

Defendant Physician can be Cross-Examined With His Disclosure and ACR Guidelines

Healthcare Alert | 2 min read

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Issue

Can the trial court properly bar plaintiff from introducing defendant radiologist's Rule 213(f)(iii) disclosure as an admission against interest, or questioning him about the American College of Radiology (ACR) practice guidelines?

Jesse Perez, as Independent Executor of the Estate of Marilyn Medina Perez, deceased v. St. Alexius Medical Center, et al., 2020 IL App (1st) 181887

Case Summary

Plaintiff patient first saw a fertility specialist in September 2011. On August 11, 2012, she presented to the St. Alexius Medical Center emergency department with pelvic pain, for which a CT scan and ultrasound were ordered. The CT scan identified a teratoma on her left ovary, but the ultrasound showed no such mass. Plaintiff's primary care physician consulted the doctors interpreting each study and determined there was no teratoma. Plaintiff then proceeded with in vitro fertilization treatment and subsequently became pregnant with twins in December 2012. On March 8, 2013, plaintiff again presented St. Alexius with abdominal pain, for which she underwent an appendectomy. Five days later, she again presented with abdominal pain. Again, a CT scan illustrated the teratoma, but the ultrasound did not. On June 21, 2013, plaintiff underwent a cesarean section, during which a teratoma was found. Plaintiff died from metastatic cancer on January 15, 2014. At trial, defendant argued that the radiologist who interpreted the ultrasound was unaware of the CT scan finding of a teratoma.

Plaintiff was awarded \$25 million against two defendants, but St. Alexius and the radiologist who interpreted the ultrasound were found not guilty.

Plaintiff appealed, in part, because the trial court prohibited plaintiff from cross-examining the radiologist who interpreted the ultrasound with his Rule 213 expert witness disclosures as an admission against interest. The 213 disclosure contained an admission that the defendant radiologist would have reviewed the CT scan and report, and would have been aware of the finding of a teratoma. On appeal, the court reasoned that the trial court erred in distinguishing the Rule 213(f)(iii) disclosure from a retained expert versus the defendant. Even though the disclosure was signed by the defendant's attorney, and therefore reflected the mental impressions about the opinions to which the defendant, his client, would testify at trial, that defendant could be cross-examined with same.

Plaintiff also appealed from the trial court prohibiting cross-examination of the radiologist with the ACR practice guideline which states that a radiologist should compare the current exam with the prior exam. Plaintiff's expert had laid the foundation for cross-examination of other witnesses with it by testifying that it was a good, safe, prudent standard of radiology practice. Even though the defendant radiologist was not familiar with the guideline, another witness with expertise in the manner, plaintiff's expert, established that the ACR guidelines were authoritative such that they could be used in cross-examining other witnesses, including the defendant radiologist. Not allowing plaintiff to confront the defendant radiologist with the ACR guidelines prejudiced plaintiff.

Takeaways

Drafting Rule 213(F)(iii) expert witness disclosures on behalf of defendant doctors must be undertaken with caution, knowing that they can create admissions against interest. Medical organizations' guidelines can be used for cross-examination of witnesses who are unfamiliar with them if at least one other witness with experience in the manner lays the appropriate foundation.

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