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## Recent Developments: Lamalfa v. Hearn

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## RECENT DEVELOPMENT

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**LAMALFA V. HEARN: “DISCLOSURE” UNDER MARYLAND RULE 5-703(b) MEANS EVIDENCE MAY BE ADMISSIBLE, UNDER A TRIAL COURT’S DISCRETION, SO LONG AS THE EVIDENCE SATISFIES THE FOUR ELEMENTS OF THE RULE AND THE EVIDENCE IS USED TO EXPLAIN THE FACTUAL BASIS OF AN EXPERT’S OPINION.**

**By: W. Ryan Parry**

The Court of Appeals of Maryland held that disclosure meant admission under Maryland Rule 5-703(b), giving the trial court discretion to admit medical records. *Lamalfa v. Hearn*, 457 Md. 350, 178 A.3d 501 (2018). Once admitted, the jury may use the evidence to assess the factual basis of an expert’s opinion. *Id.* at 356, 178 A.3d at 504. Therefore, the jury may use the medical records to evaluate the testimony if the data is deemed trustworthy, unprivileged, reasonably relied upon by an expert in forming an opinion, and necessary to illuminate the expert’s testimony. *Id.*

On October 14, 2011, Patricia Lamalfa (“Lamalfa”) was riding in the back seat of an SUV when the vehicle was rear-ended by Janis Hearn (“Hearn”). Lamalfa did not immediately seek medical treatment for the accident until the following morning. She complained of lower back pain and tenderness in her left forearm, but was released from Mercy Medical Center (“Mercy”). A week after the accident, Lamalfa sought treatment after experiencing further pain in her left hip, right shoulder, and tailbone.

In November 2011, Lamalfa underwent an MRI revealing an injury that would later be diagnosed as a torn rotator cuff requiring surgery. Several months following the accident, Lamalfa began experiencing abdominal pain and she was diagnosed with an epigastric hernia, a medical condition she was previously diagnosed with in 1984. As a result of her injuries, Lamalfa filed a negligence action against Hearn in the Circuit Court for Baltimore City seeking more than \$75,000 in damages.

During trial, both parties called doctors as expert witnesses. Hearn’s expert, Dr. Halikman, stated that he relied upon four of Lamalfa’s medical records in forming his opinion. When Hearn’s counsel moved to admit the medical records, Lamalfa objected, arguing that the medical reports were hearsay. Ultimately, the court overruled Lamalfa’s objection and admitted all four records into evidence without a limiting instruction. Dr. Halikman opined that, based upon his review of the medical records, there was a reasonable degree of medical certainty that Lamalfa did not sustain the rotator cuff injury or the epigastric hernia as a result of the accident.

At the conclusion of trial, the court granted Lamalfa’s motion for judgment, finding Hearn negligent. The case was then sent to the jury for a determination on the amount of damages. The jury returned a verdict

awarding Lamalfa the full amount of her medical expenses totaling \$9,926.05 and \$650 in non-economic damages.

Lamalfa timely appealed to the Maryland Court of Special Appeals, contending that the trial court abused its discretion by admitting the four medical records relied on by Dr. Halikman. The court affirmed the trial court's ruling, holding that there was no significant difference between disclosure and admission under Maryland Rule 5-703 ("Md. Rule 5-703"). Therefore, the jurors were permitted to use the medical records, and Lamalfa's failure to request a limiting instruction was a waiver of the issue on appeal. Lamalfa proceeded by filing a petition for writ of *certiorari*. The Court of Appeals of Maryland granted *certiorari* to determine whether under Md. Rule 5-703, disclosed meant admitted and whether the admittance of the four medical records into evidence was proper.

The Court of Appeals of Maryland began its analysis by examining the plain language of Md. Rule 5-703. *Lamalfa*, 457 Md. at 381, 178 A.3d at 519. Md. Rule 5-703 (a) permits an expert to form an opinion based on data regardless of whether such data would be admissible into evidence. *Id.* Subsection (b) of the rule further states that such data must satisfy four elements before the trial court may disclose the data to the jury. *Id.* The elements require the data to be deemed trustworthy, unprivileged, necessary to illuminate the expert's testimony, and reasonably relied upon by the expert. *Id.* However, the opposing party must request a limiting instruction that the data only be used in evaluating the validity of the expert's opinion and not for its substantive value. *Id.*

While Md. Rule 5-703 does not define the term disclosed, the court reasoned that if disclosure were to be permitted narrowly, it would have been specified in the rule. *Lamalfa*, 457 Md. at 382, 178 A.3d at 520. Looking at precedent, the court reasoned that Maryland courts have consistently interpreted disclosure to mean admission if the data satisfies the four elements of the rule. *Id.* at 382-83, 178 A.3d at 520 (citing *Brown v. Daniel Realty Co.*, 409 Md. 565, 601, 976 A.2d 300, 321 (2009)). These courts admitted the data into evidence and did not simply disclose them briefly to the jury, as Lamalfa contended. *Lamalfa*, 457 Md. at 382, 178 A.3d at 520.

The court next addressed Lamalfa's contention that requesting a limiting instruction was futile once the jury received the medical records. *Lamalfa*, 457 Md. at 386, 178 A.3d at 522. Md. Rule 5-703 expressly states that upon request, the trial judge must give a limiting instruction for the jury to use the data relied upon by the expert in assessing the validity and probative value of the opinion, and not as substantive evidence. *Id.* The court further reasoned that limiting instructions explain to a jury how evidence is to be used, and that a jury is presumed to follow the instruction. *Id.* at 387, 178 A.3d at 523. Therefore, the court determined that since Lamalfa failed to make a motion for a limiting instruction, she waived any issue as to the weight that the jury may have given the medical records. *Id.* at 388, 178 A.3d at 523.

Using this reasoning, the court examined whether the four medical records relied upon by Hearn's expert witness, Dr. Halikman, satisfied the

four elements of Md. Rule 5-703. *Lamalfa*, 457 Md. at 388-89, 178 A.3d at 523-24. Md. Rule 5-703 does not require a trial court to announce that the elements were satisfied on the record. *Id.* Therefore, the trial court's failure to mention all the elements did not preclude the conclusion that the elements for disclosure had been met. *Id.* The court then acknowledged that Lamalfa did not dispute that the records were unprivileged or reasonably relied on by Dr. Halikman. *Id.* at 391, 178 A.3d at 525. Further they found that the records were trustworthy since they were created by appropriate medical professionals. *Id.* Lastly, due to the time period of the plaintiff's injuries, the records were found to be necessary to illuminate Dr. Halikman's opinion. *Id.* at 392, 178 A.3d at 525-26. Thus, the records satisfied the required elements of Md. Rule 5-703 (b) and the trial court was correct in admitting the records. *Id.*

The Court of Appeals of Maryland held that disclosed meant admitted under Md. Rule 5-703 if the evidence satisfies the four elements set forth in the rule. Therefore, such evidence may, at a trial court's discretion, be disclosed to the jury to explain the factual basis of an expert's testimony. This ruling strengthens a party's ability to have the jury view documentation they otherwise may not be able to access. This holding further emphasizes the importance of requesting a limiting instruction when challenging a trial judge's ruling to preserve it for appeal. Furthermore, the court's holding will require attorneys to take a more calculated approach when determining what records their expert witnesses will be relying on to form an opinion.