "necessary [medical] expenses". Thus, it can be discerned that the drafters intended to give the term "necessary" a broad, all-inclusive meaning.

Further, 11 NYCRR §65.15(o)(1)(vi), which requires that the insured pay for any professional health services (i.e., chiropractic treatment and physical therapy) "necessary for the treatment of the injuries sustained", nowhere distinguishes between curative treatment and pain treatment. It simply says "treatment", which is again all-encompassing.

Thus the term "necessary", in the context used in the Statute and regulation, and the term "treatment", as used in the regulation, include pain treatment. This plain meaning can be derived not only from a common-sense reading of the Statute and Regulations, but also from the way medicine is practiced. Medical professionals have a duty to eliminate discomfort and pain whenever possible, even though such treatment does not "cure" the patient. This duty, recognized since antiquity, is embodied in the Hypocratic Oath (England, Elizabeth, The Debate on Physician-Assisted Suicide", 16 Pace Law Rev 359, 421, FN 34; Bouvia v Superior Court of the State of California for the County of Los Angeles, 179 Cal.App.3d 1127, 1147, 225 Cal.Rptr. 297, 308 [1986]). A large portion of modern medicine is aimed at reducing pain or discomfort or stabilizing a medical condition rather than at curing.

For example, a diabetic is monitored by her physician and is given insulin prescriptions even though this medical treatment does not "improve" the diabetic's condition. The diabetic is at MMI, yet nevertheless needs medical monitoring and treatment in order to avoid disastrous consequences.

Likewise, when an insured has suffered ligament and other soft tissue injuries in a motor vehicle accident, the insured may reach a point of MMI, i.e., medical treatment is no longer improving her overall medical condition. The medical treatment, however, may still be "necessary" in order to monitor, control, and maintain the pain and discomfort at as low a level as possible.

In the case before the Court, plaintiff's testimony that her neck pain and stiffness improved with the chiropractic treatment and physical therapy she had been receiving was uncontroverted, and indeed it could not be controverted since it reflects plaintiff's own subjective experience. Since this fact is uncontroverted, plaintiff argued, there was no question of fact for trial.

In opposition to the motion, the carrier submitted to the Court several Master No-Fault awards holding that "necessary treatment" includes only curative treatment, and not maintenance treatment. Based on this distinction, those awards held that the no-fault carrier was justified in terminating benefits after a claimant achieves MMI.

Plaintiff countered that the arbitration awards to which the carrier cited in turn discuss other arbitration awards holding contra, i.e., that both curative and maintenance treatment are medically necessary, and that MMI cannot serve as grounds for terminating no-fault medical benefits. Thus, there is a split in authority among arbitrators. In any event, clearly a Court of Law is not bound by arbitrators' decisions. The Court is obligated to examine the legislation itself to discern its meaning, and nowhere do the no-fault regulations or legislation distinguish between curative and maintenance treatment. The regulation refers merely to all necessary treatment.

The carrier also argued that, but for the MMI limit, a no-fault insurer may have to provide life-time medical treatment to a claimant who is not improving medically from it. This would be expensive and impractical. The word "necessary" in the Statute and in the Regulation must therefore be construed to mean "necessary for improvement". The MMI limitation acts as a stop-gate against a lifetime of medical treatment of dubious medical value.

Plaintiff responded that the legislature did provide a stop-gate to unlimited medical expenses. That stop-gate is not, however, MMI, but rather $50,000. If the legislature had intended to enact a separate MMI stop-gate, it would have done so. For example, it did provide a 3-year stop-gate for lost wages, yet provided no such time limit for medical treatment.

Finally, the legislative history supports plaintiff's position. Before the No-Fault law was enacted, a victim of a motor vehicle accident could bring an action in Supreme Court against the negligent party for even the most minor injuries. If plaintiff suffered pain symptoms as a result of the accident, she could plead, prove and be compensated for medical treatment aimed at alleviating that pain, even if such treatment would not bring her any overall medical improvement. No law existed which would deny a plaintiff the right to plead, prove and be compensated for her pain treatment after she reached "MMI".

The no-fault law did not change this. Instead, it simply re-allocated the responsibilities so that the no-fault carrier would be responsible for paying the first $50,000 of treatment. If the injury was not "serious", the insured's rights to recovery ended here. In sum, the no-fault carrier was to be the exclusive provider of compensation for non-serious injuries. In terminating treatment of injuries based on MMI, the no-fault carrier breaches its duty to provide necessary medical treatment for these non-serious injuries.

A no-fault insurer is thus obliged to pay for such treatment until the $50,000 limit has been reached or until the treatment is no longer effective in treating the pain or discomfort.

Plaintiffs' lawyers across the State should refuse to allow no-fault insurers to short-change their clients. They should sue in Supreme Court, raising the above arguments. They should also provide the Court with a transcript of the Oral Decision rendered in Hobby v CNA, because it apparently represents the only Decision by a Court of Law on this issue. If you have any questions please call or e mail me.

Judge Major's decision.

1

2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF ONONDAGA : CIVIL TERM : ROOM 317

4 --

5 BONNIE L. HOBBY,

6 Plaintiff,

7 vs. Index No. 97/5830

8 CNA INSURANCE, Motion Decision

9 Defendant.

10 --

11 Onondaga County Courthouse
401 Montgomery Street

12 Syracuse, New York 13202
November 13, 1998

13

B e f o r e:

14

HONORABLE CHARLES T. MAJOR,

15

Justice

16

A p p e a r a n c e s:

17

MICHAELS & SMOLAK, P.C.

18 Attorneys for the Plaintiff
71 South Street -- P.O. Box 308

19 Auburn, New York 13021
BY: MICHAEL G. BERSANI, ESQ.

20

SUGARMAN, WALLACE, MANHEIM & SCHOENWALD

21 Attorneys for the Defendant
360 South Warren Street

22 Syracuse, New York 13202
BY: KEITH D. MILLER, ESQ.

23

24 PATRICIA A. ALEXANDER, CSR, RPR
Official Court Reporter

25

1

2 THE COURT: But, in any event, let me

3 read. I've written something here. So, put

4 it on the record.

5 Plaintiff's motion for summary judgment

6 is granted with 2 percent interest per

7 statute.

8 Submit an affidavit of attorney services

9 so I can award attorneys' fees. The Court

10 finds nothing in the no fault statute in the

11 regulations, for example, 11 NYCRR 65.15 or

12 the case law, which limits the no fault

13 medical benefits to the time of maximum

14 medical improvement.

15 Here, the plaintiff is receiving

16 relief from pain and discomfort for

17 injuries received by the treatment rendered:

18 11 NYCRR 65.15(o)(1)(vi) refers to services

19 "necessary for the treatment of the injuries

20 sustained."

21 The Court finds that the continuing

22 relief of pain of an injured person is

23 treatment covered by the No Fault Law and the

24 regulations.

25 Submit an order accordingly.

3

1
2 MR. BERSANI: Thank you, Judge.
3 (Whereupon, the proceedings were
4 concluded.)
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6 * * * *
7
8 C E R T I F I C A T E
9
10 I, Patricia A. Alexander CSR, RPR, an
11 Official Reporter of the Supreme and County
12 Courts, Fifth Judicial District, State of
13 New York, do hereby certify that the foregoing
14 is a true and correct transcript of my
15 stenographic notes taken in the above-entitled
16 matter at the time and place first
17 above-mentioned.
18
19 Patricia A. Alexander
20 PATRICIA A. ALEXANDER, CSR, RPR
Official Court Reporter
21
Dated: December 7, 1998.
22 Syracuse, New York.
23
24
25

Motion for summary judgment.

PLEASE TAKE NOTICE, that upon the annexed affidavit of Michael G. Bersani, sworn to on the 1stday of October, 1998, the exhibits attached thereto, and on the pleadings and proceedings heretofore had herein, a motion will be made pursuant to §3212 of the Civil Practice Law and Rules at the Onondaga County Courthouse, in Syracuse, New York, on the _____ day of _______________, 1998, at 9:30 A.M., in the forenoon or as soon thereafter as counsel can be heard, for an Order granting summary judgment and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits shall be served seven days prior to the return date of this motion.

DATED: October 1, 1998
Yours, etc.
MICHAELS & SMOLAK, P.C.
by: Michael G. Bersani
Attorney for Plaintiff
Office and P.O. Address
71 South Street
P.O. Box 308
Auburn, New York 13021
315/253-3293
TO:Keith D. Miller, Esq.
SUGARMAN, WALLACE, MANHEIM
& SCHOENWALD
Attorney for Defendant
Office and P.O. Address
Marine Midland Bank Building
360 South Warren Street, 5th Fl.
Syracuse, New York 13202

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss:

MICHAEL G. BERSANI, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York and an associate of the law firm of Michaels & Smolak, P.C., attorneys for the plaintiff herein and as such, I am fully familiar with the facts and circumstances surrounding this action.

2. I submit this affidavit in support of plaintiff's motion for summary judgment.

3. In this action, plaintiff Bonnie Hobby seeks to compel the defendant to pay outstanding medical bills pursuant to the no-fault provisions contained in her motor vehicle insurance policy. A summons and complaint was filed and served upon the defendant who joined issue (Exhibits A and B).

4. On January 16, 1998, defendant's insurance adjuster, Mitzi King, who made the determination to terminate plaintiff's no-fault benefits, gave examination before trial testimony (Exhibit C).

5. King testified that she terminated no-fault medical payments as of August 29, 1997 because, according to defendant's independent medical examiner (Dr. Nastasi), plaintiff had reached "maximum medical improvement". There was no other basis for denial (Ex. C, p. 14-15).

6. Ms. King testified that her definition of "maximum medical improvement" was that an insured is "not going to get any better with the treatment [she is receiving] . . .". King testified that there are no-fault "regulations" which permit the no-fault carrier to terminate benefits once a claimant has reached "maximum medical improvement" (Ex. C, p. 6).

7. King further testified that treatment that maintains a person at the same level of comfort, without actually improving the symptoms, is not covered by no-fault under the regulations. She testified that no-fault does not cover "maintenance" (Ex. C, p. 6).

8. Ms. King was unable to cite to any case law or regulation which states that maximum medical improvement allows a no-fault carrier to terminate benefits (Ex. C, pp. 6-8).

9. King terminated plaintiff's no-fault medical benefits despite plaintiff's treating physician's (Dr. Reich's) opinion that plaintiff had not yet reached maximum medical improvement, and his recommendation that plaintiff continue chiropractic treatment (Ex. C, p. 20-22).

10. For the purpose of this summary judgment motion, plaintiff agrees to assume that she has reached maximum medical improvement.

11. As set forth in the accompanying Memorandum of Law, it is plaintiff's position that a no-fault insurer is not permitted to terminate medical benefits merely because an insured has reached maximum medical improvement. Instead, the insurer must show that the medical expense is not "necessary for the treatment of the injuries sustained" (11 NYCRR §65.15[o][1][vi]). As set forth in the affidavit of plaintiff's treating physician, the medical treatment he prescribed for plaintiff is necessary for minimizing the pain and discomfort she suffers, even if plaintiff has reached "maximum medical improvement", i.e., the treatment will not actually "improve" her overall medical condition.

12. Thus, defendant's termination of medical benefits based on "maximum medical improvement" was improper as a matter of law.
Wherefore, plaintiff requests that the Court grant summary judgment to plaintiff, and order payment of all overdue medical bills, interest on all overdue payments from the date of demand to the date of payment at the rate of 2 percent per month, compounded, attorney's fees and disbursements, and Court costs.

s/ Michael G. Bersani
Sworn to before me this 1st
day of October, 1998.

Notary Public

Doctor's affirmation

STATE OF NEW YORK)
COUNTY OF CAYUGA) ss:

Dieter Eppel, M.D., a physician being duly licensed in the State of New York, hereby affirms, under penalties and perjury of law:

1. I am a physician licensed to practice medicine in the State of New York.

2. I have been treating Bonnie Hobby for injuries she sustained as a result of a motor vehicle accident on April 19, 1996.

3. I began treating Ms. Hobby for her injuries in April of 1996 and continue to treat her to date. In September of 1997, I advised Michaels & Smolak, P.C., f/k/a Michaels, Bell & Smolak, P.C., that I continued to treat Ms. Hobby for her injuries resulting from the motor vehicle accident as she continued to be symptomatic with pain in her neck and left shoulder.

4. Objectively, at that time she continued to have marked rotation restriction. It was my belief that physical therapy and medication were necessary treatments for her to continue to improve her medical condition at that time. Further, I did not believe that she could return to her work full time. Attached are copies of my progress notes and narrative report from September of 1997 to date.

5. I have continued to treat Ms. Hobby through May of 1998 as she is continuing to have neck and arm pain and shows objective findings of continued restricted range of motion. Necessary medical treatment to improve her condition has included physical therapy, TENS unit and medication.

6. It is my opinion at this time that continued treatment, including physical therapy and medication, is necessary to improve Ms. Hobby's condition. Ms. Hobby has not reached maximum medical improvement.

7. Even assuming arguendo that Ms. Hobby had reached "maximum medical improvement", treatment would still be necessary to minimize the pain and discomfort she suffers from even though it would not actually "improve" her condition.

s/Dieter Eppel, M.D.

Memoradum of Law

Pursuant to Insurance Law §5102, the no-fault insurer is required to pay "basic economic loss", which means "up to $50,000 per person" for the first three years post-accident. Basic economic loss includes "all necessary expenses incurred for: medical, hospital . . . service . . . any other professional health services" (Insurance Law §5102; See also, 11 NYCRR §65.12).

The insurance regulations promulgated by the Superintendent of Insurance provide that the term "any other professional health services" is "limited to those services that are required, or would be required, to be licensed by the State of New York if performed within the State of New York [e.g., chiropractic and physical therapy treatment] (11 NYCRR §65.15[o][1][vi]). The regulations further provide that "professional health services should be necessary for the treatment of the injuries sustained and within the lawful scope of the licensee's practice" (11 NYCRR §65.15[o][1][vi]).

Nowhere do the regulations provide that necessary treatment for symptoms of pain and discomfort ends when an insured reaches "maximum medical improvement". Indeed, the term "maximum medical improvement" appears nowhere in the no-fault regulations.

The Court of Appeals has recently held that:

When applying its special expertise in a particular field to interpret statutory language, an agency's [the Superintendent of Insurance's] rational construction is entitled to deference [citations omitted]. Indeed, once it has been determined that an agency's conclusion has a 'sound basis in reason' [citations omitted] the judicial function is at an end and a reviewing court may not substitute its judgment for that of the agency [citations omitted]. Judicial review of a regulation is limited, and the 'interpretation given a statute by the administering agency if not irrational or unreasonable, should be upheld.' [citation omitted].

(Paramount Communications, Inc. v Gibraltar Cas. Co., 90 NY2d 507. 513 [1997]).

For the purpose of this summary judgment motion, plaintiff has agreed to assume that she has reached "maximum medical improvement". Plaintiff submits that, under regulation 11 NYCRR § 6515(o)(1)(vi), a no-fault insurer is not permitted to terminate medical benefits merely because an insured has reached maximum medical improvement. Neither the regulations nor the case law permit the insurer to terminate benefits because an insured has reached maximum medical improvement. Rather, regulations require that the no-fault insurer pay for all professional health services which are "necessary for the treatment of the injuries sustained" (11 NYCRR §65.15[o][1][vi]).

Even where a patient reaches maximum medical improvement, further medical, chiropractic and physical therapy is often "necessary" for treating the pain and other symptoms of a permanent condition. A no-fault insurer is obliged to pay for such treatment until the three year or $50,000 limit has been reached. Nowhere in the no-fault regulations, or in the case law, is the insurer allowed to deny payment for treatment of the pain which continues after an insured reaches maximum medical improvement.

In Dr. Eppel's affirmation, which has been submitted in connection with the instant motion, he states, in paragraph 7, that "even assuming that Ms. Hobby had reached "maximum medical improvement", treatment would still be necessary to minimize the pain and discomfort she suffers from even though it would not necessarily 'improve' her condition". Thus, in the instant case, even if maximum medical improvement has been reached, the continuing treatment Ms. Hobby is receiving is medically necessary.

Much of modern medical treatment is aimed at maintaining a level of comfort, reducing pain or avoiding a deterioration of a condition. For example, a diabetic is monitored by her physician and is given insulin prescriptions even though this medical treatment does not "improve" the diabetic's condition. The diabetic is at maximum medical improvement, yet nevertheless needs medical monitoring and treatment in order to avoid disastrous consequences.

Likewise, when an insured has suffered ligament and other soft tissue injuries in a motor vehicle accident, the insured may reach a point of maximum medical improvement, i.e., medical treatment is no longer improving her overall medical condition. The medical treatment, however, may still be "necessary" in order to monitor, control, and maintain the pain and discomfort at as low a level as possible. Indeed, a physician's hippocratic oath requires her to minimize a patient' suffering (England, Elizabeth, The Debate on Physician-Assisted Suicide", 16 Pace Law Rev 359, 421, FN 34; Bouvia v Superior Court of the State of California for the County of Los Angeles, 179 Cal.App.3d 1127, 1147, 225 Cal.Rptr. 297, 308 [1986]).

The plain meaning of insurance regulation 11 NYCRR §65.15(o)(1)(vi) requires that the insured pay all professional health services which are "necessary for the treatment of the injuries sustained." Nowhere does the regulation say that necessary treatment of pain or other symptoms stops at "maximum medical improvement." Therefore, defendant improperly denied plaintiff's no-fault medical benefits on the grounds that plaintiff had reached "maximum medical improvement". Since the denial was improper and groundless, plaintiff's no-fault benefits should be reinstated and the outstanding medical bills should be paid.

Wherefore, plaintiff requests summary judgment in her favor, payment of all overdue medical bills, interest on all overdue payments from the date of demand to the date of payment at the rate of 2 percent per month, compounded, attorney's fees and disbursements, and Court costs.

Dated:October 1, 1998
MICHAELS & SMOLAK, P.C.
by: Michael G. Bersani
Attorneys for Plaintiff
Office and P.O. Address
71 South Street
P.O. Box 308
Auburn, New York 13021
315/253-3293

Reply affidavit

MICHAEL G. BERSANI, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York and an associate of the law firm of Michaels & Smolak, P.C., attorneys for the plaintiff herein and as such, I am fully familiar with the facts and circumstances surrounding this action.

2. I submit this affidavit in reply to defendant's opposition papers, and in further support of plaintiff's motion for summary judgment.

3. First, I object to defendant's late service of his Answering papers. My Notice of Motion clearly called for service of Answering papers at least 7 days prior to the return date. Instead, they were not served until 3 days prior to the return date. The delay is inexcusable, especially given the fact that my motion papers were served on September 30, six weeks ago. I was out of the office most of these last few days, so I have had to hastily prepare this Reply on the eve of the return date. There have been two motions on this action, and each time defendant has served his answering papers late. On these facts, the Court should simply refuse to consider defendant's papers.

4. In the event that the Court should consider the defendant's papers, plaintiff submits the following reply.

5. Plaintiff's testimony (attached as Exhibit A to defendant's attorney's affidavit) indicates that the pain medication, chiropractic treatment and physical therapy she has been receiving has relieved her pain symptoms.

6. Specifically, plaintiff testified that the pain medication "relieve[s] her pain somewhat" (plaintiff's EBT, at 11).

7. The physical therapy helped "loosen" her stiff neck, and gave her relief for several days after each session (plaintiff's EBT, at 18).

8. The chiropractic treatment "took some of the pain [away]" and loosened her neck so that she could move it more freely (plaintiff's EBT at 25).

9. This testimony is uncontroverted, and indeed it cannot be controverted since it reflects plaintiff's own subjective experience that her pain and stiffness improves with the medical treatment she had been receiving.

10. Since this fact is uncontroverted, there is no question of fact for trial.

11. The only issue is whether medical treatment which relieves pain symptoms and helps make a motor vehicle accident victim's day-to-day life more bearable is medically "necessary" within the meaning of the no-fault law.

12. Defendant has submitted to the Court several Master No-Fault Awards (exhibit B of defendant's attorney's affidavit) which interpret the no-fault regulations in such a way that "necessary treatment" includes only curative treatment, and not maintenance treatment. Based on this distinction, those Awards hold that a no-fault carrier can terminate benefits after a claimant has achieved "maximum medical improvement".

13. First, those arbitration Awards themselves show that there have been, and continue to be, arbitration decisions holding contra, i.e., that both curative and maintenance treatment are medically necessary, and that "maximum medical improvement" cannot serve as grounds for terminating no-fault medical benefits.

14. Second, this Court is not bound by arbitrators' Awards, but rather the arbitrators will be bound by the Court's Decision (McKinney's Cons Laws, Statutes, Book 1, § 72, p. 143).

15. This Court may be the first Court in New York State to decide the issue. The Court is called on to interpret the phrase "all necessary expenses incurred for: medical, hospital . . . service . . . any other professional health services" (Insurance Law §5102; See also, 11 NYCRR §65.12).

16. The intent of the drafters of a regulation can be ascertained from the words and language used ((McKinney's Cons Laws, Statutes, Book 1, § 94, p. 188). Here the drafters of the regulation used adjective "all" in conjunction with the term "necessary [medical] expenses". Thus, it can be discerned that the drafters intended to give the term "necessary" a broad, all inclusive meaning.

17. No where do the no-fault regulations or legislation distinguish between curative and maintenance treatment. The regulation refers merely to all necessary treatment.

18. In interpreting the meaning of the term "necessary" treatment, the Court should also defer to the medical experts, i.e., our community of physicians. Medical doctors should decide what treatment is medically "necessary", or at least their opinion should be given great weight.

19. As set forth in my original motion papers, the medical community has recognized since antiquity, as embodied in the Hypocratic Oath, that medical professionals have a duty to eliminate discomfort and pain whenever possible, even though such treatment does not "cure" the patient. The medical community has always understood that both curative and maintenance medical treatment is "necessary", since it is their duty to provide both types of care.

Wherefore, plaintiff requests that the Court grant summary judgment to plaintiff, and order payment of all overdue medical bills, interest on all overdue payments from the date of demand to the date of payment at the rate of 2 percent per month, compounded, attorney's fees and disbursements, and Court costs.

s/ Michael G. Bersani

Sworn to before me this 12th
day of November, 1998.

Notary Public