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11 SUPERIOR COURT OF ARIZONA
12 MARICOPA COUNTY

13 AMBER WINTERS, et al.,

14 Plaintiffs,

15 vs.

16 BANNER HEALTH INC., et al.,

17 Defendants.

No. CV2012-007665

**REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO
ALTER OR AMEND JUDGMENT**

18 Plaintiffs appear to oppose Defendants' requested clarification to the judgment
19 simply for the sake of doing so. They have offered no reason for the Court to deny
20 Defendants' motion to alter the judgment.

21 **I. Plaintiffs blow the scope of the requested clarification out of proportion.**

22 Defendants seek a straight-forward clarification to the Court's judgment. The
23 judgment should enjoin Defendants from enforcing health care provider liens for care for
24 which AHCCCS has made payment. If AHCCCS paid for care—that is, AHCCCS
25 covered the care—the injunction would apply, barring the hospital from asserting a lien
26 for additional payment. If AHCCCS did not pay for care—that is, the care was not
covered by AHCCCS—the injunction would not apply, and the hospital would retain its
lien rights.

1 This is consistent with the Court’s ruling on the merits and the case law. The
2 Court held that federal law prohibits the practice of “balance billing,” the use of liens to
3 collect *additional amounts* beyond the AHCCCS payment. If AHCCCS did not pay for
4 the care, the hospital is not “balance billing” by enforcing a lien for that care. *See Miller*
5 *v. Gorski Wladyslaw Estate*, 547 F.3d 273, 284 (5th Cir. 2008) (“[T]he limitations on a
6 health care provider’s ability to obtain reimbursement for the services it provides a
7 Medicaid-eligible patient are not triggered until a provider bills and accepts payment
8 from Medicaid *for those services.*” (emphasis added)).

9 For some reason, this request has triggered a hysterical reaction from Plaintiffs.
10 Plaintiffs “le[ft] aside the fact that Defendants’ desired wording is so broad as to impose
11 no practical limits on Defendants whatsoever.” Resp. at 2. But why? If Defendants’
12 proposed language is really too broad, shouldn’t Plaintiffs be able to articulate how that is
13 so? Perhaps Plaintiffs left this argument aside because they know it is meritless.

14 Similarly, Plaintiffs claim that the clarification seeks “a vague and extraordinarily
15 broad right to continue asserting balance billing liens.” Resp. at 4. Again, Plaintiffs
16 failed to explain how that is so. The clarification **would not permit “balance billing”**
17 **liens**—if AHCCCS paid for the care, the hospital could not enforce a lien to recover
18 additional funds for that care.

19 Next, Plaintiffs characterize the two situations flagged by Defendants as “purely
20 hypothetical”—even though the alleged “contemptuous conduct” complained about later
21 by Plaintiffs’ counsel concerns *exactly one of those scenarios*. The situations flagged by
22 Defendants are real and can involve six- or seven-figure amounts.

23 Finally, Plaintiffs cite cases that do not support their position. Resp. at 3.
24 *Olszewski*, *Evanston Health*, and *Public Health Trust* all held that providers could not use
25 liens to collect *additional amounts* beyond the Medicaid payment. They never held that
26 providers could not use liens to collect for care that Medicaid did not cover at all.

1 Plaintiffs' overheated rhetoric is not supported by anything of substance. The
2 Court should clarify that lien enforcement is barred "only to the extent of the covered
3 services for which Defendant has received any payment from AHCCCS."

4 **II. Plaintiffs' counsel has falsely accused Defendants' counsel of misconduct.**

5 On behalf of a non-defendant hospital, Defendants' counsel argued that the
6 judgment does *not* bar lien enforcement for inpatient hospital care that exceeds
7 AHCCCS' 25-day coverage limit. Based on that, Plaintiffs' counsel has wrongfully
8 accused Defendants' counsel of "contemptuous conduct."

9 According to Plaintiffs' counsel, Defendants conceded in this motion that the
10 judgment prohibits lien enforcement even for care for which AHCCCS did not pay. This
11 is ludicrous. First, Plaintiffs' counsel quoted Defendants' *description* of the judgment:
12 "The Judgment enjoins Defendants from enforcing a health care provider lien after
13 accepting 'any' payment from AHCCCS for a patient's care." Resp. at 5. Second,
14 Plaintiffs' counsel quoted Defendants' description of the judgment's *potential effect* in
15 the absence of clarification: "[T]he Judgment, as presently worded, could bar the
16 hospital from enforcing a lien *even for care for which AHCCCS did not pay.*" Resp. at 5.
17 Neither of these statements are concessions.

18 Conveniently, Plaintiffs' counsel omitted this statement by Defendants *from the*
19 *exact same motion*:

20 Although Defendants believe that the Judgment would *not* apply
21 under the circumstances noted above [non-emergency services
22 given to FES Program patients or care given beyond the 25-day
23 limit on inpatient coverage], Defendants recognize that there are
colorable arguments to the contrary.

24 Mot. to Alter or Amend J. at 3. Defendants certainly did not *concede* that the judgment
25 applies to non-covered services. In fact, the letter and the motion take the exact same
26 position: that the judgment *in fact* does not bar such lien enforcement.

1 The Court might want to remind Plaintiffs' counsel of their duty of candor to the
2 tribunal, *see* ER 3.3 & Rule 11, and warn them against levelling baseless accusations of
3 misconduct. In any event, Plaintiffs' counsel's broadside shows that the Court should
4 impose a meet and confer requirement before any party may file a motion for contempt.¹
5 Otherwise, disputes over the scope of the injunction will quickly become requests for
6 contempt sanctions.

7 **III. Conclusion.**

8 The Court should clarify once and for all that the judgment does not preclude
9 Defendants from enforcing liens to pay for care that was not covered by AHCCCS. Lien
10 enforcement should be barred "only to the extent of the covered services for which
11 Defendant has received any payment from AHCCCS."

12 RESPECTFULLY SUBMITTED this 14th day of January, 2015.

13 GAMMAGE & BURNHAM, P.L.C.

14 By /s/ Christopher L. Hering

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25 _____
26 ¹ The Court should summarily deny Plaintiffs' counsel's request for an order directing
Defendants' counsel to provide a copy of the judgment "to any AHCCCS patient or
AHCCCS patient representative."

1 FILED electronically with the Clerk of
2 the Court this 14th day of January, 2014
3 and COPIES mailed this 14th day of
4 January, 2014 to:

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