

Impeachment of Plaintiff's Expert

The plaintiffs, John Iaccino and Elisa Iaccino, individually and as parents and next friends of the minor plaintiff, Jonathan Iaccino, brought an action for medical malpractice against Northwest Community Hospital and various physicians for injuries Jonathan sustained during labor as a result of oxygen deprivation.

At trial, plaintiffs furnished as an expert witness, Dr. Gary Blake. As mandated by the Illinois Civil Code of Procedure, 735 ILCS 5/2-622, Dr. Blake filed a written medical report attached to the plaintiffs' complaint that stated that certain defendants were negligent in the care and treatment of Jonathan Iaccino. In his written medical report, Dr. Blake interpreted the decelerations that he saw in the fetal monitor strip of Jonathan Iaccino as "variable decelerations." At trial, however, Dr. Blake testified on direct examination that he interpreted the decelerations in the fetal monitor strip as either "late decelerations", or "variable decelerations with a late component."

Defense counsel impeached Dr. Blake with the inconsistencies in his written medical report that called the decelerations "variable" with Dr. Blake's trial testimony on direct that the decelerations were either "late decelerations" or "variable decelerations with a late component."

At trial, the plaintiffs objected to Dr. Blake being impeached with his written medical report because in their opinion, impeaching Dr. Blake with his written medical report would unfairly handicap Dr. Blake because the report is only a threshold opinion usually prepared at a point before all the facts are fully developed in discovery. The trial court disagreed with the plaintiffs' objection and allowed the impeachment of Dr. Blake. The Illinois Appellate Court upheld the trial court's ruling that Dr. Blake could be impeached with his prior written medical report.

Illinois has long held that for a prior statement to be considered inconsistent for impeachment purposes, the statement need not be directly contradictory to the witness's later testimony. Rather, it is sufficient that such statements have a reasonable tendency to discredit the witness's testimony. In *Re Lane*, 127 Ill.2d 90, 535 N.E.2d 866 (1989). When a witness has been impeached by a prior inconsistent statement, the witness is able to qualify or explain the inconsistency in order to rehabilitate himself or herself. *People v. Hanson*, 83 Ill. App. 3d 1108, 404 N.E.2d 801 (2d Dist. 1980).

Thus, the Illinois Appellate Court in *Iaccino v. Anderson*, 406 Ill. App. 3d 397, 940 N.E.2d 742 (1st Dist. 2010) held that



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Section 2-622 does not prescribe the form that the written medical report must take and nothing in the statute prevents the author of such a report from qualifying his opinions to make clear that they are preliminary opinions subject to amendment or supplementation upon the acquisition of additional information such as additional medical records or deposition testimony. The Illinois Appellate Court in *Iaccino* reasoned that an expert physician is able to be impeached with his written medical report and the impeachment is not unfair because the physician could explain that the report was prepared during the early stages of discovery or, in the alternative, the physician could attempt to explain any inconsistencies between his report and his trial testimony in accordance with Illinois Evidentiary Law.

The Illinois Appellate Court further reasoned that the jury must be able to assess the explanation in evaluating the credibility of the physician's testimony. The jury may conclude that the physician sufficiently explained why his or her opinion had changed. On the other hand, the jury may conclude that a particular explanation was not credible. If the expert in sworn testimony in the ensuing litigation testifies that something inconsistent with the opinion set forth in his or her written medical report, a legitimate concern arises as to whether a valid cause existed to initiate the litigation in the first instance. As a result, the physician when confronted with the possibility that he or she may be impeached with the prior written medical report, will be in most instances more careful to make only those accusations of medical malpractice that have a reasonably valid scientific basis.

Therefore, the clear holding in *Iaccino* is that an expert doctor's written medical report prepared pursuant to Section 2-622 of the Illinois Civil Code of Procedure may be used against that doctor as a prior inconsistent statement for impeachment purposes.

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