

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2020-CA-009358-O

NICOLE PHILLIPS,

Plaintiff,

vs.

DANIEL P. KLEINSCHNITZ, QUICK
RESPONSE FIRE PROTECTION, LLC,

Defendants. _____ /

**ORDER ON PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE
TESTIMONY OF DEFENDANTS' CODING EXPERT**

THIS CAUSE, having come on to be heard upon the Plaintiff's Motion in Limine to Exclude Testimony of Defendants' Purported Billing Expert, Marilyn Pacheco, Under *Daubert* and Incorporated Memorandum of Law dated July 26, 2022, and the Court having conducted a hearing on September 2, 2022, and having reviewed the testimony of Ms. Pacheco (Deposition dated July 13, 2022), the Court file, reviewed the relevant case law, the prior orders, and after considering argument of counsel, it is hereby:

ORDERED and ADJUDGED that the Plaintiff's Motion is hereby DENIED; however, the Court will limit Ms. Pacheco's testimony as follows:

1. The Court analyzed Ms. Pacheco's testimony under Florida Statute Section 90.702, *Andrews v. State*, 181 So.3d 526 (Fla. 5th DCA 2015), and *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579, 589 (1993).¹

¹ The Court held a hearing pursuant to *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993) to determine whether Ms. Pacheco's testimony was based on sufficient facts or data, and whether the opinion is "the product of reliable principles and methods, and if the

2. Ms. Pacheco has sufficiently shown the Court that she is qualified, based on her training and experience, to testify about the CPT codes the medical providers utilized in their billing for medical services provided to Plaintiff, Nicole Phillips. Accordingly:

a. Ms. Pacheco may present opinion testimony about whether the medical providers utilized the appropriate CPT Codes when they billed for the Plaintiff's medical care;

b. Ms. Pacheco may testify about coding issues such as bundling or unbundling which may lead to increased medical bills;

c. Ms. Pacheco may testify about whether medical services billed by the providers were supported by the medical records.

3. Ms. Pacheco will not be allowed to provide any ultimate opinions regarding whether Plaintiff's medical bills were reasonable with respect to the amounts billed. Ms. Pacheco has not shown that that she can provide reliable, trustworthy testimony about the amounts billed by the Plaintiff's medical providers.

4. Allowing Ms. Pacheco to provide testimony regarding "reasonable" reimbursement rates when that information is randomly obtained from various hospitals and medical providers (without knowing the specific source of the data and whether payments were obtained by insurance, Medicare, or some other fee schedule) would be an improper conduit for inadmissible hearsay evidence. Accordingly, this type of testimony is not the product of reliable principle or methods as required under Florida Statute Section 90.702 and *Daubert*.

5. In sum, Ms. Pacheco may explain CPT Coding to the jury and provide opinion testimony about whether the medical providers utilized the appropriate CPT Codes. However, Ms. Pacheco may not provide opinion testimony about reasonable or appropriate reimbursement rates, medical bill pricing, prevailing or customary rates for medical bill charges, or any medical bill

"principles and methods" have been applied reliably to the facts of the case." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 157 (1999).

reimbursement database including but not limited to the one maintained by CMS (Centers for Medicare & Medicaid Services).

DONE AND ORDERED in Chambers in Orange County, Florida, on this 7th day of September, 2022.



KEVIN B. WEISS
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court this 7th day of September 2022, by using the Florida Courts E-Filing Portal System. Accordingly, a copy of the foregoing is being served on this day to all attorney(s)/interested parties identified on the ePortal Electronic Service List, via transmission of Notices of Electronic Filing generated by the ePoral System.

Jill Gay, JA to Judge Kevin B. Weiss