1. Does your jurisdiction maintain a collateral source rule?

   Yes. In Oklahoma, Denco Bus Lines v. Hargis, 229 P.2d 560 (Okla. 1951) is the preeminent case on the collateral source rule. The Denco Bus Lines court stated:

   Upon commission of a tort it is the duty of the wrongdoer to answer for the damages wrought by his wrongful act, and that is measured by the whole loss so caused and the receipt of compensation by the injured party from a collateral source wholly independent of the wrongdoer does not operate to lessen the damages recoverable from the person causing the injury.

   Id. at 561. 85 O.S. § 45(A) of the Oklahoma Workers’ Compensation Act codifies the rule: “[n]o benefits, savings or insurance of the injured employee, independent of the provisions of this act shall be considered in determining the compensation or benefit to be paid under this act.” The collateral source rule is additionally applicable to prohibit the admission of a spouse’s remarriage for the purposes of mitigating damages in a wrongful death action. Kimery v. Public Service Co. of Okla., 562 P.2d 858 (Okla. 1977).

   However, the state of Oklahoma chooses not to play by its own rules. 51 O.S. §155-14 of the Oklahoma Governmental Tort Claims Act bars “[a]ny loss to any person covered by any workers’ compensation act or any employer’s liability act. (emphasis added). The statute has been amended four times since 1978; with each amendment lessening the state’s liability regarding previously interpreted judicial exceptions. Question Submitted by Brenda Wynn to Oklahoma Attorney General, 2000 OK AG 51.

   In 2003, the Oklahoma Supreme Court stated that §155-14 barred state tort liability related to a decedent killed when struck by a school bus driven by an employee of the Bartlesville Independent School District. Gladstone v. Bartlesville Indep. Sch. Dist. No. 30 (I-30), 2003 OK 30. While the court appears to lend legitimacy to the notion that the statute is unjust; the court did not find the statute unconstitutional.

   Although we are not unmindful that the exclusion of only those persons who are protected by workers’ compensation might appear unfair and inequitable, we find absolutely no basis in the equal protection or due process analyses for its condemnation as invidious discrimination or as otherwise offensive to some principle of fundamental federal or state law.
51 O.S. §155-14, essentially prohibits a subrogation action by a workers’ compensation or liability carrier against the state, no matter how egregious the state’s conduct. Simply stated, the collateral source doctrine applies to a tortfeasor unless that tortfeasor is the state of Oklahoma.

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

   Oklahoma’s billed versus paid statute, 12 O.S. § 3009.1, applicable to written off expenses, sits on rocky ground. The previous version of the billed versus paid statute, enacted in 2011 was held unconstitutional by various district court judges in both Tulsa County and Oklahoma County—the two largest counties in the State. The legislature enacted a revised statute applicable to all personal injury cases filed after November 1, 2015. The revised version of 12 O.S. § 3009.1 states:

   “If no bills have been paid, or no statement acknowledged by the medical provider or sworn testimony as provided in subsections A and B of this section is provided to the opposing party and listed as an exhibit by the final pretrial hearing, then the amount billed shall be admissible at trial subject to the limitations regarding any lien filed in the case”

   At least one Tulsa County District Court judge has already ruled the revised statute unconstitutional. The constitutionality of the subject statute appears headed to an appellate court for determination.

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

   No. In Oklahoma, a plaintiff may recover medical damages if the finder of fact determines the treatment rendered via the medical bills is a result of the defendant’s alleged act or omission. Expert testimony is often not needed to connect medical expenses to the defendant’s act or omission. *See, Reed v. Scott*, 820 P.2d 445, 448-50 (Okla. 1991) and *Godfrey v. Meyer*, 933 P.2d 942, 943-44 (Okla. Civ. App. 1996).

   Future medical expenses are treated differently under Oklahoma law. Expert testimony is required for a plaintiff to recover future medical expenses. *See, Reed and Godfrey*. A plaintiff must utilize expert testimony to prove that future medical expenses are necessary, however, a plaintiff does not need expert testimony regarding the amount of future medical expenses. *M.K. & O. Airline Transit Co. v. Deckard*, 397 P.2d 888, 889 (Okla. 1964). The jury is afforded considerable discretion in determining the necessity of future medical expenses. *Id.*

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

   Yes, if a valid lien is filed. Liens should only be filed by providers if no other payment is forthcoming. *Vizant v. Hillcrest Medical Center*, 1980 OK 50, 609 P.2d 1274, 1277. In Oklahoma, physicians may assert a lien for the purposes of “encourage[ing] physicians to provide medical
treatment to injured persons without regard to [the injured person’s] ability to pay at the time the services are rendered.” Broadway Clinic v. Liberty Mutual Ins. Co., 2006 OK 29, 139 P.3d 873, 876. If a proper lien was filed prior to payment of a settlement or judgment, it must be honored. Saint Francis Hospital v. Vaughn, 1998 OK CIV APP 167, 971 P.2d 401. A duty attaches to a lawyer to ensure liens held by medical lien holders are satisfied out of settlement. State ex rel. Oklahoma Bar Association v. Bedford, 1997 OK 83, 956 P.2d 148, 152. Despite the statutory importance granted to the physician’s lien, attorney liens are superior to all statutory liens in recognition of the attorney’s role in undertaking the settlement or verdict. 5 O.S. § 6.

5. If an insurance carrier maintains a contractual agreement with a healthcare provider that reduces payments, what can a plaintiff “blackboard” as damages?

See response to Question No. 2 as the question relates to 12 O.S. § 3009.1. Prior to a likely forthcoming appellate court ruling, and if the trial court judge finds the subject statute constitutional, the plaintiff may only “blackboard” the adjusted amount or the amount paid by the insurance carrier.