

IN THE SUPERIOR COURT OF PAULDING COUNTY
STATE OF GEORGIA

 **EFILED IN OFFICE**
CLERK OF SUPERIOR COURT
PAULDING COUNTY, GEORGIA
21-CV-000429-P2
P2
JAN 26, 2022 03:52 PM

Sheila Butler, Clerk
Paulding County, Georgia

NAKISHA JONES,

PLAINTIFF,

V.

CIVIL ACTION

FILE NO: 21-CV-000429

GREYSON ELKINS,

DEFENDANT.

**DEFENDANT'S OBJECTION TO PLAINTIFF'S NOTICE OF INTENT TO
INTRODUCE MEDICAL REPORT/NARRATIVE AT TRIAL PURSUANT TO O.C.G.A.
§ 24-8-826**

Comes now Greyson Elkins, Defendant in the above-styled case, and hereby objects to the introduction of or reading into evidence the narrative reports of Said Elshihabi M.D., dated December 30, 2021, pursuant to O.C.G.A. § 24-8-826 for the following reasons:

1.

By way of Plaintiff's "Sixty Day Notice Required by O.C.G.A. § 24-8-826", Plaintiff has expressed her intention to introduce a certain narrative report into evidence pursuant to O.C.G.A. § 24-8-826, specifically, the Medical Narrative of Said Elshihabi M.D..

2.

O.C.G.A. § 24-8-826(a) also provides that "[a]ny adverse party may object to the admissibility of any portion of the report, other than on the ground that it is hearsay, within 15 days of being provided with the report."

3.

The statute requires that the report must "set forth the relevant information in prose language that is more readily understandable to laymen." Bell v. Austin, 278 Ga. 844, 847(2)(b),

607 S.E.2d 569 (2005); Lott v. Ridley, 285 Ga.App. 513, 515(1), 647 S.E.2d 292 (2007). The report may not consist of “unexplicated medical terms and uninterpreted scientific test results.” Bell v. Austin, 278 Ga. 844, 847(2)(b), 607 S.E.2d 569 (2005). Further, medical records that “would require an expert analysis to demonstrate their import are still subject to a hearsay objection.” Bell v. Austin, 278 Ga. 844, 847(2)(b), 607 S.E.2d 569 (2005); see John Crane, Inc. v. Jones, 262 Ga.App. 531, 535(2), 586 S.E.2d 26 (2003).

4.

The purported medical narrative report offered by Plaintiff includes numerous “unexplicated medical terms and uninterpreted scientific test results.” Bell v. Austin, supra at 847(2)(b). Such examples gleaned from the report proffered by Plaintiff include references to procedures such as “fluoroscopy”, “inserting a three and half inch, 22-gauge, spinal needle into both sides of Ms. Jones’s L3 and L4 facet joints of her lower back” and “received a facet joint injection which is very similar to the medical branch block injection...we inject the anesthetic medicine and steroid directly into the facet joint of the spine”.

5.

Additionally, the narrative at issue is not written in prose language easily understood and is not in narrative story form, made easy to understand pursuant to Lott v. Ridley, 285 Ga. App. 513. The narrative report is simply a recitation of Plaintiff’s medical records.

6.

The use of the narrative reports, without an opportunity to cross-examine the physician/author in the presence of the jury, violates O.C.G.A. § 24-6-611(b). See also Martin v. Baldwin, 215 Ga. 293, 299 (1959). This impermissibly shifts the burden of proof and cost to the defense to pay for the expense of deposing and bringing forth evidence to disprove the substance of the narrative.

7.

“Generally, a party cannot make evidence for himself by his own declarations, and it is a well-established general rule that a statement of a party, whether oral or written, which is of a self-serving nature is not admissible in his favor.” Denton v. Etheridge, 73 Ga.App. 221 (36 S.E.2d 365); see also Wyatt v. Murrery, 90 Ga.App. 138 (3) (82 S.E.2d 159). These statements are not admissible under any exception to the hearsay rule.

8.

The testimony contained in the narrative report is not authenticated under O.C.G.A. § 24-9-902.

9.

Defendant object on the basis that Plaintiff's offer of evidence lacks entirety of the parts and, therefore, violates the rule of completeness. Additionally, Defendant object to the introduction of medical evidence that may represent any distinct portion of a larger medical record of Plaintiff. Defendant reserve the right to object to specific portions.

10.

Defendant object to the subject report on the basis that it is a mere copy, whereas O.C.G.A. § 24-8-1002 contemplates original documents.

11.

O.C.G.A. § 24-8-826 provides that a medical narrative report shall only be “received in evidence insofar as it purports to represent the history, examination, diagnosis, treatment, prognosis, or interpretation of tests or examination” of the person signing the narrative. There is nothing in the medical narrative statute which allows for the introduction of future medical expenses via narrative. Further, to warrant a recovery for future medical expenses, evidence must be presented that the injury “will” require future medical attention. Goss v. Total Chipping, 222 Ga. App. 643, 648 (1996); see also Womack v. Burgess, 200 Ga. App. 347 (1991). The narrative of Dr. Elshihabi merely states additional treatment in the future for her pain is needed, but it does

not state with any certainty whatsoever what the probability is for the necessity of that recommended treatment.

In Womack, the Court of Appeals found that the trial court had erred by allowing the jury to consider the issue of future surgical expenses. Womack, 200 Ga. App. at 347. There, the plaintiff's treating doctor testified that the probability that future surgery "would be required was approximately '50/50'." Womack, 200 Ga. App. at 347. The Court of Appeals found that the doctor's testimony did not provide an adequate basis for submitting the issue of future surgical expenses and/or future surgery to the jury, as such evidence could not provide the jury with the information necessary to "ascertain except by mere speculation and conjecture that [plaintiff] would ever have future medical expenses" Womack, 200 Ga. App. at 348.

Like the situation in Womack, the plaintiff cannot demonstrate the necessary foundation for submitting the issue of future medical expenses and treatment to the jury. As such, this Court should not allow the plaintiff to introduce any evidence and/or testimony pertaining to future medical expenses and/or treatment.

12.

Subject to the forgoing objections, Defendants reserve their right to cross-examine plaintiff's treating physicians and to provide rebuttal testimony.

For these reasons, the documents listed in Plaintiff's Notice pursuant to O.C.G.A. § 24-8-826 should be inadmissible.

This 26th day of January, 2022.

LAW OFFICES OF MCLAUGHLIN & REAM

A handwritten signature in blue ink that reads "Aaron C. Smith". The signature is written in a cursive style with a large initial 'A'.

Aaron Smith

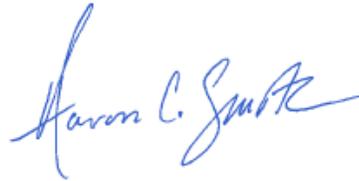
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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing parties in the foregoing matter with a copy of the attached pleading by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to ensure delivery.

This 26th day of January, 2022.



Aaron Smith
Attorney for Defendant

PERSONS SERVED:

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