

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

**UNITED AUTOMOBILE  
INSURANCE COMPANY,**

**Appellant,**

**APPELLATE DIVISION (CIVIL)  
Case No.: 502008AP00004/XXXXMB  
L.T. No.: 502006CC013074XXXX  
DIVISION 'AY'**

**v.**

**ABACOA TOWN CENTER CHIROPRACTIC  
INC, d/b/a ABACOA PHYSICAL MEDICINE,  
INC., a/a/o YOLANDA RIVERA,**

**Appellee.**

Opinion filed: *October 5, 2009*

**✓ Appeal from the County Court in and for Palm Beach County,**

**✓ For Appellant:** Michael J. Neimand, Esq., PO Box 140490, Coral Gables, FL 33114

**✓ For Appellee:** Paul Adams, Esq. and Robert Stein, Esq., 2300 Glades Rd., Suite #200  
West, Boca Raton, FL 33431

Opinion filed:

**Appeal from the County Court in and for Palm Beach County,**

**For Appellant:** Michael J. Neimand, Esq., PO Box 140490, Coral Gables, FL 33114

**For Appellee:** Paul Adams, Esq. and Robert Stein, Esq., 2300 Glades Rd., Suite #200  
West, Boca Raton, FL 33431

**REVERSED and REMANDED.**

United Automobile Insurance Company ("United Auto") appeals the lower court's order granting summary judgment in favor of ABACOA Town Center Chiropractic, Inc., d/b/a ABACOA Physical Medicine, Inc., a/a/o Yolanda Rivera ("ABACOA"). We reverse the decision of the lower court.

United Auto insured Yolanda Rivera under a PIP automobile insurance policy. She was involved in an automobile accident wherein Ms. Rivera was treated for her injuries at ABACOA, and she assigned to ABACOA her benefit rights under the policy. ABACOA filed a complaint against United Auto for breach of contract for failure to pay PIP benefits under the policy. Thereafter, ABACOA filed a motion for summary judgment, alleging that all treatment provided was reasonable, related and necessary to Ms. Rivera's recovery pursuant to § 627.736(7), Fla. Stat. (2005). In support of its motion, ABACOA filed an affidavit of the treating physician. In opposition to ABACOA's motion for summary judgment, United Auto filed the affidavit and peer review report of Dr. Joseph Marfisi, who did not perform an examination of Ms. Rivera but reviewed the treating physician's notes in coming to the conclusion that some of the treatment provided by ABACOA was not reasonable, related or necessary. ABACOA argued that this affidavit and peer review report should not be considered because it was not a "valid report" under section 627.736(7)(a) as it was not based upon an independent medical examination of Ms. Rivera. After a hearing, the lower court agreed with ABACOA and did not consider Dr. Marfisi's report in determining whether an issue of material fact existed. The court then granted ABACOA's motion for summary judgment as well as its motion for attorney's fees. We review the lower court's granting of summary judgment *de novo*.

The outcome of this case is controlled by the disjunctive language of the statute. Section 627.736(7)(a) provides:

A valid report is one that is prepared and signed by the physician examining the injured person *or reviewing the treatment records of the injured person* and is factually supported by the examination and treatment records if reviewed and that has not been modified by anyone other than the physician. (Emphasis added).

It is clear that the physician preparing the report does not have to personally examine the insured so long as the report is prepared by a physician who has reviewed the treatment records of the patient. *See also United Automobile Insurance Co. v. Bermudez*, 980 So. 2d 1213 (Fla. 3d DCA 2008). Here, Dr. Marfisi did not himself examine Ms. Rivera. It is clear from the record, however, that Dr. Marfisi prepared his affidavit and report after reviewing the records of the treating physician. Therefore, reference to Dr. Marfisi's affidavit and peer review was permissible in ruling upon ABACOA's motion for summary judgment so long as Dr. Marfisi's report met the remaining requirements of section 627.736(7)(a).

Based upon the foregoing, it is hereby ORDERED AND ADJUDGED that the order granting summary judgment in favor of ABACOA and the fee judgment are REVERSED. The case is REMANDED for further determination of whether the affidavit and peer review report were otherwise legally sufficient under section 627.736(a).

FRENCH, ROSENBERG and KELLEY, JJ., concur.