IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL)
CASE NO: 502009AP000019XXXXMB
L.T. Case No. 502008SC005790XXXXSB
DIVISION: 'AY'

JANE E. BISTLINE, M.D., P.A.,
(a/a/o BRIDGET A. MONGAN),

Appellant,

v.

USAA CASUALTY INSURANCE
COMPANY,

Appellee.
_____/

Opinion filed: JUN - 2 2010

Appeal from the County Court in and for Palm Beach County, Judge James Martz.

For Appellant: Marlene Reiss, Esq., 9130 South Dadeland Blvd., Suite 1612, Miami, FL 33156.

For Appellee: Douglas H. Stein, Esq., Two Alhambra Plaza, Suite 800, Miami, FL 33134.

PER CURIAM

REVERSED and REMANDED.

Jane E. Bistline, M.D., P.A., ["Bistline"] appeals a final judgment entered in favor of USAA Casualty Insurance Company ["USAA"]. This personal injury protection ["PIP"] insurance benefits lawsuit involves the issue of whether a medical provider can properly furnish an insurer "written notice of the fact of a covered loss and of the amount of same" under *section* 627.736(4)(b), *Florida Statutes* (2007), even if it failed to submit a valid Disclosure & Acknowledgment ["D&A"] form as required under *section* 627.736(5)(e). Based on the recent Fifth District Court of Appeal decision in *Florida Medical & Injury Center, Inc. v. Progressive Express Insurance Co.*, 29 So. 3d 329 (Fla.

5th DCA 2010), which was unavailable to the trial court at the time it rendered its decision, we must reverse. We must follow *Florida Medical & Injury Center, Inc.* as this decision appears to be the only district court decision to address this exact issue. *See Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) ("[I]n the absence of interdistrict conflict, district court decisions bind all Florida trial courts.").

The insured was treated by Dr. Bistline—once in October of 2007, and a second time in November of 2007—for the injuries sustained in a motor vehicle accident. The insured had assigned to Bistline her right to receive PIP benefits under the policy issued by USAA. On the initial date of treatment, the insured executed a D&A form. Paragraph one of the D&A form requires the insured person to affirm: "The services or treatment set forth below were **actually rendered**. This means that those services have **already been provided.**" Immediately following this quoted language were two blank lines, which were left blank. Bistline submitted to USAA the D&A form with its bill for the initial date of treatment. The parties dispute whether Health Care Financing Administration ["HCFA"] forms were attached to the submitted D&A form. USAA denied Bistline's bill because it failed to comply with *section* 627.736(5)(e), which prompted Bistline to submit a revised D&A form in an effort to comply. Subsequently, Bistline submitted to USAA a further set of bills from the second date of treatment, which USAA denied because it had failed to comply with *section* 627.736(5)(e). In an attempt to comply, Bistline submitted to USAA a second revised D&A form.

Bistline, thereafter, filed this breach of contract claim against USAA for unpaid PIP benefits. USAA moved for summary judgment, contending that it was not on notice of a covered loss under section 627.736(4)(b) because the D&A form failed to indicate the "services set forth therein." The trial court, finding that Bistline failed to comply with the D&A requirements, granted summary judgment in favor of USAA.

We apply a *de novo* standard of review to an order granting summary judgment. *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). PIP benefits are governed by *section* 627.736, *Florida Statutes*. *Section* 627.736(4)(b), provides, in pertinent part, that "[p]ersonal injury protection insurance benefits paid pursuant to this section shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same." Under *section* 627.736(5)(e), each physician must require an insured person, who is claiming personal injury protection benefits, to execute a D&A form at the initial treatment.

The dual purposes of the D&A form "are to enhance patient understanding of their treatment and to discourage fraud by unscrupulous medical providers, especially the submission of claims for services not actually performed on the patient." *Florida Medical & Injury Center, Inc.*, 29 So. 3d at 332. In *Florida Medical & Injury Center, Inc.*, the Fifth District Court of Appeal found that the requirement of notice under *section* 627.736(4)(b), and the requirement of a D&A form under *section* 627.736(5)(e), are "two distinct statutory duties." *Id.* at 337. The Court further stated that "[t]here is no language in paragraph (5)(e) that even suggests that failure to provide the properly completed form to the insurer is failure to provide 'notice of the covered loss' to the insurer, or that such failure will render the provider's bills not payable." *Id.* at 338.

Accordingly, the trial court erred in its Order Granting USAA's Motion for Final Summary Judgment and Containing Final Judgment in finding that the D&A form is a prerequisite to the billing requirement, and erred in rejecting Bistline's argument that a defective D&A form may be overlooked where the bills and records were sent contemporaneously. Based on *Florida Medical & Injury Center, Inc.* we are required to reverse and remand this case for the trial court to determine whether HCFA forms were attached to the D&A form, and if so, whether the HCFA forms constituted ample notice of the fact and amount of loss under *section* 627.736(4)(b). *See id.* at 337–

38 ("The documenting of treatment by attaching records to the D&A Form, rather than listing treatments on the face of the form, is ample notice of the fact and amount of the loss under (4)(b), even if it does not satisfy (5)(e).").

Accordingly, the final judgment is hereby REVERSED and the matter is REMANDED for further proceedings consistent with this opinion. Bistline's Motion for Appellate Attorney's Fees is GRANTED if it ultimately prevails in the trial court. USAA's Motion for Attorney's Fees Pursuant to Proposal for Settlement is DENIED.

KELLEY, FRENCH, CROW, JJ., concur.