1. Does your jurisdiction maintain a collateral source rule?

The collateral source rule is still in effect in Georgia. In Georgia, the collateral source rule is a creation of common law. See Olariu v. Marrero, 248 Ga. App. 824, 549 S.E.2d 121 (Ga. Ct. App. 2001). In Georgia, “[t]he collateral source rule bars the defendant from presenting any evidence as to payments of expenses of a tortious injury paid for by a third party and taking any credit toward the defendant’s liability and damages for such payments.” Kelly v. Purcell, 301 Ga. App. 88, 91, 686 S.E.2d 879, 882 (Ga. Ct. App. 2009); Hoeflick v. Bradley, 282 Ga. App. 123, 124 (Ga. App. 2006). The oft-cited rationale for the continued application of the collateral source rule in Georgia is that “a tortfeasor is not allowed to benefit by its wrongful conduct or to mitigate its liability by collateral sources provided by others.” Id.

2. Does your jurisdiction allow plaintiff recovery for expenses written off by the healthcare provider?

Plaintiffs are entitled to collect for expenses written off by its healthcare provider. The Georgia Court of Appeals has expressly held that a defendant “is not entitled to use a third party’s write-off of medical expenses as a set-off against a plaintiff’s recovery of past medical expenses.” Olariu v. Marrero, 248 Ga. App. 824, 826 (Ga. App. 2001).

3. Must a plaintiff prove medical services were reasonable or necessary in order to recover?

A plaintiff entitled to recover damages for a physical injury may recover reasonable physicians’ bills incurred, but in order to recover such expenses, there must be proof of a definite nature as to the amount expended and also some evidence as to the reasonableness of such amount. Southern R. Co. v. Broughton, 128 Ga. 814 (1907).

4. Must a plaintiff guarantee reimbursement payment to a healthcare provider if a judgment is rendered or settlement achieved?

There is a general policy of discouraging a double recovery on the part of a plaintiff who has received payment from an insurer prior to filing suit against a tortfeasor. Policy provisions, such as those stating that “no medical payments will be made unless the injured person or that person’s legal representative agrees in writing that any payment shall be applied toward any
settlement or judgment that person receives,” have been upheld and enforced. Georgia Farm Bureau Mut. Ins. Co. v. Harper, 272 Ga. App. 536 (2005). It has also been held that policy language that require an insured receiving medical payment benefits to reimburse the insurer for such payments out of any recovery the insured may obtain from a tortfeasor are valid and enforceable. Sheppard v. State Farm Fire & Casualty Co., 222 Ga. App. 619 (1996). Moreover, an attorney’s failure to reimburse medical care providers out of settlement proceeds, despite language in a contingency fee agreement requiring such reimbursement, has been found to be cause for disbarment, suggesting that the discouragement of such a double recovery is of utmost importance. In the Matter of J. Malik Abdullah Frederick, 278 Ga. 571 (2004). However, if the contract or policy does not specify, the court may not enforce such set-offs, as “the primary responsibility for writing coverage that limit’s the insurer’s obligation to actual losses lies with the insurer in the drafting of its contract.” Anderson v. Mullinax, 269 Ga. 369, 370 (1998).

5. If an insurance carrier maintains a contractual agreement with a healthcare provider that reduces payments, what can a plaintiff “blackboard” as damages? (i.e., what effect does a pre-existing agreement between an insurance carrier and healthcare provider have on a plaintiff’s ability to recover medical bills?)

A plaintiff is entitled to recover those expenses, arising from his injuries, that are “reasonable and necessary.” MCG Health, Inc., v. Kight, 325 Ga. App. 349, 353 (2013); Allen v. Spiker, 301 Ga. App. 893, 896 (2009). Such damages are not limited to seeking economic damages represented by the discounted amounts paid on a hospital’s billed charges under the contract with an insurance provider. Id. Under the collateral source rule, a plaintiff is entitled to seek full recovery from a tortfeasor undiminished by insurance payments or write-offs under a hospital’s contract with an insurance provider. Id., at 353; Olariu v. Marrero, 248 Ga. App. 824 (2001).