The bizarre world of hospital liens under *Parnell*, *Howell* and *Dameron*

What to do about balance billing by hospitals and physicians

By Alexandra Hamilton

In a personal-injury case involving health insurance, it is relatively easy to determine the past medical damages based on the amount paid by the health insurance plus any out-of-pocket costs paid by the plaintiff. So what happens if the hospital that provided your client emergency services attempts to assert a lien on the difference between the billed amount and the amount paid by the health insurance? Such "balance billing" may throw a wrench in your case resolution.

Hospital Lien Act and balance billing

Pursuant to the California Hospital Lien Act (HLA), codified in California Civil Code sections 3045.1 to 3045.6, a hospital may claim repayment for all "emergency and ongoing" services provided to a person who was injured in "an accident, or negligent or wrongful act." The hospital may place a lien on the tortfeasor "to the extent of the amount of the reasonable and necessary charges of the hospital." (Civ. Code, § 3045.1; see also Gov. Code, § 23004.1 [allowing county hospitals to assert liens].) The hospital lien is generally limited to only third-party recoveries and not from uninsured motorist or underinsured motorist insurance policies.

Many times, the hospital and the separate emergency room physicians may attempt to charge the injured party the difference between the hospital's "charge rate" and the amount the injured party's health insurance paid as the "contract rate." Pursuant to Title 42 of the United States Code section 1395CC, balance billing is prohibited when the hospital accepts payments from Medicare or Medicaid. When the hospital accepts payments

from private healthcare, the hospital can assert the lien.

California case law establishes that when a hospital accepts payments from the injured party's private health insurance as payment in full for the hospital bills, then the hospital cannot charge for its balance. However, California courts explicitly encourage hospitals and private health insurers to enter into contracts to preserve their right to balance billing.

Parnell v. Adventist Health System West

In *Parnell v. Adventist Health System West* (2005) 35 Cal.4th 595, the California Supreme Court addressed whether a hospital could conduct balance billing under the HLA in a personal-injury case.

Joel Parnell, a taxicab passenger injured in a vehicle collision, sought treatment from San Joaquin Community Hospital (operated and owned by Adventist Health System West). Parnell's medical treatment was paid through his private health insurance, which had contracted with Community Hospital. After Parnell filed a lawsuit against the driver, Community Hospital asserted a lien for the difference between the paid amount and the billed amount under the HLA. Parnell filed an action against Community Hospital, alleging unfair business practices (Bus. Prof. Code, § 17200, et seq.), violation of the Consumer Legal Remedies Act (Civ. Code, § 1750 et seq.) trespass to chattels, breach of third-party contract, and negligence. Community Hospital filed and won a motion for summary judgment, claiming the HLA allowed the lien. Parnell appealed.

The California Supreme Court analyzed the HLA and determined that the HLA gives a hospital the right to a statutory lien. The hospital's right is borne out of the patient's third-party case and is not an independent action unless the tortfeasor does not pay the hospital's lien. The hospital's ability to recover from the tortfeasor is based on the patient's debt. Many of the HLA provisions are aimed at the third-party tortfeasor, not the patient. For example, the hospital need not provide notice of the lien to the injured person – only to each alleged tortfeasor known to the hospital – and failure to pay makes the tortfeasor, not the patient, liable for the lien amount. If the tortfeasor does not pay the lien, the hospital may file a lawsuit against the tortfeasor only.

The Court then looked at Parnell's health insurance's contract with Community Hospital, which stated that the Community Hospital agreed to accept the hospital's negotiated price as "payment in full." Because the "payment in full" language erased any debt owed by Parnell, Community Hospital could not assert a lien against the tortfeasor. The Court held that, "[b]y precluding the Community Hospital from asserting a lien under the HLA in this case, we 'simply give[ ] effect' to its contracts. If hospitals wish to preserve their right to recover the difference between usual and customary charges and the negotiated rate through a lien under the HLA, they are free to contract for this right." (*Parnell*, *supra*, 35 Cal.4th 592-583.)

The *Parnell* case post-*Howell*

The *Parnell* opinion was decided in 2005 when a plaintiff could, and usually did, claim the billed charges – not just the paid amounts – against a tortfeasor. In 2011, *Howell v. Hamilton* limited the injured plaintiff's past medical damages to only paid amounts. (*Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541 (holding that only amounts paid or incurred are recoverable as medical expenses); see also, *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1331-1332.) Despite this limitation on medical damages, California courts have continued to allow hospital liens for the billed amount.

In *Dameron Hospital Association v. AAA Northern California, Nevada and Utah Insurance Exchange* (2014) 229 Cal.App.4th 549, AAA and Allstate settled third-party actions with Dameron Hospital's patients despite notice of Dameron Hospital's HLA liens arising from emergency treatment of the patients following vehicle collisions with AAA and Allstate insureds. Dameron Hospital sued AAA and Allstate to recover its liens. AAA argued that *Howell* overruled *Parnell*, negating Dameron Hospital's liens.

The Third District Court of Appeal ruled that *Howell* and *Corenbaum* did not overrule the *Parnell* opinion. The *Dameron* opinion explicitly distinguished its holding from *Howell* and *Corenbaum* since those cases involved different parties. (See *Dameron*, *supra*, 229 Cal.App.4th at 564-565 ["Howell addressed whether a patient could recover the customary billing rate from a tortfeasor, whereas this case involves a claim by the hospital against tortfeasors and their liability insurers."].) The *Dameron* opinion reiterated that, in *Howell* and *Corenbaum*, the health insurance company had contracted to accept the negotiated rate as payment in full, so evidence of customary rates could not be introduced at trial to prove medical expenses. The *Dameron* opinion again relied heavily on the contract between the insurance company and the hospital to determine whether or not the lien was valid even in a post-*Howell* world.

Negotiate with the hospital before settlement

If you get notice of a hospital lien, demand the contract between the hospital and the health insurance company. Many of these contracts were negotiated long before *Parnell* so the contract may not provide for the hospital's ability to balance bill. If the hospital's ability to assert the lien is not explicitly called out in the contract, the lien is invalid under *Parnell* and *Dameron*.

If the contract allows the lien, negotiate the hospital lien immediately and long before settlement talks. The hospital lien makes the tortfeasor, not the patient,

liable for failure to pay. Still, no party should settle without determining the hospital lien issue first. Since hospital liens are not reduced by the common fund doctrine, it is imperative to negotiate before settlement when the parties have more leverage. (See *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105; *Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243.) Make sure to include any hospital liens in your calculation of damages and be prepared to explain, orally or through a motion in limine, the distinction between *Howell*, *Corenbaum*, *Parnell*, and *Dameron* to the defense counsel, mediator, or judge.


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