

Accuracy in Damages

We support HB 583 by Rep. Fant and SB 146 by Sen. Passidomo that ensures the evidence the jury sees reflects the amount the health care provider was actually paid for his or her treatment of the claimant. We also support reform that allows a defendant to provide a jury with evidence of unnecessary medical treatments.

Issue/Background

The greatest element of economic damages in a personal injury lawsuit is often the cost of medical treatment. In Florida, generally only the *billed* amount of medical treatment is admissible as evidence in trials. This is due to Section 768.76, Florida Statutes, which prohibits the introduction of evidence regarding payments for medical treatment made by collateral sources such as private health insurers.

The Problems

In Florida, there are three main problems that prevent accuracy in damages.

Billed Charges versus Paid Charges

Anyone who's gone to the doctor wouldn't be surprised to hear that the amount a medical provider bills for services is usually more – sometimes much more – than the amount the provider is actually willing to accept in payment.

But in Florida, generally the jury only sees the amount billed when determining damages. While judges can reduce or set-off the award based on amounts paid by other sources like health insurance, problems still exist.

First, using billed charges hides from the jury exactly how much the claimant has actually been damaged. Unfortunately, the inflated amount creates a false impression that misleads juries as they determine total damages. Second, because the jury awards damages for future medical care after seeing those inflated past costs, the future care award is oftentimes inflated as well. Here, though, the judge is not allowed to reduce the award for bills not yet paid.

Letters of Protection

A Letter of Protection is an agreement between the claimant's lawyer and the medical provider, where the provider agrees not to collect until the lawsuit is over, so the "paid" amount the provider would have accepted is not available to the judge for consideration.

Since judges are not allowed to reduce an award for medical bills not yet paid, a Letter of Protection hides these bills from the judge's reach, inflating the total damages.

The Solution

Since the claimant owes a treating medical provider only what was actually paid, the claimant's compensation for those damages should be the same, rather than amounts that no one paid or ever will pay.