

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.

ALFREDO MURCIANO, M.D., P.A., a
Florida Corporation,

Plaintiff,

vs.

BLUE CROSS AND BLUE SHIELD OF
FLORIDA, INC. d/b/a FLORIDA BLUE, a
Florida corporation,

Defendant.

_____ /

COMPLAINT

Plaintiff, ALFREDO MURCIANO, M.D., P.A. (“Dr. Murciano”), sues Defendant, BLUE CROSS AND BLUE SHIELD OF FLORIDA, INC., d/b/a FLORIDA BLUE (“Florida Blue” or Defendant) and alleges the following:

GENERAL ALLEGATIONS

A. Jurisdiction, Venue and Parties

1. This is an action for damages greater than \$30,000.00, exclusive of court costs, pre-judgment interest and attorney’s fees.
2. Plaintiff, Dr. Murciano, is a Florida for-profit corporation with its principal place of business in Miami-Dade County, Florida.
3. Defendant Florida Blue is a Florida for-profit corporation that contracts to insure persons or risks located within the State of Florida, including Miami-Dade County. At all times

relevant hereto, Florida Blue was a licensed preferred provider organization (“PPO”) in Florida within the meaning of, and subject to, Florida Statutes Chapter 627.

4. Jane Doe (“Member”) is a fictitious name for the patient who received the medical services described in this Complaint. Upon information and belief, Member can be identified by Florida Blue Member ID # DOW323087790199.

5. Baptist Hospital of Miami (not a party to this suit) is an acute care facility located in Miami-Dade, is a contracted facility with Florida Blue, and is where the medical services described in this Complaint were provided.

6. Venue is proper in Miami-Dade County, Florida, pursuant to Chapter 47, Florida Statutes, because all services were performed in Miami-Dade County and billed from Plaintiff’s principal place of business.

B. The Covered Services

7. Upon information and belief, at all times material, Baptist Hospital of Miami had and has a contractual agreement with Defendant by which Baptist Hospital of Miami agreed to participate in Defendant’s network of participating facilities to provide medical services to subscribing members covered by Defendant’s health plans.

8. At all times material, Plaintiff had no direct agreement with Defendant to be reimbursed for its services provided to Defendant’s subscribing members at discounted rates. Accordingly, Plaintiff was and is considered an out-of-network or nonparticipating provider with Florida Blue.

9. Member is covered by Defendant’s Florida-licensed preferred provider organization (“PPO”) insurance policy (the “Policy), which was in full force and effect at the time of the medical services provided herein. Plaintiff is not in possession of Member’s Policy,

however, Defendant is, or should be, in possession of Member's policy. Plaintiff will file Member's policy upon obtaining a copy through discovery.

10. The Member was born prematurely at 24 weeks and weighing one pound on April 3, 2020 at Baptist Hospital of Miami. The Member was immediately transferred to the Neonatal Intensive Care Unit ("NICU").

11. At the NICU, the Member presented with sepsis, among other issues, and required the emergency services of an infectious disease specialist. The only infectious disease specialist on site at Baptist Hospital was Dr. Murciano.

12. The Member's sepsis and other issues were emergent in nature because of the risk of death.

13. The Member did not have the ability or opportunity to choose a participating in-network provider at Baptist Hospital who was available to perform the medical services performed by Dr. Murciano during Member's treatment at Baptist Hospital of Miami.

14. All medical services provided by Plaintiff were reasonable and medically necessary in light of Member's presenting condition.

15. The medical services provided by Plaintiff to Member are covered services under the Policy.

16. Florida Blue did not make payment for the emergency and medically necessary services required by the Member and provided by Dr. Murciano.

17. Florida Blue gave no explanation for its claim processing procedures and took inconsistent positions regarding the claims at issue ("the Emergency Claims").

18. Plaintiff's billed charges for its medical services to Member were within the usual, customary, and reasonable ("UCR") rates for the community or geographic area based on what providers in the area usually charge for the same or similar medical services.

19. Plaintiff is entitled to reimbursement of its billed charges, as same are within the UCR rates for the community or geographic area.

20. In the alternative, if Plaintiff's billed charges are determined to be in excess of the UCR rates for the community or geographic area, Plaintiff is entitled to reimbursement for the UCR rates for the community or geographic area.

21. Defendant has wrongfully refused to pay Plaintiff its billed charges on the submitted claims.

22. Defendant has wrongfully refused to pay Plaintiff the UCR rates on the submitted claims.

23. The Emergency Claims were not paid by Florida Blue, however, Florida law requires the Insurer to make payment when emergency services are rendered.

24. Florida law requires the patient responsibility portion of the Emergency Claims be processed at In-Network rates as it relates to Patient Responsibility. As such, the maximum Out of Pocket expenses to the Member per the terms of the Policy cannot be more than \$6,000.00.

25. The Member has already paid the maximum amount allowable out of pocket. Florida Blue has failed to account for this portion of the patient responsibility and has stated the Member must pay the claims as set forth above.

26. Plaintiff has retained the undersigned law firm to represent its interest in this matter. Plaintiff has agreed to pay, and counsel for Plaintiff has agreed to accept, any Court awarded fee for its reasonable attorney fees and costs.

COUNT I
BREACH OF CONTRACT
(Third-Party Beneficiary)

27. Plaintiff re-adopts and re-alleges and incorporates by reference paragraphs 1 through 26 as if fully set forth herein.

28. At all times relevant, Member, while a patient at Baptist Hospital of Miami, received emergency services and/or nonemergency services from Baptist Hospital of Miami under the terms of the Policy.

29. Plaintiff is a third-party beneficiary to the Policy since Defendant is mandated to pay Plaintiff directly for such services pursuant to Florida law.

30. Plaintiff is also a third-party beneficiary to the Policy (i) since Florida law recognizes that medical service providers are intended beneficiaries of insurance contracts; (ii) such contracts primarily and directly benefit medical providers such as Plaintiff pursuant to Florida statutes incorporated within the insurance contracts by the statutory incorporation doctrine; and (iii) because the insurance contracts either mandated or allowed for payment directly to Dr. Murciano for the services that were provided to Member. Moreover, at all times material, Defendant has acted as though Plaintiff was and is a third-party beneficiary thereby waiving any anti-assignment and/or anti-third-party beneficiary clause(s) in its Policy.

31. The Policy between Defendant and Member should be interpreted to provide that Defendant should pay Plaintiff its billed charges or, in the alternative, the UCR rates for the medical services rendered, if it is determined that the billed charges exceed the UCR rates for the medical services rendered. Alternatively, the charges for services rendered by Plaintiff are either set by statute or administrative regulation, which is incorporated into the contract through the

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