

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
FLAGLER COUNTY, FLORIDA

CASE NO.: 2023 CA 000867  
DIVISION: 49

BROOKE MINER  
Plaintiff(s)

v.

NYDIA BARARDO  
Defendant(s)

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**Order Denying Motion in Limine (Dkt #74)**

THIS CAUSE has come before the Court upon hearing on the Defendant's motion in limine filed pursuant to F.S. 768.0427. The Court being fully advised in the premises, finds, **orders and adjudges** as follows:

The Court adopts the interpretation of the statute of the Plaintiff (see Plaintiff's response at Dkt #81). The motion is **denied**.

DONE AND ORDERED in chambers, in Flagler County, Florida, on 02 day of May, 2025.

5/2/2025 10:59 AM 2023 CA  
000867 

e-Signed 5/2/2025 10:59 AM 2023 CA 000867

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CHRISTOPHER A FRANCE  
CIRCUIT JUDGE

Copies to: All parties and attorneys of record      CASE NO.: 2023 CA 000867

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,  
IN AND FOR FLAGLER COUNTY, FLORIDA

BROOKE MINER,

Plaintiff,

CASE NO: 23-CA-000867

vs.

NYDIA BARARDO,

Defendants.

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**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE**

COMES NOW the Plaintiff, BROOKE MINER, by and through the undersigned counsel and files this Response in Opposition to Defendant's Motion in Limine to determine the admissibility of evidence regarding Plaintiff's past and future medical expenses at the trial in this matter.

**FACTUAL AND PROCEDURAL BACKGROUND**

On March 24, 2023, after its passage in the Legislature, Governor DeSantis signed H.B. 837 into law. H.B. 837 includes the newly formed section 768.0427, which purports to address the admissibility of evidence that can be presented to a jury to prove past and future medical treatment. Section 768.0427(2), Fla. Stat.

Plaintiff's medical treatment related to this crash includes an emergency right arm open reduction and fusion to treat an upper arm fracture caused by this incident. Plaintiff's crash-related medical expenses incurred to date are approximately \$101,140.08, with those damages continuing.

At all material times, Plaintiff was uninsured. Other than PIP, none of her crash-related bills have been reimbursed by health insurance and they remain fully owed. Plaintiff intends to provide evidence to the jury of the reasonable amounts billed to Plaintiff for medically necessary

treatment or medically necessary services provided to the Plaintiff in the past, pursuant to section 768.0427(2)(b)(5). Plaintiff also intends to provide evidence to the jury of the reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services in the future, pursuant to section 768.0427(2)(c)(3).

However, Plaintiff will not be providing and is not required to provide any of the evidence set forth in the other paragraphs under section 768.0427(2)(b)(1-4) or section (2)(c)(1-2). Plaintiff seeks a ruling from this Court holding 1) Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), merely set forth lists of admissible evidence for unpaid or future medical bills; 2) Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), do not limit the evidence that may be offered at trial by Plaintiff. The only limitation on evidence in section 768.0427 is the limitation for paid medical bills in subsection (2)(a); and 3) Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), are not lists of required evidence that Plaintiff must introduce at trial.

### **MEMORANDUM OF LAW AND ARGUMENT**

**A. Section 768.0427(2) sets forth lists of admissible evidence for unpaid past medical and future medical bills, and does not limit the evidence that may be offered or require evidence that Plaintiff must introduce.**

Section 768.0427(2) only sets forth lists of admissible evidence that can be used to prove unpaid or future medical bills and does not require Plaintiff to introduce any particular evidence that Plaintiff otherwise would not. “In interpreting a statute, [a court’s] task is to give effect to the words that the legislature has employed in the statutory text.” *Lab. Corp, of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022).

Here, subsection (2) 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 subsection.” Section 768.0427(2), Fla. Stat. (emphasis added). As shown above,

subsection (2) uses the word “admissible.” It does *not* use the word “required” or otherwise state that a plaintiff must introduce the listed evidence or else suffer a directed verdict. If the legislature had intended such a result, it would have made that intention clear. *E.g., Crews v. State*, 183 So. 3d 329, 335 (Fla. 2015)(“If the Legislature had intended such a meaning, it could easily have made such intention clear.”).

For example, Florida’s transitory-substance statute expressly states that “[i]f a person slips and falls on a transitory foreign substance in a business establishment, the injured person *must prove* that the business establishment had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it.” Section 768.0755, Fla. Stat. (2024)(emphasis added). There are no such words in subsection (2) of section 768.0427. For instance, the legislature did not write: “A party *must prove* the amount of damages for past or future medical treatment or services in a personal injury or wrongful death action as provided in this subsection.” Rather, the legislature wrote: “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.” Section 768.0427(2), Fla. Stat. (emphasis added).

Subsection (2) includes several subdivisions, but none provides that a plaintiff is required to introduce any particular evidence to prove unpaid medical bills or future medical bills. As shown below, subsection (2)(a) limits the evidence that may be admitted only for *satisfied* medical bills. For unpaid medical bills or future medical bills, there is no limitation. Instead, subsections (2)(b) and (2)(c) authorize certain types of evidence for unpaid medical bills or future medical bills, but do not require a plaintiff to introduce every item on the list.

Subsection (2)(b) governs unpaid medical bills and unlike subsection (2)(a), subsection 2(b) does not limit the evidence that may be admitted. Subsection (2)(b) states: “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.” Section 768.0427(2)(b) (emphasis added). Subsection (2)(b) then lists five categories of evidence that may be admitted depending on the facts of the case. Section 768.0427(2)(b)(1-5).

To make it abundantly clear that subsection (2)(b) does not limit evidence—as it expressly states—the fifth category is a catchall provision that allows a party to admit, “*Any evidence* of reasonable amounts billed to the claimant for medically necessary treatment or medically necessary services provided to the claimant.” Section 768.0427(2)(b)(5)(emphasis added).

Subsection (2)(c) governs future medical bills and like subsection (2)(b) does not limit the evidence that may be admitted, as it states: “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.” Section 768.0427(2)(c) (emphasis added). Subsection (2)(c) then lists three categories of evidence that may be admitted depending on the facts of the case. Section 768.0427(2)(c)(1-3) (emphasis added). Like in subsection (2)(b), the third category in subsection (2)(c) is a catchall provision that allows a party to admit “*Any evidence* of reasonable future amounts to be billed to the claimant for medically necessary treatment or medically necessary services.” Section 768.0427(2)(c)(3)(emphasis added).

To be sure, subsections (2)(b) and (2)(c) use the word “shall” in the phrase “shall include, but is not limited to...” But that does not mean a plaintiff must introduce every item in the list or else suffer a directed verdict. Depending on the context in which it is used, the word “shall” can have either a permissive or a mandatory sense. *E.g., Belcher Oil Co v. Dade County*, 271 So. 2d 118, 121 (Fla. 1972)(applying “[a] permissive rather than mandatory construction” to the word “shall” in a Florida statute).

For example, the United States Supreme Court has noted that “certain of the Federal Rules use the word ‘shall’ to *authorize*, but *not to require*, judicial action.” *De Martinez v. Lamagno*, 515 U.S. 417, 432 n.9 (1995) (emphasis added). Likewise, the Florida Supreme Court has recognized that “the term ‘shall’ can be construed as ‘must’ or ‘*may*.’” *Allstate Ins. Co v. Orthopedic Specialists*, 212 So. 3d 973, 978 (Fla. 2017). Indeed, “courts in virtually every English-speaking jurisdiction have held—by necessity—that *shall* means *may* in some contexts, and vice versa.” Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 952 (3d ed. 2011). The Florida Supreme Court has explained that the interpretation of the word “shall” “depends upon the context in which it is found and upon the intent of the legislature as expressed in the statute.” *S.R. v. State*, 346 So. 2d 1018, 1019 (Fla. 1977).

There are three contextual reasons why the word “shall” should be construed in its permissive, not mandatory sense:

1. As noted above, subsection (2) merely states that the listed evidence is “admissible.” It does *not* use the word “required” or otherwise state that a plaintiff must introduce the listed evidence or else suffer a directed verdict.
2. The last category of admissible evidence under subsections (2)(b) and (2)(c) are catchall provisions that allow a party to admit “*Any evidence...*” of reasonable amounts billed or to be billed. Section 768.0427(2)(b)(5) and (2)(c)(5), Fla. Stat. (emphasis added). It would not make sense to interpret subsections (2)(b) and (2)(c) as setting forth required lists of evidence when one of the items on the lists is open-ended. To read either of these subsections as a required list would mean that a plaintiff would need to introduce every possible form of evidence, which is an absurd result. “Where a statute is open to multiple interpretations, Florida courts endeavor to avoid

interpretations which would lead to absurd results.” *Hardee County v. FINR II, Inc.*, 221 So. 3d 1162, 1165 (Fla. 2017).

3. The word “shall” appears in the phrase “shall include, but is not limited to.” It is well settled that “[t]he verb *to include* introduces examples, not an exhaustive list.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 15, at 132 (2012). Although the mere use of the word “include” is sufficient to convey a non-exhaustive list, adding the phrase “but is not limited to” further emphasizes the point. *E.g.*, *White v. Mederi Caretenders Visiting Servs. Of Se. Fla., LLC*, 226 So. 3d 774, 783 (Fla. 2017)(“The qualifying phrase ‘includes, but is not limited to’ made clear that the Legislature intended to allow the protection of more interests than simply those set forth in the non-exhaustive list.”). Because the lists in subsections (2)(b) and (2)(c) are not an exhaustive list, they should not be construed as lists of required evidence.

This Court should also keep in mind that the legislature did not write subsections (2)(b) and (2)(c) on a blank slate. To the contrary, “the common law can, and sometimes must, inform the proper understanding of a statutory text.” *C.N. v. I.G.C.*, 316 So. 3d 287, 290 (Fla. 2021). Indeed, the Florida Supreme Court has recognized “the importance of reading statutes with an awareness of and sensitivity to background common law rules,” and it has explained that “[c]ommon law rules might also inform the correct interpretation and application of statutory provisions themselves.” *Ripple v. CBS Corp.*, 385 So. 3d 1021, 1028 (Fla. 2024).

Here, the relevant common law rule is the evidentiary collateral-source rule. It provides that “payments from collateral source benefits are not admissible because such evidence may confuse the jury with respect to both liability and damages.” *Joerg v. State Farm Mat. Auto Ins.*, 176 So. 3d 1247, 1249 (Fla. 2015). For example, courts have applied the collateral-source rule to

exclude evidence of insurance benefits. *Id.*, at 1249. Courts have also applied the collateral-source rule to exclude “evidence of social legislation benefits such as those received from Medicare, Medicaid, or Social Security.” *Id.*, at 1250 (collecting cases).

The legislature acted against this backdrop when it enacted subsections (2)(b) and (2)(c) of section 768.0427. Indeed, whereas the collateral-source rule would have excluded evidence of insurance, subsections (2)(b) and (2)(c) now authorize in certain circumstances the admission of evidence of what insurance is obligated to pay for medical bills. Similarly, whereas the collateral-source rule would have excluded evidence of Medicare or Medicaid benefits, subsection (2)(b)(3) and (2)(c)(2) now authorize in certain circumstances the admission of “evidence of 120 percent of the Medicare reimbursement rate...” or “170 percent of the applicable state Medicaid rate...” Section 768.0427(2)(b)(3) and (2)(c)(2), Fla. Stat.

In short, subsections (2)(b) and (2)(c) were enacted to supersede the evidentiary collateral source rule in certain circumstances and render *admissible* certain evidence that would have otherwise been excluded by the rule. This understanding further demonstrates that subsections (2)(b) and (2)(c) do not set forth lists of evidence that a plaintiff is *required* to introduce or else suffer a directed verdict.

Another relevant background principle of law is “the general canon of evidence that any fact relevant to prove a fact in issue is admissible into evidence unless its admissibility is precluded by some specific rule of exclusion.” *Williams v. State*, 110 So. 2d 654, 658 (Fla. 1959). If the legislature intended to overrule that principle of common law, it needed to do so clearly. *E.g.*, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 52 (2012) (“A statute will be construed to alter the common law only when that disposition is clear.”). “The presumption is that no change in the common law is intended unless the statute is explicit and clear

in that regard. Unless a statute unequivocally states that it changes the common law or is so repugnant to the common law that the two cannot coexist, the statute will not be held to have changed the common law.” *Thornberv. City of Ft. Walton Beach*, 568 So. 2d 914, 918 (Fla. 1990); accord *Emerson v. Lambert*, 374 So. 3d 756, 768 n.15 (Fla. 2023)

As the Florida Supreme Court has explained, “a material variation in terms suggests a variation in meaning.” *Thompson v. DeSantis*, 301 So. 3d 180, 186 (Fla. 2020). Accordingly, the fact that the legislature expressly limited the evidence for paid medical bills in subsection (2)(a), but did not do so for unpaid medical bills in subsection (2)(b) or future medical bills in subsection (2)(c), indicates that there is no limitation on evidence for unpaid or future bills. *See, e.g., USAA Cas. Ins. V. Emergency Physicians, Inc.*, 393 So. 3d 257, 261 (Fla. 5<sup>th</sup> DCA 2024) (“[W]hen the legislature includes particular language in one section of a statute but not in another section of the same statute, the omitted language is presumed to have been excluded intentionally.” (citation omitted)).

Any contrary reading would render useless the catchalls in subsections (2)(b)(5) and (2)(c)(3). After all, these remaining categories capture every possible factual circumstance. If Plaintiff were limited to one of the categories, then what would be the purpose of the catchalls? “[A] basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.” *State v. Knighton*, 235 So. 3d 312, 316 (Fla. 2018)(citation omitted). Courts are “required to give effect to ‘every word, phrase, sentence, and part of the statute, if possible, and words in a statute should not be construed as mere surplusage.’” *Id.* (citation omitted).

Other courts have looked at this issue and have adopted the Plaintiff's view of this statute.

Plaintiff would direct the Court to the following Orders (attached to this Motion as composite Exhibit A):

- In the case of *Beyenka v. Pyle*, Case No. 2023-CA-009204 (April 21, 2025), Judge James H. Daniel found that section 768.0427(2) does not create a burden of production on the plaintiff and does not limit evidence of unpaid past medical bills.
- In the case of *Steiger v. Murali, et al.*, Case No. 2023-CA-482 (Nov. 20, 2024), Judge David Frank found that Plaintiff was entitled to present evidence of the full amount of her past and future medical bills, and that subsection (2)(b) and (2)(c) did not impose an additional burden on the plaintiff to prove anything else.
- In the case of *Grant v. Cartwright*, Case No. 23002644-CA (Feb. 25, 2025), Judge Geoffrey H. Gentile found that Plaintiff is not required to prove Medicare numbers pursuant to the subject statute, and that while Defendant could admit such evidence, Plaintiff was not required to do so.

In alignment with the courts above, this Court should find that section 768.0427(2)(b) and (2)(c) do not limit the evidence that may be offered by Plaintiff to prove her past or future medical bills, nor do these sections require that Plaintiff present any of the other lists of evidence to prove either her past or future medical bills.

**B. If this Court were to adopt an interpretation that section 768.0427(2) requires Plaintiff to introduce the lists of evidence it sets forth, such an interpretation would be error.**

If this Court were to interpret subsections (2)(b) and (2)(c) as setting forth lists of evidence that Plaintiff is required to introduce or else suffer a directed verdict (which it should not), then the statute would be untenable. Providing such evidence, especially as to future medical bills, would be impossible, as by its very nature it involves information that is not readily available to a plaintiff or that is unknowable.

For example, in the case of a plaintiff having health care coverage, subsection (2)(b)(1) refers to "...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..." Section 768.0427(2)(b)(1), Fla. Stat. Similarly, subsection (2)(b)(2) refers to "...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..." Section 768.0427(2)(b)(2), Fla. Stat. Yet, subsection (2)(e) states that "[i]ndividual 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.*" Section 768.0427(2)(e)(emphasis added)

The question then becomes for a plaintiff with health insurance coverage: How can a plaintiff prove the amount her health care insurer "is obligated to pay" or "would pay" the health care provider when the contract between the insurer and the provider is not admissible? The answer is that Plaintiff is not and cannot be required to introduce such evidence. To hold otherwise would violate Plaintiff's constitutional right of access to courts because it would impose a "significantly difficult" procedural hurdle. *See generally T.A. Enters., Inc. v. Olarte, Inc.*, 931 So. 2d 1016, 1018 (Fla. 4th DCA 2006)("To find a violation of the right of access, 'it is not necessary for [a] statute to produce a procedural hurdle which is absolutely impossible to surmount, only one which is significantly difficult.'" (citation omitted).

Florida Supreme Court precedent is clear that an error in admitting collateral source evidence is not harmless, as a matter of law, if the result of the trial is either a defense verdict on liability or the award of less medical damages than sought by the plaintiff. *See Sheffield v. Superior Ins. Co.*, 800 So. 2d 197, 203-04 (Fla. 2001)(concluding it was clear error for trial court to deny plaintiffs motion in limine to preclude evidence of plaintiffs group medical insurance benefits, and the error was not harmless where the jury awarded less than the full amount of future medical

expenses sought); *Gormley v. GTE Prods. Corp.*, 587 So. 2d 455, 457-58 (Fla. 1991) (holding that the trial court erred in overruling the plaintiffs' objection to evidence they received via insurance benefits for property damage, and a new trial was warranted because the evidence prejudiced the jury as to liability).

Thus, any ruling where Plaintiff would be required to present evidence of Medicaid rates as to past medical expenses would be in direct violation of established precedent and current Florida statutory law. Further, if this Court ruled that Plaintiff was required to produce evidence as to any alleged future health insurance, Medicare, or Medicaid rates, such requirement would be impossible for the Plaintiff to comply with. As addressed above, a violation of a plaintiff's constitutional right of access to courts is found when the law would impose a "significantly difficult" procedural hurdle. *See Olarte, supra*. A ruling from the Court imposing such a restriction as addressed above would do just that and is unwarranted.

### **CONCLUSION**

For all the reasons set forth above, Plaintiff respectfully requests this Court deny Defendant's Motion in Limine and find:

- Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), merely set forth lists of admissible evidence for unpaid or future medical bills;
- Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), do not limit the evidence that may be offered at trial by Plaintiff. The only limitation on evidence in section 768.0427 is the limitation for paid medical bills in subsection (2)(a).
- Subsections (2)(b) and (2)(c) of section 768.0427, Fla. Stat. (2024), are not lists of required evidence that Plaintiff must introduce at trial.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by Email, this 1<sup>st</sup> day of May, 2025 to:

**Cary A. W. Braswell, Esq.**

Florida Bar: 0193460

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