



The Dennis Decision: A Shot Across the Bow for Hospitals

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A recent Virginia court decision questions the reasonable value of health care services and creates a challenge to debt collection efforts by hospitals. In March, the Circuit Court for Henry County, Patrick County, and the City of Martinsville, Virginia ruled in favor of a patient, Mr. Dennis, against Memorial Hospital of Martinsville & Henry County. The case, *Glenn Michael Dennis v. PHC-Martinsville, Inc. t/a Memorial Hospital of Martinsville & Henry County*, No. CL14-483, has sounded alarm bells throughout the hospital community. The case is now under appeal.

The circuit court's opinion in *Dennis* is remarkable for two reasons. First, the court held that the hospital's patient financial responsibility agreement was unenforceable because of the severity of Mr. Dennis' medical condition when he sought care at the hospital. Second, the court held that the reasonable value of services provided to Mr. Dennis, a privately insured patient, was the amount that Memorial Hospital would have received from an uninsured patient who, in accordance with hospital policy, paid the full amount of the discounted charges to the hospital within a few days of care.

The facts surrounding Mr. Dennis' arrival at the hospital informed the court's analysis regarding the unenforceability of Mr. Dennis' financial responsibility agreement. As recited in the opinion, Mr. Dennis was taken by a co-worker to an urgent care center after he began experiencing chest pain that he believed was consistent with the pain he felt during a previous heart attack. An ambulance quickly transported Mr. Dennis from the urgent care center to Memorial Hospital, where he arrived in acute emotional and physical distress.

Approximately 45 minutes after Mr. Dennis arrived at Memorial Hospital, hospital personnel presented Mr. Dennis with papers for his signature, including the hospital's financial responsibility agreement. At the time, Mr. Dennis believed he was having a severe heart attack and that he had to sign the papers in order to receive treatment. Mr. Dennis, who was apparently fully conscious, signed the agreement, which required him to pay the hospital in accordance with the charges listed in the hospital's charge description master.

Although Mr. Dennis had health insurance at the time, Memorial Hospital did not participate in Mr. Dennis' health plan. The hospital nonetheless filed a claim with Mr. Dennis' health plan, which paid out-of-network benefits in the amount of \$27,254.95. Memorial Hospital then billed Mr. Dennis for the remaining balance of \$83,860.42. Mr. Dennis sued Memorial Hospital seeking, among other things, a declaratory judgment that the financial responsibility agreement is unenforceable. Memorial Hospital demurred and counterclaimed for breach of contract.

After engaging in a lengthy discussion of the basic principles of contract law, the circuit court found that the hospital's financial responsibility agreement was a "contract of adhesion" meaning a "take-it-or-leave-it" contract in which the parties have unequal bargaining powers - and that Mr. Dennis was coerced to sign the agreement by his urgent need for treatment. In the court's words, Mr. Dennis was presented with the option, "Your money or your life!" In so concluding, the court expressed concern that Memorial Hospital's charge master was treated as confidential. A valid contract requires mutual consent of the parties to the terms of the agreement, and, according to the court, such mutual consent was objectively impossible if one of the key terms, i.e., the price, was solely within the control and knowledge of the hospital. The court found that the financial responsibility agreement was, therefore, unenforceable.

The court's logic regarding the financial responsibility agreement potentially extends to every patient that enters a hospital emergency department. Many of these patients, almost by definition, perceive that they are experiencing a life-threatening or other acute medical condition that requires immediate medical attention. Applying the rationale of the *Dennis* court, it is questionable whether a court would enforce a hospital-patient agreement signed in any hospital emergency department, because emergency department patients could invariably assert that they were coerced to sign the hospital's non-negotiable agreement. The court's conclusion that the confidential nature of the hospital's charge master made it impossible for the patient to assent to the contract is an added concern with the opinion. In the court's words, "No definition of the word "mutual" encompasses a situation in which all of the information about a critical contractual element is held by one of the parties, who refuses to share it with the other party."

Even though the court found the financial responsibility agreement unenforceable, the court concluded that Memorial Hospital was entitled to some payment. Memorial Hospital argued, and the court agreed, that it was entitled to the reasonable value of its services under a theory of implied contract. That value, however, was the subject of considerable disagreement and led to an analysis that is causing concern among providers.

The hospital argued that the amount reflected on its charge master, from which Mr. Dennis' bill derived, was the reasonable value of its services. The court disagreed, relying on other evidence demonstrating that Memorial Hospital received, and accepted as payment in full, significantly smaller amounts from commercial insurers, government health care programs, and even uninsured patients who agree to pre-pay (or promptly pay) for care. Ultimately, the court held that the reasonable value of the services rendered to Mr. Dennis was "the amount the hospital would have received had Dennis pre-paid his bill as an uninsured patient." That amount was \$27,778.84, which exceeded the amount paid by Mr. Dennis' insurer by only \$523.89.

Following the *Dennis* decision, patients sued by hospitals and other medical providers for amounts that derive from a charge master or similar document may be emboldened to challenge the validity of the charge master amount. The *Dennis* decision opens the door for every patient to challenge a provider's bill and provides no ready mechanism for either party to know the "reasonable value" of the services rendered.

Memorial Hospital has appealed the circuit court's decision and is seeking relief from the Supreme Court of Virginia. In its petition for appeal, Memorial Hospital frames the case as more than just a contract dispute and asserts that the trial court's ruling has broader implications for healthcare providers across Virginia. According to Memorial Hospital, the underlying lawsuit is part of a coordinated effort by Mr. Dennis' employer and the third-party administrator of the employer's health plan to lower their healthcare costs via litigation rather than through customary, arm's-length negotiations.

Memorial Hospital assigns three errors to the trial court's ruling. First, Memorial Hospital states that the trial court misapplied contract law to conclude that there was no mutual assent to the financial responsibility agreement. On this point, the hospital argues that the trial court conflates the concept of mutual assent with the unpled affirmative defense of duress, effectively requiring the hospital to disprove an unpled defense. Memorial Hospital's next contention is that the trial court erred in basing the reasonable value of Mr. Dennis' medical services upon discounts offered to uninsured patients who, in accordance with hospital policy, pre-pay or promptly pay for care, instead of privately insured patients like Mr. Dennis. Lastly, Memorial Hospital asserts that the trial court erred in excluding relevant evidence regarding Mr. Dennis' health benefits plan. According to Memorial Hospital, such evidence is relevant to (i) the value of services rendered; (ii) Mr. Dennis' affirmative defense of unconscionability; and (iii) the trial court's concept of mutual assent.

Mr. Dennis is permitted to file a brief opposing Memorial Hospital's appeal in early August. Thereafter, the Supreme Court will decide whether to grant the appeal within the next several months. If the Supreme Court grants an appeal, the Supreme Court could take several additional months to render a decision. In the meantime, the *Dennis* decision is a shot across the bow for all hospitals. The *Dennis* decision may have significant implications for the current rate-setting and debt collection process for hospitals. The decision also could affect hospitals' charity discount policies and could encourage private payors to second-guess the value of negotiating discount rates with hospitals. Depending on the ultimate resolution of this matter, hospitals may need to revise certain provisions in their financial responsibility agreements and refine their debt collection efforts.

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