

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

DOCTORS SPECIALTY CARE, LLC,

Plaintiff,

v.

THE HEALTH PLAN OF WEST
VIRGINIA, INC.,

Defendant.

Civil Action No. 20-c-196

Judge Thomas A. Bedell

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CLERK OF COURT
HARRISON COUNTY
WEST VIRGINIA

ANSWER TO COMPLAINT

Defendant, The Health Plan of West Virginia, Inc., ("The Health Plan" or "Defendant"), by and through its undersigned counsel, hereby files its Answer to the Complaint filed by Doctors Specialty Care, LLC ("Plaintiff"), and states as follows:

1. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and, therefore, denies same and demands strict proof thereof.
2. The Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.
3. The Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Complaint.
4. The Defendant admits that it is a clinically-driven, technology-enhanced, and customer-focused health maintenance organization that manages and improves the health and well-being of its members. The Defendant admits that it contracts with employers. Defendant is

without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 4 of the Complaint, and, therefore, denies same and demands strict proof thereof.

5. The Defendant admits the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. The Defendant admits that there was a contractual relationship between the Plaintiff and The Health Plan. The remaining allegations of Paragraph 6 of Plaintiff's Complaint references a writing that speaks for itself.

7. Defendant admits that it entered into a Physician Agreement with Plaintiff on or about July 7, 2015. The remaining allegations of Paragraph 7 of Plaintiff's Complaint references a writing that speaks for itself.

8. Paragraph 8 of Plaintiff's Complaint references a writing that speaks for itself. Defendant denies all other allegations contained in Paragraph 8.

9. Paragraph 9 of Plaintiff's Complaint references a writing that speaks for itself.

10. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint, and, therefore, denies same and demands strict proof thereof.

11. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, and, therefore, denies same and demands strict proof thereof.

12. Paragraph 12 of Plaintiff's Complaint references a writing that speaks for itself.

13. The Defendant denies the allegations contained in Paragraph 13 of Plaintiff's Complaint and demands strict proof thereof.

14. The Defendant denies the allegations contained in Paragraph 14 of Plaintiff's Complaint and demands strict proof thereof.

15. The Defendant admits the allegations contained in Paragraph 15 of Plaintiff's Complaint.

16. The Defendant denies the allegations contained in Paragraph 16 of Plaintiff's Complaint and demands strict proof thereof.

17. Paragraph 17 of Plaintiff's Complaint states a legal conclusion to which a response is not required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 17 of the Plaintiff's Complaint.

COUNT I

Breach of Contract

18. Defendant incorporates by reference its responses to Paragraphs 1 through 17 of Plaintiff's Complaint.

19. Defendant denies the allegations contained in Paragraph 19 of Plaintiff's Complaint and demands strict proof thereof.

20. Defendant denies the allegations contained in Paragraph 20 of Plaintiff's Complaint and demands strict proof thereof.

21. Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint and demands strict proof thereof.

COUNT II

Violation of Prompt Pay Act

22. Defendant incorporates by reference its responses to Paragraphs 1 through 21 of Plaintiff's Complaint.

23. Paragraph 23 of Plaintiff's Complaint states a legal conclusion to which a response is not required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 23 of the Plaintiff's Complaint.

24. Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint and demands strict proof thereof.

25. Defendant denies the allegations contained in Paragraph 25 of Plaintiff's Complaint and demands strict proof thereof.

26. Paragraph 26 of Plaintiff's Complaint states a legal conclusion to which a response is not required. To the extent that a response is required, Defendant denies the allegations contained in Paragraph 26 of the Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's Complaint is barred, in whole or in part, based on the doctrines of accord and satisfaction, release, settled, discharge, ratification, and/or waiver.

Second Affirmative Defense

Plaintiff's Complaint is barred, in whole or in part, based on the failure to mitigate damages.

Third Affirmative Defense

Plaintiff's Complaint is barred, in whole or in part, based on his material breach of the underlying contractual documents.

Fourth Affirmative Defense

Plaintiff's damages, if any, were not proximately caused by any act or omission by The Health Plan, but by the acts or omissions of other persons or entities for whose actions The Health Plan is not legally responsible.

Fifth Affirmative Defense

The Health Plan invokes the doctrine of first breach and asserts that Plaintiff materially breached the contract between the parties and, therefore, cannot sue to enforce the provisions thereof.

Sixth Affirmative Defense

Plaintiff has failed to fulfill its duties and obligations under any contract which duties and obligations are conditions precedent to the maintenance of this action and, therefore, Plaintiff is not entitled to any recovery in its favor.

Seventh Affirmative Defense

To the extent it has any duty to Plaintiff, The Health Plan has not breached any such duty.

Eighth Affirmative Defense

Plaintiff's claims are barred by the Statute of Frauds.

Ninth Affirmative Defense

The Health Plan asserts all defenses set forth in W. Va. Code §§ 33-45-1 *et seq.*, including, but not limited to, the "another payor exception" and the remaining defenses set forth in W. Va. Code § 33-45-2(a)(1)(A)-(E).

Tenth Affirmative Defense

The Health Plan asserts that W. Va. Code §§ 33-45-1 *et seq.* is inapplicable to the allegations set forth in the Complaint pursuant to W. Va. Code § 33-45-8(f).

Eleventh Affirmative Defense

The Health Plan asserts that Plaintiff failed to exhaust all remedies or avenues for relief prior to the filing of this Civil Action as required by the underlying contractual documents.

Twelfth Affirmative Defense

Plaintiff's Complaint fails to state a claim or cause of action upon which relief can be granted against Defendant.

Thirteenth Affirmative Defense

The Health Plan reserves its right to assert additional affirmative defenses as set forth in Rule 8(c) of the West Virginia Rules of Civil Procedure.

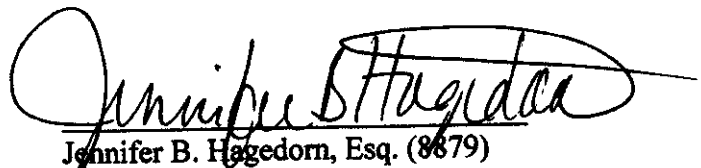
Fourteenth Affirmative Defense

Defendant reserves the right to amend its Answer and Affirmative Defenses if investigation, discovery and/or further information should warrant such amendments and, further, to assert any applicable defenses during the pendency of this action.

WHEREFORE, Defendant, The Health Plan of West Virginia, Inc., by counsel, respectfully requests this Honorable Court to: 1) deny the relief sought by Plaintiff's Complaint; 2) dismiss Plaintiff's Complaint with prejudice; 3) award it judgment against Plaintiff for the costs of defense, including reasonable attorney fees and associated expenses, as allowed by law; and 4) grant it such other relief as the Court may deem just and proper.

THE HEALTH PLAN OF WEST
VIRGINIA, INC.

Dated: December 4, 2020



Jennifer B. Hagedorn, Esq. (8879)
BOWLES RICE LLP
1800 Main Street, Suite 200
Canonsburg, PA 15317
Phone: 724-514-8915
Fax: 724-514-8954
E-Mail: jhagedorn@bowlesrice.com
Counsel for Defendant


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CLERK OF COURT

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 4th day of December, 2020, that a true and correct copy of the foregoing Answer to Complaint was served by depositing same in the U.S. Mail, postage prepaid, and addressed as follows:

Gregory H. Schillace, Esq.
Schillace Law Office
PO Box 1526
Clarksburg, WV 26302-1526


Jennifer B. Hagedorn, Esq. (8879)

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Bowles Rice

Attorneys at Law

Southpointe Town Center
1800 Main Street, Suite 200, Canonsburg, PA 15317
724.514.8915

Jennifer B. Hagedorn
jhagedorn@bowlesrice.com
T 724.514.8940
F 724.514.8954

600 Quarrier Street
Charleston, WV 25301

101 South Queen Street
Martinsburg, WV 25401

125 Granville Square, Suite 400
Morgantown, WV 26501

501 Avery Street
Parkersburg, WV 26101

1217 Chapline Street
Wheeling, WV 26003

480 West Jubal Early Drive, Suite 130
Winchester, VA 22601

bowlesrice.com

December 4, 2020

Albert Marano, Clerk
Harrison County Circuit Court
Harrison County Court House
301 W. Main Street
Clarksburg, West Virginia 26301

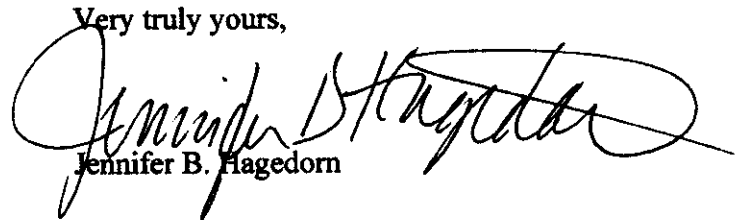
Re: Doctors Specialty Care, LLC v. The Health Plan of West Virginia, Inc.
Civil Action No. 20-C-196

Dear Mr. Marano:

Please find enclosed the *Answer to Complaint*, which I ask that you please place in the file of the above-referenced civil action. Copies have been provided to all parties of record. Should you have any questions or concerns, please do not hesitate to contact me.

Thank you for your assistance in this regard.

Very truly yours,



Jennifer B. Hagedorn

JBH/slf
Enclosures

cc: Gregory H. Schillace, Esq.

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HARRISON COUNTY
CLERK'S OFFICE