Hospital Liens in Alabama

by Michael K. Timberlake

Most attorneys that handle personal injury claims in Alabama are intimately familiar with the statutes that create hospital liens and set forth the procedure for enforcing a lien. In addition to the statutes, there is a body of caselaw that further defines the rights created by the lien statute and provides an analysis of various fact scenarios that may guide attorneys when working with hospitals to resolve liens. In review of the caselaw, it is apparent that our appellate courts have taken great liberties to enforce the protections provided by the lien statute and, in some cases, have expanded the application and/or breadth of the statute.

When a person is injured in an incident caused by a liable third party and is treated at a hospital in Alabama, the hospital can assert a lien against the proceeds of any action, claim, settlement, or judgment that arises from the incident. It is likely that the hospital or its representative will issue a notice of a “hospital lien” pursuant to Alabama Code § 35-11-370. This code provision provides:

“Any person, firm, hospital authority, or corporation operating a hospital in this state shall have a lien for all reasonable charges for hospital care, treatment, and maintenance of an injured person who entered such hospital within the week after receiving such injuries, upon any and all actions, claims, counterclaims, and demands accruing to the person to whom such care, treatment, or maintenance was furnished, or accruing to the legal representative of such person, and upon all judgments, settlements, and settlement agreements entered into by virtue thereof on account of injuries giving rise to such actions, claims, counterclaims, demands, judgments, settlements, or settlement agreements and which necessitated such hospital care, subject, however, to any attorney’s lien.”

Since the plain language of the statute makes it clear that the lien is limited to “reasonable charges for hospital care,” an assessment of what is “reasonable” may be at issue when dealing with a lien. In Roberts v. University of Alabama Hospital, 27 So. 3d 512 (Ala. Civ. App. 2008), the trial court found that the testimony of hospital employees stating that the treatment was medically necessary and that the charges were determined by reference to a uniform, industry standard pricing list was sufficient to establish that the charges were reasonable. On cross-examination, counsel for Roberts sought to show that the hospital accepted less than the full amount of its billed rates for patients that have health insurance with Blue Cross and Blue Shield, Medicare, and Medicaid. The trial court ruled that this evidence was of “no probative value” as to whether the charged amount was reasonable. On appeal, the Court of Civil Appeals affirmed the trial court’s ruling, noting that the acceptance of lower payments from health insurers was based on contractual agreements that were not applicable to Roberts’ admission.

In University of South Alabama Hospital v. Blackmon, 42 So. 3d 1258 (Ala. Civ. App. 1999), the court reaffirmed its ruling in Roberts, holding that the testimony of hospital employees was sufficient to establish that its charges were reasonable despite testimony that patients with available health insurance received substantial discounts and evidence that the hospital marked up a one dollar band aid 1000 percent and charged nine dollars for a sleeping pill that cost ten cents.

Alabama Code § 35-11-370 also limits the hospital’s lien to charges for hospital care of an injured person who entered the hospital within a week of receiving such injuries. This provision was at issue in Ex parte University of South Alabama, 761 So. 3d 240, (Ala. 1999); where a person was treated at a hospital immediately after being injured in an automobile wreck and was discharged after twenty days. Seven days after discharge, the injured person was
readmitted to the hospital for additional care to treat the injuries she sustained in the automobile wreck. Although it was apparent that the hospital had a valid lien for the charges associated with the initial hospitalization, the hospital also claimed a lien for the charges associated with the second admission that was clearly more than one week after the injuries occurred.

After the trial court ruled the hospital did not have a valid lien for the charges associated with the second admission and its decision was affirmed by the Alabama Court of Civil Appeals, the Alabama Supreme Court reversed the lower courts. Concluding that the wording of the statute “lends itself to two readings” and relying on caselaw calling for the broad and liberal construction of hospital lien statutes, the court held that the lien for the charges associated with the second admission was valid. Id. at 243,246.

A hospital lien does not attach to a person's real property or personal property. Instead, a hospital lien only attaches “upon any and all actions, claims, counterclaims, and demands” accruing to the injured person and “upon all judgments, settlements, and settlement agreements entered into by the injured person.” Ala. Code § 35-11-370 (1975). This language has been interpreted to include actions arising from tort liability as well as claims resulting from contractual agreements such as uninsured/underinsured motorist insurance coverage and medical payments coverage. See Progressive Specialty Ins. Co. v. Univ. of Ala. Hospital, 953 So. 2d 413, 415 (Ala. Civ. App. 2006), cert. denied, (stating that “the language used in the hospital-lien statute does not confine itself solely to tort claims and does not limit the right of a hospital to assert a lien on moneys realized only from tort settlements or actions.”)

Ala. Code § 35–11–371 provides that a hospital lien is attached upon perfection of the lien in the probate court as required by § 35–11–370. Upon perfection of the lien, the hospital has an automatic lien for its reasonable charges, against the patient's actions and claims. § 35–11–370. Upon perfection of the lien in the manner provided in § 35–11–371, the hospital's lien is protected, pursuant to § 35–11–372, from impairment by one settling an action or claim without obtaining a release or satisfaction of the lien. If the patient settles with the tortfeasor and the hospital has failed to perfect its lien, the hospital's only remedy is against the patient. If the patient settles with the tortfeasor after the lien has been perfected, the hospital has a remedy against both the tortfeasor and the tortfeasor's insurer for impairing the lien, pursuant to § 35–11–372.9

Infinity, 737 So. 2d at 466.

By requiring strict compliance with the perfection requirements set forth in § 35–11–371, the Infinity decision places responsibility on the hospital to timely perfect a hospital lien or forego potential claims against insurers or attorneys for impairment of a hospital lien. Although the Infinity opinion mentioned that some courts have allowed actual notice to serve in place of the constructive notice achieved by timely filing a lien, the court found that issue was not before the court and did not comment further.

The impact of actual notice came before the Alabama Supreme Court in Board of Trustees of Univ. of Ala. ex rel. Univ. of Ala. Hospital v. American Resources Ins. Co., 5 So. 3d 521 (Ala. 2008), wherein the court implicitly overruled Infinity to the extent that it required strict compliance with § 35–11–371 to create a valid hospital lien. In this case, a person was injured in a motor vehicle wreck and was immediately treated at Gadsden Regional Medical Center, then UAB Hospital, before passing away from his injuries approximately one month after the wreck. A personal injury claim seeking compensation for medical expenses was filed before the patient died and the complaint was subsequently amended to add a claim for wrongful death. Each hospital filed a verified statement in the probate court as required by § 35–11–371, but both filings were not timely as they were filed more than ten days after the patient's discharge.

Following a court ordered mediation attended by both hospitals, counsel for the deceased patient and counsel for the defendant entered into a settlement agreement that required dismissal of the claims for personal injury and wrongful death. The settlement agreement also provided that the patient's estate and counsel would hold the defendants harmless from all liens and subrogation claims, “including but not limited to UAB Hospital and Gadsden Regional.” After the case was dismissed, the hospitals filed claims against the liability insurance carrier, patient's counsel and patient's estate alleging that the settlement impaired the hospitals' statutory liens. The trial court entered summary judgment against the hospitals.

On appeal, our supreme court addressed the impact of the hospitals' failure to strictly comply with the perfection requirements of § 35–11–371. Recognizing that the hospitals did not strictly comply with the ten-day filing deadline required to perfect the asserted hospital liens, the court emphasized that all the parties in the case had actual knowledge of the asserted liens at the time of mediation and when they entered into a settlement. Considering the purpose of the hospital lien statute and precedent supporting a broad interpretation of the statute, the court concluded that constructive notice through perfection was not required “where there is actual knowledge or where actual notice is given.” Id. at 531. Accordingly, the court held that “the failure to provide constructive notice under 35–5–371(a) was immaterial to the validity and enforceability of the lien” because there was actual knowledge of the asserted liens.

The court also examined the impact of the hospitals’ liens on the patient's claims for personal injury and wrongful death. Citing Jones v. DCH Heath Care Auth., 621 So. 2d 1322, 1324 (Ala. 1993), the court ruled that the hospitals’ liens did not attach to the proceeds of a wrongful death claim. In Jones, the court reviewed the Alabama Wrongful Death Act (Ala. Code § 6–5–410) and concluded that the proceeds of a wrongful death claim are not subject to a hospital lien as § 6–5–410(c) expressly states that “[t]he damages recovered are not subject to the payment of the debts or liabilities of the testator or intestate, but must be distributed according to the
statute of distributions.” Id. As additional authority, the Jones court referred to Board of Trustees of Univ. of Ala. v. Harrell, 188 So. 2d 555 (Ala. Ct. App. 1965), cert. denied, 188 So. 2d 558 (Ala. 1966). (holding that wrongful death damages are punitive, not actual or compensatory and are not to be used to pay for expenses or to creditors of the deceased).

Although the hospital liens did not attach to the proceeds of the wrongful death claim, the American Resources court found that the hospitals’ liens did attach to the personal injury claims that were filed before the patient died. Once the hospitals’ liens were perfected by actual knowledge, Alabama Code § 35-11-372 dictates that “no release or satisfaction or any action, claim, counterclaim, demand, judgment, settlement or settlement agreement, or of any of them, shall be valid or effectual as against such lien unless such lienholder shall join therein or execute a release of such lien.” Id. at 532.

Counsel for the deceased patient argued that the settlement was solely for wrongful death and therefore not subject to the hospital liens. The Court rejected this assertion as it was apparent that the patient’s claims for personal injury were viable at the time the liens were perfected by actual knowledge, the settlement agreement executed at mediation required the dismissal of the claims for personal injury, and the executed release was “broad enough to encompass the personal injury claims.” Id.

It is interesting to note that the court also ruled that the hospitals’ claims against the deceased patient’s estate and counsel were properly dismissed by the trial court because they were not timely filed. Id. Alabama Code § 35-11-372, requires a hospital’s civil action for impairment of a lien to “be commenced against the person liable for such damages within one year of the date such liability shall be finally determined by a settlement, release, covenant not to sue, or by the judgment of a court of competent jurisdiction.” As the hospitals’ claims against the deceased patient’s estate and counsel were not filed within one year of the date of the settlement agreement, the summary judgment for these defendants was proper. Id. at 532. The hospitals’ remaining claim against the liability insurance carrier was remanded to the trial court. Id. at 532.

Progressive Specialty Ins. Co. v Univ. of Ala. Hospital, 953 So. 2d 413 (Ala. Civ. App. 2006), concerns the liability of an insurance carrier for impairment of a hospital lien in a medical payments benefits context. (This stands in contrast to impairment of a lien in a liability insurance context, as in Univ. S. Alabama v. Progressive Ins., 904 So. 2d 1242 (Ala., 2004), wherein the tortfeasor’s liability carrier paid the patient $6,000.00 in exchange for a full release of claims against the tortfeasor, in disregard of the hospital’s lien). In this case, it was undisputed that Progressive paid its policyholder $2,000 in medical payments coverage after receiving either constructive or actual notice of a hospital lien in the amount of $27,898.57. Id. Progressive initiated a declaratory judgment action to question the applicability of the hospital lien to the proceeds of the medical payments coverage. Id. The trial court ruled that a hospital lien applied to the proceeds paid pursuant to contractual agreements and found that Progressive had impaired the hospital’s lien by paying $2,000 directly to its insured. Id. at 414. The trial court entered judgment against Progressive for the full amount of the lien ($27,898.57) plus $4,000 in attorney fees. Id. On appeal, the Alabama Court of Civil Appeals affirmed the trial court’s conclusion that the hospital lien was applicable to the medical payments coverage and other contractual agreements as well as the judgment of $27,898.57. The Court also affirmed the award of attorney’s fees noting that an award of “costs and reasonable attorney’s fees” are specifically authorized by Alabama Code § 35-5-372. Id. at 416-417.

In review of the published opinion, it does not appear that Progressive argued at any point that its liability for impairment of the lien should have been limited to the total available coverage under the contract for medical payments coverage. The plain language of Alabama Code § 3-11-370 makes it clear that a hospital can assert a lien for reasonable charges upon claims or judgments, but when the value of such a claim is limited by contract, there is no language in the statute to allow for a recovery in excess of the contractual obligation. Likewise, in the case of a settlement with a liability carrier, there is nothing to indicate that a hospital’s remedy for impairment of a lien should exceed the amount of the settlement regardless of the amount of the charges for treatment.

The Alabama Court of Civil Appeals followed this precedent in the recent case, Alfa Mut. Ins. Co. v. Univ. S. Alabama, ___ So.3d ___, 2015 WL 4389308 (Ala. Civ. App. 2015), holding that a medical payments insurance provider was responsible for the full amount of a $30,900.50 hospital lien that it had impaired by issuing a payment of $2,000.00. In this case, Alfa’s insured was admitted to a hospital operated by the University of South Alabama on May 21, 2013 for injuries suffered in a motor vehicle crash, and passed away from her injuries on the same day. Id. The hospital perfected a lien on May 30, 2013 in the amount of $30,900.50 for the medical care Alfa’s insured had received prior to her death. Id. Alfa carried a medical payments benefits policy with a limit of $2,000.00 for necessary medical and/or funeral expenses, and Alfa issued a draft for $2,000.00 to the decedent’s parents for her funeral on July 23, 2013. Id. The hospital then filed suit against Alfa seeking the full amount of its lien on the grounds that Alfa had impaired the hospital lien by issuance of the funeral benefits payment to the family. Id. In an extensive opinion that discussed the history of the lien statute, whether the statute applied to medical payments benefits, notice of the lien, and an amended lien filed by the hospital on a later date, the Court of Civil Appeals followed precedent and held that, “the hospital-lien statute requires that a party that is found to have impaired a hospital lien, the creation of which is automatic under §35-11-370, is responsible for the entirety of the reasonable charges as outlined by the hospital-lien statute.” Id. at *4.

Alfa appealed to the Supreme Court of Alabama, and—in a stunning opinion issued just as this article was going to print—the Supreme Court of Alabama issued an opinion that reversed the Court of Civil Appeals, holding that the hospital’s damages against Alfa should be limited to the medical payments policy limits of $2,000.00. Ex parte Alfa Mut. Ins. Co. v. Univ. S. Alabama, [Ms. 1141343] ___ So.3d __ (Ala. 2017). In this case, the court cites to a partial dissent by Chief Justice Nabers in an earlier lien impairment case, Univ. S. Alabama v. Progressive Ins., 904 So. 2d 1242 (Ala., 2004), stating: “[I]t is appropriate that [the hospital] be restored to the position it would have been in had its lien not been impaired.’ That conclusion is consistent with §35-11-372, which provides for a civil action for damages on account of such impairment.’ Damages on account of an impairment means damages caused by or resulting from the impairment. That is to say that damages on account of an impairment are measured by the difference between the amount the hospital actually recovered and the amount it could have recovered absent the impairment. That result is equitable and comports with the purpose of the lien statute. Awarding a hospital a windfall for a minor impairment is not equitable and does not comport with the purpose of
the statute.” Ex parte Alfa, Ms. 1141343 at 11-12 (internal citations omitted, emphasis in original). The opinion also makes the distinction that the claim in Ex parte Alfa is for a $2,000.00 medical payment, which was the limit of Alfa’s medical payments coverage and the maximum amount that Alfa could have paid, had the lien not been impaired. Id. at 12. This would stand in contrast to a case involving “release of a tortfeasor, which, unlike an insurer whose potential liability is limited pursuant to a pre-injury contract, could potentially be liable for an amount that equals or exceeds the full amount of the hospital’s lien.” Id. at 13.

In holding that the damages against Alfa were limited to the medical payments policy limits, the court reiterated, “The purpose of the lien statute is to induce hospitals to receive a patient injured in an accident, without first considering whether the patient will be able to pay the medical bills incurred. […] [N]ot to precipitate additional litigation, provide a windfall for hospitals, or saddle insurers with uncontracted-for liability in the event they pay a policy benefit that happens to be subject to a hospital lien.” Ex parte Alfa, Ms. 1141343 at 13-14 (internal citations and quotations omitted).

Alabama Code § 35-11-370 expressly states that a hospital’s lien is subject to any attorney’s lien. As such, there are not competing interests between a hospital and an attorney handling a personal injury claim. However, in Mitchell v. Huntsville Hospital, 598 So. 2d 1385 (Ala. 1992), the court held that neither the common fund doctrine nor § 35-11-370 required a hospital to pay any portion of the attorney’s fee for the work that allowed for the settlement or judgment.

Alabama Code § 35-11-374 provides that a hospital lien does not apply to compensation paid pursuant to the Workers’ Compensation Act. Alabama Code § 35-11-375 states that the hospital does not have an independent right to determine liability for injuries.

Typically, a hospital will assert a lien pursuant to § 35-11-370 in any situation where a person is transported to the hospital emergency room by an emergency medical service such as ambulance or helicopter. This statutory lien is only available to hospitals. Doctors, chiropractors or other healthcare providers cannot assert a lien against a settlement or judgment unless the injured party executes a document conveying rights to any claims.

Often, a hospital or its representative will file a lien and provide notice of the lien even when a patient has available health insurance coverage. In some instances, the hospital is contractually required to file with a healthcare insurance company and accept its payment as full satisfaction of the charges. In this case, the hospital must release its lien. As such, it is important to provide health insurance information to the hospital as soon as possible because there may be a time limitation – typically one year – on filing a claim for health insurance benefits.

In other situations, the hospital may not be required to accept payment from a healthcare insurance provider and can assert its lien to recover payment from any settlement or judgment. Joiner v. Medical Center East, Inc., 709 So. 2d 1209 (Ala. 1998), concerned a Medicare beneficiary who was injured in a motor vehicle wreck and received treatment at Medical Center East. Medical Center East sought payment of its charges by filing a hospital lien and asserting a claim against the settlement with the automobile liability carrier. The hospital “elected to forgo billing Medicare” for its treatment and refused to accept payment from Medicare. Joiner, 709 So 2d at 1210. Upon review of the federal regulations and statutes that govern the Medicare program, our supreme court held that Medical Center East was not obligated to file a claim with Medicare and had a “right under federal law to obtain full payment of its charges” from the settlement. Id. at 1221.

For claims involving persons covered by Alabama Medicaid, the Alabama Medicaid Agency Administrative Code, Chapter 560-X-1-.07(03) provides:

“(3) Providers have freedom of choice to accept or deny Medicaid payment for medically necessary services rendered during a particular visit. This is true for new or established patients. However, the provider (or their staff) must advise each patient prior to services being rendered when Medicaid payment will not be accepted, and the patient will be responsible for the bill. The fact that Medicaid payment will not be accepted must be recorded in the patient’s medical record.”

Once a patient is accepted as a Medicaid patient, Chapter 560-X-7-.24(4) provides that he or she is “not responsible for the difference between the charges billed and the amount paid by Medicaid for covered services” and Chapter 560-X-7-.24(5) dictates that “[p]roviders agree to accept the amount paid by Medicaid as payment in full.”

Therefore, if a hospital does not advise the patient that Medicaid will not be accepted prior to rendering services and note this in the medical record, the hospital would be in violation of the administrative code if it files a lien and asserts a claim for its total charges from the proceeds of any settlement or judgment. To report violations of the administrative code, Medicaid recipients may contact the Alabama Medicaid Agency located at 501 Dexter Avenue, Montgomery, AL 36103-5624.

The foregoing discussion makes it apparent that the lien created by Alabama Code § 35-11-370 provides significant leverage for hospitals seeking to recover from injured persons. However, careful analysis of the statutes and the caselaw will allow attorneys to generate the best outcome possible for their clients and avoid any pitfalls associated with hospital liens.

Michael Timberlake
is a native of Huntsville, Alabama and is the son of local attorney, Kenan Timberlake. Michael earned his undergraduate degree from Birmingham Southern in 1989 and his law degree from Cumberland School of Law in 1995. Following law school, Michael worked as a clerk for William Robertson, Chief Justice of the Alabama Court of Civil Appeals. After finishing his clerkship he has practiced in Huntsville and is currently a partner in the firm of Siniard, Timberlake & League, PC. His practice is devoted to helping persons injured as a result of medical malpractice, nursing home abuse, motor vehicle wrecks and industrial accidents.

Mr. Timberlake is a member of the Alabama State Bar, the Huntsville Bar Association, the Alabama Association for Justice and the America Association for Justice. Mr. Timberlake is a graduate of the American Trial Lawyers Association Trial College and has frequently served as a speaker for continuing legal education seminars in Alabama. He is currently licensed to practice in Alabama and in the United States District Court for the Northern District of Alabama.