

**AMERICAN ARBITRATION ASSOCIATION  
NO-FAULT/ACCIDENT CLAIMS**

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In the Matter of the Arbitration between

(Claimant)

v.  
ENCOMPASS INSURANCE CO.  
(Respondent)

AAA CASE NO.: 18 Z 600 20322 03  
INS. CO. CLAIMS NO.: 08110457N5  
DRP NAME: Andrew A. Patriaco  
NATURE OF DISPUTE: PPO Agreement

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**AWARD OF DISPUTE RESOLUTION PROFESSIONAL**

**I, THE UNDERSIGNED DISPUTE RESOLUTION PROFESSIONAL (DRP)**, designated by the American Arbitration Association under the Rules for the Arbitration of No-Fault Disputes in the State of New Jersey, adopted pursuant to the 1998 New Jersey "Automobile Insurance Cost Reduction Act" as governed by *N.J.S.A. 39:6A-5, et. seq.*, and, I have been duly sworn and have considered such proofs and allegations as were submitted by the Parties. The Award is **DETERMINED** as follows:

Injured Person(s) hereinafter referred to as: C.A.

1. ORAL HEARING held on April 12, 2004.
2. ALL PARTIES APPEARED at the oral hearing(s) .

NO ONE appeared telephonically.

3. Claims in the Demand for Arbitration were NOT AMENDED at the oral hearing (Amendments, if any, set forth below). STIPULATIONS were not made by the parties regarding the issues to be determined (Stipulations, if any, set forth below).

4. FINDINGS OF FACTS AND CONCLUSIONS OF LAW:

This is a claim arising out of an accident that occurred on March 28, 2002.

Claimant submitted the following documents:

- 1) Demand for Arbitration with Exhibits A-C received on November 13, 2003.
- 2) Letter dated March 22, 2004 with Exhibits D-F amending the claim to \$2,275.22.

Respondent submitted the following documents:

- 1) Letter dated January 7, 2004.
- 2) Letter dated March 19, 2004 with Exhibits A-F.

Claimant seeks \$2,205.22 for dates of service from April 1, 2002 to August 21, 2002 and \$70.00 for office consultations on May 21, 2002 and July 10, 2002. Claimant contends respondent improperly assessed a PPO reduction on dates of service from April 1, 2002 to August 21, 2002. Claimant contends that he terminated the PPO agreement with CHN on November 12, 2001, 5 months prior to the dates of service in issue.

Claimant has provided a letter from Doctor D'Agostini to CHN dated November 12, 2001. The letter states that he would like to terminate the PPO agreement as of November 12, 2001. This letter was faxed on November 12, 2001 to CHN and claimant has provided proof of receipt.

Respondent did not terminate the PPO agreement at that time. Doctor D'Agostini wrote another letter to CHN dated November 12, 2002 in which he stated that he had not been removed as a provider and again forwarded the November 12, 2001 letter to CHN along with the fax transmittal receipt.

CHN then wrote to Doctor D'Agostini on December 2, 2002 acknowledging the receipt of Doctor D'Agostini's letter dated November 12, 2002, but ignoring his letter of November 12, 2001. CHN terminated the PPO agreement as of November 12, 2002 instead of November 12, 2001.

Respondent argues that Doctor D'Agostini's November 12, 2001 termination letter did not terminate the PPO agreement because the agreement calls for termination via certified mail return receipt requested.

I find that Doctor D'Agostini's letter of November 12, 2001 faxed to respondent did terminate his PPO agreement with CHN. Claimant has produced a fax transmittal receipt. Further, CHN acknowledged receipt of the November 12, 2002 letter and did terminate the agreement at that time based on a faxed transmittal not a certified mailing.

Based on the foregoing, respondent's PPO reduction was improper as no PPO agreement existed between Doctor D'Agostini and CHN at the time the services in issue were provided. I award \$2,205.22 on this portion of the claim.

Next, claimant seeks payment for office consultations on May 21, 2002 and July 10, 2002. Claimant performed other services on that date and was paid \$90.00 pursuant to N.J.A.C. 11:3-29.4(m). Claimant contends that it is entitled to payment, pursuant to N.J.A.C. 11:3-29.4(o).

In order to qualify for payment under N.J.A.C. 11:3-29.4(o) the services must fall within one of the 4 exceptions listed in this code provision. I find that claimant's proofs indicate that it was medically necessary to perform an evaluation on these dates in order to provide evaluation services over and above those normally provided during the

therapeutic services, exception (4). Claimant performed these evaluations in order to develop interim treatment plans. I award \$70.00 on this portion of the claim.

Counsel for claimant seeks a fee of \$1,430.00. Pursuant to Rule 30, I award \$1,000.00 as attorney's fees.

5. MEDICAL EXPENSE BENEFITS:

Awarded

Provider                      Amount Claimed              Amount Awarded      Payable to

Provider	Amount Claimed	Amount Awarded	Payable to
Doctor D'Agostini	\$2,275.22	\$2,275.22	Provider

Explanations of the application of the medical fee schedule, deductibles, co-payments, or other particular calculations of Amounts Awarded, are set forth below.

6. INCOME CONTINUATION BENEFITS: Not In Issue

7. ESSENTIAL SERVICES BENEFITS: Not In Issue

8. DEATH BENEFITS: Not In Issue

9. FUNERAL EXPENSE BENEFITS: Not In Issue

10. I find that the CLAIMANT did prevail, and I award the following COSTS/ATTORNEYS FEES under N.J.S.A. 39:6A-5.2 and INTEREST under N.J.S.A. 39:6A-5h.

(A) Other COSTS as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$285.00

(B) ATTORNEYS FEES as follows: (payable to counsel of record for CLAIMANT unless otherwise indicated): \$1,000.00

(C) INTEREST is as follows: waived per the Claimant.

This Award is in **FULL SATISFACTION** of all Claims submitted to this arbitration.

April 28, 2004

Date

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Andrew A. Patriaco, Esq.