OREGON

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

   Oregon maintains a collateral source rule. Pursuant to ORS 31.580(1), courts may deduct certain benefits received from collateral sources from the amount of damages awarded. The statute allows (but does not require) a trial court to subtract the value of collateral benefits from the damages award. *White v. Jubitz*, 219 P3d 566, 572 (Or. 2009). However, by the terms of ORS 31.580(1) courts are precluded from subtracting the following exempt sources of collateral benefits:

   - Benefits, which the party awarded damages - the person injured or that person’s estate - is obligated to repay;
   - Life insurance or other death benefits;
   - Insurance benefits for which the person injured or members of that person’s family paid premiums; and
   - Retirement, disability, pension and federal Social Security benefits.

   Although qualifying collateral benefits can be deducted from the amount of damages, they are still inadmissible as evidence during trial. ORS 18.580(2) provides that evidence of the payments received must be given to the court by affidavit, submitted after the verdict. Admission of collateral-source benefits at trial, even for “limited purposes,” has been held to constitute an abuse of discretion and is reversible error. *Reinan v. Pacific Motor Trucking Co.*, 527 P2d 256, 259 (Or. 1974). However, if evidence of collateral benefits is admitted, counsel must immediately call for a mistrial; otherwise, the error is waived. *DeYoung v. Fallon*, 798 P2d 1114, 1115 n. 1 (Or. Ct. App. 1990), *rev. denied*, 810 P2d 554 (1991).

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

   The Oregon Supreme Court has held that medical expenses billed and later written off by a medical provider under an agreement with Medicare are not subject to post-verdict deduction from a damages award under ORS 31.580(1)(d), the Social Security exception to the collateral source rule. *Jubitz*, 219 P3d at 583. Further, the write-offs are not admissible as evidence at trial, even if they are offered to prove the reasonable value of the medical services rendered. *Id.*
No reported Oregon appellate decision has considered whether Medicaid write-offs should be treated similarly, although the same analysis would presumably apply if Medicaid benefits were deemed Social Security benefits and fell under that exception to the collateral source rule. Similarly, no reported Oregon appellate decision has considered whether a court should deduct from a damages award write-offs that were reached under an agreement with a private insurer. We believe that Oregon courts would likely prohibit benefits written off by private insurers from being deducted under the reasoning above. The write-offs would likely be characterized as a benefit falling within one of the exceptions to the collateral source rule in ORS 31.580(1) (c).

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

In Oregon, a plaintiff must prove medical services were reasonable and necessary. In general, a plaintiff can recover (as economic damages) medical expenses incurred as a result of a defendant’s conduct, including expenses for doctors, hospital care, nursing care, and medicine. *Mathews v. City of La Grande*, 299 P 999, 1001 (Or. 1931). See also ORS 31.710(2)(a) (defining “economic damages” as “objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services . . . .”). To recover, the plaintiff must show that the medical supplies or services were actually provided, reasonable in amount, and necessary for the treatment of conditions related to the injury. *Id.; Valdin v. Holteen*, 260 P2d 504, 510 (Or. 1953).

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

Where a person receives medical treatment on account of any injury, and that person claims damages from the person who caused the injury, the healthcare provider who treated the injured person has a “lien upon any sum awarded the injured person . . . by judgment or award or obtained by a settlement or compromise to the extent of the amount due” to the healthcare provider. ORS 87.555(1). The lien attaches only “to the extent of the amount due the [healthcare provider] for the reasonable value of such medical treatment rendered prior to the date of judgment, award, settlement, or compromise.” *Id.* Oregon has a similar system where the injured person is the beneficiary of an insurance policy. See ORS 87.555(2). Both of these liens attach only to the personal injury judgment or settlement, and do not extend to other property. See *Valley Credit Service, Inc. v. Kelley*, 994 P2d 1229, 1231 (Or. Ct. App. 2000).

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?)**

As discussed above, insurance benefits for which the injured person paid premiums do not diminish the value of damages awarded. ORS 31.580(1). These benefits are not admissible at trial. ORS 31.580(2). See also *Gragg v. Hutchinson*, 176 P3d 407, 410 (Or. Ct. App. 2007) (“Evidence of insurance benefits is not admissible at the trial of a civil action for damages for bodily injury or death”). In general, plaintiffs are allowed to “blackboard” the full amount of damages.