

ADDRESSING MEDICAL LIENS IN AUTO ACCIDENT LITIGATION

By

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A. Who has a lien?

“Any person, firm, hospital authority, or corporation operating a hospital, nursing home, or physician practice or providing traumatic burn care medical practice in [Georgia] shall have a lien for the reasonable charges . . . for care and treatment of an injured person. . . .” O.C.G.A. § 44-14-470(b).

“Physician practice” was added to Georgia’s medical lien statute July 1, 2004. A “physician practice” is defined as any medical practice that includes one or more physicians licensed to practice medicine in this state. O.C.G.A. § 44-14-470(a)(4).

B. What/Who is the lien against?

The lien is against any and all causes of action accruing to the person to whom the care was furnished or to that person’s legal representative on account of injuries giving rise to the causes of action and which necessitated the care. O.C.G.A. § 44-14-470(b). The statute was amended in 2002 to emphasize that the lien is only a lien against the cause of action and is not a lien against the injured person, the person’s legal representative, or any other property or assets of such persons. *Constantine v. MCG Health, Inc.*, 275 Ga. App. 128, 130, 619 S.E.2d 718 (2005) (citing O.C.G.A. § 44-14-470(b) and Ga. L. 2002, p. 1429, § 1). The lien shall not be evidence of the patient’s failure to pay a debt. O.C.G.A. § 44-14-470(b). Medical liens do not apply to any moneys due under the Workers’ Compensation Act. O.C.G.A. § 44-14-474.

The medical lien is subject to any attorney’s lien. O.C.G.A. § 44-14-470(b). See also *Holland v. State Farm Mut. Auto. Ins. Co.*, 236 Ga. App. 832, 834, 513 S.E.2d 48 (1999) (reversing the trial court’s finding that the attorney’s lien was untimely asserted and did not take priority over the hospital and Medicaid liens); *Ramsey v. Sumner*, 211 Ga. App. 202, 438 S.E.2d 676 (1993) (attorney’s lien takes priority over hospital lien). In



Thomas v. McClure, the UM carrier paid its \$15,000 policy limits into the registry of the court. Tanner Medical Center's lien was for \$13,397.00 of medical treatment. The court awarded the hospital only \$8,681.00 and awarded the plaintiff's attorney the remainder to cover his fees and expenses. *Thomas v. McClure*, 236 Ga. App. at 622.

C. When does the lien attach?

The lien attaches at the moment the patient begins receiving medical treatment. *Thomas v. McClure*, 236 Ga. App. 622, 624, 513 S.E.2d 43 (1999); *Macon-Bibb County Hosp. Authority v. National Union Fire Ins. Co.*, 793 F.Supp. 321, 323 (M.D. Ga. 1992). "The statute sets out no conditions precedent such as filing requirements for obtaining a valid lien." *Id.* Thus, a medical provider's late filing to perfect the lien has no effect on the validity of the lien, so long as the party against whom it is asserted had actual knowledge of the lien. *Id.*

D. How is the lien perfected?

A medical provider must satisfy two requirements before the lien is perfected.

First, the medical provider must provide written notice to the patient and, to the best of the medical provider's knowledge, the person's firms, corporations, and their insurers claimed by the injured person to be liable for the damages arising from the injuries. O.C.G.A. § 44-14-471(a)(1). This notice has to be sent to all such persons and entities by first-class and certified mail or statutory overnight delivery, return receipt requested. *Id.* This notice must be sent at least 15 days before meeting the second requirement—the filing of a verified statement in the superior court. *Id.*

Second, the medical provider is required to file in the office of the clerk of the superior court of the county in which the hospital, nursing home, physician practice, or provider of traumatic burn care medical practice is located and in the county wherein the patient resides, if a resident of Georgia, a verified statement setting forth the name and address of the patient as it appears on the patient's records, the name and location of the medical provider and operator, the dates of admission and discharge of the patient and/or dates of treatment, and the amount claimed to be due. O.C.G.A. § 44-14-471(a)(2). If the statement is filed by a hospital, nursing home, or traumatic burn care provider, then



the statement must be filed within 75 days of the patient's discharge. O.C.G.A. § 44-14-471(a)(2)(A). If the statement is filed by a physician practice, then the statement must be filed within 90 days after the person first sought treatment. O.C.G.A. § 44-14-471(a)(2)(B).

The filing of the lien constitutes notice of the lien to everyone liable for the damages, whether or not they received written notice. O.C.G.A. § 44-14-471(b). The failure to perfect the lien as required invalidates the lien, except as to anyone who receives prior to the date of any release, covenant not to sue, or settlement, actual notice of a notice and filed statement, via hand delivery, certified mail, return receipt requested, or statutory overnight delivery with confirmation of receipt. *Id.*

Therefore, the failure to perfect the lien within the time period set forth in O.C.G.A. § 44-14-471(a) does not invalidate the lien when the parties against whom the hospital sought to enforce the lien received actual notice of the lien prior to settlement. This conclusion was reached by both the Georgia Court of Appeals and the U.S. District Court for the Middle District. *Tanner v. McClure*, 236 Ga. App. at 624; *Macon-Bibb County Hosp. Authority v. National Union Fire Ins. Co.*, 793 F.Supp.at 323. In both cases, the liens were perfected 3 days late by the hospitals. In both cases, the parties responsible for the patient's injuries and their insurers received actual notice, by certified mail, of the liens before the cases were resolved. Both courts concluded that the purpose of the filing requirement was notice, and because actual notice was accomplished the courts held that timely perfection of the liens did not prevent enforcement. The courts rejected the argument that strict compliance with the medical lien statute was required because at the time the decisions were rendered the medical lien statute lacked language requiring strict compliance, unlike the mechanics lien statute. The medical lien statute was subsequently amended in 2002 to codify the actual notice requirement contained in O.C.G.A. § 44-14-471(b).¹

¹ Note that some states require strict compliance with their medical lien statutes. The court in *Macon-Bibb County Hosp. Authority v. National Union Fire Ins. Co.*, observed that North Carolina and Wisconsin courts concluded strict compliance was required



E. The Superior Court Clerk's obligations.

The superior court clerk is required to file stamp the verified statement and maintain an indexed lien book with the name of the medical provider, the name of the patient, and the amount claimed. O.C.G.A. § 44-14-472. The verified statement shall be recorded in the name of the patient. *Id.* The regular filing fee for such a recording applies. *Id.*

An invaluable tool to search for medical liens is available through the Georgia Superior Court Clerks' Cooperative Authority ("GSCCCA"). The GSCCCA makes medical liens from most Georgia counties searchable on-line through its website. In order to use the service you must register and obtain a log in and password. There is a fee associated with the service, but it is nominal compared to having to make routine trips to many different court houses.

F. A medical lien can be enforced against the party responsible for the damages or that party's insurer through an action to foreclose on the lien.

"[T]he claimant or assignee of the lien may enforce the lien by an action against the person, firm, or corporation liable for the damages or such person, firm, or corporation's insurer." O.C.G.A. § 44-14-473(a). Practically speaking, the claimant should bring the action to foreclose on the lien against both the liable party and the liable party's insurer. A lien claimant, however, is not provided an independent right of action to determine liability for injuries sustained by a person or firm. O.C.G.A. § 44-14-476.

A claim against an uninsured motorist carrier is treated no differently than a claim against a tortfeasor covered by a liability insurance policy. The lien statute applies equally to claims against uninsured motorist carriers because the uninsured motorist claim accrues to the injured person as a result of the injuries arising out of an accident for which the injured person received treatment. *Thomas v. McClure*, 236 Ga. App. at 624.

because of the language of their lien statutes. 793 F.Supp.at 324 n. 4. The court also relied on decisions from Florida, North Dakota, and Washington that interpreted those states' lien statutes to not require strict compliance. *Id.* at 324.



G. A lien claimant can recover attorney's fees in an action to foreclose on the lien.

“If the claimant prevails in the action, the court may allow reasonable attorney's fees.” O.C.G.A. § 44-14-473(a).

H. There is a one year limitations period on enforcing medical liens.

“The action shall be commenced against the person liable for the damages or such person's insurer within one year after the date the liability is finally determined by a settlement, by a release, by a covenant not to bring an action, or by the judgment of a court of competent jurisdiction.” O.C.G.A. § 44-14-473(a).

In a case in which Henry Medical Center rendered treatment to an automobile accident victim, the hospital argued that the settlement release did not “finally determine liability” in an unsuccessful attempt to circumvent the one year limitations period. *Integon Indemnity Corp. v. Henry Medical Center, Inc.*, 235 Ga. App. 97, 100, 508 S.E.2d 476 (1998). The hospital's first argument was that the release did not finally determine liability because the release contained language that the released parties expressly denied liability. *Id.* The court disagreed because the hospital's lien was on only the cause of action, liability in the tort action was avoided permanently by the settlement and release, and no further action against the tortfeasor was permitted. *Id.* The hospital's second argument was that the release did not finally determine liability because it was a limited release made pursuant to O.C.G.A. § 33-24-41.1. *Id.* The court again disagreed with the hospital because a limited release is only limited in that the release of one liable insurer does not operate to release other carriers providing coverage or other tortfeasors and their carriers. *Id.*

A Medicaid lien can likewise be waived if not brought within the requisite limitations period. *Department of Medical Assistance v. Hallman*, 203 Ga. App. 615, 417 S.E.2d 218 (1992).

I. What is the effect of a settlement release on a medical lien?



“No release of the cause or causes of action or of any judgment thereon or any covenant not to bring an action thereon shall be valid or effectual against the lien created by O.C.G.A. § 44-14-470 unless the holder thereof shall join therein or execute a release of the lien.” O.C.G.A. § 44-14-473(a). “No release or covenant not to bring an action which is made before or after the patient was discharged from the [facility] or, with respect to a physician practice, which is made after the patient first sought medical treatment from the physician practice for the injuries shall be effective against the lien perfected in accordance with Code Section 44-14-471, if such lien is perfected prior to the date of the . . . settlement unless consented to by the lien claimant; provided, however, that any [party consummating the settlement] first procures from the injured party an affidavit . . . shall not be bound or otherwise affected by the lien except as provided in subsection (c) of this Code section, regardless of when the settlement . . . was consummated.” O.C.G.A. § 44-14-473(b).

No settlement or release entered into or executed prior to treatment by the lien claimant is affected by or subject to the medical lien statute. O.C.G.A. § 44-14-475.

Georgia’s complete compensation rule does not apply to medical liens. *Holland v. State Farm Mut. Auto. Ins. Co.*, 236 Ga. App. 832, 834, 513 S.E.2d 48 (1999). In *Holland*, an interpleader action filed by State Farm to determine priority of the lien claims, the injured party argued that the hospital and Medicaid’s lien claims should not be satisfied until he was made whole. *Id.* The court rejected this argument holding that the complete compensation rule only applies to the subrogation rights of an insurance carrier who has made payments on behalf of the injured party and then seeks recovery of those payments. *Id.*

J. The “Lien Affidavit”

An affidavit meeting the requirements of O.C.G.A. § 44-14-473(c) will protect “any person, firm, or corporation which consummates a settlement, release, or covenant not to bring an action” with the injured party from enforcement of the lien by the medical provider, so long as no lien in the name of the injured party is on file with the clerk of the superior court of the county wherein the injured party resides. O.C.G.A. § 44-14-473(b)



and (c). The affidavit shall affirm: (1) that all hospital, nursing home, physician practice, or provider of traumatic burn care medical practice bills incurred for treatment for injuries for which a settlement is made have been fully paid; and (2) the county of residence of such affiant, if a resident of Georgia. *Id.* Providing a false affidavit under this Code section constitutes the offense of false swearing. O.C.G.A. § 44-14-477.

K. Medical liens do not qualify as payment of other claims or otherwise under the UM statute.

Medical liens do not qualify as “payment of other claims or otherwise” under O.C.G.A. §33-7-11(b)(1)(D)(ii). Therefore, medical liens do not reduce a tortfeasor’s available liability coverage to increase the coverage provided by an injured party’s UM carrier. *State Farm Mut. Auto. Ins. Co. v. Adams*, 288 Ga. 315, 702 S.E.2d 898 (2010); *American Intern. South Ins. Co. v. Floyd*, 288 Ga. 322, 704 S.E.2d 755 (2010).

L. The interaction between a medical lien and health insurance.

When a medical provider accepts health insurance payments of less than the full amount of the medical provider’s charges and the medical provider has a contract with the health insurance company that says the medical provider will not make additional charges for covered services and will not have recourse against the patient receiving the health insurance benefits, then the medical provider’s lien claim for the difference is extinguished. *Constantine v. MCG Health, Inc.*, 275 Ga. App. at 130. To support its decision, the Georgia Court of Appeals relied on authority from other states. See *Parnell v. Adventist Health System/West*, 35 Cal.4th 595, 609(III) (9), 26 Cal.Rptr.3d 569 (2005) (when hospital receives payment from patient and insurer under negotiated agreement as payment in full, hospital cannot assert lien against plaintiff’s cause of action); *N.C. v. A.W.*, 305 Ill. App.3d 773, 775-776, 239 Ill. Dec. 244, 713 N.E.2d 775 (1999) (enforcing hospital’s contract with insurer and denying lien on patient’s cause of action where contract provided for \$18,000 less than hospital’s actual cost); see generally *Dorr v. Sacred Heart Hosp.*, 228 Wis.2d 425, 597 N.W.2d 462 (1999) (since plaintiff is third-party beneficiary of hospital’s contract with HMO, hospital’s lien was unauthorized, and hospital is liable for conversion and tortious interference).



The statutory and regulatory scheme for TRICARE, a federal health insurance program for military personnel, does not permit a hospital rendering care to a TRICARE beneficiary for injuries received in an automobile accident to enforce a lien against the tortfeasor's insurer. *MCG Health, Inc. v. Owners Ins. Co.*, 288 Ga. 782, 707 S.E.2d 349 (2011).

M. Medicaid liens.

Medicaid liens are very similar to medical liens. “The Department of Community Health shall have a lien for the charges for medical care and treatment provided a medical assistance recipient upon any moneys or other property accruing to the recipient to whom such care was furnished or to his legal representatives as a result of sickness, injury, disease, disability, or death, due to the liability of a third party, which necessitated the medical care.” O.C.G.A. § 49-4-149(a). In order to perfect and enforce a lien the Department of Community Health (“DCH”) has to follow similar procedures as the medical providers listed in O.C.G.A. § 44-14-470 (a). O.C.G.A. § 49-4-149(b). DCH is required to follow O.C.G.A. § 44-14-470 through 473, except that DCH has one year from the date the last item of medical care was furnished to file its verified lien statement and the statement must be filed in the county of residence of the recipient and in Fulton County. *Id.* The statute of limitations for DCH to file suit on a Medicaid lien is the same as the statute of limitations on a medical lien and can be waived if not brought within the requisite limitations period. O.C.G.A. § 44-14-473(a) (action to foreclose lien must be brought within one year of liability being “finally determined”); *Department of Medical Assistance v. Hallman*, 203 Ga. App. 615, 417 S.E.2d 218 (1992).

N. Practice pointers to protect your client or your insured and yourself.

Generally speaking, strict compliance with the lien perfection requirements or actual notice of the lien (by certified mail or statutory overnight delivery) is all that is required to subject a responsible party to the lien.

Gather all the facts. Counsel should inquire of their clients (both plaintiffs and defendants) and of the opposing party through discovery as to whether they have received



notice of a lien. Non-party discovery to the plaintiff's medical providers can also produce information about whether a lien is being claimed.

Perform a lien search in the county of the plaintiff's residence and in any county in which the plaintiff received medical treatment or in Fulton County if the plaintiff is a Medicaid recipient. At one time this would have been a daunting task, but with the on-line search capabilities of the GSCCCA website lien searches can be performed in a short period of time and without leaving your office.

Once a lien has been identified, insurers and defendants considering settlement of a case should work with plaintiffs to resolve the lien out of the settlement funds. Routinely, medical providers will "compromise" their liens to help a case settle.

Insurers and defendants should condition settlement of a claim on receipt of a Lien Affidavit from the injured party, but note that the Lien Affidavit states that the lien has been paid off, not that the injured party intends to pay.

If all else fails, interplead the settlement or judgment funds into the court and ask the court to determine the validity and/or priority of the liens.

Watch out for the part of the *Integon Indemnity* case that says a hospital suing to foreclose on a lien has no cause of action against a tortfeasor's insurer. *Integon Indemnity Corp. v. Henry Medical Center, Inc.*, 235 Ga. App. 97, 100, 508 S.E.2d 476 (1998). At the time *Integon Indemnity* was decided it followed the medical lien statute, but the statute was amended in 2002 to explicitly provide a cause of action against the tortfeasor's insurer. O.C.G.A. § 44-14-473(a).

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