IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHARLES EVANS, on behalf of himself and all others similarly situated,

Plaintiff,

v. Case No. 2:18-cv-02114-MSN-tmp

AVECTUS HEALTHCARE SOLUTIONS, LLC,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Before the Court are two motions: First, Plaintiff's Motion for Partial Summary Judgment filed January 23, 2018 in the Circuit Court for Shelby County ("Plaintiff's Motion"). (ECF No. 1-3 at PageID 218.) Defendant responded in opposition to Plaintiff's Motion on April 30, 2018. (ECF No. 13.) Second, Defendant's Motion for Summary Judgment filed April 30, 2018 and May 1, 2018 ("Defendant's Motion"). (ECF Nos. 15 & 17.) Plaintiff responded in opposition on May 26, 2018 and August 6, 2018. (ECF Nos. 22, 23, 24, and 35.) Defendant filed a reply on June 8, 2018 and August 13, 2018. (ECF Nos. 25, 26, & 36.) For the reasons set forth below, Plaintiff's Motion is **DENIED,** and Defendant's Motion is **GRANTED**.

BACKGROUND

Defendant is a corporation that assists hospitals in providing claim resolution services. (ECF No. 1-3 at PageID 241; ECF No. 17-1 at PageID 661.) One way in which Defendant provides this service is by filing hospital liens on behalf of hospitals who treat uninsured patients that have

been injured by a third party. (ECF No. 1-3 at PageID 240; ECF No. 17-1 at PageID 661.) In Tennessee, these liens are filed by an employee of Defendant who completes a standard lien form that has been drafted by a licensed Tennessee attorney. (ECF No. 15-5 at PageID 565; ECF No. 23 at PageID 701.) Filling in the lien form consists of writing in the patient's name, address, and any additional information that is provided by the hospital. (ECF No. 15-5 at PageID 565; ECF No. 23 at PageID 701.) Beyond filling in the form and filing the hospital lien, Defendant also sends the subject of the lien a document entitled "Explanation of Hospital Lien." (ECF No. 1-3 at PageID 240; ECF No. 17-1 at PageID 663.) In part, this document states:

> Many times hospitals are called on to treat injuries without knowledge of the circumstances causing the injuries, or who the liable party may be. Your health insurance may pay only AFTER liability is determined. To help protect their interest, the State of Tennessee recommends Tennessee hospitals file a hospital lien to help recover their charges.
>
> A lien is filed only in the event of an injury, not an illness. The lien enclosed affects only funds recovered by the injured party UP TO the amount of hospital charges. This lien does not affect credit ratings, property or any residence that he/she may own. This lien is not a collection or a demand for payment. This lien is only against insurance benefits.
>
> . . . If you have any additional information which may help us, please call (662) 286-6949.

(ECF No. 1-3 at PageID 240.)

In Tennessee, these liens are filed pursuant to the Tennessee Hospital Lien Act, Tenn. Code Ann. § 29-22-101 *et seq.* ("HLA"). The HLA allows a hospital, or its agent, to place a lien on the proceeds from a settlement or judgment that a patient may receive from a third party that caused the patient's injury. *Id.*

On September 19, 2016, Saint Francis Hospital Bartlett ("Saint Francis") provided emergency medical services to Plaintiff, Charles Evans, for injuries he sustained in a car accident.

(ECF No. 24-5 at PageID 818.) Plaintiff had health insurance at the time of this treatment. (*Id*. at PageID 816.) Plaintiff was discharged from Saint Francis the following day. (*Id*. at PageID 820.) Saint Francis charged Plaintiff $4,008.93 for the medical services it provided. (ECF No. 15-5 at PageID 564; ECF No. 23 at PageID 700.) After Saint Francis treated Plaintiff, Saint Francis sent Defendant Plaintiff's account for purposes of filing a hospital lien, despite the fact that he had health insurance. (ECF No. 15-5 at PageID 563; ECF No. 23 at PageID 699.) The aforementioned hospital lien was filed by Defendant in the Shelby County Circuit Court on October 7, 2016. (ECF No. 1-1 at PageID 37; ECF No. 17-1 at PageID 663.)

Saint Francis ultimately received payment from Plaintiff's insurer, Cigna, on January 13, 2017. (ECF No. 17-1 at PageID 663; ECF No. 23 at PageID 702.) Almost three months later, on March 11, 2017, Defendant mailed the release for Plaintiff's hospital lien. (ECF No. 1-1 at PageID 36; ECF No. 17-1 at PageID 663.) On March 6, 2017, between the time that Saint Francis received payment from Plaintiff's insurer and Defendant's release of the lien, Plaintiff's attorney mailed a check to Defendant written for the full amount of the lien and made payable to Saint Francis. (ECF No. 17-1 at PageID 663; ECF No. 23 at PageID 702.) Because Plaintiff's insurer previously paid Saint Francis for the charges,[1] Tenet Health, a company affiliated with Saint Francis, wrote a check to Plaintiff for $4,008.93 on November 21, 2017, in effect returning the amount of the check that Plaintiff's attorney had sent to Defendant on March 6, 2017. (ECF No. 17-1 at PageID 663–64; ECF No. 26 at PageID 862.) Plaintiff has never deposited this check, and the original remains in the possession of Plaintiff's attorney, Mr. Blount. (ECF No. 26 at PageID 862.)

[1] After payment by Plaintiff's insurance, Plaintiff's remaining balance due to Saint Francis was his $150 co-pay. (ECF No. 23 at PageID 702.)

It is Plaintiff's contention that both the filing of the lien on Saint Francis' behalf, as well as the document sent out by Defendant regarding the lien, constitute the unauthorized practice of law in Tennessee. (ECF No. 1-1 at PageID 24.)

STANDARD OF REVIEW

Federal Rule of Civil Procedure 56 permits a party to move for summary judgment — and the Court to grant summary judgment — "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party asserting the presence or absence of genuine issues of material facts must support its position either by "citing to particular parts of materials in the record," including depositions, documents, affidavits or declarations, stipulations, or other materials, or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). In ruling on a motion for summary judgment, the Court must view the facts contained in the record and all inferences that can be drawn from those facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Nat'l Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, 907 (6th Cir. 2001). The Court cannot weigh the evidence, judge the credibility of witnesses, or determine the truth of any matter in dispute. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The moving party may discharge this burden either by producing evidence that demonstrates the absence of a genuine issue of material fact or simply "by 'showing' — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. Where the movant has satisfied this burden, the nonmoving party cannot "rest upon its . . . pleadings, but

rather must set forth specific facts showing that there is a genuine issue for trial." *Moldowan v. City of Warren*, 578 F.3d 351, 374 (6th Cir. 2009) (citing *Matsushita*, 475 U.S. at 586; Fed. R. Civ. P. 56). The nonmoving party must present sufficient probative evidence supporting its claim that disputes over material facts remain and must be resolved by a judge or jury at trial. *Anderson*, 477 U.S. at 248–49 (citing *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253 (1968)); *see also White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 475–76 (6th Cir. 2010). A mere scintilla of evidence is not enough; there must be evidence from which a jury could reasonably find in favor of the nonmoving party. *Anderson*, 477 U.S. at 252; *Moldowan*, 578 F.3d at 374.

The Court's role is limited to determining whether there is a genuine dispute about a material fact, that is, if the evidence in the case "is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Such a determination requires that the Court "view the evidence presented through the prism of the substantive evidentiary burden" applicable to the case. *Id.* at 254. Thus, if the plaintiff must ultimately prove its case at trial by a preponderance of the evidence, on a motion for summary judgment the Court must determine whether a jury could reasonably find that the plaintiff's factual contentions are true by a preponderance of the evidence. *See id.* at 252–53.

Finally, if the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the movant is entitled to summary judgment. *Celotex*, 477 U.S. at 323. The Court must construe Rule 56 with due regard not only for the rights of those "asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury," but also for the rights of those "opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis." *Id.* at 327.

DISCUSSION

The Motions for Summary Judgment involve two issues. First, Plaintiff disputes that Defendant was acting as an agent of Saint Francis[2] at the time the hospital lien was filed. (*See* ECF No. 35 at PageID 886.) Second, Plaintiff alleges that Defendant engaged in the unauthorized practice of law. (ECF No. 1-1 at PageID 24.)

A. Whether Defendant Was Acting as Saint Francis' Agent

In Tennessee, an agent is "[o]ne who undertakes to transact some business, or to manage some affair, for another, by the authority and on account of the latter, and to render an account of it." *Miller v. Ins. Co. of N. Am.*, 211 Tenn. 620, 625 (1963). "Agency is a relationship that results from the manifestation of consent by one person to another that the other shall act on his behalf subject to his control and consent." *Jahn v. McKee Baking Co.*, 629 S.W.2d 689, 693 n.2 (Tenn. Ct. App. 1981). A written agreement or contract expressly stating that an agency relationship exists is not necessary, rather "[t]he existence of an agency is determined by the actual relationships and deeds of the parties." *Elec. Power Bd. of Metro. Gov't v. Woods*, 558 S.W.2d 821, 824 (Tenn. 1977). "The test is whether the principal has a right to control the conduct of the agent with respect to matters entrusted to the agent. The 'right of control is the primary or essential test of an agency relationship without which no agency exists.'" *Sodexho Mgmt. v. Johnson*, 174 S.W.3d 174, 178 (Tenn. Ct. App. 2004) (citing *Nidiffer v. Clinchfield R. Co.*, 600 S.W.2d 242, 245 (Tenn. Ct. App. 1980).

[2] The Court notes that Plaintiff appears to dispute that Saint Francis designated Defendant as its agent to file hospital liens because it disputed that Defendant was designated as such for purposes of filing hospital liens on certain patient accounts (*see* ECF No. 35 at PageID 886), but Plaintiff did not dispute that "[a]fter Saint Francis treated Plaintiff, it sent [Defendant], as its agent, Plaintiff's account for purposes of filing a hospital lien." (ECF No. 23 at PageID 699.) Thus, Plaintiff's position regarding Defendant acting as an agent is unclear. For the sake of clarity, the Court will discuss the relevant case law and its application in this case.

Defendant was acting as an agent of Saint Francis when Defendant filed the hospital lien on Saint Francis' behalf under Tennessee law. The record reflects ample evidence of a "manifestation of consent by one person to another that the other shall act on his behalf subject to his control and consent." *Jahn*, 629 S.W.2d at 693 n.2. At the time the hospital lien was filed, Saint Francis designated Defendant as its agent for purposes of filing hospital liens. (ECF No. 15-1 at PageID 480–81.) While Plaintiff originally conceded that this was the case (*see* ECF No. 23 at PageID 699), Plaintiff now disputes this fact on the basis that an amendment to the contract between Defendant and an affiliate of Saint Francis specifically stated that Defendant was not the agent of Saint Francis. (ECF No. 35 at PageID 886.) As Defendant points out, however, this amendment was not effective until April 7, 2017, nearly six months after the hospital lien in question was filed by Defendant. (ECF No. 36 at PageID 891.) Plaintiff has introduced nothing to contradict Defendant's evidence that it was acting as Saint Francis' agent at the time it filed the hospital lien on October 7, 2016, and given the effective date of the amendment, Plaintiff's basis for later disputing this fact is without merit.

In his response to Defendant's Motion for Summary Judgment, Plaintiff suggests that it would have been permissible for an employee of Saint Francis to file the hospital lien, but not Defendant as an agent of Saint Francis, in effect distinguishing between permissible conduct of an employee versus that of an agent. (ECF No. 22 at PageID 691.) It makes little sense to apply such a distinction here. To place a limit on what sort of acts may be delegated from a principal to an agent would not be in keeping with the concept of agency. *See generally* 1 Tenn. Juris. Agency § 1 (2020). Additionally, the Hospital Lien Act specifically allows the agent of a hospital to file hospital liens on the principal's behalf. Tenn. Code Ann. § 29-22-102. If the Court were to adopt

Plaintiff's desired distinction, it would have the effect of preventing a hospital from delegating the authority to file a lien to an agent despite specific statutory authorization to do so.

B. Whether Defendant Engaged in the Unauthorized Practice of Law

The Tennessee General Assembly passed the Hospital Lien Act in 1970. Act of Feb. 20, 1970, ch. 527 Tenn. Pub. Acts 533. The HLA permits a hospital, or its agent, to file a lien on the proceeds of any judgment or settlement for all reasonable and necessary charges that the hospital incurs while treating a patient that was injured by a third party. Tenn. Code Ann. 29-22-101 *et seq*. "The dual purposes of the HLA were to promote the availability of hospital care and to assure hospitals that they could be compensated for the services they provide . . . [h]owever, a debt owed by a patient to a hospital is the foundation of a lien under the HLA." *West v. Shelby Cty. Healthcare Corp.*, 459 S.W.3d 33, 43 (Tenn. 2014). To help effectuate the General Assembly's purposes in passing this statute:

> [T]he courts must construe lien statutes strictly because the Tennessee General Assembly has created the lien and has defined its scope and operation. The courts do not have the power to waive these statutory requirements or impose new ones . . . . [W]e must avoid interpreting lien statutes so narrowly that we frustrate the General Assembly's purpose in creating the lien.

Id. at 41. Because "a debt owed by a patient to a hospital is the foundation of a lien under the HLA," *West*, 459 S.W.3d at 43, the filing of a hospital lien pursuant to the HLA is considered a collection activity. *Franks v. Sykes*, No. W2018-00654-SC-R11-CV, 2019 Tenn. LEXIS 582 (Tenn. May 1, 2020) (holding that plaintiffs who had a hospital lien filed against them had stated a claim under the Tennessee Consumer Protection Act of 1977 which prohibits, in part, deceptive collection practices).

Only licensed attorneys may engage in the practice of law in Tennessee. Tenn. Sup. Ct. R. 7, §1.01; Tenn. Code Ann. § 23-3-103(a). The Tennessee Supreme Court "exercises original

jurisdiction over issues pertaining to the practice of law." *In re Burson*, 909 S.W.2d 768, 773 (Tenn. 1995). It is the Tennessee Supreme Court's "essential and fundamental right to prescribe and administer rules pertaining to the licensing and admission of attorneys." *Id.* Included in this regulatory power is "also the corollary power to prevent the unauthorized practice of law." *Id.* The Tennessee General Assembly has defined both "practice of law" as well as "law business." Tenn. Code Ann. § 23-3-101. However, because the Tennessee Supreme Court exercises original jurisdiction over the practice of law, the court is "not bound by the definitions of 'practice of law' and 'law business.'" *In re Burson*, 909 S.W.2d at 776. Rather, "the acts enumerated in the definitions of 'law business' and 'practice of law' contained within Tenn. Code Ann. § 23-3-101 . . . , if performed by a non-attorney constitute the unauthorized practice of law only if the doing of those acts requires the professional judgment of a lawyer." *Id.* (internal quotation marks omitted).

The state's interest in regulating the practice of law is to "serve the public right to protection against unlearned and unskilled advice in matters relating to the science of the law." *Id.* at 776. The Tennessee Supreme Court defends this principle by "protect[ing] primarily the interest of the public and not . . . hamper[ing] and burden[ing] such interest with impractical technical restraints . . . ." *Id.* Accordingly, "the question of whether an individual has engaged in the unauthorized practice of law is very fact specific as it concerns whether that individual gave advice or rendered services on matters that require the professional judgment of a lawyer." *State v. 2013 Delinquent Taxpayers*, No. M2017-01439-COA-R3-CV, 2018 Tenn. App. LEXIS 255, at * 7 (Tenn. Ct. App. May 11, 2018).

Although "[i]t is neither necessary nor desirable to attempt the formulation of a single specific definition of what constitutes the practice of law," *In re Burson*, 909 S.W.2d at 775, Tennessee courts have repeatedly identified activities which call for the professional judgment of

a lawyer. *Old Hickory Eng'g & Mach. Co. v. Henry*, 937 S.W.2d 782, 786 (Tenn. 1996) ("The preparation and filing of a complaint requires the professional judgment of a lawyer, and is, therefore, the practice of law."); *Fifteenth Judicial Dist. Unified Bar Ass'n v. Glasgow*, Appeal No. M1996-00020-COA-R3-CV, 1999 Tenn. App. LEXIS 815 (Tenn. Ct. App. Dec. 10, 1999) (holding that the owner of a "divorce typing service" was engaged in the unauthorized practice of law because her services consisted of (1) preparing marital dissolution agreements, and (2) suggesting where and when the paperwork should be filed); *Vandergriff v. Parkridge E. Hosp.*, 482 S.W.3d 545, 554 (Tenn. Ct. App. 2015) (prohibiting a child's parent from filing a claim on the child's behalf *pro se*) ("Neither Mother nor Father is a licensed attorney. Therefore, they may not file a *pro se* complaint that asserts claims on [the child's] behalf or appear in court as a legal advocate for her.")

Tennessee courts have also articulated what activities do not constitute the unauthorized practice of law because they do not require the professional judgment of a lawyer. Broadly, the "professional judgment of a lawyer" is "his educated ability to relate the general body and philosophy of law to a specific legal problem of a client." *In re Burson*, 909 S.W.2d at 776. Where the "professional judgment of a lawyer" is not called for, individuals may perform certain activities requiring "special knowledge of law in certain areas." *Id*. These activities include filing a claim for debts against a decedent's estate, *In re Estate of Green v. Carthage Gen. Hosp., Inc.*, 246 S.W.3d 582, 586 (Tenn. Ct. App. 2007) ("[F]iling a claim for debts due from a decedent does not require the exercise of the professional judgment of a lawyer. Such claims are in essence demands for payment.") and filling in blanks on a form, *Haverty Furniture Co. v. Foust*, 174 Tenn. 203, 208 (1938) ("[T]he filling in of the blank forms described, without more, was the performance of a merely clerical or ministerial act, calling for the exercise of none of the intellectual, moral or

professional qualifications required in and for the practice of the law."); *see also Flanary v. Carl Gregory Dodge of Johnson City, L.L.C.*, No. E2007-01433-COA-R3-CV, 2008 Tenn. App. LEXIS 352, at *10 (Tenn. Ct. App. June 17, 2008) ("The simple act of filling in the blanks on form documents that have been prepared for a business use does not constitute the unauthorized practice of law.")

To review, it is Plaintiff's contention that Defendant engaged in the unauthorized practice of law by filing hospital liens on behalf of Saint Francis, as well as by Defendant's mailing of the document "Explanation of a Hospital Lien" to patients of Saint Francis who were subjects of said liens. (*See* ECF No. 1-1.) Based on the record before the Court, as well as the applicable law regarding the unauthorized practice of law in Tennessee, this Court finds Plaintiff's arguments unavailing.

1. Filing a Hospital Lien

Plaintiff's argument that Defendant engaged in the unauthorized practice of law fails because Defendant acted within the scope of the HLA, and further, because Defendant's process for filing the hospital lien did not require the professional judgment of a lawyer.

Defendant cites *Haverty Furniture Co.* as well as *In re Estate of Green* in arguing that the filing of the hospital lien is akin to filling in blanks on a form. (ECF No. 17-2 at PageID 667–70.) In response, Plaintiff argues that *Haverty Furniture Co.* and *In re Estate of Green* are distinguishable because in both cases it was an employee of the business that filed the writ of replevin in the former and the claim against the decedent's estate in the latter. (ECF No. 22 at PageID 688–91.) As discussed in Part A. *supra*, the notion that an employee of a hospital, but not the hospital's agent, is permitted to fill in blanks on a form without committing the unauthorized practice of law is at odds with both the concept of agency and the HLA. Unlike Tenn. Code Ann.

§ 30-2-307, the statute that was interpreted in *In re Green*, the HLA explicitly permits an agent of a hospital to file a hospital lien. Tenn. Code Ann. § 29-22-101 *et seq*. In making his argument, Plaintiff asks the Court to effectively read out the word "agent" in the HLA. The Court declines to do so.

In support of his Motion for Partial Summary Judgment, Plaintiff cites several Tennessee Attorney General opinions. (ECF No. 1-3 at PageID 227–28.) These opinions, though not binding precedent, are "entitled to considerable deference" where applicable. *State v. Black*, 897 S.W.2d 680, 683 (Tenn. 1995). The Attorney General opinions cited by Plaintiff address a variety of conduct, but none directly address whether the filing of a hospital lien under the HLA constitutes the unauthorized practice of law. Of the opinions cited by Plaintiff, the one which most closely resembles the facts at hand states that a nonlawyer may not prepare divorce complaints and marital dissolution agreements for a fee. Tenn. Op. Atty. Gen. 94-101 (Sept. 9, 1994). Even this opinion, however, is not factually analogous to Defendant's conduct and is of greater similarity to the defendant in *Glasgow* who operated a "divorce typing service." *Glasgow*, 1999 Tenn. App. LEXIS 815, at *9 n. 4. Hence, the opinions cited by Plaintiff are not entitled to "considerable deference," *Black*, 897 S.W.2d at 683 (Tenn. 1995), given their dissimilarity to the facts at hand.

Plaintiff also cites caselaw from North Carolina and Texas in support of his argument that Defendant engaged in the unauthorized practice of law. (ECF No. 1-3 at PageID 230–31.) In both cases the defendants operated lien-filing services and were both found to be engaged in the unauthorized practice of law. *State Bar v. Lienguard, Inc.*, 2014 NCBC 11, 2014 WL 1365418 (N.C. Sup. Ct. Apr. 4, 2014); *Crain v. Unauthorized Practice of Law Comm. of Tex.*, 11 S.W.3d 328 (Tex. Ct. App. 1999). Defendant counters that the liens filed in *Lienguard* and *Crain* were

more complex in their processes for perfection than the hospital liens filed by Defendant pursuant to the HLA. (ECF No. 13 at PageID 309.)

While the defendants in *Lienguard* and *Crain* may be similarly situated with Defendant given the fact that they are all lien-filing services, they are nonetheless distinguishable. In *Crain*, Texas law explicitly prohibited nonlawyers from the "preparation of a legal instrument affecting title to real property including a deed, deed of trust, note, mortgage, and transfer or release of lien." Tex. Gov't Code § 83.001. Tennessee statutes relating to the unauthorized practice of law do not contain similar language. Tenn. Code. Ann. § 23-3-101. Additionally, in *Lienguard*, it appears that the defendant engaged in conduct that went far beyond merely filling in the blanks on a form and filing a lien, including providing customers with services ranging from "preliminary notice–$75" to "bond claim with research–$210." *Lienguard, Inc.*, 2014 WL 1365418, at *3. While the Court does not determine whether the liens at issue in *Crain* and *Lienguard* are more complex than a hospital lien as Defendant argues (ECF No. 13 at PageID 308), there are not sufficient similarities between the defendants in *Crain* and *Lienguard* to overcome the plain language of the HLA authorizing a hospital or its agent to file a hospital lien. Tenn. Code Ann. § 29-22-101 *et seq*.

Defendant's process for filing the hospital lien can best be described as filling in the blanks on a form (*see* ECF No. 23 at PageID 701), which does not constitute the unauthorized practice of law in Tennessee. *Haverty Furniture Co. v. Foust*, 174 Tenn. 203, 208 (1938). To hold that a hospital or its agent is permitted to file a hospital lien pursuant to the HLA, while simultaneously requiring that it use a lawyer in order to do so would place "impractical technical restraints" on what constitutes the unauthorized practice of law in Tennessee, *In re Burson*, 909 S.W.2d at 776, while at the same time interpreting the HLA "so narrowly" as to "frustrate the General Assembly's purpose in creating the lien." *West*, 459 S.W.3d at 41. As an aside, the fact that the HLA has been

law in Tennessee for nearly 50 years without even a scintilla of a suggestion that its use may constitute the unauthorized practice of law is a strong indication that the Tennessee Supreme Court has no desire to exercise its original jurisdiction to restrict the HLA to prevent the unauthorized practice of law.

Finally, the filing of a hospital lien has recently and repeatedly been described by Tennessee courts to be akin to a collection practice or demand for payment. *See Franks*, 2020 Tenn. LEXIS 582, at *16; *see also West*, 459 S.W.3d at 43. If a hospital lien is a demand for payment, then it stands to reason that filing a hospital lien is merely "filing a claim for debts due" and "does not require the exercise of the professional judgment of a lawyer" because "[s]uch claims are in essence demands for payment." *In re Estate of Green*, 246 S.W.3d at 586.

2. "Explanation of Hospital Lien" Letter

Plaintiff argues that Defendant's conduct in sending the "Explanation of Hospital Lien" document is analogous to that of the defendant in *In re Rose*, 314 B.R. 663, 674 (Bankr. E.D. Tenn. 2004). In *In re Rose*, the defendant was a paralegal operating a bankruptcy "handholding" business that assisted clients in filing bankruptcy petitions for a fee. *Id*. The defendant admitted to regularly assisting clients in filling out bankruptcy forms, answering general questions, reviewing the documents, and finalizing the documents for filing. *Id*. at 692. Most relevant to the matter at hand, the defendant, Ms. Motley, would send a packet of documents to her clients for a fee of $199.00. *Id*. at 696. This packet included six documents. *Id*. The first document was entitled "Bankruptcy Document Preparation Agreement" and set out the parameters of the defendant's relationship with her clients. *Id*. The second document was the "Customer Information Workbook," which customers were instructed to fill in themselves and was later transcribed into the customers' actual bankruptcy statements. *Id*. at 697. The third document was entitled "Tennessee Step by Step

Guide to the Bankruptcy Workbook." *Id*. This document included a glossary of bankruptcy terms, examples of completed workbook pages, and a list of Tennessee's real and personal property exemptions with their corresponding section in statute. *Id*. The fourth document was entitled "Bankruptcy Overview" and contained an overview of everything from what bankruptcy is, to how to rebuild credit afterwards. *Id*. The fifth document was another copy of the Tennessee Bankruptcy Exemptions Table. *Id*. The sixth and final document informed customers where they could file their bankruptcy petition in Tennessee. *Id*. at 698.

In finding that that Ms. Motley was engaged in the unauthorized practice of law, the bankruptcy court cited the Tennessee Court of Appeals in *Glasgow*: "sellers who . . . advise customers on which forms to use and how to fill them out have been found to be engaging in the unauthorized practice of law." *Id*. at 705 (citing *Glasgow*, 1999 Tenn. App. LEXIS 815, at *9 n. 4.) The bankruptcy court also stated that it was most concerned with the Guide and Overview given to customers by Ms. Motley "because [t]he information contained in the[] documents actually inform[ed] potential debtors what to include within their bankruptcy schedules, along with providing answers to what Ms. Motley believe[d] . . . [were] 'generic' bankruptcy questions." *In re Rose*, 314 B.R. at 699.

Defendant sending individuals the Explanation of a Hospital Lien is not analogous to the actions of the defendant in *In re Rose*. Unlike *In re Rose*, there was no relationship between Defendant and the patients who were sent the Explanation of a Hospital Lien. Further, no patients paid Defendant for the Explanation of a Hospital Lien. While Defendant's Explanation of a Hospital Lien does describe the funds that the lien affects (ECF No. 1-1 at PageID 33), it simply does not rise to the level of behavior exhibited by the defendant in *In re Rose* where Ms. Motley was sending out packets of information detailing the bankruptcy process and walking clients

through it. *In re Rose* is much more akin to *Glasgow* where the defendant operated a "divorce typing service," prepared marital dissolution agreements, and suggested where they should be filed. *See Glasgow*, 1999 Tenn. App. LEXIS 815, at *3–4. While Defendant sent out a document giving an overview of the hospital lien that it had filed, the Court does not find that Defendant's conduct is equal to that of the defendants in *Glasgow* and *In re Rose*.

Plaintiff correctly points out that Defendant's "Explanation of a Hospital Lien" document contains a legal inaccuracy regarding the lien acting as a demand for payment. (ECF No. 22 at PageID 694–95.) Indeed, this Court grants Defendant's Motion for Summary Judgment in part because the hospital lien is a demand for payment. *See Franks*, 2020 Tenn. LEXIS 582, at *16; *see also West*, 459 S.W.3d at 43. While this inaccuracy suggests that the practice of law may have occurred in the document's drafting, much like the drafting of the hospital lien form that Defendant's employees fill out, the Court distinguishes between the acts of the lawyers who wrote these documents and the company which filled the form out, in the case of the lien, or mailed the form out, in the case of the explanatory document. The practice of law incident to another separate activity does not make the latter also the practice of law. If it did, for example, a non-lawyer ACLU staff member handing out a card to an individual detailing a citizen's Fourth Amendment rights could be considered to be practicing law just because the cards themselves required the professional judgment of a lawyer in their drafting.

This Court is respectful of the Tennessee Supreme Court's instruction not to interpret statutorily created liens in a manner as to "waive the[] statutory requirements or impose new ones." *West*, 459 S.W.3d at 41. Under the facts presented to the Court, Defendant did not engage in the unauthorized practice of law in Tennessee. To hold otherwise would frustrate the purpose of the HLA by burdening its effectuation with "impractical technical restraints," *In re Burson*, 909

S.W.2d at 776, while at the same time interpreting the HLA "so narrowly that we frustrate the General Assembly's purpose in creating the lien." *West*, 459 S.W.3d at 41. Accordingly, this Court holds that Defendant's actions did not constitute the unauthorized practice of law.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion for Partial Summary Judgment is **DENIED** and Defendant's Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED, this 28th day of September 2020.

s/ Mark S. Norris
MARK S. NORRIS
UNITED STATES DISTRICT JUDGE