KANSAS

Shawn M. Rogers
Jonathan E. Benevides
BAKER STERCHI COWDEN & RICE LLC
2400 Pershing Rd. Suite 500
Kansas City, Missouri 64108
Phone: (816) 471-2121
Email: rogers@bscr-law.com
benevides@bscr-law.com

1. Does your jurisdiction maintain a collateral source rule?

Yes. In Kansas, the admission into evidence of expenses that have been paid by a third party is governed by the common law collateral source rule. The rule generally dictates that “benefits received by the plaintiff from a source wholly independent of and collateral to the wrongdoer will not diminish the damages otherwise recoverable from the wrongdoer.” Martinez v. Milburn Enterprises, Inc., 290 Kan. 572, 574, 233 P.3d 205, 208 (2010)(citations omitted). Accordingly, the fact that all or a portion of the plaintiff’s medical expenses were reimbursed or paid for by his/her insurance carrier is not admissible at trial. “[E]vidence of the source of any collateral payment is inadmissible under the collateral source rule.” Martinez, 233 P.3d at 229. The application of the collateral source rule to the payment of medical expenses by third-party will be discussed in depth below.

2. Does your jurisdiction allow plaintiff recovery for expenses written-off by health care provider?

Yes. In Martinez, the Kansas Supreme Court considered the issue of “whether in a case involving private health insurance the collateral source rule applies to bar evidence of (1) the amount originally billed for medical treatment or (2) the reduced amount accepted by the medical provider in full satisfaction of the amount billed, regardless of the source of payment.” Id. at 208. The court held that evidence of (1) the original amount billed and (2) the amount accepted by the hospital in full satisfaction of the amount billed was admissible. 233 P.3d at 229. “However, evidence of the source of any actual payments is inadmissible under the collateral source rule.” Id. “The finder of fact is permitted to determine from these and other facts, the reasonable value of the medical services provided.” Id. Accordingly, if the finder of fact determines that the original amount billed by the health care provider represents the reasonable value of the medical services provided to plaintiff, the plaintiff may recover for expenses written-off by the health care provider.

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

Yes. “In Kansas, personal injury plaintiffs are entitled to claim as damages the reasonable value of medical services necessary to recover from injuries caused by a wrongdoer.” Martinez, 233 P.3d at 235-236 (citing Shirley v. Smith, 261 Kan. 685, 693, 933 P.2d 651 (1997) (emphasis added). Indeed, it is well settled that expenses incurred by an injured plaintiff, which resulted from
the injuries, are proper elements of damages only if the services were necessary and the charges reasonable. Lewark v. Parkinson, 73 Kan. 553, 85 P. 601, Syl. P (1906)); PIK Civ. 4th 171.02 (recoverable damages for personal injury include "reasonable expenses of necessary medical care").

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

No. There is no provision of Kansas law that requires the plaintiff to guarantee reimbursement. A defendant or its insurer paying out a judgment or settlement is subject to liens asserted by hospitals, Medicare, and Medicaid, and must ensure that they are satisfied by agreement or by court order.

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)?

The existence of a contractual agreement between an insurance carrier and a health care provider has no impact on the amount of past and future medical damages that a plaintiff may seek to recover. See Martinez v. Milburn Enterprises, Inc., 290 Kan. 572, 574, 233 P.3d 205, 222-23 (2010). As the Kansas Supreme Court explained in Martinez:

When medical treatment expenses are paid from a collateral source at a discounted rate, determining the reasonable value of the medical services becomes an issue for the finder of fact. Stated more completely, when a finder of fact is determining the reasonable value of medical services, the collateral source rule bars admission of evidence stating that the expenses were paid by a collateral source. However, the rule does not address, much less bar, the admission of evidence indicating that something less than the charged amount has satisfied, or will satisfy, the amount billed.

Martinez, 233 P.2d at 222-23.

This section of the Compendium was prepared by an attorney not licensed in the State of Kansas. Although the attorney used his/her best efforts to set forth the current law, users of this section of the Compendium should rely solely on counsel licensed in the State of Kansas.