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Medical Document Reviewer Hired by an Insurer Does Not Owe a Duty to an Insured, Says the Third Circuit Court of Appeals

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The Third Circuit held that a doctor hired by an insurer to conduct a peer review assessment did not owe a duty to the insured. Working with what the court described as "terribly sad facts," Andrew Hamelsky and Rafael Vergara successfully advocated in favor of affirming the dismissal of the defendants hired to conduct a peer review of a health insurance claim.

This case highlights the importance of having medical professionals delineate the scope of the services being provided when making assessments of persons who did not hire them. When doctors are hired by an insurer to review medical records pertaining to an insured, it may be useful for them to describe in their reports who hired them, the purpose for which they were hired, and exactly what they did in furtherance of the role they were assigned. In the *Skelcy v. UnitedHealth Group, Inc.* case decided September 22, 2015, the Third Circuit examined the report of the doctor providing a peer review assessment in determining whether a duty of care was owed to the insured. Text from the doctor's report assisted in having the court conclude that no duty existed.

James Skelcy was afflicted with a connective tissue disease, dermatomyostis. In 2009, his health insurer approved Rituxan treatment, which proved effective. Mr. Skelcy's symptoms returned in 2010 and his doctor prescribed Rituxan or an IVIG infusion. The insurer denied the claim and Mr. Skelcy appealed it.

In processing the appeal, the insurer retained Medical Evaluation Specialists, Inc. (MES) for a peer review assessment. MES assigned Dr. Beighe to conduct that assessment. Dr. Beighe concluded upon a review of materials, including medical records, that Rituxan was not the standard of care but that IVIG would be at this point for Mr. Skelcy. The day after receiving Dr. Beighe's assessment, Mr. Skelcy's appeal was denied.

Approximately two weeks later, Mr. Skelcy's doctor pleaded with the insurer in a faxed letter. The insurer went on to approve the Rituxan treatment, but Mr. Skelcy died within 36 hours of that approval. Mr. Skelcy's wife brought suit in the United States District Court for the District of New Jersey.

The appellate court affirmed the district court's dismissal of the complaint against MES and Dr. Beighe because they did not owe a duty of care to Mr. Skelcy. The court determined that "[w]hether a physician owes any duty to an individual who is the subject of a peer review assessment as part of that individual's claim for health insurance coverage is a question that has not been addressed by the New Jersey Supreme Court." Accordingly, the court had to predict how the New Jersey Supreme Court would decide this case.

After reviewing New Jersey cases, the court concluded that while a traditional doctor-patient relationship or special duty is not required to maintain a negligence cause of action against a physician, the facts in this case did not support the finding of a duty of care. The court noted that cases relevant to the issue "involved personal interactions with or affirmative acts by a physician that induced the injured party to foreseeably and reasonably rely on the physician to discover or disclose serious illnesses." In this case, however, Mr. Skelcy had no interaction with Dr. Beighe. Based on the facts of the case, the court doubted that the New Jersey Supreme Court would recognize a duty and affirmed the dismissal of the claims against MES and Dr. Beighe.

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