

ROSEMARIE and JEFFREY
BLAKE, Husband and Wife,

V.

Defendant.

ORDER

1. Defendant has moved to exclude from evidence Plaintiffs' "Day in the Life" video. I am going to exclude most of the video. The narrative portions which are the majority of the video are hearsay. There is no reason why the Plaintiffs cannot be questioned during direct about the issues that are raised in video. I will allow the Plaintiffs to play those portions of the video outlined below without audio. The portions referenced below demonstrate how the alleged negligence has impacted the Plaintiffs' life.

3:28 to 3:40;
4:00 to 4:13;
4:57 to 5:14;
5:15 to 5:22;

5:30 to 6:20;
6:55 to 7:11;
7:24 to 7:22;
7:26 to 7:35;
7:47 to 7:56;
8:50 to 8:37.

2. Defendant has moved in limine to exclude certain opinions of Dr. Philip Marion at trial. Dr. Marion is a physical medicine and rehabilitation physician who developed a life care plan at Plaintiffs' counsel's request. First, Defendant seeks to prevent Dr. Marion from offering causation opinions. Defendant's position is that Dr. Marion is not qualified to offer any opinions because he testified at deposition that he was not offering causation opinions. As I understand Dr. Marion's testimony he will testify as to the needs of the Plaintiff based on the diagnosis that has been provided. Dr. Marion is able to testify if a qualified medical doctor opines that the various diagnoses requiring an item in the plan are causally related to the incident in question. Once that testimony comes forward Dr. Marion can testify as to the needs as a result of that condition. Defendant additionally challenges Dr. Marion's opinions because he did not deal with Plaintiff's preexisting conditions in considering her plan. Whether the Plaintiff suffered preexisting ambulatory dysfunction and whether she was able to shop on her own are issues that go to weight and credibility, not

admissibility. Again, Dr. Marion can only discuss these issues if there is appropriate causation testimony tying these limitations to the alleged negligent act. Similarly, Dr. Marion may not testify as to any needs related to cognitive deficits and mental issues that are not established by a qualified expert to say that they were caused by the alleged negligent act. At this point Defendant's motion on this point is denied subject to the proof presented at trial.

3. Defendant challenges Dr. Marion's opinion because it relies on a survey of what private providers typically charge for such services. Defendant maintains that under Delaware law the workup of the pricing of the various items outlined in his report must be based on Medicare pricing since Plaintiff has Medicare coverage. In *Stayton v. Delaware Health Corp.*, 117 A.3d 521, 534 (Del. 2015) the Supreme Court ruled that a plaintiff whose medical expenses were paid by Medicare could only recover the amount paid by Medicare. In *Smith v. Mahoney*, 150 A.3d 1200, 1028 (Del. 2016) the Court declined to apply *Stayton* to an award of future costs even though the plaintiff was a Medicaid recipient because it was speculative to assume the plaintiff would remain Medicaid eligible as individuals are encouraged to move out of the program. In the instant case Plaintiff is a Medicare recipient based on her age and as such she will not be moving out of the

Medicare system. This Court believes that in a case like the instant one the Supreme Court would follow *Stayton* as to future medical expenses. Dr. Marion's prices must be based on the Medicare rates, not the private rates. To the extent that Medicare does not cover certain expenses then those expenses can be proven by the private costs of those services.

4. Defendant challenges the opinion of Plaintiffs' economic expert, Dr. Nik Volko, as to his opinions related to lost earnings and loss of household services. Plaintiffs are not opposing this motion. This motion is granted.
5. Defendant seeks to exclude the standard of care opinions of Plaintiffs' standard of care expert Dr. Imdad Ahmed. Defendant contends that Dr. Ahmed's opinions lack an adequate factual basis and his inverted causation testimony is unsupported as the opinion impermissibly relies on the existence of presumed injuries to prove negligence as opposed to a breach in the standard of care in the performance of the procedure causing the alleged negligence. Plaintiffs maintain that they have presented evidence to establish the prima facie case. Specifically, Plaintiffs argue that Dr. Ahmed will testify that the standard of care was breached when Plaintiff suffered injuries to the left atrium, right ventricle and aorta during a Watchman procedure. Plaintiffs maintain that the fact that Dr. Ahmed cannot explain how those injuries occurred in this case goes to the weight of the evidence,

not its admissibility.

6. The Court's review of the testimony of Dr. Ahmed leads to a conclusion that the Plaintiffs have met their burden. The essence of Dr. Ahmed's testimony is that the areas of injury should not have been involved in the Watchman procedure and the fact that those areas were injured is evidence that the manner in which the Watchman procedure was done was a breach of the standard of care because the surgeon should not have been anywhere near those areas. The fact that Dr. Ahmed cannot explain how those injuries occurred goes to the weight of the evidence not its admissibility.¹ Defendant's motion to limit or exclude the testimony of Dr. Ahmed is **DENIED**.

IT IS SO ORDERED this 28th day of October, 2026.

/s/ Francis J. Jones, Jr.
Francis J. Jones, Jr., Judge

cc: *Counsel via File & ServeXpress*

¹ *Green v. Weiner*, 766 A.2d 492, 496 (Del. 2001).