

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

APPELLATE DIVISION (CIVIL)
Case No.: 502008AP000032XXXXMB
L.T.: 502007CC006201 XXXXMB
Division: 'AY'

A KAUFMAN CHIROPRACTIC CLINIC INC,
(a/a/o Michael Gordon),

Appellant(s),

v.

PROGRESSIVE SELECT INSURANCE COMPANY,

Appellee(s).

Opinion filed: *August 20, 2009*

**Appeal from the County Court in and for Palm Beach County,
Judge Ted Booras.**

✓ For Appellant:

Sanford R. Topkin, Esq.
1166 W. Newport Ctr. Dr.
Suite 309
Deerfield Beach, FL
33442

Virginia M. Best, Esq.
2600 Douglas Rd.
Penthouse 1212
Coral Gables, FL
33134-2333

Joseph Murasko, Esq.
884 US Hwy One
North Palm Beach, FL
33408

For Appellee:

Douglas H. Stein, Esq.
100 S.E. 2nd St.
Suite 4300 Bank of America Tower
Miami, FL 33131

PER CURIAM.

REVERSED and REMANDED.

A. Kaufman Chiropractic Clinic, Inc. ("Kaufman") appeals the county court's March 11, 2008 order granting final summary judgment in favor of Appellee, Progressive Select Insurance Company ("Progressive"). The Court reviews the county court's order de novo. See Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000). The first issue is whether the trial court erred by granting Progressive's Motion for Summary Judgment due to the fact that the HCFA form initially submitted to Progressive did not contain the physician's license number in Box 31. We conclude that granting summary judgment was error, and reverse.

The Insured, Michael Gordon, was involved in an automobile accident on November 12, 2004 and sought and received treatment from Kaufman from November 2, 2005 through November 7, 2005. Kaufman submitted the bills to Progressive, but failed to include his physician's license number in Box 31 of the HCFA form. Progressive made partial payment to Kaufman based on a unilateral application of Medicare and Workers Compensation fee schedules. On February 12, 2007 Kaufman submitted a demand letter requesting the remainder of payment. In the Demand Letter was a copy of the HCFA form with the physician's license number provided in Box 31. Progressive failed to pay the remainder amount and Kaufman filed suit, seeking payment of PIP benefits. Progressive filed a Motion for Summary Judgment alleging that the initial HCFA form did not include Kaufman's professional license number in Box 31 as required by § 627.736(5)(d) Fla. Stat. As a result, Progressive argued that it had not been placed on proper notice of the covered loss, thus entitling it to summary judgment as a matter of law.

Section 627.736(5)(d), Florida Statutes (2003) states as follows:

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 properly completed [HCFA] form...All providers other than hospitals shall include on the

[HCFA] form the professional license number of the provider in the line or space provided...For the 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, and unless the statements or bills are properly completed in their entirety as to all material provisions, with all relevant information being provided therein.

(emphasis added). The term "properly completed" used in section 627.736(5)(d) is defined by the statute as "providing truthful, substantially complete, and substantially accurate responses as to all material elements to each applicable request for information or statement by a means that may lawfully be provided and that complies with this section, or as agreed by the parties." § 627.732(13), Fla. Stat. (emphasis added). By the statute's own language, substantial compliance of the material elements of the statute should satisfy the statute's requirements and not be denied payment based on a technicality. See United Automobile Insurance Co. v. Medical Specialists and Diagnostics Services, 11 Fla. L. Weekly Supp. 508a (Fla. 9th Cir. Ct. Mar. 1, 2004); Physical Medicine Pain Center, P.A. v. Progressive Express Insurance Co., 11 Fla. L. Weekly Supp. 452a (Fla. Orange Cty. Ct. Mar. 5, 2004).

We find that the professional license number was not a material element of the bills, and therefore it was error to grant summary judgment due to Kaufman's failure to include that information in the HCFA form. Progressive processed thousands of Dr. Kaufman's previous bills, knew his license number, and agreed that there was no evidence whatsoever of any fraud, or even any suspicion by Progressive that there might be fraud. Moreover, there was no indication that Progressive even considered the possibility that Kaufman was not a properly licensed physician, even when it used the failure to provide the license number in Box 31 as the basis of its Motion for Summary Judgment. Progressive admitted at the hearing that this is a "hyper technical defense."

Even if we concluded that providing the physician's license number in Box 31 was material to complying with section 627.736(5)(d), Kaufman's resubmission of the corrected HCFA form with the Demand Letter pre-suit substantially complied with the notice requirements of section 627.736(5)(d). Therefore, we hold that regardless of the materiality of the inclusion of the physician's license number in Box 31, Kaufman substantially complied when it provided the license number in the corrected HCFA form prior to suit.

The second issue on appeal is whether the trial court erred in granting summary judgment in favor of Progressive while there was pending discovery. Since we reverse the order granting summary judgment, it is unnecessary for the Court to address this issue as it has been rendered moot.

Accordingly, the trial court's order granting Defendant's Motion for Summary Judgment is **REVERSED** and the case is **REMANDED** for further proceedings consistent with this opinion. Appellee's Motion for Attorney's Fees Pursuant to Proposal for Settlement is **DENIED**. Appellant's Request for Attorney's fees is **GRANTED**, and the matter is remanded to the lower court to determine the reasonable amount thereof.

COX, ROSENBERG, and MCCARTHY, JJ., concur.