

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
MDL No. 1334  
**MASTER FILE NO. 00-1334-MD-MORENO**  
(Case No. 04-21206)

IN RE: MANAGED CARE LITIGATION

**THIS DOCUMENT RELATES TO PROVIDER TRACK CASES**

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NORTH CAROLINA MEDICAL	)
SOCIETY,	)
	)
Plaintiff,	)
	)
v.	)
	)
BLUE CROSS BLUE SHIELD OF	)
NORTH CAROLINA,	)
	)
Defendant.	)

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**JOINT TAG-ALONG STATUS REPORT**

Pursuant to the Notice of Court Practice in MDL Tag-Along Actions and Order Closing Case for Statistical Purposes and Placing Matter in a Civil Suspense File dated May 27, 2004 (the "May 27 Order"), the parties submit the following Joint Tag-Along Status Report regarding the status of *North Carolina Medical Society v. Blue Cross Blue Shield of North Carolina*, which was transferred to this Court, pursuant to MDL Rule 7.4, by the Judicial Panel on Multidistrict Litigation (the "MDL Panel") from the United States District Court for the Eastern District of North Carolina, Western Division on May 24, 2004.

### 1.A. The Nature of the Claims Alleged in the Complaint

Plaintiff, the North Carolina Medical Society (“NCMS” or “Plaintiff”) filed its complaint in the Superior Court Division for the County of Wake, General Court of Justice of North Carolina on January 5, 2004, on behalf of its members and on its own behalf, alleging, *inter alia*, that Blue Cross Blue Shield of North Carolina (“BCBSNC” or “Defendant”) engaged in unfair and deceptive acts designed to delay, reduce and/or deny lawful reimbursement to physicians who are members of NCMS. (Compl. ¶ 1).

Plaintiff’s Complaint alleges that Defendant’s improper practices constitute violations of the North Carolina unfair trade practices statute, N.C. Gen. Stat. § 75-1.1, *et seq.*, the North Carolina Prompt Payment Law, N.C. Gen. Stat. § 58-3-225, and Civil Action for Obtaining Services Under False Pretenses, N.C. Gen. Stat. § 1-528.2, as well as common law claims including breach of contract accompanied by tortious interference and fraudulent acts.

Plaintiff’s complaint alleges that BCBSNC has employed a variety of means to effect the unfair and deceptive scheme alleged in the Complaint, including, but not limited to, the following alleged practices:

- systematically denying payment to NCMS members for medically necessary claims to achieve internal financial targets without regard for individual patients’ medical needs by, *inter alia*: (i) improperly employing software programs to automatically downcode procedures and/or deny payment to physicians without appropriate clinical review, oversight or justification; and (ii) improperly applying so-called “medical policies” or “guidelines” in a manner that BCBSNC knows is unreasonable for the purpose of denying payment to physicians for coverage for medically necessary treatments that have been rendered;

- failing to provide adequate staffing, staff training, or staff supervision to handle NCMS members' inquiries; routinely and unjustifiably failing to make payments to NCMS members within the time period prescribed by applicable provisions of North Carolina state law;
- requiring physicians to enter into one-sided physician agreements in order for them to provide medical care to patients who receive healthcare through Defendant's managed care plans; and
- making unreasonable demands, refunds or recoupments of "overpayments" of claims previously paid, even when the overpayment was based on Defendant's errors or other circumstances beyond the physician's control.

(Id. ¶ 3).

#### **1.B. The Nature of the Defenses Asserted by the Defendant**

Defendant asserts that Plaintiff lacks standing to bring this action on behalf of itself or its members. Defendant further asserts that Plaintiff's state law claims are preempted by the Employment Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*; and by the Federal Employee Health Benefits Act, as amended ("FEHBA"), 5 U.S.C. §§ 8901, *et seq.* Moreover, Defendant denies any and all imputations of fraudulent and/or improper conduct. Defendant notes that at the time this case was placed in the civil suspense file, the time for Defendant to file its response to the Complaint had not yet expired. Because Defendant has not yet responded to Plaintiff's Complaint, Defendant reserves the right to assert, at the appropriate time, all additional defenses and affirmative defenses.

**2.A. The Court in Which the Action Originated**

The action was originally brought in the Superior Court Division for the County of Wake, General Court of Justice of North Carolina. Defendant removed the case to the United States District Court for the Eastern District of North Carolina, Western Division.

**2.B. The Names of the Plaintiff and Defendant**

Plaintiff: North Carolina Medical Society

Defendant: Blue Cross Blue Shield of North Carolina

**2.C. The Attorneys Involved in the Action and Who They Represent**

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**3. Statement of the Current Status of the Proceedings and Whether Any Discovery has been Conducted**

On January 5, 2004, Plaintiff commenced this action by filing a complaint in the Superior Court Division for the County of Wake, General Court of Justice of North Carolina. Defendant removed the action to the Eastern District of North Carolina on February 20, 2004. Thereafter, pursuant to MDL Rule 7.5(e), Defendant notified the Clerk of the MDL Panel, that this action was a potential tag-along to MDL No. 1334. On or about March 19, 2004, Plaintiff filed a Motion to Remand to State Court.

On April 9, 2004, the MDL Panel issued an order conditionally transferring this action to MDL No. 1334. On April 19, 2004, Defendant filed with the Eastern District of North Carolina a Motion To Stay Proceedings And For An Extension Of Time (in which to respond to Plaintiff's Complaint and to oppose Plaintiff's Motion to Remand to State Court) ("Stay & Extension Motion"). On May 14, 2004, Plaintiff filed a Motion For An Order Extending Time To Respond To Defendant's Stay & Extension Motion. The Eastern District of North Carolina subsequently entered an order on May 18, 2004, granting Plaintiff's motion and ordering that the time in which Plaintiff may respond to Defendant's Stay & Extension Motion be extended to June 16, 2004. On or about May 24, 2004, this case was transferred to the Southern District of Florida for inclusion in MDL No. 1334.

To date, no discovery has been conducted in this action.

**4. List of Pending Motions**

Plaintiff's Motion to Remand to State Court (at the time this case was placed in the civil suspense file, the time had not yet run for Defendant to file its Opposition to Plaintiff's Motion to Remand to State Court).

**5. List of Issues Unique to the Tag-Along Action**

**Plaintiff's Position**

Plaintiff contends that, unlike the Main Provider Track case, *Charles B. Shane, M.D., et al. v. Humana, Inc., et al.* ("*Shane*"), all legal and factual allegations in this matter relate solely to whether Defendant has violated North Carolina state law by engaging in policies and practices specifically alleged in the Complaint.

**Defendant's Position**

The claims and underlying allegations of improper practices asserted in this action involve common questions of fact with the alleged improper practices underlying the claims asserted in *Shane*. For example, both actions involve allegations that the defendant insurers deny, delay and reduce reimbursement to providers for services rendered through a variety of tactics, including the downcoding and/or bundling of claims. There are certain issues unique to this action. First, BCBSNC is not named in *Shane* as a defendant. Second, BCBSNC is a not-for-profit entity and is a Blue Cross Blue Shield Association licensee, while the *Shane* defendants are for-profit entities. Third, in contrast to the *Shane* plaintiffs, NCMS has not asserted a RICO claim in this case. Rather, Defendant contends that Plaintiff asserts state-law claims which are completely preempted by ERISA and FEHBA, and which Plaintiff lacks standing to bring.

**6. Appendix Documents**

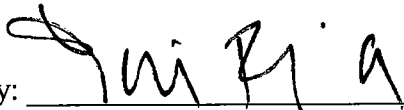
Complaint

Plaintiff's Motion to Remand to State Court

Undersigned counsel is authorized to represent that counsel for Plaintiff, Milberg Weiss  
Bershad & Schulman, consents to the filing of this Joint Tag-Along Status Report.

Dated: June 25, 2004.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Joint Tag-Along Status Report was served via U.S. mail, first-class postage pre-paid, this 25<sup>th</sup> day of June, 2004, on the following persons:

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And a final, signed and scanned version of the foregoing was sent via e-mail to all counsel of record on the Court's Service List, dated April 12, 2004.

  
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Lori Piechura