

Temporary Injunction Granted in Florida Personal Injury Protection Case

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Circuit Judge Terry P. Lewis issued a partial injunction against the Florida Personal Injury Protection law, putting a halt - at least temporarily - to the portion of the law that requires a finding of an emergency medical condition as a prerequisite for payment of PIP benefits and that prohibits payment for services provided by acupuncturists, massage therapists and chiropractors.

The state's Office of Insurance Regulation filed an appeal requesting a stay of the injunction. However, the Florida PIP Defense Fund attorneys then filed a motion to vacate the stay. The case could ultimately end up before the state's Supreme Court.

Background

A group of Florida acupuncturists and massage therapists were hoping to close out 2012 with some positive momentum in their fight against HB119, which prohibits the state's acupuncturists and massage therapists from billing personal injury insurance. The Florida PIP Defense Fund, a group assembled specifically to fight this bill, learned in the waning days of 2012 that the federal court canceled its hearing scheduled for December 27, 2012, and issued an order denying its motion for a preliminary injunction.

Attorney's Luke Lirot and Adam Levine then filed a motion to reconsider and they are also filed a response to defendant Kevin McCarty's request for dismissal on the day the case was due to be heard in Federal Court. Lirot and Levine explained that, "we believed that the provisions of this act violated the rights of acupuncturists, licensed massage therapists and chiropractors in Florida. Specifically, we believed that these health care provider's rights, which are protected to due process and equal protection, were violated when Florida determined that in order to prevent fraud, all licensed massage therapists and acupuncturists should no longer be permitted to provide care to those injured as a result of a motor vehicle collision."

According to an earlier release from the Florida PIP Defense Fund, Constitutional attorney Luke Lirot filed a complaint for declaratory and injunctive relief against Kevin N. McCarty in his official capacity as Commissioner of the Florida Office of Insurance Regulation. The complaint states that "the challenged legislation is invalid on a vast number of bases, generally summarized:

- It violates the 'single subject rule.'
- It contains a variety of restrictions that are unnecessary and unreasonable.
- It violates the equal protection rights of healthcare providers.
- It denies due process of law.
- It is based on unsupported statistical assumptions, not the product of proper research methodology.
- It unduly limits the rights of medical professionals and consumers.
- It departs from the rationale originally relied on to support the 'No-Fault' regulations as a 'sufficient alternative' to a party having access to the courts, and now results in a denial of

access to the courts.

- It violates the separation of powers doctrine by legislatively imposing a statute that determines the amount of 'damages' an injured party may obtain."

Lirot said, "While Insurance companies might be able to pick and choose medical providers, treatments and so forth, the State cannot. If, as the Governor alleges, the high costs to insurers is due to fraud in the PIP system, why then eliminate an entire field of medical providers? Why not go specifically to the fraudulent activity and attack the ones perpetrating the fraud? It is totally unreasonable, unjustifiable, arbitrary and overreaching to eliminate a whole profession of medical providers. Was it just because massage therapists and acupuncturists were the easiest to target?"

For additional information about the Florida PIP Defense Fund visit www.flpipdefensefund.com.

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