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

Virginia’s collateral source rule has been applied in tort cases for more than a century. It provides that compensation received by a tort victim from a source collateral to the tortfeasor may not be applied as a credit against the amount of damages the tortfeasor owes. *Schickling v. Aspinall*, 369 S.E.2d 172, 174 (Va. 1988). The amount a tortfeasor owes cannot be diminished by insurance payments, social security benefits, public and private pension payments, unemployment compensation benefits, vacation and sick leave allowances, workers’ compensation payments and other payments, both contractual and gratuitous. *Id.*

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

A plaintiff can recover for medical expenses “written off” by a healthcare provider because of an agreement between the provider and the plaintiff’s insurer. *See Acuar v. Letourneau*, 260 Va. 180, 531 S.E.2d 316 (2000). To say that an expense is “written off” implies that the fee was incurred but not collected. The most common reason for this is that the provider agreed to do so based on a preexisting agreement with an insurance carrier. The plaintiff obtained this benefit by purchasing insurance, so the collateral source rule applies – a tortfeasor’s obligation to compensate an injured party cannot be reduced by payments from a collateral source.

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

A plaintiff must provide that services were reasonable or necessary to recover damages. The plaintiff may make this showing by creating through his own testimony a rebuttable presumption that his medical bills are authentic and the reflected charges were reasonable. Va. Code. Ann. § 8.01-413.01(A). However, if the defendant challenges the authenticity of the bills, the bills themselves will be insufficient to create a jury issue and independent authentication is required. *McMunn v. Tatum*, 379 S.E.2d 908, 914 (Va. 1989). Independent authentication is generally accomplished through the testimony of an expert or treating physician.

4. **Must a plaintiff guarantee reimbursement payment to a healthcare provider if a judgment is rendered or settlement achieved?**
Pursuant to Virginia Code § 8.01-66.2, any healthcare provider not operated by the Commonwealth has a lien against the defendant on the plaintiff’s personal injury claim. The amount of the lien is capped, depending on the type of provider. The Commonwealth is entitled to full reimbursement under Virginia Code § 8.01-66.9. In either case, the lien is only enforceable if a settlement is reached or judgment is entered. There is no statutory requirement that a Plaintiff guarantee reimbursement of liens, which is one of the reasons why standard settlement releases incorporate such a requirement.

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 plaintiff can “blackboard” the full amount of his medical expenses, regardless of any preexisting agreement between his insurance carrier and medical provider.