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KAGAN & GERTEL

KAGAN & GERTEL

Attorneys-at-Law
1123 Avenue J
Brooklyn, NY 11230
Tel: (718) 258-8080
Fax: (718) 253-3278

RECEIVED

OCT 03 2003

CHAMBERS OF JUDGE O'MALLEY

HOWARD KAGAN *

IRVING GERTEL

*Also admitted in New Jersey

October 1, 2003

Sulzer Settlement Trust
Claims Administrator
P.O. Box 94558
Cleveland, OH 44101-4558

Carl B. Stokes United States Courthouse
Att: Sulzer Appeals, Judge O'Mally
801 West Superior Avenue
Cleveland, OH 44113-1830

Re: Mejirema Feratovic
Claim No.: 118782316

Gentlemen:

We wish to appeal the denial of benefits determination regarding the claim of the above-named individual.

Please note that, although the Notice of Final Determination directed that appeals comply with Section 4.6(f) of the Settlement Agreement, we have never been provided with a copy thereof. We trust that this appeal is in conformity therewith.

Insofar as we are able to determine, Ms. Feratovic's claim was denied because it was ruled to have been untimely filed.

Although it is indeed true that the filing was technically untimely, that untimely filing was attributable to the fact that it was physically impossible for the claim to have been filed in a timely fashion.

Inasmuch as a specific requirement of proper documentation of the claim mandated that the claim papers be supported by appropriate medical and hospital records, immediately after our retention (see copy of retainer statement, annexed) on May 9, 2002, we wrote to Coney Island Hospital and Bellevue Hospital Center, (with appropriate medical record authorizations annexed) for copies of Ms. Feratovic's records. These records were crucially necessary, since all of Ms. Feratovic's medical and surgical treatment was at one or the other of these hospitals.

Not having heard from either hospital for approximately 3 weeks, we sent follow-up letters to each. Still not having heard from either one for yet another 3 weeks, we filed a formal complaint (see copy annexed) with the Office of Health Systems Management, the subdivision of the New York State Department of Health which insures that hospitals supply records when requested. On July 12, 2002, we were informed that the complaint was being forwarded from the main office to the New York City regional office (see copy annexed). Thereafter, on September 5, 2002 we were informed that the complaint had been received in the New York City regional office and that an investigation was being begun (see copy annexed).

We were subsequently informed by the person in charge at Bellevue Hospital Center that its 2,400 pages of records were sent to us in 8 separate envelopes in early September 2002. Unfortunately, they were addressed to an incorrect address and were returned to Bellevue Hospital Center. Eventually, these records made their way back to the desk of the correct administrator, who noted the incorrect address and re-sent them to us at the correct address. We finally received those 2,400 pages of records in late October 2002.

The 134 pages of records from Coney Island Hospital were also received in October 2002.

All of the records had to be reviewed, with appropriate dates and data being noted, and with appropriate entries being made in the claim forms, a herculean task considering that each of the more than 2,500 pages of records had to be reviewed. Because of the late date on which the records were received and the extreme bulk of those records, the review took a considerable period of time.

We understand that the cutoff date for filing of Ms. Feratovic's claim was approximately November 4, 2002, which date was exceeded by approximately 6 weeks. As set forth above, the filing date was missed because of the refusal of the two hospitals at which Ms. Feratovic received all of her treatment to voluntarily transmit her records to us, together with the inevitable delay entailed in compelling those hospitals to provide the records. Thus, although the filing date was missed in its strictest sense, the claim forms and supporting medical documents were in fact filed in a very short time after we finally succeeded in obtaining the records. There was no prejudice to anyone, except of course to Ms. Feratovic, by this late filing. The late filing was not attributable to any fault by the claimant, but rather is attributable to misconduct of her treating hospitals making a timely filing of her claim impossible.

Accordingly, in the peculiar circumstances herein involved, it is respectfully requested that the determination denying benefits to Mejirema Feratovic be vacated and that she be awarded all appropriate benefits.

All statements made herein are made under penalty of perjury.

Kagan & Gertel

A handwritten signature in black ink, appearing to read "Irving Gertel", written in a cursive style.

By: Irving Gertel



For office use:

NYC COA 5395395 JUN 12 02

RETAINER STATEMENT

TO: OFFICE OF COURT ADMINISTRATION
Retainer and Closing Statements
Post Office Box 2016
Church Street Station
New York, NY 10008

1. Date of agreement as to retainer 5/9/02
2. Terms of compensation Thirty Three and one-third (33 1/3%) 30% per cent of the sum recovered whether recovered by suit, settlement or otherwise.

3. Name and home address of client MATREMA FERTOVIĆ
1633 WEST 10th ST, #C1, BROOKLYN, NY 11223

4. *If engaged by an attorney, name and office address of retaining attorney

5. If claim for personal injuries, wrongful death or property damage, date and place of occurrence 9/01 (approx.)
Bellevue Hospital, NY, NY

6. If a condemnation or change of grade proceeding:
(a) Title and description

(b) Date proceeding was commenced

(c) Number or other designation of the parcels affected

7. Name, address, occupation and relationship of person referring the client GENERAL REPUTATION

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HOWARD KAGAN *

IRVING GERTEL

*Also admitted in New Jersey

June 28, 2002

Office of Health Systems Management
Bureau of Hospital Services
433 River Street, suite 303
Troy, NY 12180-2299

Re: Bellevue Hospital Center
First Avenue at 27th Street
New York, NY 10016

Re: Coney Island Hospital
2601 Ocean Parkway
Brooklyn, NY 11235

Gentlemen:

We wish to file a complaint against both of the above-named hospitals for their failure and refusal to respond to our requests for records.

We represent Ms. Mejrema Fertovic in connection with certain personal injury claims. With regard thereto, it is necessary that we obtain her hospital records from each of the above-named hospitals. We wrote to both hospitals on May 14 and June 10, 2002 requesting these records, but have never been accorded the courtesy of a response. A copy of our correspondence is enclosed.

Accordingly, the assistance of your Office is requested to facilitate transmission of those records to us as soon as possible.

Respectfully yours,



Kagan & Gertel
By: Irving Gertel



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

July 2, 2002

Irving Gertel
Kagan & Gertel
Attorneys at Law
1123 Avenue J
Brooklyn, New York 11230

Dear Mr. Gertel:

The New York State Department of Health has received your communications dated June 28, 2002, regarding your attempts to secure a copy of the medical record for patient, Mejrema Fertovic, from Bellevue Hospital Center and Coney Island Hospital.

Your communications have been forwarded to the New York Metropolitan Area Regional Office with the request that staff initiate appropriate action to address your concerns.

If you have any additional information to share with the department, you may contact the Regional Office directly at (212) 268-6554.

Thank you for bringing this matter to our attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martin J. Conroy', written over a rectangular stamp area.

Martin J. Conroy
Bureau of Hospital & Primary Care Services

SEP 5 2002 ij



STATE OF NEW YORK DEPARTMENT OF HEALTH

Metropolitan Area Regional Office

5 Penn Plaza

New York, New York 10001-1810

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 28, 2002

Irving Gertel
Kagan & Gertel, Esqs.
Attorney at Law
1123 Avenue J
Brooklyn, NY 11230

Facility: Coney Island Hospital
Complaint #02-07-50450

Dear Mr. Gertel:

This letter is to acknowledge receipt of your complaint against the above referenced facility. We will conduct an investigation and advise you of our findings upon completion.

Please be advised that The New York State Department of Health is dedicated to promoting quality health care in all of the State's hospitals. We strive towards this goal by measuring the care rendered to patients in comparison to a code of rules and regulations which all hospitals are required to provide.

The investigation process involves a review of the issues summarized in your complaint by trained personnel, an onsite visit to the facility, review of pertinent documents, including the medical record if applicable, and interviews with appropriate hospital personnel. The Department report of findings to you will indicate whether or not the hospital fulfilled the requirements of our State Hospital Code based upon the concerns you raised. It will not provide you with a detailed description of the medical care provided.

Thank you for bringing this matter to our attention.

Sincerely,

Mary Stevens
Complaint Unit Coordinator
Hospital Program
MARO

MS/dw