IADC COMMITTEE NEWSLETTER

MEDICAL DEFENSE AND HEALTH LAW

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IN THIS ISSUE

Robert G. Smith summarizes a recent opinion by the Supreme Court of Texas, where the Court agreed that a hospital's reimbursement rates from private insurers and public payers are relevant to determine whether the hospital's charges are reasonable.

Hospital's Reimbursement Rates Found to be Relevant to Determine Whether the Hospital's Charges are Reasonable

ABOUT THE AUTHOR

Robert G. Smith is a shareholder of the firm Lorance Thompson, PC in Houston, Texas. Rob is a member of the Product Liability; Business Litigation; Cyber Security, Data Privacy and Technology; and Medical Defense & Health Law Committees of the International Association of Defense Counsel. Rob's clients include health care providers, manufacturers, and many types of corporations. He has tried a wide variety of cases during his 20 years of practice. He can be reached at rgs@lorancethompson.com.

ABOUT THE COMMITTEE

The Medical Defense and Health Law Committee serves all members who represent physicians, hospitals and other healthcare providers and entities in medical malpractice actions. The Committee recently added a subcommittee for nursing home defense. Committee members publish monthly newsletters and *Journal* articles and present educational seminars for the IADC membership at large. Members also regularly present committee meeting seminars on matters of current interest, which includes open discussion and input from members at the meeting. Committee members share and exchange information regarding experts, new plaintiff theories, discovery issues and strategy at meetings and via newsletters and e-mail. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article contact:

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The Texas Supreme Court issued an interesting opinion on April 27, 2018, agreeing that a trial court judge did not abuse his discretion by ordering a hospital to produce information regarding its reimbursement rates from private insurers and public payers because it is relevant to determine whether the hospital's charges are reasonable. *In re North Cypress Medical Center Operating Co., Ltd.*, No. 16-0851, 2018 Tex. LEXIS 346 (Tex. Apr. 27, 2018).

After settling a personal injury claim related to an auto accident, the injured party negotiated to reduce her hospital bill from North Cypress, which held a lien on the settlement. The injured party and the hospital failed to reach an agreement and the patient sued, asking for a declaratory judgment that North Cypress's lien was invalid to the extent its charges exceeded a reasonable amount for the services provided.

The injured party in *North Cypress* sent discovery requesting copies of the hospital's contracts with various insurance companies and reimbursement rates for the medical services she received. The Court noted there is a two-tiered healthcare billing system that has evolved over the past several decades, where reimbursement rates for patients with health care benefits are drastically lower than the rates charged to (but often uncollectible from) uninsured patients. The Court found that this system gives healthcare facilities an incentive to set its full rates as high as possible, since reimbursement rates rise accordingly. The Court noted that reimbursement payments "comprise the vast majority" of a facility's actual income, and concluded that at minimum the rates charged to insurers must have some bearing on deciding whether charges to an uninsured patient for the same services are reasonable.

The court found:

> The trial court's order at issue in this mandamus proceeding requires the defendant hospital to produce information regarding its reimbursement rates from private insurers and public payers for the services it provided to the plaintiff. The hospital argues those reimbursement rates are irrelevant to whether its charges to the uninsured plaintiff were reasonable and that the trial court therefore abused its discretion in ordering production of that information. We disagree. The reimbursement rates sought, taken together, reflect the amounts the hospital is willing to accept from the vast majority of its patients as payment in full for such services. While not dispositive, such amounts are at least relevant to what constitutes a reasonable charge.

The price of medical services varies greatly, with the uninsured often charged many times the price of those with healthcare coverage. In personal injury litigation, which

disproportionately involves plaintiffs lacking private insurance or government benefits this pricing scheme often results in damage awards bearing no relationship to the rates health care providers accept in compensation for most of their patients. Worse yet, the plaintiffs' bar can create higher "paid or incurred" medical expenses simply by deciding not to submit a client's medical expenses to an insurer, allowing them to seek the higher "uninsured" rates from the jury.

This argument could be used in many contexts, particularly where uninsured plaintiffs (or those who simply do not use their insurance and receive care under a Letter of Protection) claim large medical bills were paid/incurred. Seven *amici curiae* briefs and letters were submitted in this case. North Cypress filed a motion for rehearing on June 15, 2018.

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