IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 2025-CA-000500

KIMBERLY LYLES,

Plaintiff,

vs.

SEWNARINE BALRAJ,

Defendant.
_____/

ORDER ON DEFENDANT'S MOTION IN LIMINE REGARDING ADMISSIBLE EVIDENCE OF PAST AND FUTURE MEDICAL TREATMENT OR SERVICES EXPENSES AND APPLICATION OF FLA. STAT. § 768.0427

THIS CAUSE having come before this Court on Defendant's Motion in Limine Regarding Admissible Evidence of Past and Future Medical Treatment or Services and Application of Fla. Stat. § 768.0427, and Plaintiff's Response in Opposition [In Part], and the parties' Notices of Filing Supplemental Authorities, and this matter being heard via hearing on September 16, 2025, and after entertaining argument of counsel, the Court hereby:

ORDERED AND ADJUDGED, as follows:

1. Defendant's Motion in Limine regarding admissible evidence of past and future medical treatment or services expenses and application of Fla. Stat. 768.0427 is hereby **GRANTED in part and DENIED in part.**

2. The Court finds that Section 768.0427 applies to this matter and will also apply to the parties at trial.

3. The Court did not make any determination as to what evidence regarding Section 768.0427 will be admissible for trial purposes. The Court indicated that will be determined at a later date.

4. The Court finds that in the instant case Section 768.0427 (2)(a); (2)(b); and 2(c) apply.

5. The Defendant filed a Motion in Limine asking this Court, *inter alia*,[1] to conclude that pursuant to Section 768.0427(2), the Plaintiff has the burden of proof to provide evidence for the reimbursement rates for any private health care that did, or could, provide treatment, and/or reimbursement rates for Medicare/Medicaid that would cover said medical treatment in the past and in the future. Defendant also moved for an Order to introduce any evidence specifically permitted by subsection (2)(b)-(c). Defendant further argues that if the Plaintiff does not present this evidence, she will be prohibited from recovering past or future medical damages.

6. The Plaintiff opposed this Motion, arguing in relevant part that she does not have the burden to present any particular evidence under Section 768.0427(2), that the statute merely concerns the admissibility of evidence, and does not create a burden of production, that the only limitation in the statute is for evidence of ***satisfied*** medical expenses, that the statue does not limit proof for unpaid or future medical expenses, nor require a plaintiff to introduce particular evidence for such expenses, that the Legislature has provided a list of non-exclusive items that may be admissible in evidence.

7. This Court agrees with the Plaintiff's position. In issuing this ruling, this Court has reviewed all of the statewide orders provided by the parties, and finds most persuasive *Hourihan*

[1] The Defendant's Motion asks for other relief not opposed by the Plaintiff, and thus this Court did not need to rule on these other matters.

v. Mona, No. 16-2023-CA-010388 (Fla. 4th Cir. Ct. Aug. 1, 2025) (Anderson, J.), and Order denying Defendant's Motion for Reconsideration in that case on September 12, 2025.

8. First, this Court finds that Section 768.0427 is a statute of admissibility, not of burden shifting. The Florida Supreme Court has explained that where the Legislature wishes to amend the common law, it must do so explicitly. The Legislature has not included explicit language that the burden has been shifted to the Plaintiff to present any particular evidence and thus this Court cannot conclude that the Legislature has imposed a burden of evidentiary proof.

9. Second, even if that Supreme Court reasoning did not govern, as a matter of statutory construction, this Court finds that the statutory text in Section 768.0427(2) is clear that there is no burden shifting.

10. In examining the text, this Court turns to subsection (2), which states, "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 section."[2] This Court notes the word used is "admissible." Nothing here mentions burden shifting or whose burden anything is, with the Legislature simply referring to what is "admissible."

11. The Court next turns to subsection Section 768.0427 (2)(a). This reads, "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." This Court can only conclude that this shows the Legislature understands what it means to ***limit*** admissible evidence. The Legislature has done so for ***satisfied*** medical treatment or services.

12. By contrast, the language in subsection (2)(b) is different compared to 2(a). This says, "evidence offered to prove the amount necessary to satisfy ***unpaid*** charges for incurred

[2] All emphasis is by this Court.

medical treatment or services ***shall include*** but ***is not limited to evidence provided in this paragraph*** "

13. This Court notes the distinction between the language in subsection (2)(a) referring to what evidence "is limited to" and the language in subsection (2)(b) "is not limited to." This Court finds that this is not a burden shifting statute.

14. As for the use of the word "shall" in subsection (2), this Court finds this refers to the beginning of a list. As Plaintiff's appellate counsel pointed out, just because the phrase "shall include" is used does not mean that every single thing must be included or introduced. This Court also agrees with Plaintiff's appellate counsel that the word "shall" does not mean "must" in this context or circumstance and can include other items aside from those numbered and outlined under Section 768.0427(2)(b)(1-5). The word "shall" in this section does not indicate a burden shifting to the plaintiff, but rather simply indicates the beginning of a list.

15. Furthermore, this Court finds that the statutory reference to "not limited to" does not shift the burden to the Plaintiff. Subsection (2)(b)'s language refers to the evidence of the amount necessary to prove unpaid medical charges to include this non-exclusive list of 5 categories, without being limited to that list.

16. This Court also notes that even when not considering the subsection (2) language of the admissible evidence that "is not limited to," subsection (2)(b)5. is a catch-all provision that is part of the non-exhaustive list of admissible evidence.

17. At trial, the Plaintiff can offer evidence or decide not to offer any evidence under Section 768.0427 (2)(b)(1-5).

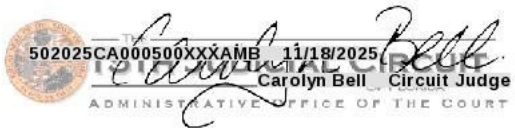
Similarly, at trial, the Defendant can offer evidence or decide not to offer any evidence under Section 768.0427 (2)(b)(1-5). At trial, the Defendant has the right to seek the admissibility of evidence under Section. 768.0427 in its entirety.

18. This Court is not making a finding of what will be admissible at trial or whether all of the buckets of evidence would govern the facts of this case.[3] But this Court finds it is up to the Plaintiff to bring in or not bring in whatever evidence they want to bring in. On the other hand, this Court also finds the Defendant will have its opportunity to present admissible evidence under the statute as well.

19. For the same reasons that Section 768.0427(2)(b) does not impose a burden on the Plaintiff to introduce certain evidence regarding past medical treatment and services, this Court finds the same is true for subsection (2)(c), and future medical treatment and services.

20. The Court further adopts and incorporates by reference its findings and rulings made orally at the hearing on this matter.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.



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Carolyn Bell
Circuit Judge

Copies Furnished To:

All counsel of record

Jason J. Guari, Esq.

[3] This Court is not making a finding of admissibility because there are other rules of evidence that may apply. This Court is also not making a finding of whether all of the buckets of evidence in subsection (2)(b) and (c) would be admissible.

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