

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-007665

11/07/2014

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
S. Uppendahl
Deputy

AMBER WINTERS, et al.

GEOFFREY M TRACHTENBERG
B LANCE ENTREKIN

v.

BANNER HEALTH NETWORK, et al.

CHRISTOPHER L HERING

L ERIC DOWELL
DOCKET-CIVIL-CCC

JUDGMENT

The above-captioned suit was filed as a putative class action on May 8, 2012. On April 8, 2013, the Court dismissed claims against Defendant Kingman Regional Medical Center (“KRMC”) on the basis that they were “moot” since KMRC released the liens that Plaintiffs asked the Court to declare unenforceable.

The remaining hospital Defendants consists of Banner Health Network dignity Health, Scottsdale Health Corp., Northwest Hospital, LLC, Northern Arizona Healthcare Corp., University Medical Center Corp., Carondelet Health Network, Tucson Medical Center, and John C. Lincoln Health Network (the “hospital Defendants”).

On May 21, 2013, the Court certified a class of Plaintiffs pursuant to Rule 23(b)(2), Ariz.R.Civ.Proc. That class consists of: (a) individuals who have incurred medical bills at an Arizona hospital owned or operated by one of the hospital Defendants; (b) from May 8, 2006 to the present; (c) the hospital billed AHCCCS for some portion of the individual’s hospital bills; (d) the hospital has recorded a lien against personal injury proceeds for some portion of the individual’s hospital bills which have not been paid by AHCCCS, pursuant to A.R.S. § 36-2903.01(G)(4) and related statutes; and (e) the individual has not paid the hospital to release the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-007665

11/07/2014

lien (hereinafter the “Open Lien Plaintiffs” and, with respect to liens recorded by hospital Defendants, “Open Liens”).

WHEREAS the hospital Defendants and Open Lien Plaintiffs all moved for summary judgment and, on January 17, 2014, the Court denied the hospital Defendants’ Motion for Summary Judgment and granted the Open Lien Plaintiffs’ Motion for Summary Judgment.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 1) that the portion of A.R.S. § 36-2903.01(G)(4), which purports to allow a “hospital to collect any unpaid portion of its bill from other third-party payers or in situations covered by title 33, chapter 7, article 3,” is preempted by 42 U.S.C. § 1396a(a)(25)(C) and/or 42 C.F.R. §447.15;
- 2) that the practice of the hospital Defendants’ asserting Healthcare Provider Liens against personal injury recoveries of patients, pursuant to A.R.S. § 33-931 *et seq.*, or any other state statute, after having received *any* payment from AHCCCS for the patient’s care, is held to be unlawful and in violation of 42 U.S.C. § 1396a(a)(25)(C) and/or C.F.R. § 447.15;
- 3) that any lien or claim against a patient’s personal injury recovery by any hospital Defendant, whether pending at that time of or filed after one of the hospital Defendants received *any* payment from AHCCCS for the same patient’s care, is void and unenforceable in light of 42 U.S.C. §1396a(a)(25)(C) and/or 42 C.F.R. § 447-15;
- 4) that, pursuant to A.R.S. § 12-1831 *et seq.*, the hospital Defendants are permanently enjoined from filing or asserting any lien or claim against a patient’s personal injury recovery, after having received *any* payment from AHCCCS for the same patient’s care;
- 5) that, pursuant to A.R.S. § 12-1831 *et seq.*, the hospital Defendants are hereby ordered to release and discharge all Open Liens on which the hospital has had contact with a patient, attorney or insurance carrier adjuster [the known Open Liens] within ten [10] calendar days of this Judgment;
- 6) That, pursuant to A.R.S. § 12-1831 *et seq.*, the hospital Defendants are hereby ordered to release and discharge all Open Liens within five (5) calendar days of this Judgment after oral or written request;

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-007665

11/07/2014

- 7) that the Settlement Procedures order entered on October 9, 2013, is hereby vacated, without prejudice to the validity of any settlement completed by the hospital Defendants pursuant to that order.
- 8) that, upon consideration of the Plaintiffs' Application for Attorneys' Fees and supporting evidence, the Court awards attorneys' fees in the amount of \$621,520 to Lance Entrekin P.C. and attorney's fees in the amount of \$602,381.75 to Levenbaum Tractenberg PLC, against the hospital Defendants jointly and severally, together with post-judgment interest at the prime rate plus 1%, which is currently 4.25%, from the date of this Judgment;
- 9) that, pursuant to A.R.S. § 12-1840, the Court hereby awards taxable costs in the amount of \$1,512.58 against the hospital Defendants jointly and severally, together with post-judgment interest at the prime rate plus 1%, which is currently 4.25%, from the date of this Judgment; and,
- 10) that all claims against KRMC are dismissed on the grounds that they are moot.

Notwithstanding any of the foregoing, the Court is not making a determination at this time whether or not hospitals are, in the case of AHCCCS eligible or enrolled patients, required to bill AHCCCS. Nothing in this Order shall be construed as a determination, one way or the other, as to whether or not a hospital can elect to bill AHCCCS where a patient is eligible or enrolled in the AHCCCS program.

No further matters remain pending and judgment is entered, as described hereinabove, pursuant to Rule 54(c), Ariz.R.Civ.Proc.

DATED this 10 day of November, 2014

/s/ HONORABLE J. RICHARD GAMA

HON. J. RICHARD GAMA
JUDICIAL OFFICER OF THE SUPERIOR COURT