10 Fla. L. Weekly Supp. 346a

Insurance -- Personal injury protection -- Standing -- Assignment -- Medical provider did not have standing to sue insurer where assignment states that it is for benefit of entity which is not related to or affiliated with medical provider and assignment does not mention medical provider -- HCFA form which was submitted by other entity and is not countersigned by insured does not create valid assignment -- Notice -- Medical provider has not complied with condition precedent to provide insurer with sufficient notice of loss where chiropractor who performed videofluoroscopy and range of motion tests at issue was neither licensed as medical practitioner nor certified as technician in Florida -- Lawfully rendered services -- Medical provider failed to lawfully render treatment to insured where provider violated law by allowing chiropractor to perform test without verifying his licensure or certification, and chiropractor violated law by testing insured without holding valid license or certificate -- Services to insured were not lawfully rendered where medical provider violated administrative rule by using mobile unit to perform videofluoroscopy test when it was practicable for insured to travel to stationary radiographic installation -- HCFA Form -- Medical provider failed to comply with condition precedent to filing suit by knowingly and intentionally providing false, misleading, incomplete or patently deceptive information on HCFA Form by falsely indicating that it had insured's signature on file, that no outside lab performed test, and that test was performed in its office rather than mobile lab; billing for 5 anatomical areas although only one area was tested; billing for professional component of test that it did not render; misrepresenting cost of services; indicating medical provider's owners performed or supervised test; and naming as medical provider entity which is not registered corporation or fictitious name -- Medical provider failed to "render treatment" within meaning of section 627.736 and cannot recover for treatment, where treatment was provided by independent contractor -- Medical provider failed to comply with condition precedent and failed to lawfully render services where provider did not perform professional component of test but copied report of physician who performed professional component onto its own letterhead and submitted report to justify billing for professional component -- Medical provider which merely provided mobile testing van used to perform test provided no "necessary medical, surgical, x-ray, dental, and rehabilitative services" or the like to insured and is not healthcare provider entitled to PIP benefits -- Patient brokering -- Medical provider's activities constitute clear violation of public policy and statutes prohibiting patient brokering and split-fee arrangements -- Summary judgment granted in favor of insurer -- Questions certified

MOTION X-RAY, INC. d/b/a NU-BEST DIAGNOSTICS LABS, INC. as assignee of JOEL PACKARD, Plaintiff, vs. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant. County Court, 9th Judicial Circuit in and for Orange County. Case No. SC099-3386. September 3, 2002. C. Jeffery Arnold, Judge. Counsel: Robert Shea. Jeffrey Albert. Mark Barth. Donald J. Masten. Rebecca L. Bench. Robert M. Lyerly. Melissa M. McCullough.

FINAL SUMMARY JUDGMENT IN FAVOR OF DEFENDANT, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

THIS MATTER having come before the Court for hearing on March 7, 2002, March 11, 2002 and May 2, 2002 on Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY's, Motions for Final Summary Judgment, and the Court having reviewed the Court file, including all record evidence presented, the parties' motions and supporting documents, and the Court having heard argument of counsel and being otherwise fully advised in the premises.

It is hereby ORDERED and ADJUDGED as follows:

I. *NATURE OF CASE*

1. Plaintiff brought this action pursuant to an alleged assignment of benefits seeking recovery of personal injury protection ("PIP") benefits under § 627.736, Florida Statutes, to recover said benefits as a result of a videofluoroscopy rendered to STATE FARM's insured under an automobile insurance policy issued by STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ("STATE FARM").

2. STATE FARM sought summary judgment on six (6) different grounds as set forth below.

A. PLAINTIFF'S LACK OF STANDING

STATE FARM asserted that Plaintiff is not entitled to payment of any PIP benefits because the undisputed record evidence established that Plaintiff was not the real party in interest as the insured did not assign his benefits to Plaintiff. Plaintiff had no standing to sue STATE FARM for the bill at issue at the time it filed suit.

B. PLAINTIFF'S VIOLATIONS OF FLORIDA STATUTES, §468.302 AND FLORIDA ADMINISTRATIVE CODE 64E-5.502

STATE FARM asserted that the technical component of the videofluoroscopy test at issue was performed by Brent Baldasare of Baldasare, Inc. The undisputed record evidence showed that, at the time that the test was performed, Brent Baldasare was not a licensed chiropractor or radiologic technician. Further, the evidence established that Brent Baldasare was not working under any other individual's chiropractic license or under the direct supervision of a licensed chiropractor at the time that he performed the test. In addition, it was unlawful for Plaintiff to hire an unlicensed technician. As such, Plaintiff violated Florida Statutes, §468.302, Florida Statutes, §468.311 and Florida Administrative Code §64E-5.502 when it allowed Brent Baldasare to perform the videofluoroscopy test.

Further, Plaintiff violated §64E-5.502, Florida Administrative Code, by utilizing a mobile testing van when it was practicable for STATE FARM's insured to go to a stationary radiographic installation.

C. PLAINTIFF'S FAILURE TO COMPLY WITH STATUTORY CONDITIONS PRECEDENT OF FLORIDA STATUTES, §627.736(5)(a) AND (5)(d) -- PATENTLY DECEPTIVE HCFA

STATE FARM asserted that the undisputed material facts demonstrated that the information provided on the Healthcare Finance Administration ("HCFA") 1500 claim form submitted by Nu-Best Diagnostics Labs was false, misleading, incomplete and patently deceptive. As a result, Plaintiff failed to comply with statutory conditions precedent to filing suit by failing to submit a properly completed HCFA.

D. PLAINTIFF'S USE OF IMPROPER CPT CODES AND FAILURE TO SUBMIT A LEGITIMATE WRITTEN REPORT (GLOBAL BILLING)

STATE FARM asserted that the undisputed material facts demonstrated that the current procedural terminology ("CPT") code utilized on the HCFA submitted by Nu-Best Diagnostics Labs was incomplete, inaccurate, misleading and patently deceptive. Specifically, STATE FARM argued that Plaintiff billed for professional services it did not render and failed to comply with the minimum record-keeping standards promulgated by the Board of Chiropractic Medicine.

E. PLAINTIFF'S FAILURE TO RENDER TREATMENT

STATE FARM sought summary judgment as a matter of law on the ground that Plaintiff did not *lawfully render* any medical services to STATE FARM's insured. The undisputed facts established that Brent Baldasare of Baldasare, Inc. actually rendered the medical services to STATE FARM's insured. Therefore, Plaintiff's solicitation of

payment for services it did not render violated Florida Statutes, §627.736(5)(d), Florida Statutes, §817.061 and Florida Statutes, §817.234.

F. PLAINTIFF'S ILLEGAL FEE SPLITTING

STATE FARM asserted that the undisputed evidence demonstrated the Plaintiff's activities did not constitute a necessary, reimbursable or "lawful service" either under Florida's PIP Statute or STATE FARM's policy because Plaintiff's activities amounted to fee splitting under Florida Statutes, §817.505 and Florida Statutes, §456.054.

3. The Court hereby grants each of STATE FARM's Motions for Final Summary Judgment for the reasons outlined below.

II. *FINDINGS OF FACT*

4. The material facts in support of STATE FARM's motions are undisputed and established by the pleadings and the evidence. Plaintiff did not file any affidavits in opposition to STATE FARM's Motions for Summary Judgment.

5. On November 18, 1997, Plaintiff entered into a Franchise Agreement with Nu-Best Franchising, Inc. wherein Plaintiff was granted exclusive jurisdiction to perform videofluoroscopy tests in Orange and Seminole Counties in Florida.

6. There are several business entities involved in Plaintiff's claim. The entities and their relationship to this action are as follows:

a. Nu-Best Franchising, Inc. owns the rights to sell videofluoroscopy machines within the United States for V.F. Works, Inc. Nu-Best Franchising, Inc. is owned and operated by John Postlethwaite.

b. "Nu-Best" is a registered trademark for Nu-Best Franchising, Inc.

c. V.F. Works, Inc. manufactured the videofluoroscopy machines used by Nu-Best Franchisee's. V.F. Works, Inc. is owned by John Postlethwaite.

d. Nu-Best Diagnostic, Inc. is a dissolved Florida corporation, which was owned and operated by John Postlethwaite, and Paul Reveling.

e. Plaintiff, Motion X-Ray, Inc. is a Florida corporation owned and operated by Rick Argall and France Carpentier (hereinafter "ARGALL" and "CARPENTIER," respectively). Plaintiff filed a fictitious name Nu-Best Diagnostic Labs on March 1, 2000.

f. Baldasare, Inc. is a Florida corporation owned and operated by Brent Baldasare. Brent and Angela Baldasare operated Baldasare, Inc. out of their home located at 10868 Norcross Circle, Orlando, Florida.

g. Nu-Best Diagnostic Labs, Inc. is owned and operated by John Postlethwaite.

h. There are six (6) entities within the State of Florida that have utilized the fictitious name Nu-Best Diagnostic Labs.

i. The name Nu-Best Diagnostic*s* Labs is not a registered fictitious name or corporation within the State of Florida.

7. This is one of nine cases, which were consolidated for the purpose of summary judgment. In each of the cases, the services were allegedly performed between July 1998 and June 1999. Plaintiff initially filed suit under Nu-Best Diagnostics Labs, Inc., Nu-Best Diagnostics Labs and Motion X-Ray, Inc. On March 22, 2002, this Court entered an order allowing Plaintiff to substitute parties to this litigation. Motion X-Ray, Inc., d/b/a Nu-Best Diagnostics Labs thereafter, became the Plaintiff in all nine cases.

8. Pursuant to the terms of the franchising agreement, Nu-Best Franchising, Inc. sent out advertising throughout the State of Florida soliciting referrals through its toll free numbers and website. Nu-Best Franchising, Inc. sent all referrals for Seminole and Orange County to Baldasare, Inc. For these services, Plaintiff paid Nu-Best Franchising, Inc. the greater of $500 or 5% of gross sales for each month's sales of videofluoroscopies. In addition, both Plaintiff and Baldasare, Inc. solicited patients, referred them to Baldasare, Inc. and allowed Plaintiff to bill for the service.

9. STATE FARM's insured was involved in an automobile accident and sought treatment with a referring chiropractor for injuries associated with the accident. The referring chiropractor recommended that the insured undergo a videofluoroscopy test.

10. Neither ARGALL nor CARPENTIER ever performed any services on STATE FARM's insured. Instead, Plaintiff contracted with an independent corporation, Baldasare, Inc., to perform the videofluoroscopy tests. Plaintiff paid Baldasare, Inc. a set monthly fee plus a percentage of the revenue generated from performing the test. For Plaintiff, it was strictly a business venture.

11. According to the oral contract between Plaintiff and Baldasare, Inc., Baldasare, Inc. operated and maintained the mobile testing vehicle, solicited clients, obtained the necessary paperwork, performed the videofluoroscopy tests and directly paid the salaries of all of the employees who performed the videofluoroscopy on STATE

FARM's insured. Plaintiff simply provided the mobile testing vehicle; paid Baldasare, Inc. a base fee for its services and a percentage of all revenue generated by performing videofluoroscopy tests; and reimbursed Baldasare, Inc. for all of its marketing expenses, maintenance expenses and other general expenses. Plaintiff never directly paid any of Baldasare, Inc.'s employees.

12. Prior to performing the videofluoroscopy test, Brent Baldasare made sure he obtained the prescription from the referring physician; the insurance verification log; a provider lien; an assignment of benefits for a "Nu-Best Entity"; an assignment of benefits for William E. Gatlin, Inc.; and a medical release form. Baldasare also performed range of motion testing on STATE FARM's insured.

13. Brent Baldasare, while employed by Baldasare, Inc., performed the videofluoroscopy in a mobile van while it was parked outside of referring chiropractor's office. Brent Baldasare was not working under either ARGALL's or CARPENTIER's chiropractic licenses when he performed the test. STATE FARM's insureds were capable of traveling to a stationary radiographic facility and it was not impracticable to transfer the insured to a stationary radiographic facility. STATE FARM's insured traveled to the referring chiropractor's office to have the test performed.

14. STATE FARM's insured signed a form entitled "Assignment of Benefits" which states as follows:

ASSIGNMENT OF BENEFITS

"I, _____, hereby assign all rights, title, and interest from my automobile insurance policy to NU-BEST DIAGNOSTIC, INC., for payment for services rendered to me by NU-BEST DIAGNOSTIC, INC. on _____."

ASSIGNMENT OF CAUSE OF ACTION

"I _____, by this instrument assign all rights and causes ofaction in tort, in contract, and the Laws of Florida against _____ for its failure to pay for services rendered to me NU-BESTDIAGNOSTIC, INC., on _____."

15. Plaintiff was not mentioned in the alleged Assignment of Benefits. Plaintiff was not identified as the entity providing the services in the Healthcare Finance Administration Claim Form 1500 (hereinafter "HCFA") submitted to STATE FARM.

16. Brent Baldasare only performed the technical component of the videofluoroscopy. He did not perform the professional component. At that time, Brent Baldasare was

neither a chiropractic physician[1] nor a certified radiological technician authorized to perform the test pursuant to Florida Law.[2] Brent Baldasare did not maintain any of the records that a chiropractor would be required to maintain,[3] and was not licensed as a chiropractic physician.

17. STATE FARM received a HCFA in the amount of $650.00, submitted by Nu-Best Diagnostic*s* Labs for the videofluoroscopy tests. Nu-Best Diagnostic*s* Labs did not lawfully exist. Nu-Best Diagnostic*s* Labs' HCFA utilized CPT code 76120. CPT Code 76120, unless modified, specifically includes a written report of the examination and test results. Plaintiff did not author a written report.

18. The HCFA submitted by a medical provider is supposed to contain the basic information required by Florida Statutes, so that an insurance company can determine whether payment should be made. The 1998 and 1999 Florida PIP Statute required that Plaintiff's claim be submitted on a HCFA 1500 form with the correct CPT Coding.

19. STATE FARM also received a HCFA from William E. Gatlin, Inc. for the interpretation of the videofluroscopy on STATE FARM's insured. Dr. Gatlin submitted his report with his own letterhead, “William E. Gatlin, Inc.” His HCFA billed for CPT code 76125 with the modifier -26. When a physician adds the modifier -26 to the CPT code number, it is billing for the professional component only.

20. As a matter of custom and practice, Nu-Best Diagnostic*s* Labs obtained Dr. William E. Gatlin's report then altered the report by placing Nu-Best Diagnostic*s* Lab's own letterhead on Dr. Gatlin's report (with the Nu-Best Franchising website and toll free number), and offered the report as Nu-Best Diagnostic*s* Labs' own to justify billing for the professional component of the videofluoroscopy. The Court finds that Nu-Best Diagnostic*s* Labs' report and HCFA falsely indicated that it performed the professional component.

21. Dr. Gatlin submitted his HCFA on a date separate and distinct from the date Nu-Best Diagnostic*s* Labs submitted its report and HCFA, billing for CPT code 76125 rather than 76120. STATE FARM's adjuster was deceived by Plaintiff's conduct, and did not realize that multiple copies of Dr. Gatlin's report was being submitted on different letterhead, to support different CPT codes for the professional component.

22. Plaintiff knowingly and intentionally represented itself to be the supplier of the videofluoroscopy services for which it sought payment despite the fact that it knew representatives from Baldasare, Inc. actually performed the test, and despite the fact that it did not perform the professional component of the test.

23. The Court specifically finds that Plaintiff did not provide any treatment, medical or x-ray service to STATE FARM's insured. Brent Baldasare actually performed and rendered the test on STATE FARM's insured. Plaintiff simply contracted with Baldasare, Inc. to perform the test and provided the mobile testing vehicle.

24. The HCFA submitted by Nu-Best Diagnostic*s* Labs was false, misleading, incomplete, patently deceptive and designed to conceal the true facts and circumstances surrounding Nu-Best Diagnostic*s* Labs' claim. The statements are as follows:

a. Box 12 of the HCFA requires the signature of the insured to authorize the release of the medical records necessary to process the claim. Box 13 of the HCFA requires the signature of the insured to authorize payment of medical benefits to the physician or supplier who executes Box 31. Neither Box 12 nor 13 of the HCFA submitted by Nu-Best Diagnostic*s* Labs is signed. Instead both Boxes merely state "Signature on File." Nu-Best Diagnostic*s* Labs did not have a signature on file. Plaintiff knew or should have known it did not have a signature on file. Plaintiff knew that STATE FARM would rely on the HCFAs in making a claim decision.

b. Box 20 of the HCFA asks the provider to indicate whether an outside lab performed the videofluoroscopy test on the insured. Nu-Best Diagnostic*s* Labs checked "No". Checking "Yes" in Box 20 indicates that an entity other than the entity billing for the service performed the diagnostic test. A "No" in Box 20 indicates that no purchased tests are included on the claim. When "Yes" is indicated, item 32 must be completed. By checking "No" in Box 20, Nu-Best Diagnostic*s* Labs falsely alleged that no outside diagnostic lab was used even though Plaintiff used Baldasare, Inc., an independent company, to perform the diagnostic test. No one from Plaintiff's company ever performed the professional components of a videofluoroscopy on STATE FARM's insured.

c. Nu-Best Diagnostic*s* Labs also certified in Box 24(b) of the HCFA that the services were performed in Nu-Best Diagnostic*s* Labs' office by placing code "11" within said Box. Code "11" is only used when the physician or supplier is billing for medical services performed in the physician's office or the supplier's office.

d. Box 31 of the HCFA is not stamped or signed. CARPENTIER's name and "Signature on File" is typed into the Box. Box 32 of the HCFA is the medical supplier's certification that:

[t]he services shown on this form were medically indicated and necessary for the health of the patient and were personally furnished by me or were furnished incident

to my professional service by my employee under my immediate personal supervision . . . For services to be considered as "incident" to a physician's professional service,

1) they must be rendered under the physician's immediate personal supervision by his/her employee,

2) they must be an integral, although incidental part of a covered physician's service,

3) they must be of kinds commonly furnished in physician's offices, and

4) the services of nonphysicians must be included on the physician's bills.

The use of the language "Signature on File" in Box 31 is meaningless. There is no statutory or regulatory basis for the response. Typing "Signature on File" does not assure the Insurance Company that Plaintiff actually performed the videofluoroscopy.

e. Nu-Best Diagnostic*s* Labs left the portion of the form (Box 32) that requested the name and address of the facility where the services were rendered if different than the supplier (which Nu-Best Diagnostic*s* Labs indicated was itself). The test was not performed at the address listed in Box 33 (Pinellas County). The test was actually performed within the mobile testing van while parked outside the office of the referring chiropractor.

f. Box 33 of the HCFA claim form requires the "Physician Supplier's Billing Name, Address, Zip Code & Phone #." Nu-Best Diagnostic*s* Labs asserted that the Physician's or Supplier's Billing Name, Address and Zip Code was "Nu-Best Diagnostic*s* Labs, 5, Birdie Lane, Palm Harbor, Florida 34683. Nu-Best Diagnostic*s* Labs was not the Physician's or Supplier's Name because there is no corporation or fictitious name registered in the State of Florida as "Nu-Best Diagnostics Labs." The address listed in Box 33 was ARGALL and CARPENTIER's home address.

25. Had STATE FARM paid the claim as requested, the fee in this case would have been split between Plaintiff and Baldasare, Inc. and between Plaintiff and Nu-Best Franchising, Inc.

26. The Court finds the manner in which the HCFA was completed was false, misleading, incomplete and patently deceptive. Based on the forgoing, the HCFA is legally deficient. Plaintiff did not perform any treatment or necessary medical service. To the extent Plaintiff performed *any* services they were unlawful.

III. *CONCLUSIONS OF LAW -- LACK OF STANDING*

27. The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or mixed findings of fact and conclusions of law.

28. Plaintiff, at the time it filed suit, did not have a valid assignment of benefits executed by STATE FARM's Insured. Consequently, Plaintiff does not have standing to maintain the present cause of action. The assignment attached to Plaintiff's complaint clearly states that the assignment is for the benefit of Nu-Best Diagnostic, Inc. Plaintiff is in no way related to or affiliated with Nu-Best Diagnostic, Inc. Furthermore, Plaintiff is not mentioned anywhere in the alleged assignment.

29. In addition, this Court in determining whether or not the HCFA created a valid assignment of benefits follows the rule set forth in the cases of *Hartford Insurance Company of the Southeast v. St. Mary's Hospital, Inc.,* 771 So. 2d 1210 (Fla. 4th DCA 2000) and *Security National Ins. Co. v. Biotronix Laboratories, Inc.,* 6 Fla. L. Weekly Supp., 314 (Fla. 11th Cir., Dade County, March 12, 1999), which interpreted Florida Statutes, §627.736(5)(a) as requiring the patient's countersignature in Box 13 of the HCFA in order to create an enforceable assignment pursuant to Florida's No-Fault Law.

30. Plaintiff's HCFA was submitted by Nu-Best Diagnostic*s* Labs. Nu-Best Diagnostic*s* Labs is neither a fictitious name nor corporation recognized by the State of Florida. Further, the HCFA submitted by Nu-Best Diagnostic*s* Labs is not countersigned[4] by STATE FARM's insured, and does not meet the condition precedent outlined in Florida Statutes, §627.736(5)(a) to create a valid assignment of rights under the policy of insurance.

31. Based upon the undisputed facts established in the record and as set forth above, the Court concludes that Plaintiff is not entitled to benefit from this lawsuit because it does not have a valid assignment of benefits executed by STATE FARM's insured. As such, Plaintiff lacks standing to sue STATE FARM for the medical services at issue and STATE FARM is entitled to Final Summary Judgment as a matter of law.

IV. *CONCLUSIONS OF LAW -- LICENSURE -- CONDITIONS PRECEDENT -- FLORIDA STATUTES, §627.736(5)(d)*

32. The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or mixed findings of fact and conclusions of law.

33. Brent Baldasare did not possess a valid license to perform the videofluoroscopy or range of motion test on STATE FARM's insured as required by Florida Statutes, and Florida Administrative Code.

Florida Statutes, §627.736(5)(d) states in pertinent part:

* * *

No statement of medical services may include charges for medical services of a person or entity that performed such services without possessing the *valid licenses* required to perform such services. For purposes of paragraph (4)(b), an insurer shall not be considered to have been furnished with notice of the amount of covered loss or medical bills due unless the statements or bills comply with this paragraph.

(Emphasis Added)

34. At the time Brent Baldasare performed the videofluoroscopy test on STATE FARM's insured, he was neither a licensed medical practitioner as defined by Florida Statutes, §468.301(10) nor a certified technician as required by Florida Statutes, §468.301(3). In addition, Brent Baldasare, prior to performing the videofluoroscopy test, performed range of motion testing on STATE FARM's insured.[5]

35. Consequently, as a matter of law, Plaintiff has not furnished STATE FARM with sufficient notice of the loss, and thereby failed to comply with the statutory conditions precedent established by Florida Statutes, §627.736(5)(d).

V. *CONCLUSIONS OF LAW -- LICENSURE -- LAWFULLY RENDERED -- FLORIDA STATUTES, §627.736(5)(a)*

36. The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or mixed findings of fact and conclusions of law.

37. Plaintiff failed to *lawfully render* treatment as required by Florida Statutes, §627.736(5)(a).

38. Florida Statutes, §627.736(5)(a) provides in pertinent part:

Any physician, hospital, clinic, or other person or institution *lawfully rendering treatment* to an injured person for a bodily injury covered by personal injury protection insurance may charge only a reasonable amount for products, services, and accommodations rendered, and the insurer providing such coverage may pay for such charges directly to such person or institution *lawfully rendering such treatment*, if the insured receiving such treatment . . . has countersigned the invoice, bill, or claim form approved by the Department of Insurance upon which such charges are to be paid for

as having actually been rendered to the best knowledge of the insured or his or her guardian.

(Emphasis Added)

39. At the time Brent Baldasare performed the videofluoroscopy test on STATE FARM's insured, he was neither a licensed medical practitioner as defined by Florida Statutes, §468.301(10) nor a certified technician as required by Florida Statutes, §468.301(3).

40. Practicing radiologic technology without holding an active certificate to do so or employing, for the purpose of applying ionizing radiation to any human being is unlawful. It is a clear violation of Florida Statutes, §468.302[6] and is punishable as provided in Florida Statues, §468.311.[7] The court finds that, it was unlawful for Plaintiff to hire Baldasare, Inc. (Brent Baldasare) to perform the videofluoroscopy services without verifying his licensure or certification prior to allowing him to perform any radiographic testing.

41. In addition, Brent Baldasare violated Florida Administrative Code, §64E-5.502(1)(a)(8)(e)[8] when he performed the videofluoroscopy test on STATE FARM's insured without holding a valid license or certificate to perform said test. Consequently, as a matter of law, Plaintiff did not"*lawfully render treatment*"to STATE FARM's insured pursuant to Florida Statutes, §627.736(5)(a).

VI. *CONCLUSIONS OF LAW -- USE OF MOBILE EQUIPMENT -- LAWFULLY RENDERED FLORIDA STATUTES, §627.736(5)(a)*

42. The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or mixed findings of fact and conclusions of law.

43. Plaintiff failed to *lawfully render* treatment as required by Florida Statutes, §627.736(5)(a). Florida Administrative Code, §64E-5.502(1)(a) states in pertinent part:

* * *

(8) Exposure Procedures Designated to Minimize Patient and Personal Exposure.

c. Portable or mobile equipment *shall be used only* for examinations where it is impractical to transfer the patient to a stationary radiographic installation.

* * *

(Emphasis Added)

44. Florida Administrative Code, §64E-5.501(92)(a) defines "Mobile" as "x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled." This court finds that Plaintiff's machine is a Mobile X-Ray Device.

45. The uncontradicted facts established that it was practicable for STATE FARM's insured to travel to a stationary radiographic installation. STATE FARM's insured traveled to the referring physician's parking lot to have the test performed.

46. Furthermore, Plaintiff's use of a mobile testing facility to perform the videofluoroscopy test on STATE FARM's insured violated Florida Administrative Code, §64E-5.502(1)(a)(8)(c) because it was practical to transfer STATE FARM's insured(s) to a stationary radiographic installation. There was no need to utilize a mobile testing facility.

47. Based on the foregoing, the services were performed in violation of Florida Administrative Code §64E-5.502(1)(a)(8)(c), and consequently were not lawfully rendered pursuant to Florida Statutes, §627.737(5)(a) and Plaintiffs' claims are void as a matter of Public Policy.

VII. *CONCLUSIONS OF LAW -- FAILURE TO COMPLY WITH STATUTORY CONDITIONS PRECEDENT -- PATENTLY DECEPTIVE HCFA -- FLORIDA STATUTES, §627.736(5)(a) and (d)*

48. The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or mixed findings of fact and conclusions of law.

49. When a physician signs a HCFA he or she certifies that the information contained therein is true and correct.[9] It is unlawful for any healthcare provider to submit a HCFA to an insurance company knowing it contains any misrepresentation or any false, incomplete or misleading information. The legislature, by requiring healthcare providers to utilize the current CPT codes on the HCFA intended that the healthcare provider fill out the HCFA in a truthful, complete and accurate manner.

50. The Court finds there is no justiciable issue of law or fact that Plaintiff's HCFA is false, misleading, incomplete, and patently deceptive based on the facts outlined above and for the reasons outlined below.

HCFA BOX 12 & 13

51. Box 12 of the HCFA requires the signature of the insured to authorize the release of the medical records necessary to process the claim. Box 13 requires the signature of the insured to authorize payment of medical benefits to the physician or supplier who executes Box 31. Neither Box 12 nor 13 of the HCFA form submitted by Nu-Best Diagnostic*s* Labs is signed by STATE FARM's insured. Instead both boxes merely state "Signature on File." Plaintiff knowingly misrepresented that it had standing to maintain this suit by falsely indicating that it had STATE FARM's insured's "Signature on File." At the very least, Plaintiff knew or acted in deliberate ignorance of the fact that Plaintiff did not have the signature of STATE FARM's insured on file as alleged in the HCFA. Whether Plaintiff had standing (an assignment of benefits) was material to STATE FARM's investigation of the claim and the determination of whether the medical services were properly payable to Plaintiff.

52. There is no genuine issue of material fact that Plaintiff failed to comply with conditions precedent to filing suit by knowingly and intentionally providing a false, misleading, incomplete and patently deceptive response to Boxes 12 and 13 of the HCFA.

HCFA BOX 20 and 24

53. Box 20 of the HCFA asks Plaintiff to indicate whether an outside lab performed the videofluoroscopy test on STATE FARM's insured. Plaintiff checked "No".

54. As a matter of law, checking "Yes" in Box 20 indicates that an entity other than the entity billing for the service performed the diagnostic test. Checking "No" in Box 20 indicates that no purchased tests are included on the claim. Furthermore, when "Yes" is indicated, item 32 must be completed. Plaintiff contracted with the Plaintiff to perform the test.

55. Nu-Best Diagnostic*s* Labs also certified in Box 24(b) of the HCFA that the services were performed in Plaintiff's office by placing code "11" within said Box. Code "11" is only used when the physician or supplier is billing for medical services performed in the physician's office or the supplier's office. By checking "No" in Box 20 and placing code "11" in Box 24(b) Nu-Best Diagnostic*s* Labs intentionally indicated that no outside diagnostic lab was used. Nu-Best Diagnostic*s* Labs intentionally and knowingly alleged that CARPENTIER performed the medical services at Palm Harbor, Florida (Pinellas County), even though it knew, at the time the HCFA was submitted, that representatives from Baldasare, Inc. performed the test in a mobile testing van while parked outside the referring physician's office. No one from Plaintiff's company ever performed the professional component of a

videofluoroscopy on STATE FARM's insured. Plaintiff simply provided the mobile testing vehicle and contracted with Baldasare, Inc.

56. Brent Baldasare was not working under either ARGALL's or CARPENTIER's chiropractic license when he performed the videofluoroscopy test on STATE FARM's insured. The determination of who actually performed the services was material to STATE FARM's investigation of the claim and its determination of whether the medical services were properly payable.

57. Additionally, Nu-Best Diagnostic*s* Labs knowingly and intentionally billed for five separate anatomical areas in Boxes 24 A-F. Only one anatomical area was tested. Nu-Best Diagnostic*s* Labs also billed for the professional component (Box 24d) of the videofluoroscopy test, which it did not render.

58. Finally, Nu-Best Diagnostic*s* Labs knowingly and intentionally misrepresented the cost of its services. Nu-Best Diagnostic*s* Labs as a custom and practice routinely waived co-payments and accepted the insurance company payments as payment in full, which eliminated the need for payment by the insured of the deductible. Consequently, when STATE FARM paid 80% of the bill Plaintiff considered it payment in full. Plaintiff was inflating the price it was willing to accept so that when STATE FARM paid the 80% it would be paid in full. Nu-Best Diagnostic*s* Labs elimination of the deductible created a disincentive for the insureds to care about how much it was charging STATE FARM, contrary to the purpose of the deductible, which is to create incentives for insureds to monitor the cost of their healthcare.

59. The Court finds that there is no genuine issue of fact or law that Nu-Best Diagnostic*s* Labs' failed to comply with conditions precedent to filing suit by knowingly and intentionally providing false, misleading, incomplete and patently deceptive responses to Box 20 and 24 of the HCFA.

HCFA BOX 31

60. The Court finds that as a condition precedent to Plaintiff recovering insurance proceeds from an insurance company, Box 31 of the HCFA must be completed by the Physician/Medical Provider who performed or supervised the performance of the medical services. The Court further finds that a healthcare provider, by signing box 31 of the HCFA, certifies that:

[t]he services shown on this form were medically indicated and necessary for the health of the patient and were *personally furnished by me or were furnished incident to my professional service by my employee under my immediate personal supervision* . . . For services to be considered as "incident" to a physician's professional service,

1) they must be rendered under the physician's immediate personal supervision by his/her employee,

* * *

61. Nu-Best Diagnostic*s* Labs assertion that either ARGALL or CARPENTIER was the physician or supplier of the services is false, misleading, incomplete and patently deceptive. Both ARGALL and CARPENTIER knew that they did not supervise or perform any services in conjunction with the HCFA's submitted by Nu-Best Diagnostic*s* Labs. They knew nothing about the insureds or the tests being performed. Nu-Best Diagnostic*s* Labs knew that Brent Baldasare,[10] an unlicensed independent contractor, performed the test and concealed this fact by indicating that they performed the test. Plaintiff also knew that they had not reviewed the HCFA's before they were submitted to STATE FARM for payment.

62. Whether CARPENTIER actually performed the videofluoroscopy test on STATE FARM's insured, or someone under his/her direct supervision performed the test was material to STATE FARM's investigation of the claim and its determination of whether the medical services were properly payable and lawfully rendered. If Box 31 was properly completed, STATE FARM may have discovered that the testing physician/chiropractor was not properly licensed. Plaintiff was legally obligated to ensure that it only hired licensed healthcare providers or certified technicians.

63. Nu-Best Diagnostic*s* Labs failed to comply with conditions precedent to filing suit by knowingly and intentionally submitting a false, misleading, incomplete and patently deceptive HCFA indicating that its owners performed or supervised the medical services allegedly provided to STATE FARM's insured.

HCFA BOX 32

64. Box 32 of the HCFA submitted by Nu-Best Diagnostic*s* Labs is blank, which indicates that the videofluoroscopy test at issue was performed at “Nu-Best Diagnostics Labs, 5 Birdie Lane, Palm Harbor FL 34683” (Box 33). Plaintiff knew the test was not performed in Palm Harbor, Florida but intentionally concealed that the test was actually performed within the mobile testing van while parked outside the referring physician's office.

65. Nu-Best Diagnostic*s* Labs failed to comply with conditions precedent to filing suit by providing a false, misleading, inaccurate and patently deceptive HCFA indicating that the medical services were performed at Plaintiff's place of business instead of indicating the true location of mobile testing vehicle.

HCFA BOX 33

66. Box 33 of the HCFA submitted by Nu-Best Diagnostic*s* Labs requires that Plaintiff indicate the billing name, address, zip code and phone number of the medical provider. Nu-Best Diagnostic*s* Labs HCFA falsely indicates that the physician's or supplier's billing name, address and zip code was "Nu-Best Diagnostics Labs, 5, Birdie Lane, Palm Harbor, Florida 34683." Plaintiffs knew there was no such corporation or fictitious name registered in the State of Florida. Nu-Best Diagnostics Labs could not have been the Physician's or Suppliers Name. The use of the unregistered fictitious name is unlawful[11] and it would be against the public policy of the state to allow Plaintiff to recover payment for the medical services at issue. See Florida Statutes, §627.736(5)(a).

67. Plaintiff failed to comply with conditions precedent to filing suit by knowingly and intentionally providing false, misleading, or incomplete information in response to Box 33 of the HCFA. Plaintiff also failed to lawfully comply with Florida Statutes, §627.726(5)(a) and (5)(d) because it did not render the services for which it has sought treatment and it failed to comply with the billing requirements outlined in the statutes.

68. Based on the foregoing material misrepresentations by Plaintiff there is no coverage for this loss. The insurance policy calls for honesty and fair dealing between the parties. Plaintiff intentionally made a false claim under the policy knowing the information on the HCFA provided to STATE FARM was false, misleading, incomplete and patently deceptive. As a matter of public policy, there is no coverage for Plaintiff under the insureds automobile insurance policy.

69. The court finds persuasive and adopts the rationale of similar court decisions in *Chaachou v. American Central Insurance Company,* 241 F.2d 889 (U.S. 5th Cir. 1957); *U.S. v. Mackby,* 261 F.3d 821 (U.S. 9th Cir. 2001); *Peterson v. Weinberger,* 508 F.2d 45 (U.S. 5th Cir. 1975).

70. Protection of the public requires that those who seek funds from insurance companies act scrupulously with regards to the requirement of law.

71. In addition, Plaintiff's HCFA fails to comply with the requirements of Florida Statutes, §726.736(5)(a) and (5)(d) in that the medical services were not lawfully rendered[12] (See also Florida Statutes, §817.234)[13] and the false HCFA was not sufficient to put STATE FARM on notice of the claim.[14]

VIII. *CONCLUSIONS OF LAW --*
FAILURE TO RENDER TREATMENT

72. The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or mixed findings of fact and conclusions of law.

73. This Court finds as a matter of law that the use of the word "rendered" in Florida Statutes, §627.736 is clear and unambiguous. The plain meaning of the word "rendered" as used in Florida Statutes, §627.736(5)(a) means to "perform" the medical services for which recovery is sought[15]. The services provided by Plaintiff did not constitute medical services, which would warrant Plaintiff's recovery of Personal Injury Benefits. "Rendered" does not mean to hire another corporation or independent contractor to perform the medical services on Plaintiff's behalf. To conclude otherwise would be inconsistent with the use of the word "rendered" and would cause the word to become meaningless and lead to an absurd statutory interpretation.

74. Based on the undisputed facts outlined above, this Court concludes that Plaintiff did not render the medical services for which it has sought recovery. Instead, the medical services were provided by Brent Baldasare of Baldasare, Inc. Furthermore, this Court finds that it would be against the public policy of the State of Florida to allow Plaintiff to recover insurance proceeds from STATE FARM when Plaintiff did not render the services to STATE FARM's insured.

75. The Court finds persuasive and adopts the rationale of similar court decisions in *Federated National Insurance Company v. Physicians Charter Services,* 26 FLW [Fla. L. Weekly] D1637; *Medical Management Group of Orlando, Inc. v. State Farm Mutual Automobile Insurance Company,* 2002 FWL 191501 (Fla. 5th DCA 2002) [27 Fla. L. Weekly D371a]; and *Central States, Southeast and Southwest Areas Health and Welfare Fund v. Pathology Laboratories of Arkansas,* 71 F.3d 1251 (U.S. 7th Cir. 1995).

IX. *CONCLUSIONS OF LAW -- GLOBAL BILLING/SERVICES NOT RENDERED*

76. The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or mixed findings of fact and conclusions of law.

77. Florida Statutes, §627.736(5)(d) provides in pertinent part that "All billings for such services shall, to the extent applicable, follow the Physicians' Current Procedural Terminology (CPT) in the year in which the services are rendered." Nu-Best Diagnostic*s* Labs billed STATE FARM for CPT Code 76120, which, unless modified, specifically includes a written report of the examination and test results. Accordingly, unless modified, CPT Code 76120 includes charges for both the professional and technical component. Plaintiff did not perform the professional component and/or prepare a written report regarding the test results as indicated in its HCFA.

Furthermore, Nu-Best Diagnostic*s* Labs failed to correctly utilize the correct CPT Codes applicable for the year in which the medical services were allegedly rendered to STATE FARM's insureds. Plaintiff billed for professional services it did not render. Plaintiff also had actual knowledge of the fact that Dr. William E. Gatlin of William E. Gatlin, Inc. was performing the professional component. As a custom and practice, Plaintiff copied Dr. Gatlin's report, placed it on Nu-Best Diagnostic_ Labs' letterhead and submitted the altered report to STATE FARM to justify billing for both the professional component, which it did not render.

78. Based on the foregoing, Plaintiff's failed to comply with statutory conditions precedent and failed to lawfully render the medical services to STATE FARM's insured. Plaintiff's HCFA is false, misleading, incomplete and patently deceptive, in violation of Florida Statutes, §817.234, Florida Statutes, §812.014 and Florida Statutes, §817.061. The Court concludes that Florida Statutes, §817.234, Florida Statutes, §812.014 and Florida Statutes, §817.061, while criminal in nature, are relevant to a consideration of whether Plaintiff complied with the statutory requirements of Florida Statutes, §627.736(5)(a).

79. Finally, this court finds that Plaintiff by knowingly and intentionally preparing, presenting, and causing the presentation of false, misleading, incomplete and patently deceptive HCFA to STATE FARM in solicitation of payment, violated Florida Statutes, §817.234(1), Florida Statutes, §817.061,[16] Florida Statutes, §812.014 and the public policy of the State of Florida.

X. *CONCLUSIONS OF LAW -- ILLEGAL FEE SPLIT*

80. The Court hereby adopts the foregoing findings of fact to the extent they encompass conclusions of law or mixed findings of fact and conclusions of law.

81. Pursuant to Florida Statutes, §627.736(5)(a) STATE FARM may only pay "[a]ny physician, hospital, clinic or other person or institution lawfully rendering treatment" to STATE FARM's insured. The Court concludes that Plaintiff is not a "physician, hospital, clinic or other person or institution lawfully rendering treatment" to STATE FARM's insured. Plaintiff provided no "necessary, medical, surgical, x-ray, dental, and rehabilative services" or the like that would qualify it as a healthcare provider entitled to payment of Personal Injury Protection (PIP) benefits under Florida Statutes, §627.736. Plaintiff simply provided the mobile testing van used to perform the test. The fact that the owners of Plaintiff's business are chiropractors is irrelevant.

82. Florida Statutes, §817.505(1)(a), (b) and (c) makes is unlawful for any person to:

(a) Offer or pay any commission, bonus, rebate, kickback, or bribe directly or indirectly, in cash or in kind, or engage in any split fee-arrangement, in any form whatsoever, to induce the referral of patients or patronage from healthcare provider or healthcare facility.

(b) Solicit or receive any commission, bonus, rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engage in any split fee arrangement, in any form whatsoever, in return for referring patients or patronage to a healthcare provider or healthcare facility.

(c) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a) or paragraph (b).

Florida Statutes, §456.054 provides, in pertinent part:

456.054. Kickbacks prohibited.

(1) As used in this section, the term "kickback" means a remuneration or payment back pursuant to an investment interest, compensation arrangement, or otherwise, by a provider of healthcare services or items, of a portion of the charges for services rendered to a referring healthcare provider as an incentive or inducement to refer patients for future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

(2) It is unlawful for any healthcare provider or any provider of healthcare services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

* * *

83. The Court concludes that the aforementioned statutes, while criminal in nature, are relevant to whether the medical services were "lawfully rendered." The Court further concludes that Plaintiff's activities constitute a clear violation of the aforementioned statutes as well as the public policy, which underlines the statutes, which prohibit patient brokering and split-fee arrangements like those between Plaintiff and Nu-Best Franchising, Inc., and Plaintiff and Baldasare, Inc.

84. Plaintiff billed $650 per videofluoroscopy test for both the professional and technical components. Nu-Best Diagnostic*s* Labs performed only the technical services. Baldasare, Inc. received $500 per week plus percentage of all videofluoroscopy tests performed. Plaintiff paid Nu-Best Franchising, Inc. the greater of $500 or 5% of the gross sales of the videofluoroscopy tests performed.

85. The payment sought by Plaintiff would result in the splitting of this fee for the videofluoroscopy tests between Nu-Best Franchising, Inc. and Plaintiff, and Plaintiff and Baldasare, Inc. In effect, Nu-Best Franchising, Inc. and Plaintiff are receiving a referral fee for brokering its patients to Baldasare, Inc. Nu-Best Franchising, Inc., Plaintiff and Baldasare, Inc. are each engaging in marketing activities directed at obtaining referrals to Baldasare, Inc. and the proceeds are directed to Plaintiff. Plaintiff paid Baldasare, Inc. for its services. The fee arrangement between the three entities constitutes an illegal kick-back, fee split and brokering arrangement. This court further finds that the franchising agreement, executed between Nu-Best Franchising, Inc. and Plaintiff, contemplates and establishes an illegal fee split.

86. The patient brokering statute reflects clear legislative intent to prohibit receipt of any kind of payment, direct and indirect, for mere referral of patients as well as any split-fee arrangement "in any form whatsoever" whereby someone who refers a patient to a healthcare facility is paid a portion of the fee for the healthcare for services provided by that entity, although the referring physician provided none of those services. The legislature was clearly concerned about prohibiting the end result of sharing the fee, not the direction of the cash flow. Accordingly the court concludes that the split fee arrangement that existed between Nu-Best Franchising, Inc., Plaintiff and Baldasare, Inc. is contrary to the public policy of the state and Florida Statutes, §817.505 and Florida Statutes, §456.054.

87. Based on the foregoing, Plaintiff is not entitled to recover PIP benefits under the STATE FARM policy. Any payment would be contrary to the public policy of the state, and would be illogical and unreasonable interpretation of the PIP statute. Plaintiff's activities are clearly prohibited by Florida Statutes, §817.505 and Florida Statutes, §456.054. The court finds persuasive and adopts the rationale of similar court decisions in *Federated National Insurance Company v. Physicians Charter Services,* 2001 WL 746651, (Fla. 3rd DCA 2001); *Medical Management Group of Orlando, Inc. v. State Farm Mutual Automobile Insurance Company,* 2002 WL 191501 (Fla. 5th DCA 2002) [27 Fla. L. Weekly D371a]; and *NuWave Diagnostics, Inc. v. State Farm Mutual Automobile Insurance Company,* 6 FLW [Fla. L. Weekly] Supp 522 (Broward Cty. 1999). In addition, the court also finds persuasive the decisions rendered in the following official governmental actions: *In Re Daso,* State of Florida, Department of Professional Regulation, Board of Chiropractic, Case No: DS 92-CH-01 (1992); *In Re Levy,* State of Florida, Board of Medicine, Final Order No. AHCA-97-0495 (1997); and Attorney General Opinion, letter to Dr. Michael Dunn, D.C., 1998.

It is ORDERED AND ADJUDGED:

88. Defendant's Motion for Summary Judgment Based on Lack of Standing is hereby GRANTED.

89. Defendant's Motion for Summary Judgment Based on Violations of Florida Statutes, §468.302, Florida Statutes, §468.311 and Florida Administrative Code §64E-5.502 is hereby GRANTED.

90. Defendant's Motion for Summary Judgment Based on Failure to Comply with Statutory Conditions Precedent -- Patently Deceptive HCFA is hereby GRANTED.

91. Defendant's Motion for Summary Judgment Based on Failure to Render Treatment is hereby GRANTED.

92. Defendant's Motion for Summary Judgment Based on Improper CPT Codes and Failure to Submit Legitimate Written Report -- Global Billing is hereby GRANTED.

93. Defendant's Motion for Summary Judgment Based on Illegal Fee Splitting is hereby GRANTED.

94. Final Judgment is hereby entered in favor of STATE FARM and is hereby adjudged that Plaintiff take nothing by this action and STATE FARM shall go hence without day. The Court reserves jurisdiction to determine the amount of attorney's fees awardable to STATE FARM pursuant to Florida Statutes, §768.79, Florida Statutes, §817.061 and Florida Statutes, §57.105, costs and any other relief this Court deems just and proper.

95. The following questions regarding the interpretation and application of Florida Statutes, §627.736 are certified to be of great public importance:

Whether A Healthcare Provider Who Does Not Have A Written Assignment May Create Standing By Typing “Signature On File” In Box 13 Of The HCFA, Or Must Box 13 Be Countersigned By The Insured As Required By Florida Statutes, §627.736(5)(a)?

Whether The Use Of A Mobile Videofluoroscopy Machine In Violation Of Florida Administrative Code §64E-5.502(1), Renders The Test Unreasonable And Unlawful, Thereby Voiding The Insurance Claim As A Matter Of Law Pursuant To Florida Statutes, §627.736(5)(a)?

Whether The Performance Of Medical Services By An Unlicensed Technician In Violation Of Florida Statutes, §468.301, Florida Statutes, §468.311, Florida Statutes,

Chapter 460, And Florida Administrative Code §64E-5.502(1) Renders The Test Unreasonable And Unlawful, And Voids The Claim As A Matter Of Law?

Whether A Healthcare Provider, In Complying With Florida Statutes, §627.736(5)(d) Must Fairly And Honestly Complete The HCFA In Accordance With The Proper CPT Coding?

Whether A Healthcare Provider Who Presents Or Causes To Be Presented, A HCFA Containing False, Misleading, Incomplete, Or Patently Deceptive Information To An Insurance Company, Knowing That The Information Is False, Misleading, Incomplete Or Patently Deceptive, Or Acting In Deliberate Ignorance Of The Truth, Falsity Or Completeness Of The Information Or Acting In A Reckless Disregard Of The Truth, Falsity Or Completeness Of The Information Contained Within The HCFA, Can Recover Under Florida Statutes, §627.736?

Whether A Healthcare Provider Who Signs Box 31 Of The HCFA Certifies That The Information Contained In The HCFA Is True And Correct?

Whether A Healthcare Provider In Completing The HCFA Must Comply With The HCFA Instructions As A Condition Precedent (As Established By Florida Statutes, §627.736(5)(d)) To The Submission Of A Claim And The Filing Of A Cause Of Action?

Whether A Healthcare Provider Who Signs Box 31 Of The HCFA Certifies That The Services Were Medically Necessary, And Were Either Personally Performed Or Performed By His/Her Employee Under His/Her Immediate Personal Supervision?

Whether A Healthcare Provider Who Knowingly Or Deliberately Ignores The Truth, Or Acts In Reckless Disregard For The Truth, By Submitting A HCFA To An Insurance Company Containing One Or More Falsely Completed HCFA Boxes, May Recover Under Florida Statutes, §627.736?

Whether A Healthcare Provider Who Submits A False, Misleading Or Deceptive HCFA Has Complied With The Statutory Conditions Precedent Of Florida Statutes, §627.736(5)(d)?

Whether A Healthcare Provider Who, As Matter Of Custom And Practice Waives Co-Payments, Is Knowingly Misrepresenting The Cost Of Its Services To The Insurance Company?

Whether A Healthcare Provider Materially Misrepresented Its Claim By Submitting A HCFA Containing A Price Which Is Greater Than It Is Willing To Accept, As

Evidenced By The Fact That The Healthcare Provider Waives Co-Payments And Accepts The Payment From The Insurance Company As Payment In Full?

Whether A Healthcare Provider Who Hires An Unlicensed Or An Uncertified Individual To Perform A Test In Violation Of Florida Statutes, §468.301, Florida Statutes, §468.311 And Florida Administrative Code §64E-5.501(1)(e), Can Recover PIP Benefits Under Florida Statutes, §627.736(5)(a)?

Whether A Healthcare Provider Who Fails To Follow The HCFA Instructions And Leaves Box 32 Blank, Which Represents That Services Were Performed At The Address In Box 33, Has Knowingly Misrepresented The Location Of The Test If The Provider Knows The Tests Were Performed At A Location Different From The Address In Box 33?

Whether A Healthcare Provider Who Unlawfully (Florida Statutes, §856.09) Used An Unregistered, Fictitious Name In Box 33, Can Recover Under Florida Statutes, §627.736(5)(a), And Whether It Has Complied With The Statutory Conditions Precedent Of Florida Statutes, §627.736(5)(d)?

Whether A Healthcare Provider Who Intentionally Bills An Insurance Company For Services It Did Not Render, And Falsifies Interpretive Reports To Support Its Claim, Is Prohibited From Recovering Under Florida Statutes, §627.736 As A Matter Of Public Policy?

Whether The Term "Lawfully Rendered" Contained In Florida Statutes, §627.736(5)(a) Contemplates Full Compliance With The Criminal, Civil, And Administrative Requirements Of Florida Law?

Whether Providing A Diagnostic Testing Machine And Contracting With An Independent Contractor To Perform Diagnostic Tests Constitutes A "Necessary Medical . . . Or Rehabilitative Service Under Florida Law?"

Whether A Franchising Agreement, Which Contemplates A Fee Split Between The Franchising Company For Referring Patients And A Diagnostic Company For Performing Services, Is An Illegal Fee Split?

Whether A Healthcare Provider Who Submits A HCFA To An Insurance Company Knowing It Contains Misrepresentations Or Any False Or Misleading Information Can Recover Under Either The Insurance Policy Or Florida Statutes, §627.736?

Whether A Healthcare Provider Who Signs Box 31 Of The HCFA Is Certifying That The Information Contained On The HCFA Is True And Correct?

Whether A Healthcare Provider, In Completing A HCFA, Must Comply With The HCFA Instructions As A Condition Precedent (Established By Florida Statutes, §627.736(5)(d)) To The Submission Of A Claim And The Filing Of The Cause Of Action?

Whether The Term "Rendering" As Used In Florida Statutes, §627.736(5)(a) Requires The Person, Corporation Or Other Business Entity Billing For The Medical Services Actually Perform The Medical Services?

Whether A Healthcare Provider Who Hires An Independent Contractor To Perform Medical Services On An Insured And Submits A HCFA To The Insurance Company Under Its Own Name, And Without Indicating That An Independent Contractor Actually Performed The Medical Services On The Insured, Has "Rendered Treatment" To The Insured As Required By Florida Statutes, §627.736?

Whether A Healthcare Provider Who Hires An Independent Contractor To Perform All Aspects Both The Technical And Professional Components Of The Medical Services Has "Rendered Treatment" As Defined By Florida Statutes, §627.736?

Whether A Healthcare Providers HCFA Form Complies With The Requirement Of Florida Statutes, §627.736(5)(a) That The Insured Receiving Treatment Countersign The Invoice, Bill Or Claim Form As Having Actually Been Rendered To The Best Of The Insured's Knowledge By Simply Typing "Signature On File?"

Whether An Agreement To Pay An Individual Or Business Entity A Set Monthly Fee Or The Greater Of A Certain Percentage Of The Medical Services Performed Constitutes An Illegal Fee-Split Pursuant To Florida Statutes, §456.054 And Florida Statutes, §817.505?

Whether A Healthcare Provider Who Submits A HCFA To An Insurance Company Knowing It Contains Misrepresentations Or Any False Or Misleading Information Can Recover Under Either The Insurance Policy Or Florida Statutes, §627.736?

Whether A Healthcare Provider, In Completing A HCFA, Must Comply With The HCFA Instructions As A Condition Precedent (As Established By Florida Statutes, §627.736(5)(d)) To The Submission Of A Claim And The Filing Of The Cause Of Action?

Whether the term countersigned as used in Florida Statutes, §627.736 requires that the person actually sign the HCFAs?

Whether A Healthcare Provider Who Performs The Medical Services At An Address Other Than That Listed In Box 33 Of The HCFA Has Knowingly Misrepresented The True Location Of The Test By Failing To Fill Out Box 32 Of The HCFA Which Requires That The Healthcare Provider Indicate The Address Of The Facility Where The Services Were Rendered If Other Than Home Or Office?

Whether A Healthcare Provider Who Contracts With An Independent Contractor To Perform A Diagnostic Test Can Bill For The Services As If It Performed The Test?

Are The Representations Made By A Healthcare Provider In Boxes 12, 13, 20, 24, 31, 32 And 33 Material To A Claim Such That The Provider's Misrepresentations In Those Boxes Are Grounds To Void Coverage Or Otherwise Deny The Claim As A Matter Of Law?

Whether An Agreement To Pay An Individual Or Business Entity A Set Monthly Fee Or The Greater Of A Certain Percentage Of The Medical Services Performed For Referring Patients Constitutes An Illegal Fee-Split Pursuant To Florida Statutes, §456.054 And Florida Statutes, §817.505?

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[1]See Florida Statutes, §460.403.

[2]Brent Baldasare acknowledged that it would have been illegal for him to perform the test if he was not a chiropractor.

[3]Florida Administrative Code §64B2-17.0065.

[4]In *Hartford Insurance Company of the Southeast v. St. Mary's Hospital, Inc.,* 771 So. 2d 1210 (Fla. 4th DCA 2000) and *Security National Insurance Company v. Biotronix Laboratories, Inc.,* 6 Fla. L. Weekly Supp., 314 (Fla. 11th Cir., Dade County, March 12, 1999), the courts interpreted Florida Statute Section 627.736(5)(a) such that the patient's actual countersignature was required in order to create an enforceable assignment pursuant to Florida's No-Fault Law.

"Countersigned" Is Defined by Webster's New College Dictionary As "To Sign (a Previously Signed Document) As for Authentication; A Second or Verifying Signature, As on a Previously Signed Document."

[5]Brent Baldasare was not a licensed chiropractic physician authorized to perform range of motion tests pursuant to Florida Statutes, Chapter 460.

[6]Florida Statute §468.302 provides in pertinent part:

(1) Except as hereinafter provided, no person shall use radiation on a human being unless he or she:

(a) Is a licensed practitioner; or

(b) Is the holder of a certificate, as provided in this part, and is operating under the direct supervision or general supervision of a licensed practitioner in each particular case.

[7]Florida Statute §468.311 provides in pertinent part:

Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(1) Practicing radiologic technology without holding an active certificate to do so.

[8]Florida Administrative Code, §64E-5.502(1)(a) states in pertinent part:

* * *

(8) Exposure Procedures Designated to Minimize Patient and Personal Exposure.

* * *

e. Persons who are *not licensed* to practice the healing arts shall not be permitted to perform *fluoroscopic* examinations or otherwise to expose humans to x-rays from fluoroscopic systems unless:

(I) The individual is certified in accordance with the requirements of Chapter 468, Part IV, Florida Statutes;

(II) Such persons have been trained and authorized in writing by the licensed practitioner in charge to perform specified procedures;

(III) The specified procedures do not involve diagnostic interpretation by the unlicensed person; *and*

(IV) The specified procedures are designed to prevent or reduce exposure to patients by facilitating proper location and positioning for radiographic procedures.

(Emphasis Added)

[9]In the case of *Rodriguez v. Ocean Harbor Casualty Insurance Co.,* 8 Fla. L. Weekly Supp. 500 (Fla. Dade Cty. Ct. April 20, 2001), the court held that because the provider failed to comply with the HCFA instruction, it thus failed to comply with 627.736(5)(d).

[10]In depositions, when asked whether STATE FARM should be concerned with who actually performed the services, Brent Baldasare stated "No. I'm a licensed chiropractor, I perform the service...." Brent Baldasare was licensed in the State of South Carolina, not the State of Florida. Again Plaintiff's subcontractor made material misrepresentations regarding his licensure and his role with Plaintiff's corporation. Baldasare repeatedly testified in depositions that he worked for Plaintiff. It was not until after the deposition of ARGALL, co-owner of Plaintiff, that he recanted his testimony and disclosed his employment with Baldasare, Inc. and Baldasare, Inc.'s relationship with Plaintiff.

[11]See §865.09, Florida Statutes, which states in pertinent part:

(9) Penalties. --

(a) If a business fails to comply with this section, the business, its members, and those interested in doing such business may not maintain any action, suit, or proceeding in any court of this state until this section is complied with. An action, suit, or proceeding may not be maintained in any court of this state by any successor or assignee of such business on any right, claim, or demand arising out of the transaction of business by such business in this state until this section has been complied with.

[12]Florida Statutes, §627.736(5)(d), specifically states:

All statements and bills for medical services rendered by any physician, hospital, clinic, or other person or institution shall be submitted to the insurer on a Healthcare Finance Administration 1500 form . . . All billings for such services shall, to the extent applicable, follow the Physicians' Current Procedural Terminology (CPT) in the year in which the services are rendered. For purposes of paragraph (4)(b), an insurer shall not be considered to have been furnished with notice of the amount of covered loss or medical bills due unless the statements or bills comply with this paragraph. (Emphasis Added)

[13]Florida Statutes, §817.234 provides in pertinent part:

(1)(a) Any person who, with the intent to injure, defraud, or deceive any insurance company, including, but not limited to, any statutorily created underwriting association or pool of insurers or any motor vehicle, life, disability, credit life, credit,

casualty, surety, workers' compensation, title, premium finance, reinsurance, fraternal benefit, or home or automobile warranty company:

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim; or

2. Prepares or makes any written or oral statement that is intended to be presented to any insurance company in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or misleading information concerning any fact or thing material to such claim, . . .

[14]Florida Statutes, §627.736(5)(a) clearly states:

Any physician, hospital, clinic, or other person or institution lawfully rendering treatment to an injured person for a bodily injury covered by personal injury protection insurance may charge only a reasonable amount for products, services, and accommodations rendered, and *the insurer providing such coverage may pay for such charges directly to such person or institution lawfully rendering such treatment, if the insured receiving such treatment . . . has countersigned the invoice, bill, or claim form* approved by the Department of Insurance upon which such charges are to be paid for as having actually been rendered to the best knowledge of the insured or his or her guardian.

(Emphasis Added)

[15]It is a well settled principle of statutory construction that Courts should not resort to statutory construction when the language of a statute is plain and unambiguous. *See Rollins v. Pizzarelli*, 25 Fla. L. Weekly S331 (Sup. Ct. Fla. May 4, 2000) (which stands for the proposition that all statutory provisions are to be given their ordinary meaning.); *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452, 454 (Fla. 1992). The plain meaning of the words "rendered" and "rendering" as used in the statutory provisions quoted above are clear. The statutory provisions utilize the terms, "lawfully rendering treatment," "lawfully rendering such treatment," and "services rendered." When taken as a whole, the use of the words "rendered" and "rendering" can have only one meaning, whether the person requesting to be paid directly from the insurer actually performed the services. Any other interpretation would render the statutory scheme meaningless or absurd, which is prohibited by the rules of statutory construction. *See United Specialties of America v. Dept. of Revenue*, 786 So. 2d 1210 (Fla. 5th DCA 2001) (which stands for the proposition that courts are

to avoid a construction that would render part of a statute meaningless) and *Ellis v. State*, 622 So. 2d 991, 1001 (Fla. 1993) (which stands for the proposition that statutory language cannot be construed so as to render it potentially meaningless.)

[16]Florida Statutes, § 817.061 makes it unlawful "for any . . . corporation . . . to solicit payment of money . . . by means of a statement or invoice . . . for services not yet performed."

* * *