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| COUNTY OF BRONX CIVIL COURT OF THE CITY OF NEW YORK | **Index No:  707340/13** |
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| |  |  |  | | --- | --- | --- | | **AVENUE C MEDICAL, PC**  A/A/O **FRANCISCO PARAPI-DUTAN**, | | | |  | | PLAINTIFF(S), | |  | -AGAINST- |  | | **MVAIC**, | | | |  | | DEFENDANT(S), | |  |  |  | | AFFIDAVIT |
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| STATE OF NEW YORK COUNTY OF | ) ) ss. |

I, Sayeedus Salehin, M.D., hereby swear the following to be true under the penalty of perjury:

1. I am a physician duly licensed to practice in the State of New York.
2. I am the treating physician of Francisco Parapi-Dutan.
3. I personally reviewed the peer review report dated December 9, 2010 by Isandr Dunesh, M.D., who opined that “medical necessity has not been established for the Range of Motion and Muscle Testing” performed on plaintiff on July 12, 2010 at Avenue C Medical, PC.
4. I also personally reviewed the peer review report dated December 9, 2012 by Christopher Burrei, D.O., who opined that “medical necessity cannot be established” for the NCV/EMG studies performed on plaintiff on August 12, 2010 performed at Avenue C Medical, PC.
5. To form an opinion of the medical necessity of any service, including the above-mentioned services, the peer reviewer must thoroughly review all medical records pertaining to that patient prior to the service in question. The peer reviewer must also set forth a standard generally accepted in the medical community for performing the service in question. Then, the peer reviewer must apply the standard to the facts of a particular patient as gleaned from *all* of the available medical records. Only such a peer review process may lead to a potentially valid opinion on medical necessity.
6. The above-mentioned peer reviews are deficient because neither doctor reviewed all of the relevant records with respect to the above-mentioned services. The relevant records, marked as **EXHIBIT B,** include:
   1. 06/08/10: Initial evaluation, detailing extensive pathology including positive orthopedic testing
   2. 06/28/10: Re-evaluation by Avenue C Medical
   3. 07/14/10: Re-evaluation by Avenue C Medical
   4. 08/02/10: Re-evaluation by Avenue C Medical
   5. 08/12/10: Physiatrist Initial Consultation, Dr. Neil Morgenstern
7. Because the above-mentioned peer reviews do not base their findings on a review of all available medical records, neither peer review presents a valid opinion on the medical necessity of the above-mentioned services.
8. Dr. Dumesh states on page 3 of his report

“More information is needed in order to justify the above diagnostic tests in this case. There is no information in the records provided on … whe the claimant first sourhgt medical help after the Hospital discharge, what were the physical exam findings at that time and what were the initial impression and recommendations. … Without all the above information, I cannot confirm the medical necessity for the above MRI and ROM tests.

1. In fact, those records exist. Exhibit B. It is impossible to speculate what Dr. Dumesh’s opinion on medical necessity would be had he had access to those medical records.
2. Firther, in pages 2-3 of the Dumesh peer review, Dr. Dumesh cites *Assessment Tools for Musculoskeletal Impairment Rating and Disability Assessment* for the propositions that “Range of Motion and Muscle Testing…has a questionable reliability” and that “these concerns have led The American Medical Association to place decreased emphasis on spine ROM for impairment rating purposes.” To the contrary, the aforementioned article notes that the tools used to “measure joint ROM (flexibility),” including those “primarily used in spine ROM testing…have proved to be reliable.” Additionally, the aforementioned article advises, “The AMA *Guides* encourages the disability physician examiner to utilize his or her ‘entire gamut of clinical skill and judgment in assessing whether or not the results of measurements or tests are plausible and relate to the impairment being evaluated.’”
3. Because the above-mentioned article directly contradicts Dr. Dumesh’s conclusions concerning ROM testing, and because the American Medical Association advises a physician to use his or her skill and judgment in evaluating the results of tests performed by the physician, I opine that Dr. Dumesh’s peer review does not present a valid opinion on the necessity of the above-mentioned services.
4. Finally, Dr. Dumesh concludes: “I cannot confirm the medical necessity for the above MRI and ROM tests.” That statement does not indicate that his opinion is that the services were not medically necessary; it merely states that he’s unable to make a determination one way or the other.
5. Regarding the NCV/EMG testing, Dr. Burrei, as stated above, failed to review the crucial medical records. Further, he doesn’t even state when such testing would be appropriate. It is impossible to determine what he considers acceptable criteria for performing NCV/EMG tests and why that criteria wasn’t met in this particular case. His mere reference to published authority is “that the AANEM Guidelines note that electodiagnostic studies should not be performed if they are not to enhance the patient’s care.” Here, the NCV/EMG study was certainly performed in order to enhance the patient’s care.
6. I have reviewed all the medical records and I am of the opinion that the services in question were medically necessary.

Date: January \_\_\_, 2014

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sayeedus Salehin, M.D.