

1 Cameron C. Artigue #011376
2 Christopher L. Hering #028169
3 **GAMMAGE & BURNHAM, P.L.C.**
4 TWO NORTH CENTRAL AVENUE
5 15TH FLOOR
6 PHOENIX, AZ 85004
7 TELEPHONE (602) 256-0566
8 FAX (602) 256-4475
9 EMAIL CARTIGUE@GBLAW.COM

6 *Attorneys for Defendants*

8 SUPERIOR COURT OF ARIZONA
9 MARICOPA COUNTY

10 AMBER WINTERS, et al.,
11 Plaintiffs,
12 vs.
13 BANNER HEALTH INC., et al.,
14 Defendants.
15

No. CV2012-007665

**MOTION TO ALTER OR AMEND
JUDGMENT**

(Oral Argument Requested)

16 Defendants respectfully move for an order altering or amending the Court's
17 judgment (the "Judgment") pursuant to Rule 59(l). The Judgment enjoins Defendants
18 from enforcing a health care provider lien after accepting "any" payment from AHCCCS
19 for a patient's care. The Judgment should instead enjoin Defendants from enforcing
20 health care provider liens "only to the extent of the covered services for which Defendant
21 has received any payment from AHCCCS." Two examples illustrate why that change is
22 necessary.

23 *First*, some patients receive AHCCCS benefits for only emergency services under
24 the Federal Emergency Services Program ("FES Program"). Under the FES Program,
25 AHCCCS pays the hospital for emergency services, but not for the rest of the patient's
26 hospital stay. *See* 8 U.S.C. §§ 1611, *et seq.*; A.R.S. § 36-2903.03; A.A.C. §§ R9-22-217

1 & R9-22-712.70. A hospital that treats an FES Program patient and receives payment for
2 those emergency services could potentially lose *all* of its lien rights—even for non-
3 emergency services on which AHCCCS did not pay.

4 *Second*, A.A.C. R9-22-204(C) limited AHCCCS’ inpatient hospital coverage to 25
5 calendar days for admissions before October 1, 2014. Under that rule, if an AHCCCS
6 beneficiary was hospitalized for more than 25 days, AHCCCS generally would not pay
7 for care beyond the 25th day.

8 An example from a non-defendant hospital illustrates. A patient was hospitalized
9 from March 27, 2014 through June 6, 2014, or 71 days. The patient’s charges totaled
10 nearly \$2.3 million. AHCCCS, however, covered only the first 25 days of the patient’s
11 hospitalization, paying \$53,110.27 for that care. AHCCCS paid nothing for the
12 remaining 46 days of treatment.

13 Would the Judgment allow a Defendant-hospital to enforce a health care provider
14 lien under these circumstances? The answer is clearly “no” as to the 25 days on which
15 AHCCCS paid. But what about the remaining 46 days? Arguably, the answer is still no.
16 Even though AHCCCS paid nothing for those 46 days of treatment, the hospital still
17 received *some* payment from AHCCCS for the patient’s care. By accepting payment
18 from AHCCCS for the first 25 days of treatment, the hospital could potentially lose *all* of
19 its lien rights—even as to treatment days that are not covered by AHCCCS.

20 These examples illustrate how the Judgment, as presently worded, could bar the
21 hospital from enforcing a lien *even for care for which AHCCCS did not pay*. Although
22 the law abhors a forfeiture, *First Fed. Sav. & Loan Ass'n of Phoenix v. Ram*, 135 Ariz.
23 178, 180, 659 P.2d 1323, 1325 (App. 1982), that is exactly what the Judgment could
24 effect.

25 Such a result is not consistent with the Court’s ruling on the merits. The Court
26 held that Defendants could not “balance bill”—that is, enforce a health care provider lien

1 after accepting payment from AHCCCS. If AHCCCS does not pay at all for particular
2 care, the prohibition against “balance billing” would not apply—and the hospital should
3 retain its lien rights as to the uncovered care.

4 Defendants are mindful that they have now objected to the Judgment’s wording on
5 multiple occasions. But that is because Defendants treat their obligations under the
6 Judgment seriously. Although Defendants believe that the Judgment would *not* apply
7 under the circumstances noted above, Defendants recognize that there are colorable
8 arguments to the contrary. Defendants therefore prefer to resolve this issue now, rather
9 than in the context of a motion for contempt.

10 The Court should alter the Judgment to bar lien enforcement “only to the extent of
11 the covered services for which Defendant has received any payment from AHCCCS.”

12 RESPECTFULLY SUBMITTED this 26th day of November, 2014.

13 GAMMAGE & BURNHAM, P.L.C.

14
15 By /s/ Christopher L. Hering
16 Cameron C. Artigue
17 Christopher L. Hering
18 Two North Central Avenue, 15th Floor
19 Phoenix, Arizona 85004
20 *Attorneys for Defendants*
21
22
23
24
25
26

1 FILED electronically with the Clerk of
2 the Court this 26th day of November,
3 2014.

4 COPIES mailed this 26th day of
5 November, 2014 to:

6 B. Lance Entrekin
7 THE ENTREKIN LAW FIRM
8 One East Camelback Road, #710
9 Phoenix, Arizona 85012
10 *Attorneys for Plaintiffs*

11 Geoffrey Trachtenberg
12 LEVENBAUM TRACHTENBERG, PLC
13 362 N. Third Avenue
14 Phoenix, Arizona 85003
15 *Attorneys for Plaintiffs*

16 L. Eric Dowell
17 Kerry S. Martin
18 OGLETREE, DEAKINS, NASH,
19 SMOAK & STEWART, P.C.
20 2415 East Camelback Road, Suite 800
21 Phoenix, Arizona 85016
22 *Attorneys for Defendant Kingman*
23 *Regional Medical Center*

24
25
26
/s/ Brenda J. St. Clair