

IT WAS BILLED, BUT IS IT REASONABLE?

Defense Strategies to Challenge the Reasonableness of Incurred Medical Bills in Arizona



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One of the most important words in personal injury litigation is “reasonable.” From the Reasonable Person standard to reasonable compensation, personal injury litigation is a battle to convince a jury what is “reasonable.” However, the plaintiffs’ bar

is making concerted efforts nationwide to convince courts that the “reasonable” in “reasonable expenses of necessary medical care” is not actually up for debate, and that any bill, if incurred, is automatically reasonable.

Defense attorneys, and the adjusters and clients whose interests we work hard to protect, are all too familiar with the collateral source rule. This rule is strictly interpreted in Arizona such that in theory, plaintiffs can ask the jury for every penny

billed to them regardless of what was actually paid. Indeed, some plaintiff attorneys take the position that defense counsel should not even be notified of liens, write-offs, or adjustments to those bills. This position circumvents the requirement in Arizona that a plaintiff may recover only those medical expenses that are “reasonable.” *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198, 129 P.3d 487 (App. 2006).

While the cost of the past medical bills is not often the primary focus of a defense, far too many defense attorneys have simply accepted that because the plaintiff can recover the full amount billed, it is not worthwhile to argue over whether that amount is reasonable. It can be tempting to avoid this battle, as it can require additional experts and discovery, but it is a battle that must be fought consistently and on all fronts. Otherwise, a potentially significant means of reducing exposure simply falls by the wayside. Although the force of Arizona’s collateral source rule is often difficult for courts to overcome, each time the defense takes up this battle, we educate the judges as to the wild billing practices of litigation-friendly treating providers. Even losses, therefore, are helpful in the long run.

The good news is that proactive defense attorneys are making headway. One of the most successful arguments defendants can make is based on foundation – or lack thereof. In *Larsen v. Decker*, 196 Ariz. 239 (App. 2000), the Arizona Court of Appeals upheld a superior court’s exclusion of multiple medical records and bills that did not have proper foundation. In that case, the plaintiff relied exclusively on the depositions of her treating providers and argued that the medical bills were admissible as business records. The court examined each record and bill, along with the corresponding deposition, to determine if each record or treator laid an adequate foundation to establish that each bill was “caused by and [was] reasonable and necessary results of the auto accident.” The *Larsen* court relied on the Washington Court of Appeals’ decision, 929 P.2d 11125, 1130 (Wash.App. 1997), for the following proposition: “[a] negligence plaintiff cannot rely only on medical records and bills to show medical expenses were necessary and reasonable; other evidence must establish the latter.” *Id.* (emphasis added).

This foundation-based objection was sustained by Judge Kerstin LeMaire in *Irakliev v. Wildfire Elementary School*, CV2015-

003913, a case tried by Jones, Skelton & Hochuli, P.L.C. (JSH) attorneys [Michele Molinario](#) and [Erica Spurlock](#). In that case, plaintiffs relied solely on the trial deposition of one treating surgeon to provide foundation not only for the reasonableness of his own bills but also for ambulance, ER, physical therapy, and surgicenter bills. The Court agreed that absent specific disclosure of the surgeon’s expertise in those areas, those bills lacked foundation and were not admissible.

In early 2019, Judge Janet Bostwick in Pima County also agreed with this foundational objection. In *Cotton v. Sally Beauty Supply, LLC*, C2017-0748, a case handled by JSH attorney [Matthew Baltierra](#), Judge Bostwick specifically ruled that medical bills, by themselves, “do not establish that medical care was necessary or that the cost was reasonable,” and therefore before the plaintiff can introduce her medical bills into evidence, the plaintiff must provide testimony from “a witness qualified by personal knowledge or expertise . . . [to] attest that plaintiff’s bills reflect . . . [a] reasonable cost for [her medical] care.” The case settled shortly after this ruling for an amount very favorable to the defense.

The other avenue for challenging the “reasonableness” of a plaintiff’s medical bills is to introduce evidence of write-offs or adjustments to the bills, or evidence that the medical provider accepted a lesser amount as payment in full. The primary authority supporting this position is *Canyon Ambulatory Surgery Ctr. v. SCF Arizona*, 225 Ariz. 414, 239 P.3d 733 (App. 2010), in which the Arizona Court of Appeals held that amounts accepted as payment-in-full for medical services are relevant for determining whether medical bills are “reasonable.” The dispute in *Canyon Ambulatory Surgery Ctr.* involved a group of treating physicians who sought payment of the full amount billed for workers who had medical coverage pursuant to a workers’ compensation policy. Similarly, in 2011 the Arizona Court of Appeals ruled that Medicaid agency’s lien on settlement proceeds should be based on the amount paid for the victim’s care, not on the full amount of medical services billed, when the medical providers had accepted discounted payments. *Southwest Fiduciary, Inc. v. AHCCCS*, 226 Ariz. 404, 409-410, 249 P.3d 1104, 1109-1110 (App. 2011).

While the difference in roles of the plaintiff and defendant in *Canyon Ambulatory Surgery Ctr.* provide the plain-

tiffs in personal injury actions with a basis to distinguish this ruling and argue against this position, some Arizona judges have nonetheless been receptive to this argument. For example, in 2014 Maricopa County Judge Randall Warner ruled that defendants could “challenge the inference that billed charges are reasonable with evidence of the charges actually paid.”

In February 2019, in *Garrett v. Specialized Services Transportation, Inc.*, 17-cv-08085 a case also handled by JSH attorney [Baltierra](#), then-District Court Magistrate Bridget Bade ruled that a plaintiff can recover as medical special damages only the amount the plaintiff’s medical providers accepted as payment-in-full.

The judges making these defense-favorable rulings no doubt understood the precept that limits plaintiffs to recovering only those amounts of medical expenses the plaintiff proves are reasonable. Unfortunately, the Judicial Committee that compiles and prepares Arizona’s Jury Instructions has suggested eliminating the “reasonableness” requirement entirely, allowing plaintiffs to recover the full amount of medical expenses billed regardless of how artificially inflated that bill is. While there is no timetable yet for when this change could be made, defense attorneys must remain organized, zealous, and consistent in waging the battle against inflated medical billing.



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