



## Alerts

### Cross-Examination About Medical Condition Without Formal Diagnosis Deemed Error

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Health Care Alert

*This alert was featured in Hinshaw's Annual Guide to Illinois Medical Malpractice Decisions: 2020 Edition*

#### Issue

Is evidence of syphilis sufficient to allow cross-examination of a treating physician relating to pain associated with that condition?

*Lugarda Castillo and Richard Castillo v. The Center for Athletic Medicine, et al.*, 2019 IL App (1st) 172958

#### Case Summary

Plaintiff patient was diagnosed with a "17-degree valgus deformity of her right femur" in 2004, meaning that her femur was misaligned and she was "knock-kneed." To correct the deformity and alleviate plaintiff's pain, the defendant orthopedic surgeon performed a right distal femoral open wedge osteotomy. Plaintiff's femur fractured during the procedure, so the surgeon changed his plans for the procedure in an attempt to achieve the desired degree of correction and take the pressure off the outside of plaintiff's right knee. The sections of plaintiff's femur did not heal together after the surgery and she underwent a revision surgery by Dr. Garapti in 2005. Plaintiff eventually healed, but testified that she continued to experience pain and functional limitations, and can only work with special accommodations. Notably, at trial, Dr. Garapti testified that both nonunions and fractures of the medial cortex are known risks of the procedure performed by the defendant surgeon, which can—and do—occur in the absence of negligence on the part of the surgeon. At trial, the jury rendered a verdict for defendants.

Plaintiff appealed, in part, because the trial court allowed questioning of her primary care physician about whether syphilis could lead to her complaints of pain. Plaintiff had tested positive for serological markers that could indicate the presence of syphilis, but was never diagnosed with it. She underwent a subsequent spinal tap that actually ruled syphilis out. In a motion *in limine* prior to trial, plaintiff requested that questions about syphilis be barred. The trial court granted the motion in part so long as syphilis was only referred to as a "neurological condition" rather than as "syphilis" to reduce the prejudicial impact. Because plaintiff ended up testing negative for this condition, the appellate court found that this admission was an error. However, because the jury found that defendants were not liable, the error was not reversible. The syphilis-related evidence went toward damages suffered by plaintiff, not toward whether the defendant surgeon negligently performed the procedure. The appellate court explained that this decision would have warranted reversal if the jury had found the defendant surgeon liable.

#### Takeaway

Litigants should heed the appellate court's ruling and confirm that evidence of a medical condition is supported by a formal diagnosis before cross-examining witnesses.



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