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The Third DCA Approves of Critical Areas for Impeachment of a Plaintiff's "Hybrid" Expert

Insurance claims representatives, risk managers, and defense lawyers are encountering, with more and more frequency, claims and lawsuits all containing the same set of facts and history:

A claimant injures her neck and back in an accident. Quickly thereafter, the claimant retains a well-known personal injury law firm to represent her for the accident. Low and behold, the claimant begins treating with a neurosurgeon known all too well by defense practitioners—a neurosurgeon who devotes his time to treating accident patients exclusively, performs numerous controversial medical procedures (such as the percutaneous discectomy), and does not accept health insurance. Within months of the accident, the claimant has undergone a two-level fusion, and the claimant's treating neurosurgeon is charging \$75,000 under a letter of protection. It is undisputed that Medicare would reimburse only \$3,000 for the same surgery.

When receiving cases with this general history, the first question that arises is: *How much of this information is admissible at trial?* Luckily, the Third DCA recently answered this question in Disla v. Blanco; in one concise and precise paragraph, the Florida appellate court provided answers to the following questions:

Can the defense cross-examine the neurosurgeon regarding his refusal to accept health insurance?

Yes. The fact that Plaintiff's treating neurosurgeon did not accept insurance was brought up in connection with the extent of the doctor's extensive medical litigation practice and was, thus, admissible.

Can the defense cross-examine the neurosurgeon regarding numerous controversial medical procedures he has performed, such as the percutaneous discectomy, even though the doctor did not perform the controversial medical procedure on the claimant?

Yes. Even though the doctor did not perform the controversial medical procedure on the Plaintiff, the questions regarding the types of surgery he performed were relevant to his practice and qualifications which he had testified to on direct examination.

Can the defense cross-examine the neurosurgeon on the Medicare reimbursement rates?

Yes. The defense attorney's questions on cross-examination regarding the Medicare reimbursement rates are relevant to the reasonableness of the doctor's charges.

Disla v. Blanco, --- So. 3d ---, ---, 2013 WL 3811805, *2 (July 24, 2013). The Disla opinion provides much-needed guidance as to a defense lawyer's ability to cross-examine a Plaintiff's treating physician as to these key subject matters. This evidence will undoubtedly assist the defense in undermining the credibility of Plaintiff's treating physician, as well as establishing the unreasonableness of the charges.

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