1. **Does your jurisdiction maintain a collateral source rule?**

   Yes. New York Civil Practice Law and Rules 4545 permits reduction of awards for past and future economic loss by amounts received from collateral sources in all personal injury, wrongful death, and property damage actions. These include payments the plaintiff (or decedent) has received and/or will receive from collateral sources to compensate the plaintiff for losses suffered in connection with the injury claimed.

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

   No. Although a write-off technically is not a payment from a collateral source within the meaning of CPLR 4545, it is not an item of damages for which a plaintiff may recover because the plaintiff does not incur liability in such a situation. See *Kastick v. U-Haul Co. of W. Mich.*, 292 A.D.2d 797 (N.Y. App. Div. 4th Dept. 2002). Pattern Jury Instruction 2:301 regarding collateral sources states in part, “[a]n award to plaintiff for loss of [medical expenses] must be only for the amount that plaintiff actually lost, paid or is required to pay. Plaintiff may not recover for any expense that was paid by defendant or for any services that were provided free of charge.” Therefore, unless the plaintiff actually incurred or will incur a loss, the plaintiff will not be allowed to recover.

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

   Yes. The burden is on the plaintiff to prove both the necessity and the amount of the expenses. As a practical matter, with regard to past medical bills, there is rarely an issue of proof as to authentication, necessity or reasonableness, as most bills are prima facie valid under CPLR 4518 and 4533-a. In addition, if a plaintiff offers competent medical testimony regarding future medical expenses, the award will be sustained. To that end, Pattern Jury Instruction 2:285 regarding expenses incurred by the plaintiff states that a plaintiff “will be entitled to recover the amount of reasonable expenditures for medical (and dental) services and medicines . . . .” Further, a jury is directed to include in the verdict the amount that [it] find[s] from the evidence to be the fair and reasonable amount of the medical (and dental) expenses necessarily incurred as a result of [the plaintiff’s] injuries.” Finally, with regard to future medical expenses, the verdict must include “an amount for those anticipated medical, hospital and nursing expenses which are reasonably certain to be incurred in the future and that were necessitated by plaintiff’s injuries.”
It should be noted that in New York, once the plaintiff has brought forth such evidence of medical expenses, the burden of establishing an entitlement to a collateral source reduction falls on the defendant and entails a two-tiered inquiry. See Kihl v. Pfeffer, 47 A.D.3d 154 (N.Y. App. Div. 2d Dept. 2007). First, a defendant must establish with “reasonable certainty” that the plaintiff actually has received or will receive payments from a collateral source. Second, a defendant must show with “reasonable certainty” that the payments specifically correspond to particular items of economic loss awarded by the trier of fact. The “reasonable certainty” standard of proof is synonymous with “highly probable” that the expenses will be indemnified by a collateral source.

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

   In New York, there is no statute which addresses a provider’s rights to reimbursement and/or subrogation for benefits or payments made pursuant to an insurance policy or other agreement. It should be noted that this does not apply to claims made by Medicare or Medicaid, as the right of subrogation is derived by statute.

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?)?**

   In New York, the plaintiff is entitled to out-of-pocket medical expenses incurred as a result of loss suffered in connection to the claimed injury. A plaintiff’s ability to recover such expenses is not affected by the existence of an agreement between a healthcare provider and an insurance carrier.