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

   Yes. See generally, *Leitinger v. DBart, Inc.*, 2007 WI 84, P32, 302 Wis. 2d 110, 736 N.W.2d 1. However, the collateral source rule has been modified in medical malpractice claims. See Wis. Stat. Ann. § 893.55. The Wisconsin courts have interpreted this statute as providing the following exception, “in a medical malpractice action, evidence of collateral source payments is relevant and, thus, admissible under statute that states that evidence of any compensation for bodily injury received from sources other than the defendant to compensate the claimant for the injury is admissible in medical malpractice action, if it is probative of any fact that is of consequence to the determination of damages.” *Weborg v. Jenny* (2012) 816 N.W.2d 191, 341 Wis.2d 668, reconsideration denied 822 N.W.2d 884, 344 Wis.2d 307.

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

   Yes. The Wisconsin Supreme Court explicitly considered this and held, “the collateral source rule allows the plaintiff to seek recovery for the reasonable value of medical services without consideration of payments made by the plaintiff's insurer; and ... the insurer's subrogation rights entitle it to recoup the amounts it paid on the plaintiff’s behalf.” *Leitinger v. DBart, Inc.*, 2007 WI 84, ¶ 29, 302 Wis. 2d 110, 126, 736 N.W.2d 1, 8-9.

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

   Generally, proof of reasonableness and necessity for medical expenses is required in order for them to be recoverable as damages. *Lautenschlager v. Hamburg*, 41 Wis. 2d 623, 630, 165 N.W. 2d 129, 132 (1969); *LeFebre v. Murphy*, 198 Wisc. App. LEXIS 846, 152 Wis. 2d 86, 447 N.W. 2d 528 (1989) The Wisconsin Supreme Court, however, has held that this requirement need not be applied “where the injury, the treatment and the amount paid therefor are fully proved.” *Figgs v. City of Milwaukee*, 116 Wis. 2d 281, 288, 342 N.W. 2d 254, 257 (Ct. App. 1983) In deciding this question, the Wisconsin Supreme Court held that evidence of necessity and reasonableness is not required when the bill is paid and the services have been rendered. It held, “the weight of authority seems to be that, where the character of the injury and of the treatment and the services of the physician and the amount paid for the service are fully proved, this constitutes evidence from which the jury may allow damages, although there is no proof of either
necessity or the reasonable value of the services. Mere proof of injury and the employment of and
treatment by a physician entitles the jury to make an award for the service, in the absence of
evidence of the necessity for or the value of the service.” Gerbing v. McDonald, 201 Wis. 214,
229 N.W. 860, 862 (1930) See also, Young v. Trokan, 1988 Wisc. App. LEXIS 464, 145 Wis. 2d
897, 428 N.E. 2d 562 (Wis. Ct. App. 1988) holding that “At a minimum, proof of injury and
employment of and treatment by a physician for those injuries must be shown. What is unnecessary
to show is the necessity for or the value of the service.”

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

Wisconsin law does not require a plaintiff to guarantee reimbursement payment to a
healthcare provider. Wis. Stat. § 779.80. However, it does provided protection in the form of a
hospital lien. Wisconsin law provides a lien in favor of a hospital for medical services rendered
to an injured person. To qualify, the hospital must also be “charitable” and maintain a hospital
within the State of Wisconsin. The lien attaches to a claim, judgment, or proceeds of any settlement
for damages on account of the injuries. The lien is limited to the reasonable and necessary charges
of the hospital for the medical treatment, care, and maintenance.

Once a notice of lien has been filed and served, any release given by the injured person is
valid as to the lien. If the injured person receives payment for such damages, the person making
such payment shall remain liable to the hospital for the amount of the lien for a period of one (1)
year from the date of such payment.

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

Wisconsin utilizes the reasonable-value approach to determine what amount of medical
bills a plaintiff may recover. Leitinger v. DBart, Inc., 2007 WI 84, ¶ 29, 302 Wis. 2d 110, 126,
736 N.W.2d 1, 8-9. A party likely cannot utilize a negotiated rated. The court held, “a particular
health insurance company’s negotiated rates with a health care provider are not necessarily relevant
evidence of the reasonable value of the medical services in a tort action. The reimbursement rate
of a particular health insurance company generally arises out of a contractual relationship and
reflects a multitude of factors related to the relationship of the insurance company and the provider,
not just to the reasonable value of the medical services. The admission in evidence of the amount
actually paid in the present case, even if marginally relevant, might bring complex, confusing side
issues before the fact-finder that are not necessarily related to the value of the medical services
rendered.” Leitinger v. DBart, Inc., 2007 WI 84, ¶¶ 69-74, 302 Wis. 2d 110, 143-46, 736 N.W.2d
1, 17-18.

This section of the Compendium was prepared by an attorney not licensed in the State of
Wisconsin. 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 Wisconsin.