

IN THE COUNTY COURT IN AND
FOR MIAMI-DADE COUNTY,
FLORIDA

IMPERIAL FIRE & CASUALTY
INSURANCE COMPANY,

Case No.: 2014-2211 CC 24 (01)

Claim No.: 00075623

Plaintiff,

vs.

MAGIC HANDS SOLUTION INC.,

Defendant.

AMENDED ORDER OF FINAL JUDGMENT IN FAVOR OF PLAINTIFF

THIS CAUSE having come before the Court on Plaintiff's, IMPERIAL FIRE & CASUALTY INSURANCE COMPANY (hereinafter referred to as "IMPERIAL"), Complaint for Declaratory Relief and Motion for Entry of Final Judgment After Default against Defendant, MAGIC HANDS SOLUTION, INC., (hereinafter referred to as "MAGIC HANDS"), and the Court having heard argument of counsel, and being otherwise advised in the Premises, the Court finds as follows,

ORDERED AND ADJUDGED that:

Facts

1. This is an Action for Final Judgment upon Plaintiff's Complaint for Declaratory Relief filed with this Honorable Court on May 21, 2014, pursuant to Section 86.011, Florida Statutes (2013).

2. The Plaintiff, IMPERIAL, is a corporation licensed in the State of Florida that is engaged in the business of automobile insurance and conducts business in Miami-Dade County, Florida.

3. The Defendant, MAGIC HANDS, is a Florida Corporation that operates as a medical clinic with its principal place of business at 663 Flagami Boulevard, Miami, FL 33144, which offers health care services to individuals and which tenders charges for reimbursement for such services.

4. Plaintiff, IMPERIAL, issued a policy of automobile insurance to FERNAN VINCENCH, (hereinafter referred to as “Insured”) under which the Defendant, MAGIC HANDS, sought payment.

5. At all time material, the Defendant, MAGIC HANDS, was operating as a medical clinic and allegedly rendered medical treatment to the Insured who was purported injury in an automobile accident.

6. The Defendant, MAGIC HANDS, applied for a Certificate of Exemption from Licensure as a Health Care Clinic on January 8, 2014.

7. The basis for Defendant’s, MAGIC HANDS, requesting a Certificate of Exemption, was that Zadys Perez, a massage therapist, was the 100% owner of the clinic. The application is executed by Zadys Perez, a licensed massage therapist.

8. The Agency for Health Care Administration (AHCA), issued a Certificate of Exemption to the Defendant, MAGIC HANDS, showing that the clinic was wholly owned within the meaning of the exemption statute, Paragraph 400.9905(4)(g).

9. The, Defendant, MAGIC HANDS, is wholly owned by a licensed massage therapist, which is not a listed exception under the PIP Statute.

10. The Defendant, MAGIC HANDS, allegedly accepted an Assignment of Benefits from the Insured(s), allegedly entitling it to received payment for alleged medical services directly from the Plaintiff, IMPERIAL.

11. Subsequently, the Defendant, MAGIC HANDS, submitted charges totaling \$12,085.44 for payment of PIP benefits to the Plaintiff, IMPERIAL.

12. On February 7, 2014, the Plaintiff, IMPERIAL, advised the Defendant, MAGIC HANDS, that the claim submitted for PIP benefits was not payable because the clinic was not properly licensed pursuant to Section 627.736, Florida Statutes (2013).

13. On or about May 21, 2014, the Plaintiff, IMPERIAL, filed its Complaint for Declaratory Relief against Defendant, MAGIC HANDS, in the Circuit Court in and for Miami-Dade County, Florida, Case Number 2014-2211 CC 24.

14. On June 20, 2014, the Clerk of this Honorable Court entered a Default in favor of the Plaintiff, IMPERIAL, for Defendant's failure to serve or file any paper as required by law.

15. The Plaintiff, IMPERIAL, moves this Court for entry of a Final Judgment after Default in favor of Plaintiff finding that Defendant, MAGIC HANDS, was required to obtain a Health Care Clinic License as a condition precedent to submitting charges for reimbursement to Plaintiff, IMPERIAL and that MAGIC HANDS' failure to obtain the Health Care Clinic License renders the charges noncompensable; therefore, Plaintiff, IMPERIAL, is not legally obligated to pay the pending claim.

Analysis

16. Part X, Chapter 400, Florida Statutes, (2013), the "Health Care Clinic Act" outlines the licensing requirements for health care clinics to operate in the State of Florida.

17. Subsection 400.9905(4), "Definitions", defines "clinic", and therefore which entities are required to be licensed under this Chapter, as "an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider."

18. Subsection 400.9905(4), “Definitions”, goes on provide various exemptions to the definition and licensing requirement of a “clinic”. See 400.9905(4)(a)-(n) for each possible exemption.

19. In particular, subsection 400.995(4)(g) provides an exemption for a clinic wholly owned by licensed health care practitioner, which states in pertinent part:

(4) ‘Clinic’ means an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements for this part do not apply to...

(g) A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under ... chapter 480 ... and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this paragraph and the spouse, parent, child or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising business activities and is legally responsible for the entity’s compliance with all federal and state laws. However, a health care practitioner may now supervise services beyond the scope of the practitioner’s license, except that, for the purposes of this part, a clinic owned by a licensee in s.456.052(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

20. In 2012, however, the Legislature required mandatory licensing for all clinics holding an exempt status, whether by issuance of Certificate of Exemption or self-determined, in order for clinic to receive reimbursement pursuant to the “PIP Statute”. See, HB 119: Chapter 2003-197, laws of Florida.

21. Section 400.9905 states, following subsection 400.9905(n):
“*Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h)*” (emphasis added).

22. Hence, a clinic must be licensed under Part X, Chapter 400 to receive reimbursement for PIP benefits, unless it qualifies for an exception listed in Section 627.736(5)(h), which states:

As provided in s. 400.9905, an entity excluded from the definition of a clinic shall be deemed a clinic and must be licensed under part X of chapter 400 in order to receive reimbursement under ss.627.730-627.405. However, this licensing requirement does not apply to:

- (1) An entity wholly owned by a physician licensed under chapter 458 or chapter 459, or by the physician and the spouse, parent, child or sibling of the physician;
- (2) An entity wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;
- (3) An entity wholly owned by a chiropractic physician licensed under 460, or by the chiropractic physician and the spouse, parent, child or sibling of the chiropractic physician;
- (4) A hospital or ambulatory surgical center licensed under chapter 395;

(5) An entity that wholly owns or is wholly owned, directly or indirectly by a hospital or hospitals licensed under chapter 395; or

(6) An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents or fellows. (Emphasis added)

23. Accordingly, although a clinic may have an exempt status from licensure under subsection 400.9905(4)(g), it must be licensed under the Health Care Clinic Act in order to receive reimbursement under the PIP statute, unless it qualifies for one of the six exceptions delineated in §627.736(5)(h)(1)-(6) above.

24. Further, subsection 400.9905(3) provides that “All charges or reimbursement claims made by or on behalf of a clinic that is required to be licensed under this part, but that is not so licensed ... are unlawful charges, and therefore are noncompensable and unenforceable.”

25. Additionally, Section 627.732(11) of Florida’s Motor Vehicle No-Fault Law (the “PIP” Statute) defines “lawful” to mean “in substantial compliance with all relevant applicable criminal, civil, and administrative requirements of state and federal law related to the provision of medical services or treatment.”


26. The Defendant, MAGIC HANDS, being wholly owned by a license massage therapist, does not qualify for any of the exceptions delineated in §627.736(5)(h)(1)-(6).

27. Therefore, this Court finds that Defendant, MAGIC HANDS, was required to obtain a Health Care Clinic license as a condition precedent to receiving reimbursement of Personal Injury Protection (PIP) benefits.

28. As a result of Defendant's, MAGIC HANDS, failure to obtain a Health Care Clinic License, this Court also finds that the charges submitted to Plaintiff, IMPERIAL, by Defendant, MAGIC HANDS, are unlawful and thus, noncompensable pursuant to Florida's Motor Vehicle No-Fault Law.

29. Therefore, Plaintiff, IMPERIAL, is not legally obligated to pay the pending claim.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 03/10/15.



DONALD J. CANAVA
COUNTY COURT JUDGE

**No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT**

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.