

United States District Court  
Southern District of Texas

**ENTERED**

October 31, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

ROBERT LEE VALENCIA

§

§

Plaintiff

§

VS.

§

CIVIL ACTION NO. 2:16-CV-85

§

UNITED STATES OF AMERICA

§


**ORDER**

Plaintiff has been treated by Dr. Dennis Gutzman. During his deposition, Dr. Gutzman provided testimony about whether or not treatment received by Plaintiff from other medical providers was reasonable and necessary and whether the costs associated with that treatment was reasonable and necessary. Defendant objected to this testimony because Dr. Gutzman has been designated as a treating physician, not as a retained expert, and has not satisfied the disclosure requirements of Federal Rule of Civil Procedure 26(a)(2), particularly a written expert report. Plaintiff responds that Dr. Gutzman is a non-retained expert because he is Plaintiff's treating physician and is therefore not required to provide an expert report.

The Court finds Dr. Gutzman has been properly designated as a non-retained expert to testify regarding his own treatment of Plaintiff. However, any testimony by Dr. Gutzman regarding Plaintiff's treatment by other medical providers is clearly outside the scope of his own treatment and therefore, does not qualify under the treating physician exception to Rule 26(a)(2). *See Beard v. Harris Cty.*, No. H-04-1982, 2005 WL 6734078

(S.D. Tex. Feb. 16, 2005). The Court is not making any decision regarding whether Dr. Gutzman is qualified to testify regarding Plaintiff's treatment by other medical providers. Rather, the Court finds Dr. Gutzman has not been properly designated as an expert in this case to provide such testimony.

ORDERED this 31st day of October, 2017.

  
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Jason B. Libby  
United States Magistrate Judge