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Medical bills should not be excepted from proper foundation

By Donald P. Eckler and Matthew Reddy
Donald "Pat" Eckler is a partner at Pretzel & Stouffer focusing on professional liability defense, insurance coverage litigation, and general tort defense. He is the legislative chair of the Illinois Association of Defense Trial Counsel. Eckler also is the co-host of the Podium and Panel podcast with Daniel Cotter. Matthew Reddy, also a partner at Pretzel & Stouffer, has substantial experience in civil trial litigation, with a focus on medical malpractice defense. He has tried dozens of jury trials involving claims of substantial damages. Their views are their own and not those of their firm or its clients.

Pursuant to Rule 102, the purpose of the Illinois Rules of Evidence is to promote "the end that the truth may be ascertained and proceedings justly determined." In that regard, foundation for a witness' knowledge about an issue is required to be shown in order for the witness' testimony to be admitted.

The Illinois Supreme Court in *Wills v. Foster* adopted the most radical version of the collateral source rule discussed in this space last week and on Aug. 19, 2020. That allows plaintiffs to recover for the total amount billed, even when the medical provider had no expectation that anyone would ever pay the amount billed and allows for the recovery of the "value" of care when the medical services were charitable.

Following on this ruling has become commonplace for plaintiffs to issue requests to admit on the reasonableness of medical bills. This practice has been encouraged by the 1st District Appellate Court in *Oezele v. Score Sports Venture, LLC*, 410 Ill. App. 3d 110, 126 (1st Dist. 2010) which stated that:

"Plaintiff had previously submitted her medical records to defendant. So defendant knew what her injuries were and, with its access to its insurance company and the insurer's databases of claims and necessary treatments and expenses, could make a pretty good guess at the reasonableness of the expenses and treatments claimed and contest those, if necessary."

The "pretty good guess" standard for an admission by a defendant as to the amount of medical bills was born. A "pretty good guess" is hardly in accord with ascertaining the truth and justly determining the outcome of proceedings.

In line with this holding, the 1st District in *Zaretsky v. Thoma*, 2021 IL App (1st) 192093-U, Par. 11, ruled that a sufficient foundation had been laid by a neurosurgeon for the admission of a partially paid medical bill for a spinal fusion based upon the following line of questioning at a trial on causation and damages only following the admission of liability for an underlying automobile crash:

Q: And it can be an expensive surgery as well; is that right?

A: Sure.

Q: In fact, I think you had initially, before you did the surgery, estimated it would be as much as $200,000 total to do the surgery?

A: With the hospital costs and everything, yes.

Q: Okay. And I think this one got done for $150,000 total. Does that sound reasonable?

A: Yeah. Bargain deal. Right.

Q: Well, you have to get paid —

A: You know I don't get paid that, right?

Q: Well, I think that there was a surgeon's bill for $100,000. Is that a reasonable fee for this type of neurosurgery?

A: I mean, that's pretty typical.

Q: The hospital bill was approximately $50,000. Is that fairly typical?

A: You know, I'm — I'm not sure exactly. It's often flipped. It's often 50 for us and 100 for the hospital, but I don't know those numbers, so I couldn't tell you for sure.

The court held, citing to *Klesowitch v. Smith*, 2016 IL App (1st) 150414, that "[t]he admission of medical bills into evidence does not require the testimony of a billing specialist, only someone with 'knowledge of the services rendered and the usual and customary charges for such charges.'"

The doctor plainly was aware and could testify competently to the services rendered, but it seems quite the stretch to claim he was aware of the usual and customary charges when he was incorrect in his estimate of the cost before the surgery, he mixed up which portion of the charges would be for his services and which would be for the hospital, and testified he was not exactly sure what was "fairly typical" for the hospital's bill and that "I don't know those numbers, so I couldn't tell you for sure."

Neurosurgeons are in the business of neurosurgery, not billing, and this decision will likely lead to unsupported and inappropriate ultracrepidarian testimony. Here, the court held as sufficient opinion testimony regarding the reasonableness of the medical bills with limited foundational testimony to substantiate that opinion. The court found sufficient the doctor's testimony about the usual and customary nature of his bills, something that he never demonstrated any knowledge of, but also testimony as to the usual and customary nature of the hospital's facilities charges, even given the acknowledgement by the witness that he was "not sure exactly" as to the typicality of those charges. A witness that is off in their estimate by 25% (irrespective of the direction) can hardly be credited as an expert in that field even if they are, indisputably, an expert in the underlying care and treatment.

Compounding the inadequacy of the testimony that this decision will likely lead to is the fact that if House Bill 3360, as amended, is signed into law by the governor, defendants will be responsible for prejudgment interest on medical bills for which foundation on any other kind of bill would be plainly insufficient.

The courts should not countenance admission of testimony from witnesses who are testifying beyond their brief and, in order to accomplish the goals of the rules of evidence should require sufficient foundation to be laid.

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