



Dealing with hospital liens

THE HOSPITAL LIEN ACT, CIVIL CODE SECTIONS 3045.1-3045.6, INCLUDING A CHECKLIST FOR NEGOTIATING HLA LIENS

Hospital liens impose a duty *on the defendant* to pay the hospital for emergency and ongoing services provided to a patient who has sued a third party for causing the harm. A defendant who settles with a patient without honoring a perfected hospital lien remains liable to the hospital for the cost of care provided. (Civ. Code, § 3045.4.) A defendant will not settle a third-party claim without putting the hospital on the check or writing a separate check to satisfy the lien. It is therefore incumbent upon plaintiff's counsel to engage early with the hospital over the lien to maximize the plaintiff's recovery by limiting the amount of the lien as much as possible. This will provide maximum recovery to the plaintiff and allow for a quick and efficient settlement of the matter.

Hospital Lien Act

To allow hospitals to recoup the cost of care provided to individuals who pursue tort claims against the responsible

third party, the California Legislature created the Hospital Lien Act to allow hospitals to assert liens in the patient's personal injury action. The lien may be asserted for any "emergency and ongoing medical care" for reasonable and customary charges. (Civ. Code, § 3045.1.) Even if there is a gap in treatment, the hospital may be entitled to recover for all of the care provided. (*Newton v. Clemons* (2003) 110 Cal.App.4th 1.)

The lien only applies to third-party recoveries, regardless of whether the money is paid in satisfaction of a judgment, settlement or arbitration award. (Civ. Code, § 3045.2.) The lien does not apply to first-party claims like underinsured motorists benefits. (*Weston Reid, LLC v. American Insurance Grp., Inc.* (2009) 174 Cal.App.4th 940.)

The hospital lien is subject to all other contractual liens perfected prior to the hospital perfecting its lien with proper notice. Attorney liens for fees and costs pursuant to the retention agree-

ment is considered a prior lien. (*County of San Bernardino v. Calderon* (2007) 148 Cal.App.4th 1103.)

Hospital lien requires valid notice to the defendant

The notice of the lien must be delivered or mailed (registered, return receipt requested) anytime prior to payment being made to the injured patient. The notice must be provided to each third party known by the hospital and alleged to be liable to the injured person for the injury. The hospital must also provide notice to the third party's insurance carrier, if known. The notice must include:

- 1) Name and address of the injured person;
- 2) Name and location of the hospital;
- 3) Date of the accident;
- 4) The amount claimed as reasonable and necessary charges for medical care provided to the patient; and

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5) Name of each person, firm, corporation known to the hospital and alleged to be liable to the injured person for the injuries received.

The hospital lien is limited to “reasonable and necessary charges”

Civil Code 3045.1

In 2011, the California Supreme Court held in *Howell v. Hamilton Meats and Provisions, Inc.* (2011) 52 Cal.4th 451, that a plaintiff was not necessarily entitled to recover the hospital’s billed charges from a third party. The Court fashioned a two-step approach for evaluating the value of past medical expenses that could be recovered by a plaintiff in a third-party action. The Court held that if the hospital accepted a lesser amount as payment in full, the plaintiff would be limited to no more than the amount paid, plus copayments as a measure of damages in the tort action. If the hospital bills were unpaid, then plaintiff would still be limited to the “reasonable value” of the care received, regardless of the amount billed.

Therefore, irrespective of the amount of the hospital bill, a plaintiff will be limited in a tort action to recovering the reasonable value of the hospital’s charges under either one of the tests set forth by the Court. It would be unfair to allow a hospital to recover more on its lien claim than a plaintiff could ever recover from a third-party tortfeasor.

The *Howell* holding was extended to hospital liens in *State Farm Mutual Ins. Co. v. Huff* (2013) 216 Cal.App.4th 1463. In the underlying case, Huff was injured in a traffic collision and received emergency and ongoing care and treatment at Pioneer Hospital. The hospital asserted a lien in the amount of \$34,320. Huff recovered at trial \$356,587, including \$232,708 in past medical expenses. Pioneer Hospital perfected its lien, but Huff demanded that the third-party insurer, State Farm, ignore the lien and satisfy the judgment in full payable to Huff alone. State Farm interpleaded the lien amount.

At trial, Pioneer called witnesses to establish all of the following:

1) The Director of Patient Accounting authenticated the medical bill;

2) Evidence was presented that the billing represented standard rates billed to all patients at Pioneer Hospital and remained unpaid;

3) The Patient Financial Advisor testified that she explained billing practices to Huff and Huff told her that the third-party insurance carrier should pay;

4) The Collection Agency testified as to the proper service of the hospital lien on the tortfeasor and State Farm.

The Trial Court ruled that Pioneer established a valid hospital lien and entered judgment in favor of Pioneer.

On appeal, the Court reversed the judgment in favor of the hospital. It noted that the hospital presented absolutely no evidence that the charges were “reasonable and necessary” pursuant to the mandate of the Hospital Lien Act and consistent with *Howell v. Hamilton Meats and Provisions, Inc.*, *supra*.

Therefore, it is important to scrutinize the charges being asserted by the hospital. First, are they related and necessary to treat the injuries caused by the tortfeasor? Next, challenge the reasonableness of the bills and utilize any defense arguments that the charges are excessive. Challenge the hospital to provide customary payments made by health insurance carriers for the same or similar services.

Does your client legally owe a debt to the hospital?

Once you determine the reasonable value of the services provided by the hospital, determine if the hospital has accepted some form of payment on the bill that precludes them from looking to your client for additional monies. Does your client really owe the hospital for any bill or outstanding balance? For example, the hospital cannot bill your client for services provided if your client is entitled to worker’s compensation benefits for the injury. (*Sanchez v. Brooke* (2012) 204 Cal.App.4th 126.)

Pursuant to federal law, a hospital cannot balance-bill the client if it has received Medicare or Medi-Cal payments for the services provided. (*Luttrell v. Island Pacific Supermarket* (2013) 215 Cal.App.4th 19 as to Medicare and *Olszewski v. Scripps Health* (2003) 30 Cal.4th 234 as to Medi-Cal.) Since Medicare and Medi-Cal are secondary payors, the hospital can forgo billing these payors in lieu of looking to the third party or its insurance carrier for payment pursuant to the HLA.

If your client had private insurance, then a hospital cannot balance-bill the patient if, at the time services were provided, the hospital had in place an agreement to accept the adjusted payment and co-pays as payment in full and they received payment. (*Parnell v. Seventh Day Health System/West* (2005) 35 Cal.4th 595.) Note, however, that the *Parnell* court stated that the hospital providers were free to negotiate into their contracts with the healthcare providers their ability to assert a hospital lien in the patient’s personal injury recoveries for the unpaid balance. Although this practice is not widespread, some hospitals like UC Davis do reserve their right to balance-bill and assert a hospital lien.

Emergency room bills

A plaintiff who has some form of health insurance may find themselves facing emergency room charges that are outside of their network or HMO and face bills directly from the providers. In *Prospect Medical Group, Inc. v. Northridge Emergency Medical Group* (2009) 45 Cal.4th 497, the Supreme Court finally weighed in on this thorny issue and held that “billing disputes over emergency medical care must be resolved solely between the emergency room doctors, who are entitled to a reasonable payment for their services, and the HMO, which is obligated to make that payment. A patient who is a member of an HMO may not be injected into the balance-billing for emergency physicians’ services dispute. Emergency room doctors may not bill a patient for the disputed amount.” (*Id.* at 502.)

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While this decision deals with an HMO, the argument can be made that the provider must turn to the plaintiff's insurer to resolve the lien, especially if the insurance plan is governed by the *Knox-Keene Act*.

Statutory reductions

Once you have determined that the hospital has perfected a valid lien, that your client owes the money, you have reduced the claim by negotiating the elimination of unrelated services, and you have agreed upon the reasonable value of the services rendered, you can next apply the statutory scheme for reducing the hospital lien.

California Civil Code 3045.4 limits the hospital recovery to 50% of the amount due to your client *after* paying any prior liens. So first, subtract any attorney's fees and costs (as well as any possible earlier perfected liens) and then the cap on the hospital lien should be 50% of the net remaining. Once you have determined the maximum amount the hospital can recover under the HLA, consider other arguments to reduce the lien further. If there are multiple liens, even those perfected after the hospital lien, make an argument that all of the liens cannot exceed 50% of the net due to your client and propose a pro-rata distribution of this 50% net to all of the medical-care lien claimants.

Next, consider any other equitable arguments that may exist in your case. Limited policy limits, a significant comparative fault argument or a client hardship are all issues that can be raised with the hospital to try to negotiate a further discretionary reduction in the lien in order to facilitate resolution of the claim.

County hospital liens under Government Code section 23004.1

Unfortunately, there are no common fund reductions for fees or other considerations concerning county hospital liens and they are entitled to a first dollar recovery for the services provided. (*The City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105.) Fortunately, county hospital liens under section

23004.1 only apply to judgments and they are not enforceable as to settlements. (*Mares v. Baughman* (2001) 92 Cal.4th 672.) Where your case is being resolved by settlement as opposed to satisfaction of a judgment, the county must rely on the Hospital Lien Act, with the limitations of reasonable and necessary charges and the statutory reductions, for any recovery.

Hospital services to children

If medical care is provided to a child under California Children's Services (CCS), there is a first dollar right to recovery without any deductions.

For all other medical services rendered to a minor, reimbursement amounts are subject to Court oversight at a Minor's Compromise hearing. (Probate Code section 3601; *Goldberg v. Superior Court* (1994) 23 Cal.App.4th 1378.) Note, however, that the parents may remain liable for the amounts due regardless of the Probate Court's order with respect to reimbursement out of the third-party recovery.

Checklist for negotiating HLA liens

- 1) Does the hospital have a valid lien? Has it accepted payment in full under a provider contract, worker's compensation, Medicare, Medi-Cal, etc.? If it claims a contractual right to assert the lien pursuant to a contractual provision in the provider agreement, demand a copy of the agreement.
- 2) Did the hospital perfect its lien to the tortfeasor with proper notice? (Civ. Code, § 3045.3)
- 3) The HLA states in three places that the amount sought under the HLA must be for "reasonable charges." Can the hospital support its charges as necessary and reasonable under the *Howell/State Farm v. Huff* criteria?
- 4) Attorney liens for fees and costs are a prior lien to the HLA lien. (*Cetenko v. United California Bank* (1982) 30 Cal.3d 528; *County of San Bernardino v. Calderon* (2007) 148 Cal.App.4th 1102.)
- 5) A hospital's recovery on a lien pursuant to the HLA is limited to 50%

of the "amount recovered by the injured person from the tortfeasor" after deducting for prior liens, including attorney fees and costs. (*Newton v. Clemons* (2003) 110 Cal.App.4th 1; 6; Civ. Code, § 3045.4.)

6) Always obtain a full release from the hospital when negotiating an HLA lien. Otherwise, your client will remain responsible for the balance of the bill.

Conclusion

Insurance companies will not settle a case without resolving the hospital lien. Attempts to settle the hospital lien after you reach a settlement in principle with the defense will make negotiating with the hospital more difficult since you have lost your leverage. Determine early on the existence of any hospital liens and begin using the above checklist so that you can go into a settlement negotiation either knowing the amount that you will be able to resolve the hospital lien for or having a very good idea. This lets you give a more accurate net recovery to your client in order to obtain the necessary consent for settlement. At the conclusion of a settlement, you should be able to give the defense the exact amount of the negotiated hospital lien so they can issue a separate check to get the lien resolved and the settlement expedited.

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