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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0636-12T4
A-0964-12T4

ALLSTATE INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY,
ALLSTATE NEW JERSEY INSURANCE
COMPANY,

Plaintiffs-Respondents,

v.

NORTHFIELD MEDICAL CENTER, P.C.;
ROBBAN ARIEL SICA, M.D.; SCOTT
DAVID, D.O.; J. SCOTT NEUNER, D.C.;
JSM MANAGEMENT COMPANY, INC.;
TILTON CHIROPRACTIC CENTER, P.C.;
TILTON CHIROPRACTIC CENTERS, SOUTH
DIVISION, P.C.; ARNOLD BACARRO, M.D.;
PANKAJ ANAND AGRAWAL, M.D. a/k/a
"PANKAJ ANAND"; ALAN CARR, D.O.;
VORRIE MACOM, M.D.; ALONSO V. CORREA, M.D.;
ALONSO V. CORREA, M.D., P.C.; CORREA
MEDICAL DIAGNOSTICS, P.C.; MEDICAL
INNOVATIONS, INC.,

Defendants,

and

DANIEL H. DAHAN, D.C.; PRACTICE PERFECT;
MEDICAL NEUROLOGICAL DIAGNOSTICS, INC.,

Defendants-Respondents,

and

ROBERT P. BORSODY, ESQ.,

Defendant-Appellant,

and

AMERICAN ARBITRATION ASSOCIATION,

Defendant in Interest.

ALLSTATE INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY,
ALLSTATE NEW JERSEY INSURANCE
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MEDICAL DIAGNOSTICS, P.C.; MEDICAL
INNOVATIONS, INC.,

Defendants,

and

DANIEL H. DAHAN, D.C.; PRACTICE PERFECT;
MEDICAL NEUROLOGICAL DIAGNOSTICS, INC.,

Defendants-Appellants,

and

ROBERT P. BORSODY, ESQ.,

Defendant-Respondent,

and

AMERICAN ARBITRATION ASSOCIATION,

Defendant in Interest.

Argued December 10, 2014 – Decided May 4, 2015

Before Judges Alvarez, Waugh, and Maven.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-3228-99.

Lawrence S. Lustberg argued the cause for appellant Robert P. Borsody in A-0636-12 (Gibbons, P.C., attorneys; Mr. Lustberg, Joshua C. Gillette, and Amanda B. Protess, on the briefs).

Shaji M. Eapen argued the cause for respondent Robert P. Borsody in A-0964-12 (Morgan Melhuish Abrutyn, and Gibbons, PC, attorneys; Mr. Eapen, on the brief).

Christopher B. Turcotte argued the cause for appellants in A-0964-12/respondents in A-0636-12 Daniel H. Dahan, Practice Perfect, and Medical Neurological Diagnostics, Inc.

Thomas Hall argued the cause for respondents Allstate Insurance Company, Allstate Indemnity Company, Allstate New Jersey Insurance Company (Sukel, Hall & McMorrow, P.A., attorneys; Mr. Hall, on the brief).

PER CURIAM

Defendants Robert P. Borsody, Esquire, Daniel H. Dahan, D.C., Practice Perfect, and Medical Neurological Diagnostics, Inc. (MND), appeal from the January 18, 2012 judgment in favor of plaintiff Allstate Insurance Company finding that they violated the Insurance Fraud Prevention Act (IFPA), N.J.S.A. 17:33A-1 to -30. Defendants also appeal the September 11, 2012 award to plaintiff of $1,320,413.40 in counsel fees and costs,

which the judge trebled pursuant to N.J.S.A. 17:33A-7(b) for a total award of $3,961,240.20. The matters were consolidated for appeal. For the reasons that follow, we reverse.

I

We omit the extensive procedural history of this litigation, which commenced in 1999: it is unnecessary to our analysis. Suffice it to say that other named defendants in their related matters with Allstate, who are not relevant to our analysis, have either settled, been found liable and not appealed, or been dismissed. A detailed description of the circumstances established at the bench trial, however, including the evolution of certain aspects of the IFPA, is necessary context to our discussion. The disputed events occurred between 1995 and 1997.

In the mid-1990s, Dahan, a California chiropractor, arranged lectures through his company, "Practice Perfect." The lectures, marketed to chiropractors, advised them on how to create multi-disciplinary practices.

Dahan also owned Management or Medical Legal Services (MLS), a New York corporation, which sold corporate kits and documents to assist in the structuring of multi-disciplinary practices. At trial, Dahan testified that he had helped establish over 700 such practices.

Borsody, a healthcare lawyer in practice since 1964, testified that, in the early 1990s, he was asked by several chiropractors to lecture on the creation of multi-disciplinary practices. He understood that no state permitted a non-physician, such as a chiropractor, to own a majority of a medical practice. He focused on developing the legal framework that would enable an individual who invested startup money in a practice to earn a profit from the investment when only a medical doctor could legally own a majority interest. Borsody devised a model in which the non-physician investor would initially form both a management company and a medical corporation. The management company would fund the medical corporation for payment of rent, equipment leases, and staff salaries. The medical practice, which would be owned by a medical doctor, would generate its own cash flow from patient visits, and those monies would repay the management company.

Borsody's stated goal was to prevent the medical doctor from "walk[ing] off with the practice," causing the chiropractor to lose his original investment. In his lectures, he recommended "terminator" agreements allowing the non-physician practitioner to protect his or her investment by replacing the medical doctor as the owner, officer, and director of the practice with another physician. Borsody considered this

admittedly one-sided arrangement lawful because it was common in business for one party to exercise economic control over another. He did not believe the structure violated the exclusivity of the physician practice of medicine. The medical doctor had control of the stock, but the non-physician had control of the assets. Prior to June 1997, Borsody authored at least one article regarding the law covering multi-disciplinary practices.

The events at issue began in 1996, with a Practice Perfect lecture in New York that was given by Borsody and attended by defendant J. Scott Neuner, a New Jersey chiropractor. Neuner testified as Allstate's witness in exchange for an agreement that the company would not pursue claims against him to recover insurance payments. At trial, Allstate played the videotape of a subsequent lecture given by Borsody in Newark. Neuner described the Newark lecture as nearly identical to the lecture he attended in New York.

During the talk, Borsody reviewed laws banning self-referrals, explaining that while states rarely enforced such laws, the federal government did. Borsody described the corporate structure he was promoting as a "doc in the box arrangement" created by contracts enabling the non-physician management company to control the medical practice.

On November 16, 1995, Kevin Earle, Executive Director of the State Board of Medical Examiners (the Board), had issued an informal advisory opinion (Earle I) in response to a query as to the legality of a multi-disciplinary practice. Ownership in that proposed professional association was to be divided thirty percent in a medical doctor and seventy percent in a chiropractor. Borsody testified that he was probably aware of the Earle I letter before he gave the lecture attended by Neuner.

In the letter, Earle said:

> The Board has not, to date, had occasion to consider a specific shareholder arrangement involving unequal ownership with a practice . . . . However . . . we would find that division especially questionable and inappropriate.
>
> We would find it inappropriate for a physician with a plenary scope of practice . . . to be in a position where the practitioner with a limited scope of practice can compel — by the simple fact of majority voting rights — the medical doctor to accept contracts for the provision of all manner of services to the Professional Association. The potential for override of the physician's professional judgment, as well as the determination as to how the practice shall be conducted, is deemed to be even more inappropriate where the management company itself is wholly owned by the 70% shareholder of the Professional Association who is a limited licensee.
>
> . . . [T]he Board has always held that a multi-disciplinary practice cannot employ

> physicians who are not themselves shareholders in the practice.
>
> . . . .
>
> You have further represented that the minority shareholder shall be designated as the Medical Director. In our view, that cannot save the scenario from the potential abuse and coercion inherent in the various circumstances described in your letter.

Neuner kept his notes and materials from the 1996 Practice Perfect seminar he attended. He received a handout including an article written by Dahan and the legal issues to be addressed by Borsody, described as "one of America's most proliferate attorney[s] in medical/legal issues." Among the issues listed were state-law prohibitions against medical doctor/chiropractor combinations, medical professional company/management company relationships, ownership and organization of the management company, and corporate practice prohibitions.

Both Dahan and Borsody spoke at the seminar Neuner attended. According to Neuner's notes, Borsody clearly explained that the practice of medicine was restricted to physicians and that no medical corporation could be owned by a chiropractor or other non-physician. Borsody also explained that a physician had to own the practice and that the physician could employ anyone, including a chiropractor or physical therapist.

Borsody suggested that the non-physician maintain control of the finances through the use of contracts, including a rental lease, equipment lease, and a management agreement. He recommended that startup costs be funneled through the management company and then transferred to the medical practice as a loan. The management company would lease the facility used by the medical practice from the owner of the real estate, and in turn would charge the practice a marked-up rent. The medical practice would likewise lease its equipment from the management company at about seventy to eighty percent above market value.

Through these arrangements, the management company would effectively receive all the income remaining after payment of the medical company's personnel; in sum, the medical practice's profits would go to the management company. Borsody advised that fee-splitting between a professional and a non-professional was prohibited, and that there were restrictions on self-referrals.

Borsody also said that although the owner of a medical practice in New Jersey had to be a medical doctor, a chiropractor could own up to a forty-nine-percent interest. He suggested that if the non-physician had a relative who was a physician, that would be the easiest way to find a medical

doctor to own the remaining fifty-one percent of the medical practice.

Borsody cautioned against having any physician actually employed by the practice as the owner, since that person might as a result seek more control over the finances. Moreover, it was easier to replace a physician working in the practice if he or she was not the owner. According to Neuner, Borsody's design designated the owner of the management company, rather than the medical practice, as the person who could hire and fire the doctors who worked in the medical practice. The titular owner of the medical practice would be paid a fee for his or her participation.

The terminator agreements came into play only if the physician-owner of the practice challenged the management company's control. The terminator documents included presigned stock certificates and resignations. By implementing the terminator agreements, the management company would be able to replace the physician-owner with another doctor if necessary.

At the end of the lecture, Borsody told the attendees that he was available to set up a multi-disciplinary practice for $7500. Borsody was not admitted to practice in New Jersey, and in his presentation did not rely on New Jersey law. In fact, he told seminar participants that they should consult "a good

lawyer" because state laws on medical practice differed and changed from time to time. He stressed that whatever the arrangements, they had to be legal.

On behalf of his practice, defendant Tilton Chiropractic, Neuner signed a March 28, 1997 contract to retain the consulting services of Practice Perfect. He renewed the contract a year later, and considered his association with Practice Perfect important in assisting him to incorporate medical doctors into his chiropractic office. Before attending the Borsody lecture, Neuner had not believed that a chiropractor could employ a medical doctor or own a medical practice. No attorney had reviewed the MLS material Dahan sold to Neuner, although Dahan testified it was a combination of documents provided to him by several attorneys, including Borsody.

After signing the contract with Practice Perfect, Neuner consulted with Borsody about the documents necessary to set up a medical corporation. Once he learned the amount of Borsody's fee, however, Neuner spoke to Dahan and decided not to retain Borsody's services. Dahan told Neuner he would give him the name of a source for the paperwork and that he should then find a local attorney to fill in the blanks. Dahan also told Neuner that he had a team of lawyers throughout the country that knew what they were doing and that he need not "reinvent the wheel."

Neuner contacted MLS and paid $2600 for a corporate kit. The kit's cover letter stated:

> In an attempt to help doctors around the country create multidiscipline centers we have, through extensive research, prepared the most comprehensive legal package available in the USA. Our legal team of experts have developed a self start-up kit which will help you set up the corporate structure of your multidiscipline MD/DC center. This kit is by far the easiest and most expedient way to open your center.
>
> . . . Although the legal structure enclosed is well defined within definite legal parameters, the billing and marketing of an MC/DC center is highly technical and can be challenged by insurance companies. Indeed, MD/DC/PT centers which have billed inappropriately or have exerted excessive billing while lacking proper documentation and a medical validity for treatment/services rendered have been questioned and/or investigated by regulatory bodies. Henceforth it is our opinion that a reputable management firm should be consulted to avoid unnecessary possible sanctions.

Dahan testified that he composed the letter, although it was signed by someone else. The kit included a service agreement, a consulting agreement, and a physician employment agreement between the management company and the medical corporation. The kit also included incorporation forms for both the medical corporation and the management company.

In April 1997, an Arizona attorney asked executive director Earle whether the formation of a corporation between a medical doctor and a chiropractor was prohibited under New Jersey law, and whether the medical doctor must own a majority of the stock. Earle responded by letter (Earle II) dated April 28, 1997:

> Inasmuch as a licensed chiropractor is another professional licensed by the professional boards under the Division of Consumer Affairs, they clearly fall into the category of licensees with whom a physician could form a professional corporation. Your interpretation as to who shall be a majority shareholder of such an entity is also correct.

Neuner's notes from a May 8, 1997 meeting reflect that Dahan advised him that only medical doctors could give orders or confirm any diagnosis and treatment before billing the insurer, and warned him against self-referrals. Dahan also suggested to Neuner that he become the clinical director of the medical practice.

Neuner consulted with a New Jersey attorney, John Grossman, on May 15, 1997. Grossman called Dahan a few days later with questions regarding the corporate kit Neuner purchased. Grossman testified that Dahan said he had previously set up such a practice in New Jersey and that Grossman should contact Borsody.

When the two attorneys spoke, Borsody told Grossman that a medical doctor could legally hire a chiropractor so long as the chiropractor did not have a separate practice. Borsody sent Grossman New Jersey caselaw as well as a copy of the Earle I informal opinion.

Dahan supplied Neuner the name of a prospective physician-owner, defendant Robban Ariel Sica, M.D., which Neuner passed on to Grossman. Grossman advised Neuner that after doing some legal research into the matter and speaking with Dahan and Borsody, Neuner should issue Sica a few shares in the medical corporation. Grossman also advised Neuner that Sica, as medical director, had to control the medical practice and all healthcare decisions. Neuner's rendering of chiropractic services had to be "consistent with and under the guidance of the medical director." Additionally, Grossman supplied Neuner a copy of the Earle I informal opinion.

When Neuner mentioned to Dahan that Grossman's fee might exceed $5000, Dahan said it was "outrageous." Ultimately, Neuner simply had someone in his office fill in the blanks on the corporate kit paperwork, setting up the medical practice and the management company, as well as the terminator agreements.

Neuner secured Sica's services as physician-owner sometime in May 1997. In early June, Grossman advised Neuner that he

should contact the Board to confirm that the arrangement was acceptable. Neuner discussed this advice with Dahan, who responded that there was no need to do so because Practice Perfect's attorneys had researched the issue.

Neuner incorporated Northfield, a multi-disciplinary medical practice, and JSM, the management company, in early June 1997. Sica was designated as the sole shareholder, director, and incorporator of Northfield. Neuner was the sole owner of JSM. Sica was to be paid a "standard annual consultation fee" of $4000 for her role in Northfield. JSM and Northfield entered into a service agreement on July 1, 1997. Under the agreement, Northfield delegated to JSM the authority to manage the non-professional aspects of its business.

Shortly after Northfield and JSM were incorporated, New Jersey Deputy Attorney General Debra Levine issued a June 11, 1997 letter in response to an inquiry by an Arizona attorney as to whether under New Jersey law a medical doctor and a chiropractor could form a corporation together. Levine stated that such a corporation could be formed and that "[t]here is no statutory or regulatory provision requiring that the licensee with the greater scope of practice hold a majority of the stock in the professional corporation."

Neuner hired, and determined the compensation to be paid to, several medical doctors to work at Northfield. He did not consult Sica before hiring or firing physicians.

Neuner also determined how much money Northfield would pay JSM each month. JSM billed Northfield approximately $740,000 for services provided between July 1997 and August 1999.

When Sica wanted to become more involved in the practice, Neuner replaced her in April 1998. At Neuner's direction, Grossman implemented the signed, undated terminator agreements. Shortly thereafter, Dahan found another medical doctor, defendant Scott David, D.O., to replace Sica, for a lower annual fee, as Northfield's new owner.

Towards the end of 1998, Allstate stopped paying Northfield's claims and asked Neuner to give a statement under oath regarding the practice's arrangement with JSM. Dahan advised Neuner not to talk to Allstate and to consult Borsody, who also initially advised Neuner not to speak to Allstate. Eventually, Neuner retained Borsody to represent him and did give Allstate a sworn statement.

Borsody informed Neuner that New Jersey law required that physicians who worked for a medical corporation have shares in the company; apparently, this had not been done with respect to any of the doctors who worked for Northfield. David, the

then-physician-owner, was issued five shares of stock in Northfield.

David testified that he was contacted by Neuner shortly after Dahan advised him that he could be compensated by chiropractors if he would agree to become a "figure head" owner-doctor. After being hired to replace Sica, he did not treat a patient, supervise personnel, or make any medical decisions. He assumed Northfield's real owner was Neuner.

Benjamin Hickey, a fraud analyst with Allstate, investigated Northfield as part of a general inquiry into illegally structured chiropractic offices which were issuing unlawful billing. Hickey concluded that Northfield should not have been billing Allstate under the personal injury protection (PIP) statute, N.J.S.A. 39:6A-1 to -35, because Neuner tried to make it appear as though a medical doctor owned Northfield when in fact it was he who owned and controlled it. In addition, he accused Neuner of bill-splitting, thereby avoiding the regulatory prohibition on fragmented billing. N.J.S.A. 39:6A-4.6(b); N.J.A.C. 11:3-29.4(g)(1).

After paying Northfield approximately $91,000 towards the end of 1998, Allstate stopped paying the practice's claims altogether. Approximately $330,000 in additional claims submitted by Northfield were not paid.

Borsody testified that he was aware of both Earle letters during the 1995-to-1997 time period as well as two cases that discussed the relationship between a management company and a medical practice, Women's Med. Ctr. v. Finley, 192 N.J. Super. 44 (App. Div. 1983), certif. denied, 96 N.J. 279 (1984), and Flynn Bros., Inc. v. First Med. Assocs., 715 S.W.2d 782 (Tex. App. 1986). He believed those cases held that management contracts between a business corporation and a medical practice were permissible, although fee-splitting was not. In his view, there was a bright line between management of the business aspects of the medical practice and day-to-day operation of the medical practice itself.

Borsody interpreted N.J.A.C. 13:35-6.16, adopted in 1992, to prohibit a limited-license professional, such as a chiropractor, from employing a professional with a plenary license, such as a medical doctor or physician. Borsody, however, did not understand the regulation to apply to a professional corporation, only to a natural person.

Borsody received a copy of the Levine letter sometime between June 1997, when it was issued, and January 1999. He recognized that New Jersey corporate practice law was evolving and that the Board frowned on the type of "interlocking contracts" that he had been advocating. Nonetheless, Borsody

did not contact the Board to obtain an opinion regarding the legality of his two-corporation practice structure. Nor did he obtain any legal opinions from any New Jersey attorneys.

Borsody recalled discussing the Earle and Levine letters with Grossman at some point in 1997 or 1998. That a chiropractor could own up to forty-nine percent of a medical corporation's stock was "no big news." However, Levine's letter "br[oke] new ground" by stating that the licensee with the greater scope did not have to own a majority of such stock. Under the Earle and Levine letters, Borsody and Grossman agreed that the Neuner "arrangement was defensible under the existing state of the law."

Once Allstate Ins. Co. v. Schick, 328 N.J. Super. 611 (Law Div. 1999), was decided on November 23, 1999, Borsody determined that his corporate arrangement for multi-disciplinary practices no longer complied with New Jersey law. He described that decision as a "red light" since, after evaluating several of Borsody's corporate arrangements, the Schick court held that the associated medical corporations would have violated the IFPA if they submitted claims to insurers while under the "dominion and control" of non-physicians, and that the medical corporations "may have been or [were] operated illegally" if their purported

physician-owners did not "actually exercise any oversight, supervision[,] or control." Id. at 628-29.

Several experts testified during the course of the trial, including John Reiss, Allstate's witness. Reiss, an attorney and former Assistant Commissioner for the New Jersey Department of Health, specialized in New Jersey healthcare law. He did not consider the Board's informal opinions to be entitled to any legal weight. He also did not consider the Levine letter to be entitled to any weight because it was merely an informal opinion of a Deputy Attorney General.

Reiss stated that the doctrine that chiropractors cannot own medical corporations was in existence prior to 1990. He opined that Borsody misstated the corporate practice of medicine doctrine, which requires physicians to be in control of all decisions made by the entity in which they are practicing. He criticized Borsody's model because the terminator agreements enabled the limited licensee to eliminate the medical doctors if they exercised control in a fashion with which he disagreed.

The agreement espoused by Borsody and Dahan made the medical doctor only a sham owner, while allowing the chiropractor to act as the real owner through the management company's effective control over the medical practice. As

support, Reiss referenced Neuner's termination of Sica when she wanted to modify the financial arrangements with Northfield.

Reiss concluded that the corporate structure Borsody espoused was inconsistent with N.J.A.C. 13:35-6.16(f) because it did not place a plenary licensed physician in control of the medical practice. The service agreement between Northfield and JSM did not allow Northfield the right to cancel. The entire purpose of the arrangement was to allow the chiropractor to control the medical practice. In his view, a competent healthcare attorney in the mid-1990s would have found the practice structure advocated by Borsody and Dahan contrary to New Jersey law.

Borsody proffered Gregory Mark, a professor of law, as an expert in corporate practice and history, not healthcare law. Mark described corporate structures such as Borsody proposed as not only common and legitimate, but good corporate practice in the mid-1990s.

J. Anthony Manger, a New Jersey attorney, testified on Dahan's behalf as an expert in New Jersey healthcare law. He opined that a New Jersey healthcare attorney would not have considered the practice structure advocated by Dahan, including the use of terminator agreements, to be violative of New Jersey law as it existed from 1995 to mid-1997. Any failure on the

part of a physician to oversee the protocols and procedures of the medical practice was not a result of the corporate structure.

Furthermore, in Manger's experience, attorneys in the healthcare field rely on informal pronouncements and advisory opinions of the Board and the Attorney General, although clearly they are entitled to less weight than formal pronouncements. He interpreted the Earle informal opinions to mean that if a chiropractor is a majority owner of a professional corporation, and the medical director the minority owner, existing regulations were not violated even though Earle agreed that the physician should be the majority owner. Levine's letter, Manger pointed out, concluded there was no statutory or regulatory requirement that the majority of the stock in a professional corporation be held by a physician. In his view, N.J.A.C. 13:35-6.16(e) required a medical doctor to have some ownership interest but not necessarily financial control over the medical practice because that section was directed towards investment and other types of healthcare entities. He found that the MLS documents were clear regarding the division of treatment responsibilities between the chiropractor and the medical doctor and properly so.

An important aspect of the trial judge's decision was his rejection of Borsody's claim that N.J.A.C. 13:35-6.16(f)(3)(i) applied only to people. He stated that Borsody's models were intended to teach chiropractors to manipulate corporations so as to "break the law without being caught." The judge found that Deputy Attorney General Levine's letter did not support Borsody's position because it stated that licensees must maintain professional discretion in the rendering of services. He also found that Borsody was well aware that, in every state, chiropractors were prohibited from employing medical doctors.

The judge also rejected Mark's testimony as he had "no particular knowledge of healthcare law," and concluded that the Practice Perfect plan put chiropractors in control of physicians, resulting in "the potential to affect healthcare services to patients." Thus the judge found that Borsody and Dahan "promoted what they knew was essentially a lie. The business model they promoted was intended to appear to be one way, and yet in reality, be another way." Moreover, the judge accepted Reiss's testimony that the prohibition in N.J.A.C. 13:35-6.16(f)(3) applied to all organizations, and that the law between 1995 and 1999 was unambiguous.

The judge further found that Grossman's conduct was not an intervening cause which spared defendants from liability.

Because he stopped short of advising Neuner that the Practice Perfect business model was consistent with New Jersey law, Grossman was neither the predominant cause of Neuner's conduct nor a superseding cause relieving defendants of liability.

Having found that defendants violated the IFPA, the judge gave no weight to defendants' argument that Allstate's counsel fees and costs were disproportionate in light of the approximate $90,000 in damages which Allstate recovered. Because Allstate had chosen "to litigate against what can be called the hub of the wheel . . . the societal value constitutes the 'interest to be vindicated.'" He trebled counsel fees and costs under the statute and rejected defendants' argument that such trebling violated due process. Because both parties together "conspired, urged[,] and assisted in violations of the IFPA[,]" under the authority of Banco Popular North America v. Gandi, 184 N.J. 161 (2005), both were jointly and severally liable.

The judge rejected defendants' attacks on specific aspects of the fees, found the hourly rates to be "reasonable and appropriate and within the range generally applied in this area," and thus awarded Allstate $1,320,413.40 in damages, trebled to $3,961,240.20, jointly payable by Dahan and Borsody. The judge also awarded Allstate $10,125.14 against Dahan and

MND, including $580.43 under an earlier order. The judge did not impose prejudgment interest. This appeal followed.

II

Of the many points of error defendants raise on appeal, we reach only the issue of liability under the IFPA. All other claims are made moot by our decision.

The crucial question is whether, by a preponderance of the evidence, Allstate proved that Borsody and Dahan "knowingly" violated the IFPA. In other words, whether Dahan and Borsody knowingly assisted Neuner in violating New Jersey law, or even knew that the law in the relevant 1995-to-1997 time frame clearly prohibited the multi-disciplinary practice model they advanced.

The scope of review of a judgment entered in a non-jury case is limited: "the findings on which it is based should not be disturbed" unless "'they are so wholly insupportable as to result in a denial of justice.'" Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974) (quoting Greenfield v. Dusseault, 60 N.J. Super. 436, 444 (App. Div.), aff'd o.b., 33 N.J. 78 (1960)). Thus, on appellate review, we do not reverse unless the factual findings and legal conclusions of the trial judge "'are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice.'" Id.

at 484 (quoting Fagliarone v. Twp. of No. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

Here, defendants' liability presents a mixed question of law and fact, since the trial court reached certain legal conclusions as to the applicability of the IFPA to the facts adduced at trial. See Manalapan Realty, L.P. v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995). Our review of the trial court's interpretation of the IFPA and its application to the facts is plenary. Ibid.

The IFPA was enacted in 1983 to "confront aggressively the problem of insurance fraud in New Jersey" by, among other things, "requiring the restitution of fraudulently obtained insurance benefits." N.J.S.A. 17:33A-2. In addition to action by insurers, N.J.S.A. 17:33A-7, the IFPA authorized the Commissioner of Banking and Insurance to bring a civil action, N.J.S.A. 17:33A-5, and the Attorney General to bring a criminal action, for violations of the law. N.J.S.A. 17:33A-8. As a remedial statute, the IFPA should be construed liberally. Allstate N.J. Ins. Co. v. Lajara, 433 N.J. Super. 20, 37 n.4 (App. Div. 2013).

A person or practitioner violates the law if he or she:

> . . . knowingly assists, conspires with, or urges any person or practitioner to violate any of the provisions of this act.

> A person or practitioner violates this act, if, due to the assistance, conspiracy or urging of any person or practitioner he knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this act.
>
> [N.J.S.A. 17:33A-4(b) & (c).]

Thus, for present purposes, a defendant may be found to have violated the law by knowingly submitting false or misleading information to an insurer, or by knowingly assisting, conspiring with, or urging any person to violate the law. Since neither Dahan nor Borsody submitted any information directly to Allstate, their liability hinges on whether they knowingly assisted, conspired with, or urged Neuner to violate the IFPA.

The IFPA does not define "knowing" or "knowingly." Absent any explicit indication of a special meaning, the words in a statute carry their ordinary and well-understood meanings. State v. Williams, 218 N.J. 576, 586 (2014); State v. Afanador, 134 N.J. 162, 171 (1993).

A civil conspiracy is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means. Banco Popular, supra, 184 N.J. at 177. Civil conspirators are jointly liable for the underlying wrong and resulting damages. Id. at 178.

In order to accomplish its purpose of deterring insurance fraud, the IFPA permits insurers to prove fewer elements than

required for common law fraud. Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 174-75 (2006). Thus, the IFPA does not require proof of reliance on a false statement or damages. Id. at 175. Nor does it require an intent to deceive. State v. Nasir, 355 N.J. Super. 96, 106 (App. Div. 2002), certif. denied, 175 N.J. 549 (2003).

The burden of proof for an IFPA violation is the preponderance of the evidence. Land, supra, 186 N.J. at 175. Thus, to establish a violation, the insurer or the State must merely show that it is, more likely than not, that the defendant has committed a violation. State v. Purnell, 126 N.J. 518, 563 (1992).

The Board's regulation regarding the structure of a medical practice, N.J.A.C. 13:35-6.16, requires a medical practice to be conducted in a business form consistent with the principles set forth in the regulation. N.J.A.C. 13:35-6.16(b). Among the acceptable forms are a partnership, professional association, or limited liability company. N.J.A.C. 13:35-6.16(f). And "such entit[ies] shall be composed solely of health care professionals, each of whom is duly licensed or otherwise authorized to render the same or closely allied professional service within this State." N.J.A.C. 13:35-6.16(f)(2).

Another acceptable form of practice is an associational relationship with another practitioner or professional entity. N.J.A.C. 13:35-6.16(f)(3). In this instance, a practitioner may be employed

> within the scope of the practitioner's licensed practice and in circumstances where quality control of the employee's professional practice can be and is lawfully supervised and evaluated by the employing practitioner. Thus, a practitioner with a plenary license shall not be employed by a practitioner with a limited scope of license, nor shall a practitioner with a limited license be employed by a practitioner with a more limited form of limited license. By way of example, a physician with a plenary license may be employed by another plenary licensed physician, but an M.D. or D.O. may not be employed by a podiatrist [] or chiropractor . . . .
>
> [N.J.A.C. 13:35-6.16(f)(3)(i).]

Allstate's theory of the case was summarized by the trial judge in his decision granting defendant partial summary judgment against MND in April 2001:

> [the defendants] promot[ed] the creation by chiropractors of rehabilitation centers with sham ownership by medical doctors and introduce[ed] their chiropractor clients to plenary licensed physicians who [we]re willing to 'lease' their names and degrees and to pose as the shareholder of the chiropractor client's new corporation.

In addition, in a related action filed by Allstate, Schick, supra, 328 N.J. Super. at 622,[1] the Law Division judge stated:

> [O]ne of the[] arrangements by which the defendants sought to divert or route PIP benefits to the organizers of these enterprises was to create a series of diagnostic facilities by forming medical corporations in which plenary licensed physicians were paid to pose as owners, while the corporations were in fact controlled by non-licensed businessmen who controlled these medical corporations through 'management companies' and provided diagnostic services in violation of administrative regulations requiring that such facilities be genuinely owned by plenary licensed physicians.

Under N.J.A.C. 13:35-2.5(b), in effect at the relevant time, only physicians holding plenary licenses could own diagnostic testing facilities. See also Allstate Ins. Co. v. Greenberg, 376 N.J. Super. 623, 630 (Law Div. 2004).

As we have said, the IFPA does not define "knowing." If the term is accorded its ordinary meaning, rather than the criminal code definition found at N.J.S.A. 2C:2-2(b)(2), it is not clear whether Allstate established a knowing violation of the IFPA by a preponderance of the evidence.

The informal opinions from Earle and Levine gave Borsody a reasonable basis to believe that the practice model he advocated

[1] Neuner, Northfield, Sica, Dahan, and Practice Perfect were mentioned in the opinion. Id. at 617 n.3.

was not illegal in New Jersey. Both Earle letters stated that in a medical practice formed between a physician and a chiropractor, the physician should be the majority owner. Borsody's model, however, was not inconsistent with that requirement.

The Levine letter stated, incorrectly, that there is no requirement that the physician be the majority owner, thus adding to the uncertainty. The effect of these letters is to make the knowledge attributable to Borsody in this case quite unlike that found in Open MRI of Morris & Essex, L.P. v. Frieri, 405 N.J. Super. 576 (App. Div. 2009).

In Open MRI, the insurers contended that a medical facility violated the IFPA by submitting insurance claims for services it was not licensed to perform. Id. at 582. The Department of Health and Senior Services had twice informed the facility that it required a license to operate. Id. at 584. As a highly regulated business directly affecting the safety and welfare of the public, the facility was also chargeable with notice of the licensing requirement. Ibid. A belief, even a good-faith belief, as to the legality of its services was not a defense to the IFPA claim in that context. Ibid.

But an important distinction exists with this factual scenario. Dahan and Borsody were never informed by any state

regulatory agency that the model they were advocating was contrary to New Jersey law. Neuner was not informed that their model, which he implemented, was unlawful. Therefore, Open MRI is distinguishable because in that case knowledge was not even an issue. Ibid.

Borsody claimed he relied upon Women's Medical Center, supra, 192 N.J. Super. at 44. There, we said that in determining the character of a medical practice:

> [not] relevant are such non-professional matters as who pays the office expenses, who maintains business records, who pays the rent, [and] who hires non-professional staff . . . . The point is that in any private practice all of these business, administrative[,] and management chores must or may be performed. If the manner of their performance does not impinge upon the ordinary patient-private physician relationship and does not impinge upon professional control by physicians of the medical practice and does not affect the essential character and commonly understood attributes of private practice, then it is evident that the "in-house" versus "out-of-house" business and administrative management of the practice has no fundamental impact on the . . . delivery of health care services.
>
> [Id. at 58.]

Borsody also referenced Flynn during his testimony. 715 S.W.2d at 783.

In Flynn, although the physician was not an actual employee of the management company, the practical effect was the same.

Id. at 785. A Texas court found that the physician had allowed the management company to use his license to provide emergency medical care, contravening the law. Ibid. Borsody's discussion, however, merely made an aside to Flynn. He said he was aware of only one other case at the time which discussed and analyzed management contracts of this nature. Borsody would not have found that case dispositive on any interpretation of New Jersey law.

Nor can knowledge in this case equate to "willful blindness." In re Skevin, 104 N.J. 476, 486 (1986), cert. denied, 481 U.S. 1028, 107 S. Ct. 1954, 95 L. Ed. 2d 526 (1987). "The concept arises in a situation where a party is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist." Ibid. In Skevin, the Court held that there was "clear[] and convincing[]" evidence to establish that an attorney had misappropriated funds where he withdrew money from a comingled account of clients' and personal funds in anticipation of receiving settlement checks. That action was knowing misuse, not inadvertent error. Id. at 484.

This case does not involve the existence of a material fact, but rather the legal interpretation of a statute. Examined from that perspective, Allstate has not borne its

burden by a preponderance of the evidence to support the conclusion that defendants knew their model violated New Jersey law during the 1995-to-1997 time period at issue. Case law was not clear on the question until the Schick decision, 328 N.J. Super. at 611, rendered in 1999. And the Earle and Levine opinions either did not address the question or incorrectly stated the law. Therefore, willful blindness does not apply either.

Apart from any legal definition of knowledge, the point is that Allstate has failed to establish, by a preponderance of the evidence, that either Borsody or Dahan showed an awareness or understanding that their aid or advice to Neuner would assist him in violating the law.

It is undisputed that Borsody spoke at the seminar Neuner attended, which started him on the path to creating the two defendant corporations. But Borsody unequivocally told the attendees that the practice of medicine was restricted to physicians and that a medical corporation could not be owned by a chiropractor or any other non-physician. However, a chiropractor could own up to forty-nine percent of a practice. The main goal of Borsody's model was to protect the chiropractor-investor from the medical doctor leaving the practice and taking the client base. Borsody did not see

anything unlawful in the arrangement because the model was similar to others used in business between corporations to enable the exercise of economic control. In addition, the model did not interfere with the physician's actual practice of medicine and interaction with patients.

Borsody acknowledged that New Jersey law on the subject was developing and that the Board frowned upon the type of interlocking contracts he was advancing. However, he believed the model was worth the risk in order to protect the chiropractor's investment, and was not actually contrary to New Jersey law under Women's Medical Center, supra, 192 N.J. Super. at 44. The Earle and Levine opinions gave him reason to believe that his model was not contrary to New Jersey law.

Clearly, Dahan was far more deeply involved in Neuner's creation of Northfield and JMS than was Borsody. Dahan also spoke at the seminar that Neuner attended, and as a result, Neuner became a client of Practice Perfect. Neuner purchased the corporate kit from another of Dahan's companies, MLS. In the kit's cover letter, written by Dahan, Neuner was informed that, while the legal structure reflected in the kit was within "definite legal parameters," because it might be challenged by insurers, "a reputable management firm should be consulted to avoid unnecessary possible sanctions."

Dahan met with Neuner prior to the formation of Northfield and JSM, and repeated that only medical doctors could give orders and confirm all diagnosis and treatment before an insurer could be billed. Dahan suggested that Neuner become Northfield's clinical director, apparently intended to be a purely administrative position, and he recommended that Neuner hire Sica as Northfield's physician-owner.

After Grossman advised Neuner that he might want to contact the Board to find out if the Northfield-JMS arrangement was permissible, Dahan told him there was no need to do so because Practice Perfect had researched the issue. After Neuner replaced Sica, he hired David based on Dahan's recommendation.

Yet, as with Borsody, there is simply insufficient evidence that Dahan knew that the corporate model he was helping Neuner implement was contrary to New Jersey law. There is not sufficient evidence that New Jersey law at the time was settled enough to hold Dahan responsible for knowing that the corporate structure he was advocating was illegal. Since the practice of chiropractic medicine is a highly regulated profession, chiropractors are charged with knowledge of the laws and regulations which govern that profession. Greenberg, supra, 376 N.J. Super. at 637. But the laws and regulations governing multi-disciplinary practices in the mid-1990s were not so

settled as to warrant imputing to Dahan knowledge that the arrangement he advocated was, in fact, contrary to New Jersey law. Therefore, Allstate did not prove by a preponderance of the evidence that Dahan had knowledge that the business model he proposed violated the IFPA.

There is no question that the IFPA "interdicts" a broad range of fraudulent conduct. Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 172 (2006). There is also no question that as a matter of policy the statutory sanctions are remedial in nature, intended to compensate insurance companies when they pursue IFPA violators for costs incurred as a result of investigation and prosecution. Id. at 172-73. But this broad and liberal purpose of preventing insurance fraud is not furthered by imputing "knowledge" of illegality to Dahan and Borsody when they had none.

Certainly, both Dahan and Borsody were fully aware that what they proposed gave the limited license holder control not affirmatively authorized by any medical board. But to their economic advantage, and that of the limited license holder, they believed that the scheme was a legitimate tool for accomplishing the goal of allowing limited license holders to increase their earnings by creating multi-disciplinary practices. That cannot be considered a violation of the IFPA. Since we conclude

defendants had no knowledge that their conduct violated the statute, we also vacate the award of attorney's fees.

Reversed.