

**IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**DOCTORS SPECIALTY CARE, LLC,**

Plaintiff,

**vs.**

**Civil Action No. 20-C-196**

**Presiding Judge: Maryclaire Akers**

**Resolution Judge: David M. Hammer**

**THE HEALTH PLAN OF WEST VIRGINIA, INC.,**

**Defendant.**

**ORDER HOLDING DEFENDANT'S MOTION TO COMPEL IN ABEYANCE**

This matter came before the Court this 4 day of April, 2025. The Defendant The Health Plan of West Virginia, Inc., (hereinafter "THP" or "Defendant"), by counsel, has filed The Health Plan of West Virginia, Inc.'s Motion to Compel Discovery from Doctors Specialty Care, LLC. The Plaintiff, Doctors Specialty Care, LLC, (hereinafter "Plaintiff" or "Doctors"), by counsel, William M. Tiano, Esq., and the Defendant, The Health Plan of West Virginia, Inc., by counsel, Sandra Henson Kinney, Esq., have fully briefed the issues necessary. The Court heard oral argument at a hearing before the undersigned on April 3, 2025. So, upon the full consideration of the issues, the record, the oral arguments of the parties, and the pertinent legal authorities, the Court rules as follows.

**FINDINGS OF FACT**

1. At all times relevant to this case, THP was a managed care organization for Mountain Health Trust, the program created to provide health benefits for West Virginia Medicaid and West Virginia Children's Health Insurance Program ("WVCHIP") beneficiaries. *See* Reply, p. 1. Doctors Specialty Care, LLC operated a suboxone clinic and accepted

Medicaid patients, many of whom were THP members. *Id.* Plaintiff and THP were parties to a Physician Agreement from July 2015 until July 2018. *Id.* The Complaint was filed in August 2020, asserting, among other things, that THP failed and/or refused to timely pay claims in violation of the Prompt Pay Act, W. Va. Code §§ 33-45-1, *et seq.* *See* Complaint at Count II. *Id.*

2. On August 28, 2024, THP served Plaintiff with Defendant's Third Set of Interrogatories and Requests for Production of Documents, which asked Plaintiff to identify the total number of claims that Plaintiff asserts THP improperly denied between July 7, 2015 and August 31, 2018. *See* Def's Mot., p. 2, 5. The Court notes the Certificate of Service for this discovery request was attached to the instant motion as Exhibit A and Defendant's Third Set of Interrogatories and Requests for Production of Documents was attached to the instant motion as Exhibit I.
3. Responses were not received prior to the due date of September 28, 2024. *See* Def's Mot., p. 2. Throughout Fall and Winter 2024, the parties corresponded regarding the submission of the response, including correspondence regarding issues such as Plaintiff's access to THP's patient portal and review of claims data from the same, and the creation of a spreadsheet containing all claims. *Id.* at 2-5. The Court also notes counsel for Plaintiff, noted his appearance in this case after events out of Plaintiff's control regarding prior counsel's law license that required substitution. *See* Pl's Resp., p. 1.
4. On February 18, 2025, THP filed the instant The Health Plan of West Virginia, Inc.'s Motion to Compel Discovery from Doctors Specialty Care, LLC. THP moved this Court pursuant to Rule 37 of the West Virginia Rules of Civil Procedure to Compel Plaintiff to respond sufficiently to Defendant's Third Set of Interrogatories and Requests for

Production of Documents. *See* Def's Mot., p. 1. These discovery requests sought the identification of the claims Plaintiff alleges are at issue. *Id.* at 5.

5. On March 28, 2025, Plaintiff filed Plaintiff's Response to Defendant's Motion to Compel Regarding Third Set of Discovery, arguing this Court should deny the motion as premature and allow reasonable time for the parties to resolve the discovery dispute after access has been granted to the provider portal and time to review what has been submitted to the Defendant for payment, and receipt of the subpoena information/data from Change Healthcare. *See* Pl's Resp., p. 4.
6. On April 1, 2025, Defendant filed its Reply Memorandum Regarding Defendant's Motions to Compel Discovery, reiterating its position that Plaintiff has repeatedly failed to identify the specific claims at issue in this civil action, and arguing Plaintiff has access to the information requested. *See* Reply, p. 2-3.
7. A hearing was held on April 3, 2025.

### **CONCLUSIONS OF LAW**

In the instant motion, Defendant requests this Court order Plaintiff to respond fully to Defendant's Third Set of Interrogatories and Requests for Production of Documents. *See* Def's Mot., p. 7. Defendant's Third Set of Interrogatories and Requests for Production of Documents asked Plaintiff to identify the total number of claims that Plaintiff asserts THP improperly denied between July 7, 2015 and August 31, 2018. *Id.* at 5. Further, for each of the denial codes identified by Plaintiff, THP also posed a request for production:

For Claims that Defendant allegedly improperly denied with Message Code [INSERT CODE NUMBER] between July 7, 2015 and August 31, 2018, produce all documents that relate to, support, or substantiate Plaintiff's allegations that such Claims were Clean Claims.

*See* Def's Mot., Ex. I at Requests for Production Nos. 34-75.

Further, THP requested that Plaintiff produce each document upon which it will rely to establish that: (a) THP allegedly improperly denied its claims in violation of the Prompt Pay Act; and (b) THP breached the Physician Agreement between the parties. *See* Def's Mot., p. 6. THP also requested documents related to Plaintiff's downcoding its claims following a denial, and THP requested Plaintiff's internal communications regarding claims denied by THP and regarding its medical record documentation and formatting. *Id.*

West Virginia Rule of Civil Procedure 37(a)(3)(b) provides that a "party seeking discovery may move for an order compelling an answer . . . [or] production" if "a party fails to answer an interrogatory submitted under Rule 33 . . . or fails to produce documents or tangible things, as requested under Rule 34." W. Va. Civ. P. 37.

At the hearing, counsel for Plaintiff articulated how he has worked with counsel for Defendant and what affirmative steps he has taken to get the requested information produced to Defendant after his substitution from prior counsel. He stated that two of the doctors have retired and no nothing regarding the billing. He stated the parties were working together to check with four providers. He stated that the parties are in the process of getting data from the clearing house Change Healthcare after the existence of the use of the clearing house was discovered during a deposition in this matter. He stated there is subpoena return date in place for April 9, 2025. Counsel for Plaintiff requested another thirty days in light of these considerations and counsel for Defendant agreed this to be reasonable.


For these reasons, this Court finds the instant motion shall be held in abeyance for thirty days. Counsel for Defendant was instructed to contact the Court after thirty days if the subject discovery dispute is still in dispute.

### CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that The Health Plan of West Virginia, Inc.'s Motion to Compel Discovery from Doctors Specialty Care, LLC is hereby HELD IN ABEYANCE. The Court notes the objections and exceptions of the parties to any adverse ruling herein.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division Headquarters, 380 West South Street, Suite 4100, Martinsburg, WV 25401.

Enter: April 7, 2025

  
\_\_\_\_\_  
JUDGE MARYCLAIRE AKERS  
JUDGE OF THE WEST VIRGINIA  
BUSINESS COURT DIVISION