

ALERT

Ruskin Moscou Faltischek's Health Law Capabilities

- Strategic Planning
- Corporate Reorganizations, Mergers and Joint Ventures
- Federal and State Regulation Compliance, including HIPAA
- Purchases/Sales of Hospitals and Practices
- Intellectual Property Issues
- Contracts — Managed Care, Insurance, Management and Employment
- Equipment Acquisitions
- Certificates of Need
- Professional Licensing and Disciplinary Proceedings
- Hospital and Physician Privilege Disputes
- Creation of Compliance Plans and Fraud Detection Systems
- Anti-Referral Law Counseling
- Formation of PCs, LLCs and Shareholder Agreements
- Defense of Medicare/Medicaid Investigations

For additional information on this or any health law related issue, please contact RMF's Health Law Department co-chairs: Alexander G. Bateman, who can be reached at 516-663-6589 or abateman@rmfpc.com or Jay B. Silverman, who can be reached at 516-663-6606 or jsilverman@rmfpc.com

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Comptroller's Audits Knocked Out: Down 2-0, the State Goes to the Bullpen

As Major League Baseball resumes play after the All-Star break, it appears that New York State is borrowing a page out of a big league manager's playbook by replacing its starting pitcher, the Comptroller's office, with the State Insurance Department in an effort to continue examining out-of-network healthcare providers.

In a previous Alert, we wrote about *South Island Orthopedic Group, P.C. v. DiNapoli*, wherein a Supreme Court judge in Albany agreed with the arguments raised by Ruskin Moscou Faltischek on behalf of South Island and concluded that the New York State Constitution does not empower the Comptroller to audit private medical entities that provide out-of-network treatment to patients insured by the State's Empire Plan.

In June, the judge in a similar case handled by RMF, *Martin Handler M.D., P.C. v. DiNapoli*, agreed with the *South Island* decision and invalidated the Comptroller's audit of billing records relating to the State's claim that the practice failed to collect the correct amount from out-of-network Empire patients. Both the *South Island* and *Handler* courts made it clear that the Comptroller's constitutionally flawed audits cannot serve as the basis for future action against the practices. These decisions are two important "runs" that RMF scored against the State on behalf of medical providers.

Now, it appears that the State has gone to the bullpen and called upon a reliever to replace the Comptroller in an effort to keep the State in the game. RMF has recently been contacted by several providers who have received demand letters and subpoenas from the Frauds Bureau of the Insurance Department in connection with this issue. This is not the first time that RMF has faced off against the Insurance Frauds Bureau. Our innovative and successful challenges to the State in *South Island* and *Handler* put us in a unique position to defend against the bureau's inquiries, and it is recommended that providers who receive any correspondence from the bureau contact us before responding.

All inquiries should be directed to either Alexander Bateman, Chair of the Health Law Department, or Matthew Didora of RMF's Litigation Department, at (516) 663-6600.