STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DANIYAH BAZAR, A MINOR, BY AND THROUGH HER PARENTS AND NATURAL GUARDIANS, AZZAM AND AMAL BAZAR,

Petitioner,

vs. Case No. 20-2038MTR

AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.
_____/

FINAL ORDER

On July 10, 2020, Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing by Zoom.

APPEARANCES

For Petitioner: Jason D. Lazarus, Esquire
Special Needs Law Firm
2420 South Lakemont Avenue, Suite 160
Orlando, Florida 32814

For Respondent: Alexander R. Boler, Esquire
2073 Summit Lake Drive, Suite 330
Tallahassee, Florida 32317

STATEMENT OF THE ISSUES

The issues are whether, pursuant to section 409.910(17)(b), Florida Statutes (17b),[1] Petitioner has proved that Respondent's recovery of $535,312 in medical assistance expenditures[2] from $5 million in proceeds from the settlement of a personal injury action must be reduced to avoid conflict with 42 U.S.C. § 1396p(a)(1) (Anti-Lien Statute)[3]; and, if so, the maximum allowable amount of Respondent's recovery.

PRELIMINARY STATEMENT

On April 27, 2020, Petitioner filed with DOAH a Petition to Determine Medicaid's Lien Amount to Satisfy Claim against Personal Injury Recovery by the Agency for Health Care Administration. Invoking Petitioner's right to a 17b proceeding, the petition alleges that Respondent's recovery of $535,312 is excessive because it violates the Anti-Lien Statute. The petition alleges that Petitioner obtained $5 million in settlement of a personal injury action with a true or full value of more than $23.5 million, or 21.3% of the true value of the case. Petitioner alleges that Respondent's recovery must bear the same proportion to $535,312[4]--21.3%--that the settlement bears to the true value of the case. The petition concludes that Respondent therefore may recover no more than $114,022.[5]

---

[1] All references to sections are to Florida Statutes, and all statutory references are to the appropriate year.

[2] "Medical assistance expenditures" is synonymous with Medicaid payments.

[3] All references to the "Anti-Lien Statute" include its counterpart, 42 U.S.C. § 1396p(b)(1), which might be called the "Anti-Recovery Statute" and similarly limits the ability of a state Medicaid agency to recover medical assistance properly expended on behalf of a recipient. "Recovery" and "lien" are used interchangeably in this final order.

[4] This value represents Respondent's medical assistance expenditures and the portion of the true value of the case represented by past medical expenses.

[5] The petition does not seek to reduce Respondent's recovery further by its proportional share of attorneys' fees and costs incurred in prosecuting the personal injury action.

The parties filed a Joint Prehearing Stipulation on June 29, 2020. Stipulated facts have been incorporated into the Findings of Fact set forth below.

At the hearing, Petitioner called three witnesses[6] and offered into evidence eight exhibits: Petitioner Exhibits 1 through 8. Respondent called no witnesses and offered into evidence no exhibits. All exhibits were admitted.

On June 29, 2020, the parties filed a Joint Motion for Protective Order, which the administrative law judge granted at the hearing and documented by order entered on July 21, 2020. The motion and order apply to Petitioner Exhibits 4 through 8. Petitioner Exhibits 4 through 7 concern confidential medical information. Petitioner Exhibit 8 is the General Release or settlement agreement between Petitioner, on the one hand, and, on the other hand, her birth hospital in West Palm Beach and the large healthcare corporation that directly or indirectly owns the birth hospital.[7]

Despite the joint motion, it is not entirely clear how the parties wish confidential information to be handled. In filing the above-referenced petition, Petitioner elected to name herself and her parents, although such information has been unnecessary to the preparation of the final order and is not invariably provided in similar petitions filed with DOAH.[8] Petitioner's

[6] One witness was Petitioner's mother, who placed a tablet in front of herself and Petitioner, so Petitioner could participate in the Zoom hearing to the extent that she was able.

[7] Paragraph 5.a of the joint motion allows the parties to use the designated exhibits solely as evidence in the subject proceeding. Paragraph 5.b of the joint motion allows the administrative law judge, appellate court judges, and Respondent's employees to inspect the exhibits. Paragraph 5.c of the joint motion requires the administrative law judge to seal the designated exhibits in an envelope with instructions for opening the envelope. Paragraph 5.d of the joint motion directs the parties not to disseminate the information contained in the designated exhibits.

[8] As of July 21, 2020, the DOAH case management website lists 26 active 17b proceedings. All but two of these cases name the petitioner and his or her representative or representatives. DOAH Case 20-0875MTR identifies the petitioner as "Jane Doe, an incapacitated adult by and through her [unnamed] plenary

proposed final order has disclosed the names of the defendants, Petitioner's metabolic disease, her metabolic decompensation and brain injuries, and the amount of the settlement. Respondent's proposed final order states that it has not disclosed "sensitive information in the [designated] exhibits,"[9] but discloses all of the same information. The preparation of this final order has required findings and analysis as to all of this information, except the names of the birth hospital and its corporate owner, so this information has been omitted from the final order, notwithstanding the ease with which third parties may inform themselves of the identity of these entities.

The parties did not order a transcript. The parties filed proposed final orders by July 21, 2020.

FINDINGS OF FACT

1. On September 28, 2005, Petitioner was born by an unremarkable delivery at 42 weeks' gestation at a hospital in West Palm Beach. On October 1, 2005, from all appearances a healthy infant, Petitioner was discharged to home. However, Petitioner was born with an extremely rare metabolic disorder known as B-ketothiolase deficiency (BKT), which prevents the body from processing a protein building block called isoleucine and impedes the body's processing of ketones. A few weeks after Petitioner's birth, the birth hospital began screening that would have detected this condition and permitted timely management and treatment of this serious condition.

2. Petitioner progressed normally until, at the age of five years, she acquired an infection that caused her to suffer a decompensation attack and

---

guardian," and DOAH Case 20-2124MTR identifies by name a parent, "individually and as parent and natural guardian of A. F., a minor." As to the latter case, the same attorneys represent the petitioner and respondent as represent Petitioner and Respondent.

[9] Resp.'s proposed final order, footnote 2.

metabolic crisis. Over the span of a few hours, Petitioner suffered irreversible and progressive atrophic changes to her basal ganglia. This brain damage produced, among other permanent conditions, intermittent painful spasms, multiple times during the day and night, that cause Petitioner to thrash her head about wildly, to arch her back into an extreme "U-like position," and uncontrollably to scratch her eyes or mouth until the spasm ends or her arms are secured or become entrapped in the wheelchair. Otherwise, Petitioner's arms and legs are in a permanent state of contracture, so as to be of little use to her, and her head is typically deviated to the left.

3. Unable to walk, Petitioner requires the use of a wheelchair for mobility, but chronic pain, especially in her back, prevents her from remaining in the chair for more than 30 minutes at a time. Unable to maintain any position for very long, Petitioner is unable even to watch television or a movie. Petitioner attends school, where she is assisted by a one-to-one paraprofessional, but, due to pain, she typically finds it necessary to leave, often in tears, prior to the end of the school day.

4. Petitioner is completely dependent on others for all of the activities of daily living. She is fed through a gastrostomy tube. Without respite care, Petitioner's mother is unable to leave her daughter unattended and provides nearly all of the required care. Among many other things, the mother secures Petitioner to her bed, changes her position, stretches her, brushes her teeth, and takes her to appointments, including brain stimulation therapy in Gainesville twice weekly to help with the spasms. The impact of Petitioner's condition upon the family is nearly inestimable. For instance, nearly the entire family must accommodate Petitioner's desire to go to an amusement park, as the mother, Petitioner's father, and the older of their other two children must help to get Petitioner into one ride.

5. Petitioner's ability to speak is limited, and she lacks the means of expressive communication by writing or a keyboard. The frustration of these communication barriers is heightened by the fact that Petitioner is likely to

be cognitively intact, meaning that she is substantially "locked in," so as to understand what is going on about her, but is unable to express herself, even by body movement or gesture.

6. No single measure adequately conveys the extensive care required just to maintain, to the maximum extent possible, Petitioner's present, limited functionality. When assessed for a life care plan, Petitioner was being seen by nine different physicians, three therapists, and the school nurse; was taking nine different medications; and was served by or consumed nearly two dozen items of equipment or supplies.

7. In 2013, Petitioner filed a personal injury action in circuit court in West Palm Beach against the birth hospital and its corporate parent. The case presented three major problems in establishing liability. At the time of Petitioner's birth, only two hospitals in the state of Florida provided BKT screening at birth, and the birth hospital was not one of them. However, the corporate parent owns numerous hospitals in other states, and at least some of these hospitals were providing BKT screening at the time. Petitioner's ability to establish a favorable standard of care was thus dependent on keeping the corporate parent in the case, even though its liability was attenuated. Petitioner's task was complicated by a Florida statute that explicitly provides that the failure of a healthcare provider to provide supplemental diagnostic tests is not actionable if the provider acted in good faith with due regard to the prevailing standard of care.[10] Lastly, Petitioner was confronted by a causation issue because, when informed of Petitioner's rare metabolic condition, the parents did not immediately obtain a screening for her older brother.

8. In September 2017, the circuit judge ordered the parties to submit to two summary jury trials, in which each side had a little over one hour to present the case to actual jurors for a nonbinding verdict. Each party devoted

[10] § 766.102(4).

nearly all of its allotted time to a presentation on liability, not damages. One jury returned a verdict for the defendants, and the other returned a verdict for the plaintiffs, awarding $23.5 million as follows: the loss of earning capacity and future medical expenses after the age of 18 years--$10.5 million; past and future pain and suffering--$5 million; past and future medical expenses until the age of 18 years--$5 million; and the parents' loss of consortium--$3 million.

9. In the ensuing settlement negotiations, the defendants' counsel did not contest the damages. Significantly, in calculating future medical expenses and loss of earning capacity, both sides chose conservative reduced actuarial values with only four years separating their choices. Additionally, the defendants' counsel did not contend that a timely screening might not have prevented the injuries. Instead, the defendants' counsel argued the above-described liability and causation issues. The plaintiffs' counsel opposed these arguments and, secondarily, argued that the $23.5 million summary jury verdict was too low due to the necessity of counsel's preoccupation with liability during their presentations. Nearly one year after the summary jury verdicts and after extensive discovery and the expenditure of about $200,000 in costs by the plaintiffs, the parties reached the settlement described above.

10. By any standard of proof, Petitioner has proved that the true value of her case was at least $23.5 million, including $535,000 for past medical expenses, and that the $5 million settlement was driven by concerns as to liability and causation, not damages. The only noteworthy damages component in the true value is Petitioner's past and future pain and suffering, which could have supported a larger value based on the Florida Supreme Court's jury instructions on the matter.[11]

---

[11] Florida Standard Jury Instructions in Civil Cases, Appendix B, Form 2, states in part:

> What is the total amount of (claimant's) damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect (list any other noneconomic damages) and loss

11. The $5 million settlement represents a discount of $18.5 million or 78.7% when compared to the true value of the case. Applying the same discount to $535,312 results in Respondent's recovery of $114,021.

CONCLUSIONS OF LAW

12. DOAH has jurisdiction. §§ 120.569, 120.57(1), and 409.910(17)(b); *Giraldo v. Ag. for Health Care Admin.*, 248 So. 3d 53 (Fla. 2018).

13. Respondent is obligated by statute to obtain reimbursement of medical assistance expenditures from judgment or settlement proceeds obtained by a Medicaid recipient[12] from a tortfeasor whose wrongdoing necessitated the Medicaid payments. To effect this recovery, Respondent is subrogated to the recipient's rights to any proceeds derived from third parties, the recipient assigns to Respondent its rights to any such proceeds, and Respondent has a lien against any such proceeds.[13]

14. In *Department of Health & Human Services v. Ahlborn*, 547 U.S. 268 (2006), the Supreme Court ruled that the imposition of a state Medicaid agency's lien on the full amount of settlement proceeds conflicts with the Anti-Lien Statute to the extent that the encumbered proceeds include "medical expenses,"[14] because the Anti-Lien Statute reserves to the recipient

---

> of capacity for the enjoyment of life sustained in the past and to be sustained in the future?

https://www.floridasupremecourt.org/content/download/243071/2143268/entireDocument.pdf.

[12] A "recipient" is the person on whose behalf the state Medicaid agency expends medical assistance. All references to "recipient" are to the recipient and its legal representative.

[13] § 409.910(6).

[14] The Court has never indicated whether "medical expenses" includes future medical expenses or only past medical expenses, but, as noted below, the Florida supreme court in *Giraldo* has held that "medical expenses" is limited to past medical expenses.

the portion of the proceeds allocable to medical expenses.[15] To determine the agency's allowable recovery, the Court applied the stipulation of the parties that, if the Court ruled for the recipient, the agency's lien would undergo a proportional reduction. There was no dispute that the agency had paid about $216,000[16] in medical assistance and the recipient had obtained settlement proceeds of $550,000 that were unallocated as to medical expenses and other damages components. The parties had stipulated that the true value of the case was about $3 million, the true value ratio--i.e., the settlement divided by the true value--was about 1:6, and one-sixth of the Medicaid payments was about $36,000, which represented the agency's recovery, once the recipient prevailed on the issue presented to the Court.

15. In *Wos v. E.M.A.*, 568 U.S. 627, 638 (2013), the Supreme Court invoked the Supremacy Clause to set aside a state statute that applied a formula to settlement proceeds to determine the state Medicaid agency's recovery--without providing the recipient an opportunity to show that the statutory recovery would violate the Anti-Lien Statute. An expert witness estimated the true value of the recipient's medical malpractice action to be over $42 million in economic damages, including over $37 million of future medical expenses in the form of skilled home care. The state Medicaid agency expended about $1.9 million in medical assistance, and the recipient settled for $2.8 million. The settlement, which did not allocate the proceeds among the various damages components, was driven largely by the defendants' policy limits. In declining to allow the agency to recover $933,333[17] of the $2.8 million settlement without a hearing to determine the portion of the

[15] The Court impliedly invoked the Supremacy Clause of the U.S. Constitution in holding that the Arkansas statute was unenforceable to the extent it authorized a lien on the medical expenses of settlement proceeds.

[16] Most values from other cases are rounded off for ease of presentation.

[17] The amount is one-third of the gross proceeds, as confirmed in *E.M.A. v. Cansler*, 674 F.3d 290, 294 (4th Cir. 2012), *aff'd sub nom.*, *Wos v. E.M.A.*, 568 U.S. 627 (2013).

settlement proceeds allocable to past medical expenses, the Court rejected the state's argument that ascertaining the true value of a case was impossible and instead exhorted trial judges and lawyers to find "objective benchmarks" to project the damages that the recipient would have been able to prove, if its case had gone to trial.

16. Responding to *Wos*,[18] the Florida legislature enacted section 409.910(17)(b), which authorizes a recipient to commence a 17b proceeding to prove that the portion of Respondent's recovery that "should be allocated as past and future medical expenses" is less than its recovery under section 409.910(11)(f), which is an allocation formula not much different from the North Carolina statutory formula at issue in *Wos*.[19] Construing 17b in conjunction with the Anti-Lien Statute and relevant case law, the *Giraldo* court held that Respondent's recovery is limited to settlement proceeds properly allocable to past medical expenses.

17. Respondent does not dispute the fact that Petitioner obtained a $5 million settlement. It is equally clear that the true value of Petitioner's case at the time of the settlement was at least $23.5 million. The future medical expenses and loss of earning capacity were supported by conservative actuarial values, and the value assigned to the pain and suffering of Petitioner was conservative to the point of being inadequate. It is thus clear that no issues involving damages drove the settlement discount of 78.7%, which was the sole result of grave issues as to liability and causation.

---

[18] A few months after the *Wos* decision, the legislature passed and the Governor signed into law two slightly different bills: chapter 2013-48, sections 6 and 14, and chapter 2013-150, sections 2 and 7, Laws of Florida.

[19] Section 409.910(11)(f) sets Respondent's recovery as the lesser of its medical assistance expenditures or the amount produced by a formula that allocates to Respondent one-half of the net settlement or judgment proceeds remaining after the reduction of the gross proceeds by 25% for attorneys' fees and by taxable costs. This statutory formula is irrelevant to the present case because Respondent's medical assistance expenditures are less than the amount derived by the formula. Under no circumstances may Respondent's recovery ever exceed its total medical assistance expenditures.

18. When the settlement amount and true value--and thus the settlement discount itself--are supported by the evidence, there is no reason not to impose the same settlement discount or proportional reduction to the past medical expenses to determine the maximum recovery that Respondent may obtain without violating the Anti-Lien Statute. Although neither *Ahlborn* nor *Wos* mandates a method for making this determination, each decision requires some sort of analysis of the settlement or judgment proceeds in terms of the relationship of the medical expenses to the other damages components. A proportional reduction of each damages component--if each damages component is supported by the evidence--is uniquely suitable because a proportion is inherently comparative.[20]

19. In its proposed final order, Respondent asserts two arguments against a proportional reduction of the past medical expenses--the latter of which is unique to the facts of this case. First, Respondent argues that the proportional reduction method is not required, which is correct, but also that this method has its problems, which is incorrect, as long as each damages component in the true value is supported by the evidence.[21]

20. Respondent relies on *Smith v. Agency for Health Care Administration*, 24 So. 3d 590 (Fla. 5th DCA 2009), in which then-Judge, now-Justice Lawson, writing for the majority, affirmed the ruling of the trial judge[22] denying a request by the plaintiff's counsel to reduce Respondent's Medicaid lien from $123,000 to $41,000. The plaintiff's counsel had argued that Respondent

---

[20] Two definitions in Webster's online dictionary are: 2.a. "proper or equal share//each did her proportion of the work"; 2.b. "quota, percentage"; and 3. "the relation of one part to another or to the whole with respect to magnitude, quantity, or degree : ratio." https://www.merriam-webster.com/dictionary/proportion.

[21] As noted above, the actual settlement amount must also be supported by the evidence, but the administrative law judge is unaware of any case in which a recipient has attempted to understate the value of the settlement in order artificially to increase the settlement discount.

[22] *Smith* predates the enactment of section 409.910(17)(b).

must accept the same 67% settlement discount that the plaintiff had accepted, as mandated by *Ahlborn*.

21. There are two obvious problems with the plaintiff's request. First, as *Smith* points out,[23] *Ahlborn* uses a proportional reduction method due to the stipulation of the parties and does not endorse, let alone mandate, the method in other cases. Second, as *Smith* points out,[24] any form of a proportional reduction requires evidence, not merely argument. *See Davis v. Roberts*, 130 So. 3d 264, 268 (Fla. 5th DCA 2013) (explaining *Smith*'s holding in part as a result of the absence of evidence from the plaintiff in allocating damages).

22. *Smith* faults the *Ahlborn* formula for assuming that the Medicaid lien is the only medical expense component in the plaintiff's damages claim. It is risky to glean much detail about a formula that was driven by the parties' stipulation, but nothing in the proportional reduction method used in this case limits past medical expenses to Respondent's medical assistance expenditures. The proportional reduction method can accommodate any judicial directive as to how to calculate the past medical expenses: i.e., past medical expenses including only Respondent's Medicaid payments, past medical expenses including all paid medical expenses, past medical expenses including all billed medical expenses, or any combination of these approaches.

23. At bottom, the trial judge in *Smith* was confronted with claims, not proof, of a true value and, thus, settlement discount that were limited only by the imagination and ethics of the plaintiff's counsel. The judge properly rejected the claims and was properly affirmed on appeal.

24. Respondent's second argument springs from a misreading of *Smith*, in which Respondent claims to have found, in the case, a "legal test" for

---

[23] *Smith*, 24 So. 3d at 591.

[24] *Smith*, 24 So. 3d at 592.

determining past medical expenses that, with considerable understatement, Respondent brands as "most closely aligned with the express language of [17b]"[25]: "a plaintiff should be afforded an opportunity to seek the reduction of a Medicaid lien amount by demonstrating, with evidence, that the lien amount exceeds the amount recovered for medical expenses."[26] Of course, three years after *Smith*, this is substantially what the legislature enacted--i.e., a provision allowing a recipient an opportunity to show that the Medicaid lien exceeds the amount recovered for medical expenses. But neither the language in *Smith* nor 17b identifies a method for making a determination of past medical expenses.

25. Next, Respondent misconstrues the 17b language that states: "the recipient must prove … that the portion of the total recovery which should be allocated as past … medical expenses is less than the amount calculated by the agency pursuant to the formula set forth in paragraph (11)(f)." Respondent contends that this language means that Petitioner must "prove not only what <u>amount</u> should be allocated, but also <u>how</u> that amount should be determined."[27] But the statute says only that, if Petitioner wishes to reduce Respondent's recovery, Petitioner must prove that past medical expenses are less. Just as the statute contains no method for making this determination, neither does it assign to the recipient the task of finding a method.

26. Respondent's argument culminates in the point that, in this case, Petitioner failed in its proof of the applicability of the proportional reduction method because neither of its expert witnesses unconditionally opted for the proportional reduction method, but instead performed the necessary

---

[25] Resp.'s proposed final order, p. 13.

[26] *Smith*, 24 So. 3d at 592.

[27] Resp.'s proposed final order, p. 12.

calculations on the assumption that such a method applied.[28] This is an interesting point because Respondent usually is on the other end of this argument: a recipient's expert witness opts for and applies the proportional reduction method, Respondent calls no expert witness to rebut this testimony, and the recipient claims victory--for the past two years, usually citing the *Giraldo* warning that a factfinder may reject "uncontradicted evidence" only if there is a "reasonable basis in the evidence" for doing so, although the court relies on a case that so holds as to expert testimony.[29]

27. In affirming a proportional reduction, the court in *Agency for Health Care Administrative v. Rodriguez*, 294 So. 3d 441, 443 (Fla. 1st DCA 2020), treated the allocation method as a finding of fact and testimony about facts of the personal injury action from the recipient's trial counsel as fact testimony, not expert testimony. This may represent the start of a much-needed judicial revisitation of the evidence that is appropriate in a 17b proceeding and the role of the administrative law judge in weighing this evidence in making direct and ultimate findings of fact.

28. Regardless of whether *Giraldo* is cited as a sword or a shield in terms of the necessity of a witness's choice of an allocation method, it is necessary to limit the role of a fact or expert witness in selecting and using a formula to determine the extent to which settlement or judgment proceeds represent past medical expenses, even if the witness does not proceed to perform the arithmetic to determine Respondent's maximum allowable recovery.[30]

---

[28] Resp.'s proposed final order, pp. 3, 8-9, and 15.

[29] *Giraldo*, 248 So. 3d at 56 (citing *Wald v. Grainger*, 64 So. 3d 1201, 1205-06 (Fla. 2011).

[30] As the court noted in *Summers v. A.L. Gilbert Co.,* 82 Cal. Rptr. 2d 162, 178 (Cal. App. 5th Dist. 1999):

> Expert opinions which invade the province of the jury are not excluded because they embrace an ultimate issue, but because they are not helpful (or perhaps too helpful). "[T]he rationale for admitting opinion testimony is that it will assist the jury in reaching a conclusion called for by the case. 'Where the jury is just as competent as the expert to consider and weigh

Otherwise, in the mine run of cases, as distinguished from this case, the roles of Respondent, the administrative law judge, and the appellate courts are quickly reduced to checking the accuracy of the witness's arithmetic, and, unless Respondent subjects itself to the expense of presenting rebuttal witnesses, the deference paid to the recipient's witness may open the back

---

> the evidence and draw the necessary conclusions, then the need for expert testimony evaporates.' [Citation.]" (*People v. Torres* (1995) 33 Cal.App.4th 37, 47, 39 Cal.Rptr.2d 103; see 1 McCormick on Evidence, *supra*, § 12, p. 49, fn. 11 ["The fact that an opinion or inference is not objectionable because it embraces an ultimate issue does not mean, however, that all opinions embracing the ultimate issue are admissible… . Thus, an opinion that plaintiff should win is rejected as not helpful."].) In other words, when an expert's opinion amounts to nothing more than an expression of his or her belief on how a case should be decided, it does not aid the jurors, it *supplants* them.

Developing the noting of supplanting the trier of fact, in a case closer to home, but long ago, the court in *Mills v. Redwing Carriers, Inc.*, 127 So. 2d 453, 456-57 (Fla. 2d DCA 1961):

> An observer is qualified to testify usually because he has firsthand knowledge which the jury does not have of the situation or transaction at issue. The expert, however, has something different to contribute. This is a power to draw inferences from the facts which a jury would not be competent to draw. To warrant the use of testimony from a qualified expert, then, two elements are required. First, the subject of the inference must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average layman, and second, the witness must have such skill, knowledge or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier of facts in its search for truth. McCormick, Handbook of the Law of Evidence, 1954, page 28 and authorities collected therein. Moreover, where the opinion is nothing more than the speculation of an admitted non-expert on the issue involved, to that extent it does invade the province of the jury, which is equally competent to reach such a conclusion upon the same physical facts observed by the witness and made known to the jury by exhibits and testimony. There would appear therefore to be no material conflict between the basis for the objection by defendant to the evidence in the instant case [failure of the witness to have been qualified as an expert] and the ground asserted by the court in granting the new trial [the witness invaded the province of the jury].

door to the presentation of a true value and, thus, settlement discount that, as in *Smith*, are limited only by the imagination and ethics of the recipient's counsel--a process that would be as well served by the unilateral filing of an affidavit or two than by a formal administrative hearing.

29. Regardless of the testimony of Petitioner's witnesses, the most suitable method for determining the extent of past medical expenses in the settlement proceeds in this case is the proportional reduction method, as applied above. As noted in the Findings of Fact, Respondent's recovery is thus limited by the Anti-Lien Statute and 17b to $114,021.

ORDER

It is

ORDERED that Respondent shall recover $114,021 from Petitioner's $5 million settlement.

DONE AND ORDERED this 29th day of July, 2020, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of July, 2020.

COPIES FURNISHED:

Alexander R. Boler, Esquire
2073 Summit Lake Drive, Suite 330
Tallahassee, Florida 32317
(eServed)

Jason D. Lazarus, Esquire
Special Needs Law Firm
2420 South Lakemont Avenue, Suite 160
Orlando, Florida 32814
(eServed)

Shena L. Grantham, Esquire
Agency for Health Care Administration
Building 3, Room 3407B
2727 Mahan Drive
Tallahassee, Florida 32308
(eServed)

Thomas M. Hoeler, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(eServed)

Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(eServed)

Stefan Grow, General Counsel
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308
(eServed)

Mary C. Mayhew, Secretary
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 1
Tallahassee, Florida 32308
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.