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Free Speech, Due Process and Trial by Jury

Verdict in Personal Injury Case May Limit Future Attorney-Physician Protections

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Plaintiff attorneys seeking compensation for the injuries and medical treatment of clients in personal injury claims have long relied on Letters of Protection to prevent discovery of the terms, conditions, practices and fees found in the agreements with treating physicians. These LOPs have generally been accepted by the judiciary.

That acceptance was codified by the Texas Legislature in 2001 through what was called the “paid and incurred statute.” This effectively limited plaintiffs in personal injury litigation to only showing the jury the medical bills that were actually paid by the insurer. Prior to the statute, plaintiffs could show the jury the total amount of medical expenses even though what the insurer paid was discounted based on CPT codes and usual and customary practices.

However, the statute also allowed attorneys to send their clients to doctors who would treat patients under letters of protection, thereby “incurring” and billing any amount they chose, resulting in even more exaggerated medical bills. Courts permitted the practice for years because there was no established case law permitting discovery into the billing practices of the providers.

But in 2021 the Texas Supreme Court held in two separate rulings (*In re ExxonMobil Corp.* and *In re K & L Auto Crushers, LLC*, a case brought by our firm) that information regarding a medical provider’s negotiated rates and costs in the treatment of individual patients can be relevant and discoverable in the course of litigation, and the evidence regarding the reasonableness of those charges may be presented to a jury.

Under this new guidance, in April of this year, our firm served as defense counsel in what was perhaps the first trial in the state involving the admissibility and cross-examination of a plaintiff’s medical bills incurred under Letters of Protection.

Building on the Court’s ruling, in the trial of *Walker vs. K&L Auto Crusher* in District Court in Dallas, the jury returned a complete verdict in favor of K&L, our client. While the

outcome could be completely attributable to a lack of negligence on the part of our client that we were able to present, there is no doubt that the ability to show the jury the excessiveness and the exaggeration of the LOP medical billing tainted the credibility of the plaintiff’s claims. In retrospect, this case can provide invaluable guidance to attorneys on both sides of the aisle — as well as medical providers — in the pursuit of personal injury claims.

The case involved the allegations of Mr. Walker and his injuries from a low-speed side-swipe collision with a tractor-trailer rig driven by a K&L employee. After the accident, both drivers took photos, exchanged information and drove away without reporting any injuries.

Four days afterward, Walker sought medical treatment and five months later underwent surgeries on his spine and shoulder based on injuries allegedly suffered as a result of the collision. He received invoices totaling about \$1.2 million for the surgeries and related treatment.

Walker did not pay for his care nor offer information to any private or public insurer, but his attorneys did send LOPs to the medical providers and promised they would attempt to protect those interests in any future settlement or trial.

Believing that all the medical treatment and associated charges were exaggerated and excessive, and despite no previous court precedence allowing for discovery of details found in the LOPs, our firm sought discovery of the terms and conditions of the agreement, how the medical bills would be adjusted following resolution of the case, what the provider generally accepted as reimbursement from others for the exact same procedures involved in this litigation, and a number of other LOP factors.

The trial court initially denied discovery, so we sought a mandamus ruling, ultimately before the Texas Supreme Court. In that May 2021 ruling, the Court granted the writ, holding that the information sought through

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our narrowed requests was relevant and that the trial court abused its discretion by completely denying that discovery.

Based on this hard-fought process, the evidence found in the LOPs and associated records revealed that the providers increased and exaggerated the attributed medical fees by almost \$900,000. None of the usual and customary practices were followed regarding billing, CPT codes and the procedures that were usually billed under one code were broken down and billed under multiple codes to increase the medical bills for litigation. Furthermore, we were able to show the Letters of Protection agreement to the jury, exploring the entities set up by the providers solely for the purposes of handling letter of protection litigation patients. We were also able to discuss the number of times the plaintiff's counsel and these same providers had worked together to provide LOP medical billing for patients in litigation.

The jury was able to hear about the excessiveness of the bills, the unreasonable amount of the charges, the failures to follow usual and customary billing and reimbursement practices, and the financial interest of the provider in the outcome of the litigation under the terms of the LOP. While it was a case of significantly disputed liability, the totality of the trial cast enough questions and doubts on the plaintiff's case that the no-negligence, no-damages verdict in favor of the defendant should be viewed as significant.

Walker v. K&L Auto Crushers may truly change the landscape of the law for defendants in civil litigation. In months and years to come, the courts will continue to allow and refine the discovery under Letters of Protection and their admissibility will be allowed in trials. This will give the defendant the ability to examine and present to a jury any evidence of excessive charges and any supporting business relationship between attorney and physician.

Trial is all about truth and truth is what should prevail. The Supreme Court's decision in Walker and the trial court's decision to follow that ruling may prove pivotal to our judicial system in seeking the truth in future claims.

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