

Succeeding Under Florida Tort Reform’s Section 768.0427
Article #6 – The Price of the Sale of an Account Receivable is Not a
Cap on Damages, is not Admissible, and is not Discoverable

This is the sixth article in a series that lights the way to success under Florida Tort Reform’s Section 768.0427. This article focuses on what may now be the most misunderstood impact of the statute: how a facility’s sale of an account receivable impacts a personal injury case. Based on the plain language of the statute, the sales price is certainly not a cap on damages and should not even be discoverable or admissible. There are two portions of the statute that address sales of bills – Subsection (2)(b)(4) and Subsection (c)(3). These will be addressed in turn.

First, as we know, Section 2 addresses the admissibility of evidence offered to prove the amount of damages for past or future medical treatment. Subsection (2)(b) addresses “evidence offered to prove the amount necessary to satisfy unpaid charges.” Subsection (2)(b)(4) expressly applies to sales of bills and states that the following is admissible:

If the claimant obtains medical treatment or services under a letter of protection and the health care provider subsequently transfers the right to receive payment under the letter of protection to a third party, evidence of the amount the third party paid or agreed to pay the health care provider in exchange for the right to receive payment pursuant to the letter of protection.

Is the sales price a cap on Damages? No. As detailed in prior articles, Subsections (2)(a) and (2)(b) are materially different. Subsection (2)(a) does state that the only evidence admissible to prove the amount of damages for past medical treatment that has been satisfied is evidence of the amount actually paid. While the sale by definition “pays” the seller for the bill, that bill still exists in the purchaser’s hands. Thus, from the perspective of the plaintiff/patient, the bill is still owed, i.e. not “satisfied.” This is why the Legislature did not place sales of accounts receivable in Subsection (2)(a). Instead, the sale of accounts receivable is deemed a Subsection (2)(b) “unpaid charge.” Accordingly, the sales price of an account receivable is not a cap on damages. See also Articles #3 and #5 of this series.

Is the sales price admissible? No. Subsection (2)(b)(4) expressly limits admissibility of the sales price to situations where the medical treatment or services were provided “under a letter of protection” and the payment was received “pursuant to the letter of protection.” The Legislature has expressly defined “Letter of Protection” as “a promise of payment . . . from any judgment or settlement.” That definition trumps the common law definition. As detailed in a prior article, no medical providers should use written or verbal letters of protection. See Article #3. So long as

there is no letter of protection, the defense will not be able to satisfy the critical “if” that begins Subsection (2)(b)(4) and thus will not be permitted to introduce the sales price to the jury.

Is the sales price discoverable. No. The other subsection addressing sales of accounts receivable is Subsection (3)(c). Section 3 governs discoverability, not admissibility. Thus, Subsection (3)(c) has bearing only on the discoverability of the sales price. But before we even get there, the introductory language of Section 3 itself terminates the right to discover the sales price: “In a personal injury or wrongful death action, as a condition precedent to asserting any claim for medical expenses for treatment rendered under a letter of protection, the claimant must disclose . . .” Thus, the defense will have to establish the existence of a letter of protection before it can even discover the purchase price. As with admissibility, so long as there is no letter of protection, the defense will have no right to discover the sales price.

The skeptics keep saying: “But the Legislature intended to make sure all of this stuff gets in front of the jury.” So?! Because of the separation of powers that is the bedrock of the United States and Florida Constitutions, the number one rule of statutory construction is that legislative intent does not come into play unless there is an ambiguity in the statute. There is no ambiguity in Subsection (2)(b)(4) or Subsection (3)(c). Yes, some trial judges will fail to apply the plain language of this statute. We saw this in the now-rejected obtuse trilogy of trial court orders finding tort reform retroactive. But we should not be planning on this failure because the appellate courts are likely to correct the trial courts on so simple an issue.