

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
CHARLOTTE COUNTY, FLORIDA** **CIVIL ACTION**

ROBERTA GRANT,  
**Plaintiff.**

**CASE NO. 23002644CA**

**VS.**

BARBARA CARTWRIGHT,  
**Defendant.**

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**Amended Order on Defendant's Motions in Limine**

**THIS CAUSE** came before the court on February 25, 2025 on the Court's own motion to reconsider the order issued earlier today being otherwise fully advised in the premises, finds as follows:

The Court recedes from the finding that Plaintiff has an initial burden to prove the 120% of Medicare numbers. Defense may admit that evidence but Plaintiff is not required to do so. Plaintiff's Medical Bill Summary is admissible so long as it is backed up by bills laying the foundation. Plaintiff's medical charges past are admissible as provided by law.

The remainder of the initial order remains.

Done and ordered this 25<sup>th</sup> day of February, 2025 in Punta Gorda, Florida.

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Geoffrey H. Gentile, Circuit Court Judge r9LS+mT0 23002644CA  
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**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
CHARLOTTE COUNTY, FLORIDA** **CIVIL ACTION**

ROBERTA GRANT,  
Plaintiff.

**CASE NO. 23002644CA**

**VS.**

BARBARA CARTWRIGHT,  
Defendant.

**ORDER ON MOTIONS IN LIMINE REGARDING ADMISSIBILITY OF PAST AND  
FUTURE MEDICAL CHARGES**

**THIS CAUSE** came before the court on February 24, 2025 on Defendant's Motions In Limine and the court having heard argument and being otherwise fully advised in the premises, finds as follows:

The Defendant has moved in Limine to exclude certain evidence of Plaintiff's past and future medical expenses, and more specifically to require Plaintiff to submit only certain charges to the jury. Counsel has been unable to provide any appellate authority on application of the statute to the facts of this case and the Court has failed to find any either. The Court finds the statute to be unambiguous and has applied the plain terms of the statute to the facts.

- The Defendant's Second Motion in Limine (1/20/2025) is GRANTED;
- Defendant's Third Motion in Limine (1/20/25) is GRANTED in part;
- Defendant's Motion in Limine re: Minor's Prior Settlement (2/14/2025) is GRANTED by agreement;
- Defendant's Motion in Limine re: Hurricane Damage (2/14/2025) is GRANTED by agreement;
- Defendant's Motion in Limine re: Past and Future Med Treatment, LOPS, etc. (2/14/2025) is GRANTED as provided below; and
- Defendant's Motion in Limine re: Cost Estimate (2/21/20225) is GRANTED.

**For ease of reference, the statute is reproduced in full below.**

**768.0427 Admissibility of evidence to prove medical expenses in personal injury or wrongful death actions; disclosure of letters of protection; recovery of past and future medical expenses damages.—**

(1) DEFINITIONS.—As used in this section, the term:

(a) “Factoring company” means a person who purchases a health care provider’s accounts receivable at a discount below the invoice value of such accounts.

(b) “Health care coverage” means any third-party health care or disability services financing arrangement, including, but not limited to, arrangements with entities certified or authorized under federal law or under the Florida Insurance Code; state or federal health care benefit programs; workers’ compensation; and personal injury protection.

(c) “Health care provider” means any of the following professionals and entities, and professionals and entities similarly licensed in another jurisdiction:

1. A provider as defined in s. 408.803.
2. A clinical laboratory providing services in this state or services to health care providers in this state, if the clinical laboratory is certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder.
3. A federally qualified health center as defined in 42 U.S.C. s. 1396d(l)(2)(B), as that definition existed on March 24, 2023.
4. A health care practitioner as defined in s. 456.001.
5. A health care professional licensed under part IV of chapter 468.
6. A home health aide as defined in s. 400.462.
7. A provider licensed under chapter 394 or chapter 397 and its clinical and nonclinical staff providing inpatient or outpatient services.
8. A continuing care facility licensed under chapter 651.
9. A pharmacy permitted under chapter 465.

(d) “Letter of protection” means any arrangement by which a health care provider renders treatment in exchange for a promise of payment for the claimant’s medical expenses from any judgment or settlement of a personal injury or wrongful death action. The term includes any such arrangement, regardless of whether referred to as a letter of protection.

(2) ADMISSIBLE EVIDENCE OF MEDICAL TREATMENT OR SERVICE EXPENSES.—Evidence offered to prove the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action is admissible as provided in this subsection.

(a) Evidence offered to prove the amount of damages for past medical treatment or services that have been satisfied is limited to evidence of the amount actually paid, regardless of the source of payment.

(b) Evidence offered to prove the amount necessary to satisfy unpaid charges for incurred medical treatment or services shall include, but is not limited to, evidence as provided in this paragraph.

1. If the claimant has health care coverage other than Medicare or Medicaid, evidence of the amount which such health care coverage is obligated to pay the health care provider to satisfy the charges for the claimant's incurred medical treatment or services, plus the claimant's share of medical expenses under the insurance contract or regulation.

2. If the claimant has health care coverage but obtains treatment under a letter of protection or otherwise does not submit charges for any health care provider's medical treatment or services to health care coverage, evidence of the amount the claimant's health care coverage would pay the health care provider to satisfy the past unpaid medical charges under the insurance contract or regulation, plus the claimant's share of medical expenses under the insurance contract or regulation, had the claimant obtained medical services or treatment pursuant to the health care coverage.

3. If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, evidence of 120 percent of the Medicare reimbursement rate in effect on the date of the claimant's incurred medical treatment or services, or, if there is no applicable Medicare rate for a service, 170 percent of the applicable state Medicaid rate.

4. 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.

5. Any evidence of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.

(c) Evidence offered to prove the amount of damages for any future medical treatment or services the claimant will receive shall include, but is not limited to, evidence as provided in this paragraph.

1. If the claimant has health care coverage other than Medicare or Medicaid, or is eligible for any such health care coverage, evidence of the amount for which the future charges of health care providers could be satisfied if submitted to such health care coverage, plus the claimant's share of medical expenses under the insurance contract or regulation.

2. If the claimant does not have health care coverage or has health care coverage through Medicare or Medicaid, or is eligible for such health care coverage, evidence of 120 percent of the Medicare reimbursement rate in effect at the time of trial for the medical treatment or services the claimant will receive, or, if there is no applicable Medicare rate for a service, 170 percent of the applicable state Medicaid rate.

3. Any evidence of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services.

(d) This subsection does not impose an affirmative duty upon any party to seek a reduction in billed charges to which the party is not contractually entitled.

(e) Individual contracts between providers and authorized commercial insurers or authorized health maintenance organizations are not subject to discovery or disclosure and are not admissible into evidence.

(3) LETTERS OF PROTECTION; REQUIRED DISCLOSURES.—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:

(a) A copy of the letter of protection.

(b) All billings for the claimant's medical expenses, which must be itemized and, to the extent applicable, coded according to:

1. For health care providers billing at the provider level, the American Medical Association's Current Procedural Terminology (CPT), or the Healthcare Common Procedure Coding System (HCPCS), in effect on the date the services were rendered.

2. For health care providers billing at the facility level for expenses incurred in a clinical or outpatient setting, including when billing through an Ambulatory Payment Classification (APC) or Enhanced Ambulatory Patient Grouping (EAPG), the International Classification of Diseases (ICD) diagnosis code and, if applicable, the American Medical Association's Current Procedural Terminology (CPT), in effect on the date the services were rendered.

3. For health care providers billing at the facility level for expenses incurred in an inpatient setting, including when billing through a Diagnosis Related Group (DRG), the International Classification of Diseases (ICD) diagnosis and procedure codes in effect on the date in which the claimant is discharged.

(c) If the health care provider sells the accounts receivable for the claimant's medical expenses to a factoring company or other third party:

1. The name of the factoring company or other third party who purchased such accounts.

2. The dollar amount for which the factoring company or other third party purchased such accounts, including any discount provided below the invoice amount.

(d) Whether the claimant, at the time medical treatment was rendered, had health care coverage and, if so, the identity of such coverage.

(e) Whether the claimant was referred for treatment under a letter of protection and, if so, the identity of the person who made the referral. If the referral is made by the claimant's attorney, disclosure of the referral is permitted, and evidence of such referral is admissible notwithstanding s. 90.502. Moreover, in such situation, the financial relationship between a law firm and a medical provider, including the number of referrals, frequency, and financial benefit obtained, is relevant to the issue of the bias of a testifying medical provider.

(4) DAMAGES RECOVERABLE FOR MEDICAL TREATMENT OR SERVICE EXPENSES.—The damages that may be recovered by a claimant in a personal injury or wrongful death action for the reasonable and necessary cost or value of medical care rendered may not include any amount in excess of the evidence of medical treatment and services expenses admitted pursuant to subsection (2), and also may not exceed the sum of the following:

(a) Amounts actually paid by or on behalf of the claimant to a health care provider who rendered medical treatment or services;

(b) Amounts necessary to satisfy charges for medical treatment or services that are due and owing but at the time of trial are not yet satisfied; and

(c) Amounts necessary to provide for any reasonable and necessary medical treatment or services the claimant will receive in the future.

**History.**—ss. 6, 27, ch. 2023-15.

### **Defendant's Second Motion in Limine**

The Motion seeks to exclude the Medical Bill Summary. Because Plaintiff had Medicare available, her past unpaid medical expenses admissible shall include, but are not limited to 120% of the Medicare reimbursement rate in effect on the date of the claimant's incurred medical treatment. Section 768.0427(2)(b)3. Florida Statutes (2024). The Plaintiff's medical bill summary is not based on this math so it is inadmissible as an initial matter. However, Section 768.0427(2)(b)5. Provides that other evidence is also admissible as follows: "Any evidence of reasonable amounts billed to the (Plaintiff) for medically necessary treatment or medically necessary services provided to the claimant." Once the Plaintiff submits evidence of the Medicare charges she may admit other evidence under subsection (5). In this case, the Court views the statutory framework as requiring a threshold proof including 120% of Medicare charges for each charge then allowing other evidence to show the reasonable amounts recoverable by Plaintiff. See, 768.0427 (4). The Defendant's Motion is GRANTED.

### **Defendant's Third Motion in Limine**

The Motion does not have a specific wherefore clause seeking specific relief. It clearly seeks to exclude anything other than the past Medicare payments for treatment paid in the past by Medicare. The Motion is GRANTED in that; Plaintiff shall not admit the full bill on any charges paid by Medicare. To the extent there is other relief requested, the ruling on the Second Motion in Limine controls. Otherwise DENIED.

### **Defendant's Motions In Limine re: Minor's Prior Settlement and Hurricane Damage both GRANTED by agreement of counsel**

### **Defendant's Motion in Limine Regarding Evidence of Past and Future Medical Treatment, Letters of Protection and Attorney Relationship with Medical Providers**

As to past medical expenses the Defendant's Motion is Granted in that Plaintiff may initially admit actual payments made or Plaintiff responsibility under any insurance such as co-pays or deductibles. As to any unpaid bills, Plaintiff must admit 120% of Medicare for any outstanding charges. Other evidence is admissible pursuant to Section 768.0427 (2)(b)5 and 768.0427 (4) Florida Statutes.

The letters of protection and referral by attorney to Alpha Medicine, Prestige Anesthesia and Suncoast Surgical Suites are admissible. 768.0427 (3)(e) Florida Statutes.

Evidence of the financial relationship between the law firm and the medical provider is admissible as provided by statute. Id.

### **Defendant's Motion in Limine Regarding The Cost Estimate Dated November 1, 2024**

Defendant's Motion is GRANTED for two reasons. First, the Estimate does not comply with the statutory provisions relating to future medical expenses. Section 768.0427 (2)(c) and (4). Second, there is no foundation for the admission of the estimate based on either the physician's testimony (no real idea except it is in the file) or on Tony Rios as he has no record qualifications to testify about future medical charges.

Done and ordered this 25<sup>th</sup> day of February, 2025 in Punta Gorda, Florida.

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Geoffrey H. Gentile, Circuit Court Judge Vj09Bdhu 23002644CA  
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