

## ANOTHER BLOW TO AMBULATORY CARE CENTERS

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The fight over the future of ambulatory centers took another turn last month with another court weighing in, this time against single room, unlicensed ambulatory centers charging facility fees. In the case of *Endo Surgi Center v. Liberty Mutual* a Union County Superior Court Judge held that a single-room, unlicensed surgery center was in violation of the Codey Law and the regulations of the New Jersey Board of Medical Examiners (“BME”). The Center is owned in part by the physician who personally performed his services at the facility.

Because the Center was in violation of the law, the Court found that it was not entitled to receive any facility fees for services provided at the Center.

In ruling against the Center the Court cited to the section of the Codey law which provides:

The restrictions on referrals of patients established in this section shall not apply to:

(1) a health care service that is provided at the practitioner’s medical office and for which the patient is billed directly by the practitioner.

The Court also relied upon BME’s own regulations which provide that the restrictions on referral of patients shall not apply to:

i. A health care service that is provided at the practitioner’s medical office, for which the patient is billed directly by and in the practitioner’s name.

Since the physician owner of the Center billed for his professional services under the name of his practice, and the disputed facility fees were billed under the name Endo Surgi Center, according to the Court, this violated the Codey Law’s prohibition on self-referrals.

In reaching its conclusion, the Court rejected arguments by Endo Surgi Center that having the doctor’s name on the bill as the doctor performing the service was sufficient to put the patient and insurer on notice, and that by doing so the material elements of the Codey law were met. According to the Court, this was no substitute for the requirements of the law, and failed to meet the objectives sought to be accomplished by the Codey Law and the BME’s regulations.

The Court also found that the exceptions provided under Codey and BME regulations, which allow physicians to refer to an ambulatory center in which they have a financial interest, only apply when the medical procedures involved are performed at the physician’s own office, and billed using the same office name. In so finding the court held that the law was explicitly clear, and that it does not permit “what is ultimately a self-referral to a facility that is owned by a different entity.”

The Court was also unimpressed by the argument that the BME does not find this relationship between ASC’s and physician owners, which appears widespread, to be problematic. The law, says the Court, is clear and cannot be altered by the BME. In reaching this finding the Court

made a point to note that the BME's effort to pass an emergency amendment to legitimize this type of activity was inconsistent with the plain language of the law and had the Governor signed the emergency amendment, it would have been stricken by the Courts as an invalid exercise of regulatory authority.

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