HOSPITAL LIENS AND THE "HOSPITAL LIEN ACT"



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INTRODUCTION: A hospital providing emergency and ongoing care to a patient who has been injured by a third party has a statutory lien for up to 50% of the amount of any judgment or settlement the patient recovers from the third party. For the lien to take effect, the hospital must give written notice to the third person and that person's liability insurer of its lien and the amount claimed.

STATUTORY PROVISIONS

Civil Code section 3045.1 provides in relevant part that a hospital "which furnishes emergency and ongoing medical or other services to any person injured by reason of an accident or negligent or other wrongful act ... shall, if the person has *a claim against another for damages on account of his or her injuries*, have a lien upon the damages recovered, or to be recovered, by the person, ... to the extent of the amount of the reasonable and necessary charges of the hospital ... resulting from that accident or negligent or other wrongful act." (Italics added.)

Civil Code section 3045.2 provides, "The lien shall apply whether the damages are recovered, or are to be recovered, by judgment, settlement, or compromise."

Civil Code section 3045.3 deals with the proper notices of the lien: "A lien shall not be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, the amount claimed as reasonable and necessary charges, and the name of each person, firm, or corporation known to the hospital and alleged to be liable to the injured person for the injuries received, is delivered or is mailed by registered mail, return receipt requested, postage prepaid, to each person, firm, or corporation known to the hospital and alleged to be liable to the injured person for the injuries sustained prior to the payment of any moneys to the injured person, his attorney, or legal representative as compensation for the injuries. "The hospital shall, also, deliver or mail by registered mail, return receipt requested, postage prepaid, a copy of the notice to any insurance carrier known to the hospital which has insured the person, firm, or corporation alleged to be liable to the injured person against the liability. The person, firm, or corporation alleged to be liable to the injured person shall, upon request of the hospital, disclose to the hospital the name of the insurance carrier which has insured it against the liability." (Italics added.)

Civil Code section 3045.4 provides for liability if funds are disbursed without paying the lien: "Any person, firm, or corporation, including, but not limited to, an insurance carrier, making any payment to the injured person, or to his or her attorney, heirs, or legal representative, for the injuries he or she sustained, after the receipt of the notice as provided by Section 3045.3, without paying to the association, corporation, public entity, or other institution or body maintaining the hospital the amount of its lien claimed in the notice, or so much thereof as can be satisfied out of 50 percent of the moneys due under any final judgment, compromise, or settlement agreement after paying any prior liens shall be liable to the person, partnership, association, corporation, public entity, or other institution or body maintaining the hospital for the amount of its lien claimed in the

notice which the hospital was entitled to receive as payment for the medical care and services rendered to the injured person."

THE HOSPITAL LIEN ACT'S PURPOSE IS TO SECURE PARTIAL PAYMENT OF THE PATIENT'S MEDICAL BILLS WHILE ASSURING THAT THE INJURED PERSON RETAINS OTHER FUNDS TO ADDRESS OTHER LOSSES RESULTING FROM THE TORTIOUS INJURIES:

In *County of San Bernardino v. Calderon* (2007) 148 Cal.App.4th 1103, the court explained, "the purpose of the HLA is 'to secure part of the patient's recovery from liable third persons to pay his or her hospital bill, while ensuring that the patient retain[s] sufficient funds to address other losses resulting from the tortious injury.' [Citation.]" *Id.* at p. 1109, citing *Mercy Hospital & Medical Center v. Farmers Ins. Group of Companies* (1997) 15 Cal.4th 213, 217).) In another case, this court elaborated the statutory purposes and the functioning of the HLA: "Civil Code section 3045.1 creates a 'statutory nonpossessory lien ... in favor of a hospital against third persons liable for the patient's injuries.' " (*Newton v. Clemons* (2003) 110 Cal.App.4th 1, 13, again quoting *Mercy Hospital*, at p. 217.)

"'A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.' [(Civ.Code, § 2872; see also Code of Civ. Proc., § 1180.) A lien may be created by contract, or by operation of law. 'There are various types of personal property liens; the one at issue in this case [i.e., a hospital lien] is a statutory nonpossessory lien. Such liens are generally nonconsensual, and enacted "to compensate a person who, pursuant to express or implied contract, furnishes services or materials in the improvement of a chattel, or stores it." [Citation.] The hospital lien act 'compensates a hospital for providing medical services to an injured person by giving the hospital a direct right to a certain percentage of specific property, i.e., a judgment, compromise, or settlement, otherwise accruing to that person.' (Italics added.) [¶] Civil Code section 3045.4 establishes the 'certain percentage' of the judgment or settlement amounts to which the lien applies: 'Any person, firm, or corporation, including, but not limited to, an insurance carrier, making any payment to the injured person ..., for the injuries he or she sustained, after the receipt of the notice [of the hospital lien], without paying to the [hospital] the amount of its lien claimed in the notice, or so much thereof as can be satisfied out of 50 percent of the moneys due under any final judgment, compromise, or settlement agreement after paying any prior liens shall be liable to the ... [hospital] for the amount of its lien claimed in the notice which the hospital was entitled to receive as payment for the medical care and services rendered to the injured person.' (Italics added.)" (Newton v. Clemons, supra, 110 Cal.App.4th at pp. 13–14, 1 Cal.Rptr.3d 90, fns. omitted.)

The hospital lien arises because of and applies to a payor fund created by the liability of a third party tortfeasor for the injuries which gave rise to the needed medical services. The lien does not come into existence until the hospital (or, as here, its assignee) files the required notice of lien. The notice of lien must be given to "each person, firm, or corporation known to the hospital and *alleged to be liable to the injured person for the injuries sustained*," and also to "any insurance carrier known to the hospital which has

insured the person, firm, or corporation alleged to be liable to the injured person against the liability." (Civ.Code, § 3045.3.)

CIVIL CODE §3045.3 DOE3S NOT REDUCE THE PATIENT'S CONTRACTUAL LIABILITY FOR THE FULL VALUE OF THE SERVICES

"[Civil Code section 3045.3] does not reduce the patient's *contractual* liability for the full value of the services rendered, but the entire amount is not recoverable as a *lien*. A lien attaches without the necessity of filing an independent action and pursuing it to judgment: rather, it is a mechanism by which sums may be recovered from a specified fund or asset without a separate litigation, or its associated expense. A hospital lien can attach to nothing other than settlement or judgment funds provided by a third party liable for the patient's injuries. In 100 percent of the cases, someone, such as an insurance carrier, will be making a payment to the injured person as a 'final judgment, compromise, or settlement.' That payment, from the insurer or other person, to the patient, is subject to the payment of prior liens, if any, and then for the hospital lien, 'or so much thereof as can be satisfied out of 50 percent of the moneys due under [the] final judgment, compromise, or settlement.' If the hospital could nevertheless insist that a greater percentage of the settlement or judgment be paid to it for its lien, on the ground that Civil Code section 3045.4 does not limit the patient's liability for the lien, then the 50 percent limitation would be rendered nugatory. We must avoid any statutory construction which renders a portion of the statutory language meaningless. Moreover, the statutory purpose, as articulated by the California Supreme Court in *Mercy Hospital*, would also be defeated, to preserve a portion of the monetary recovery to the patient himself or herself, to ameliorate other losses caused by the [tortious] injury, and to avoid pauperizing the patient altogether. [¶] ... The lien operates only as to funds paid in judgment, settlement, or other compromise, of third party liability for the injuries for which the hospital incurred charges. There will always, and only, be a payor fund to which the lien could apply. The 50 percent limitation unequivocally applies to this fund." (Newton v. *Clemons*, *supra*, 110 Cal.App.4th 1, 16–17 -- In *Newton v. Clemons*, 110 Cal. App. 4th 1, 17, the settlement was \$100,000. The hospital lien was for \$58,000. The court held that the hospital under its lien was entitled to \$50,000 and ordered the lower court to expunge the \$8000 difference.).

As the court held in *Weston Reid, LLC v. American Ins. Group, Inc.* (2009) 174 Cal. App. 4th 940, 948, the patient is contractually liable to the hospital to pay for medical treatment of all kinds, and not merely emergency or ongoing care arising out of an accident or wrongful act.

A hospital may bring a civil suit to recover the balance of monies not otherwise recovered under its lien. The decision whether or not to pursue a separate suit, however, to enforce the contract against the patient, is a wholly different question from the allocation of settlement funds under Civil Code § 3045.4. [Newton v. Clemons] The separate suit does not limit the hospital's recovery for the amounts it expended for the injured party's care, but the *lien* on plaintiff's third-party recovery is plainly subject to the 50% limitation of Civil Code § 3045.4. If a county desires a greater recovery than that provided by its lien, it must undertake an independent action. [Newton v. Clemons].

HOSPITAL LIEN NOT REDUCED FOR ATTORNEYS FEES: A hospital lien will not be reduced by a prorata share equal to plaintiff's proportionate share of attorney's fees. The common fund doctrine does not apply. [City and County of San Francisco v. Sweet (1995) 12 Cal. 4th 105, 116–118]. An attorney lien for fees and costs in the action has priority over a contractual medical lien, regardless of which lien was first in time. Rationale: Without the attorney's efforts, there may be no judgment or settlement and the medical lien would be worthless. [Gilman v. Dalby (2009) 176 CA4th 606, 618–619].

NO RECOVERY OF LIEN IN UNINSURED MOTORIST CLAIM:

The Hospital Lien Act (HLA) set forth in Civil Code §§ 3045.1 to 3045.6 cannot recover on is lien from any settlement made by an insured under its uninsured motorist provisions contained in an automobile policy. The hospital lien arises because of and applies to a fund created by the *liability of a third party tortfeasor* for the injuries which give rise to the needed medical services. [*Weston Reid, LLC v. American Ins. Group, Inc.* (2009) 174 Cal. App. 4th 940, 948.] The purpose of the HLA is to secure part of the patient's recovery from liable third persons. [*Weston Reid, LLC v. American Ins. Group, Inc.*, 174 Cal. App. 4th 940, 947–948, citing *County of San Bernardino v. Calderon*, 148 Cal. App. 4th 1103, 1109].

AN ATTORNEY IS NOT A "COLLECTION AGENCY" FOR MEDICAL BILLS:

A client's mere promise to pay a creditor does not create a lien, and an attorney therefore incurs no personal liability in failing to pay the client's creditors even if the attorney is aware of them. [Farmers Ins. Exch. v. Zerin (1997) 53 CA4th 445, 454–459, —client's promise to hold settlement proceeds "in trust" for insurer did not obligate attorney to protect insurer's interest]. However, one court has reached a contra result on the theory that the attorney's knowledge of the client's duty to reimburse the creditor out of any recovery creates an "equitable lien" to protect the creditor's interest. [Kaiser Found. Health Plan, Inc. v. Aguiluz (1996) 47 CA4th 302, 305—parties conceded existence of equitable lien]. Most courts have rejected this "sticky gum theory of equitable liens." The equities do not favor the creditor because it has an adequate remedy against the debtor (client). In addition, requiring the attorney to protect the creditor creates a conflict with the client if the client disputes the amount or does not want to pay the creditor at all. [See Farmers Ins. Exch. v. Smith (1999) 71 CA4th 660, 662].

MEDICARE/MEDICAID LIENS

The Federal Centers for Medicare & Medicaid Services (CMS) is entitled to reimbursement for medical expenses for Medicare beneficiaries injured in accidents for which third parties or private insurers are legally obligated to pay. Applicable regulations give (CMS) the right to seek reimbursement from a Medicare beneficiary *or the beneficiary's attorney* to the extent he or she received settlement payments from tortfeasors or insurers. [See 42 USC § 1395y(b)(2)(B); 42 CFR § 411.24(h)-(i)]. Medicare's reimbursement right extends to *defendants* and their attorneys. If a defendant or its liability insurer pays a Medicare beneficiary's tort claim without satisfying a Medicare lien, it may end up paying twice. [42 CFR § 411.24(i)]

All parties in the case—plaintiff, defendant, defendant's insurer and attorneys on both sides—can be held liable for \$1,000–a-day penalties for failure to comply with Medicare notification requirements; and double damages if the government sues to enforce its reimbursement rights. [42 USC § 1395y(b)(7)(B); 42 CFR § 411.24 (c),(g)]. To avoid potential personal liability, attorneys representing a Medicare beneficiary in a personal injury action should contact the CMS and propose conditional payment calculations before disbursing any settlement or award to plaintiff or other lienholders. (The CMS will probably be aware of the claim because defendants and their liability insurers are under a statutory duty to notify the CMS of the litigation; see 42 USC § 1395y(b)(7)(B).)

NOTE: It is proper to complete settlement agreements with a "set aside" provision providing that the plaintiff will set aside in a blocked account certain sums of monies to cover the amount of benefits provided. See: Schexnayder v. Scottsdale Ins. Co., 2011 WL 3273547, 8 (W.D.La.) (W.D.La., 2011).