NEW YORK STATE

LAW REVISION COMMISSION

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STATE OF NEW YORK

LAW REVISION COMMISSION

Act, Recommendation and Study relating to Determination of the Validity and Extent of Hospital Liens in Advance of Judgment or Settlement in Personal Injury Action

SUBMITTED WITH

Senate Introductory No. 229, Printed Nos. 229, 2093

Assembly Introductory No. 157, Printed Nos. 157, 2331

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1949

Senate Introductory No. 229, Printed Nos. 229, 2093

Assembly Introductory No. 157, Printed Nos. 157, 2331

AN ACT

To amend the lien law and the civil practice act, in relation to determination of the validity and extent of hospital liens in advance of judgment or settlement in personal injury actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section one hundred eighty-nine of the lien law, such section having been added by chapter five hundred thirty-four of the laws of nineteen hundred thirty-six and subdivision four thereof having been amended by chapter two hundred ninety of the laws of nineteen hundred thirty-nine, is hereby amended to read as follows:

1. Every corporation incorporated under general law or special act as a charitable institution maintaining a hospital in the state supported in whole or in part by charity, and every county, city, town or village operating and maintaining a hospital shall to the extent hereinafter provided have a lien upon any and all rights of action, suits, claims, counterclaims or demands of any person admitted to any such hospital and receiving treatment, care and maintenance therein, on account of any personal injuries received within a period of one week prior to admission to the hospital and as the result of the negligence of any other person or persons or corporation, which any such injured person or the legal representative of such injured person, in case of death as the result of such injuries, may or shall have, assert or maintain against any such other person or corporation for damages on account of such injuries, for the amount of the reasonable charges of such hospital, for such treatment, care and maintenance of such injured person at cost rates in such hospital. *Charges for services rendered by any physician or surgeon shall not be included in cost rates except to the extent that the hospital has paid as a result of a legal obligation or is legally obligated to pay such charges.* No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the county clerk of the county in which such hospital is located, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, registered and postage prepaid, a copy of such notice with a

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

statement of the date and place of filing thereof to the person or persons, firm or firms, corporation or corporations, alleged to be liable to the injured party for the injuries sustained prior to the payment to such injured person, his attorneys or legal representatives, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability. Such filing and mailing shall be deemed to be effective notwithstanding any inaccuracy or omission therein if the information contained therein shall be sufficient to enable the person or persons or corporation alleged to be liable, by the exercise of reasonable diligence, to identify the injured person, the occurrence upon which the claim for damages is based and the name and address of the hospital asserting the lien. Any hospital claiming a lien hereunder shall, in addition to the foregoing, file in the said county clerk's office within five days of the discharge of any injured person, an additional notice of lien, duly verified, which shall show the total hospital charges which have accrued and no lien hereunder shall exceed this amount.

§ 2. Such section one hundred eighty-nine of the lien law is hereby amended by inserting therein a new subdivision, to be subdivision six-a, to read as follows:

6-a. At any time after the filing and mailing of the notices of lien as provided in subdivision one of this section, such injured person, or his legal representative in case of death, or such hospital, or any person, firm or corporation alleged to be liable to the injured person or to his legal representative, may apply for an order determining the validity of such lien and fixing the amount thereof. Such application shall be made to the court in which an action to recover damages for the injury or death hereinabove described brought by such injured person or his legal representative is pending or to the surrogate of the county wherein letters have been issued to the executor or administrator of the injured person, or, if no such action is pending, to any court which would have jurisdiction of such an action or to the surrogate of the county wherein letters have been issued to the executor or administrator of the injured person. Such application shall be made upon not less than five nor more than ten days notice. Notice of the application shall be served upon the following persons, other than the applicant: (a) the person, firm or corporation alleged to be liable to the injured person or to his legal representative, (b) the hospital, (c) the injured person or his legal representative. If an action is pending, service upon any party thereto may be made upon his or its attorney. Upon the return of such application and the determination of the validity of such lien, an immediate hearing to determine the amount of the reasonable charges of such hospital for the treatment, care, and maintenance of such injured person at cost rates shall forthwith be ordered before the court and a jury, or, if a jury be waived, before the court or a referee. A copy of the order upon such application, with notice of entry, shall be served by the party making the application on every person, firm or corporation served with notice of the application, or upon his or

its attorney appearing upon the application, and the sum fixed in said order shall constitute the extent of the lien provided in this section.

§ 3. Subdivision nine of such section one hundred eighty-nine of the lien law is hereby amended to read as follows:

9. Upon the order of any court of record having jurisdiction in the premises, any person, persons or corporation against whom a lien shall have been filed and served may deposit the amount of any settlement or judgment less the amount of any other liens or claims against such moneys superior to such hospital lien, with the county treasurer in the county in which the lien is filed, except, in a county within the city of New York where such deposit shall be made with the city [chamberlain] *treasurer* of such city, and the person, persons or corporation so depositing shall be discharged from all liability in connection with such lien which lien shall attach to the fund so deposited.

§ 4. Subdivision ten of such section one hundred eighty-nine of the lien law is hereby amended to read as follows:

10. Any such lien may be enforced by action [or law] against the person, persons or corporations claimed to be liable or against the fund deposited as hereinbefore provided in any court of record.

§ 5. Section three hundred seventy-four-a of the civil practice act, as added by chapter five hundred thirty-two of the laws of nineteen hundred twenty-eight and amended by chapter five hundred twenty-three of the laws of nineteen hundred forty-seven, is hereby amended to read as follows:

§ 374-a. Admissibility of certain written records. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of said act, transaction, occurrence or event, if the trial judge shall find that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence or event, or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term business shall include business, profession, occupation and calling of every kind. The terms "writing" and "record" as used herein shall include a hospital bill provided it bears a certification by the superintendent, acting superintendent or other head of the hospital that the bill is true and correct, that each of the items shown thereon was necessarily furnished or supplied and that the amount charged therefor is the fair and reasonable value thereof. A bill bearing such certification shall be admissible in evidence under this section and shall be prima facie evidence of the facts therein contained subject, however, to rebuttal by any party affected thereby. The provisions of this section governing the admissibility in evidence of certain hospital bills shall not apply to any action or proceeding in a surrogate's court nor to any action or proceed-

ing in any court instituted by or on behalf of or in the right of a hospital to recover payment for accommodations or supplies furnished or for services rendered by or in such hospital, *or to an application pursuant to section one hundred eighty-nine of the lien law to determine the validity and extent of the lien of a hospital.*

§ 6. This act shall take effect immediately.

(NOTE: These are amendments recommended by the Law Revision Commission. See Leg. Doc. (1949) No. 65 (D). Their purpose is to facilitate settlement of personal injury actions by providing a procedure to determine promptly the validity and extent of claimed liens of a hospital after filing and mailing notice of lien. They also provide that charges for personal services of physicians and surgeons are excluded from the lien of the hospital, except in a case where the hospital has paid such charges, as a result of a legal obligation, or is legally obligated to pay them. A conformity change is made in section 374-a of the Civil Practice Act.)

RECOMMENDATION OF THE LAW REVISION COMMISSION TO THE LEGISLATURE

Relating to Determination of the Validity and Extent of Hospital Liens in Advance of Judgment or Settlement in Personal Injury Action

In 1936, Lien Law, section 189, was enacted, giving to hospitals supported in whole or in part by charity, and to municipal corporations operating and maintaining a hospital, a lien for the amount of the reasonable charges at "cost rates" for care of persons injured or who died as a result of the negligence of a third party, where such injuries were received within one week prior to the admission to the hospital. This lien attaches to any verdict, decision, decree, judgment or final order in any action brought against the third party, and to the proceeds of any settlement or compromise of such action and to the proceeds of any settlement or compromise of a claim or cause of action prior to action being brought. Elaborate procedural details are included relating to the filing of notice of lien, discharge thereof, stay of execution on the judgment, satisfaction of the lien, and enforcement thereof. There is, however, no provision relative to judicial determination of the validity of the lien itself or of the amount thereof prior to judgment, and the cases would seem to deny a remedy to fix the amount of the lien prior to judgment, although in some cases, an attempt to fix the amount has been made. (*Cf. Finkel* v. *Kushner*, 183 Misc. 64, *aff'd.* 268 App. Div. 912 (1944); *Ferguson* v. *Ruppert*, 166 Misc. 427 and 530 (1938); *David* v. *Billor*, 188 Misc. 267 (1946). See also *De Sola* v. *Farino*, 172 Misc. 571 (1939); *O'Connor* v. *Higgins*, N. Y. L. J., July 13, 1948.)

The absence of a means of determining promptly the validity of the lien or the amount thereof prior to judgment seriously impedes settlements of personal injury actions in any case where the injured person considers the amount of the claimed lien excessive. If he settles without regard to the amount of the hospital lien, he does so at the peril of not being able to maintain his position with respect to the excessiveness of the lien. In addition, the proceeds of any settlement or judgment are impounded for the time during which the hospital may sue to enforce its lien. The result is wholly unjust to the injured person. Furthermore, calendars are clogged with personal injury actions which might be avoided if some method to determine the amount and validity of hospital liens were provided.

That the present law has resulted in a demand for legislative relief is indisputable. Since 1937, one year after the enactment of the statute, fourteen bills to provide this relief, many several times amended, have been introduced in the legislature. Since 1941,

bills have been introduced annually.* Indeed in deciding that no remedy exists to test the validity and amount of the lien in case of settlements, Mr. Justice Hooley wrote in *Finkel* v. *Kushner, supra*:

> This court is in full sympathy with the justice of the procedure suggested in the two cases last cited. However, the view of that court in that respect was obiter dictum. In addition, the whole subject of hospital liens is a creation of the statute and the statute creating the lien has provided the machinery for testing its validity. This court may not create new methods for testing the lien's validity and extent. This is a matter to which the Legislature of the State may well give its attention by adding suitable provisions to section 189 of the Lien Law which would enable a party interested, even before settlement of the action, to test expeditiously the validity and reasonableness of a hosital lien, a subject which has given the Bench and Bar some concern in recent years.

The Commission has studied the subject in response to this demand, and is proposing herewith a means to test the validity and extent of the lien in advance of judgment or settlement.

Most of the bills previously introduced fall into two categories. One group provided that the amount of the proposed settlement would be a determinant factor in arriving at a reasonable value of the hospital charge. The other group attempted to limit the amount of the lien to a fixed percentage of the amount of the recovery. The 1946 bill differed from both of these groups in that it attempted, in the case of ward patients, to fix the amount of cost rates by application of the rates settled by agreement between the hospitals of the state and workmen's compensation insurance carriers.

The bill hereafter proposed differs from all of the bills heretofore before the legislature. Instead of attempting to lay down a formula for determining the amount of the hospital charge, it provides a method whereby the injured person, or his legal representative in the case of death of the injured person, or the hospital, or the person alleged to be liable, may apply to the court for an order determining the validity of the lien and fixing the amount thereof, whether or not an action is pending, at any time after the filing and mailing of notice of the hospital lien. This application is made on notice to all the other interested parties. An immediate hearing is to be provided, triable by court and jury, or by the

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* 1937: Sen. Int. No. 2091, Pr. No. S. 2625, A. Int. No. 2526, Pr. No. A. 3167; 1941: A. Int. No. 1789, Pr. No. 2129; A. Int. No. 1578, Pr. Nos. 1850, 2268, 2740, 2907; A. Int. No. 505, Pr. No. 518; 1942: A. Int. No. 1212, Pr. Nos. 1400, 2210, 2451; 1943: Sen. Int. No. 1475, Pr. No. 1731, A. Int. No. 1221, Pr. Nos. 1372, 2038, 2256; 1944: A. Int. No. 12, Pr. Nos. 13, 337; 1945: A. Int. No. 373, Pr. No. 373 (recalled from the Governor), A. Int. No. 154, Pr. Nos. 154, 1289; A. Int. No. 1273, Pr. No. 1372; 1946: A. Int. No. 1811, Pr. No. 1966; Sen. Int. No. 556, Pr. No. S. 568, A. 2231 (vetoed); 1947: A. Int. No. 895, Pr. No. 905; 1948: A. Int. No. 2148, Pr. No. A. 2287, Sen. Int. No. 2382, Pr. No. S. 2627.

court if a jury is waived. The application results in an order fixing the amount of the lien.

The Commission believes that the statutory lien, for the protection of the hospital and the injured party alike, should be thus subject to judicial scrutiny as to its validity and amount. In the long run, delay in settlement of personal injury actions seriously hinders the collection of hospital charges, and puts a great burden on injured persons who are forced to trial because of the claimed excessiveness of the hospital charge. The statute, in its present form and as proposed to be amended, does not affect the amount or validity of the *debt* which the patient owes the hospital. All that is here proposed to be affected is the method for determining the validity and amount of the *hospital lien.*

The Commission further believes that the amount of the lien should not include charges for personal services rendered by physicians and surgeons except in cases where the hospital has paid for such services or where it is under a legal obligation to pay for them. The statute was enacted to provide the hospital with *security* for "cost rates" for treatment, care and maintenance of the injured person in such hospital. It was not intended to define the amount the injured person owed, or to provide security for all charges in excess of "cost rates". Unless the physicians' or surgeons' charges are actually part of the direct cost of treatment, care and maintenance, it is obvious that they should not be included in the amount of the lien.

The statute proposed also corrects certain obvious errors (subdivisions 9 and 10). Civil Practice Act, section 374-a should be clarified to exclude from its operation the proceeding under Lien Law, section 189.

The Commission therefore recommends:

I. That subdivision one of section 189 of the Lien Law be amended to read as follows:

> 1. Every corporation incorporated under general law or special act as a charitable institution maintaining a hospital in the state supported in whole or in part by charity, and every county, city, town or village operating and maintaining a hospital shall to the extent hereinafter provided have a lien upon any and all rights of action, suits, claims, counterclaims or demands of any person admitted to any such hospital and receiving treatment, care and maintenance therein, on account of any personal injuries received within a period of one week prior to admission to the hospital and as the result of the negligence of any other person or persons or corporation, which any such injured person or the legal representative of such injured person, in case of death as the result of such injuries, may or shall have, assert or maintain against any such other person or corporation for damages on account of such injuries, for the amount of the reasonable charges of such hospital, for such treatment, care and maintenance of such injured person at cost rates in such hospital. *Charges for*

services rendered by any physician or surgeon shall not be included in cost rates except to the extent that the hospital has paid as a result of a legal obligation or is legally obligated to pay such charges. No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the county clerk of the county in which such hospital is located, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, registered and postage prepaid, a copy of such notice with a statement of the date and place of filing thereof to the person or persons, firm or firms, corporation or corporations, alleged to be liable to the injured party for the injuries sustained prior to the payment to such injured person, his attorneys or legal representatives, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability. Such filing and mailing shall be deemed to be effective notwithstanding any inaccuracy or omission therein if the information contained therein shall be sufficient to enable the person or persons or corporation alleged to be liable, by the exercise of reasonable diligence, to identify the injured person, the occurrence upon which the claim for damages is based and the name and address of the hospital asserting the lien. Any hospital claiming a lien hereunder shall, in addition to the foregoing, file in the said county clerk's office within five days of the discharge of any injured person, an additional notice of lien, duly verified, which shall show the total hospital charges which have accrued and no lien hereunder shall exceed this amount.

II. That a new subdivision 6-a be added to section 189 of the Lien Law, to read as follows:

6-a. At any time after the filing and mailing of the notices of lien as provided in subdivision one of this section, such injured person, or his legal representative in case of death, or such hospital, or any person, firm or corporation alleged to be liable to the injured person or to his legal representative, may apply for an order determining the validity of such lien and fixing the amount thereof. Such application shall be made to the court in which an action to recover damages for the injury or death hereinabove described brought by such injured person or his legal representative is pending or to the surrogate of the county wherein letters have been issued to the executor or administrator of the injured person, or, if no such action is pending, to any court which would have jurisdiction of such an action or to the surrogate of the county

wherein letters have been issued to the executor or administrator of the injured person. Such application shall be made upon not less than five nor more than ten days notice. Notice of the application shall be served upon the following persons, other than the applicant: (a) the person, firm or corporation alleged to be liable to the injured person or to his legal representative, (b) the hospital, (c) the injured person or his legal representative. If an action is pending, service upon any party thereto may be made upon his or its attorney. Upon the return of such application and the determination of the validity of such lien, an immediate hearing to determine the amount of the reasonable charges of such hospital for the treatment, care, and maintenance of such injured person at cost rates shall forthwith be ordered before the court and a jury, or, if a jury be waived, before the court or a referee. A copy of the order upon such application, with notice of entry, shall be served by the party making the application on every person, firm or corporation served with notice of the application, or upon his or its attorney appearing upon the application, and the sum fixed in said order shall constitute the extent of the lien provided in this section.

III. That subdivision nine of section 189 of the Lien Law be amended to read as follows:

9. Upon the order of any court of record having jurisdiction in the premises, any person, persons or corporation against whom a lien shall have been filed and served may deposit the amount of any settlement or judgment less the amount of any other liens or claims against such moneys superior to such hospital lien, with the county treasurer in the county in which the lien is filed; except, in a county within the city of New York where such deposit shall be made with the city [chamberlain] *treasurer* of such city, and the person, persons or corporation so depositing shall be discharged from all liability in connection with such lien which lien shall attach to the fund so deposited.

IV. That subdivision ten of section 189 of the Lien Law be amended to read as follows:

10. Any such lien may be enforced by action [or law] against the person, persons or corporations claimed to be liable or against the fund deposited as hereinbefore provided in any court of record.

V. That section 374-a of the Civil Practice Act be amended to read as follows:

§ 374-a. Admissibility of certain written records. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of said act, transaction, occurrence or event, if the trial

judge shall find that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence or event, or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term business shall include business, profession, occupation and calling of every kind. The terms "writing" and "record" as used herein shall include a hospital bill provided it bears a certification by the superintendent, acting superintendent or other head of the hospital that the bill is true and correct, that each of the items shown thereon was necessarily furnished or supplied and that the amount charged therefor is the fair and reasonable value thereof. A bill hearing such certification shall be admissible in evidence under this section and shall be prima facie evidence of the facts therein contained subject, however, to rebuttal by any party affected thereby. The provisions of this section governing the admissibility in evidence of certain hospital bills shall not apply to any action or proceeding in a surrogate's court nor to any action or proceeding in any court instituted by or on behalf of or in the right of a hospital to recover payment for accommodations or supplies furnished or for services rendered by or in such hospital, *or to an application pursuant to section one hundred eighty-nine of the lien law to determine the validity and extent of the lien of a hospital.*

Submitted herewith is a study made under the direction of the Commission.

Dated, *December* 15, 1948.

BY THE LAW REVISION COMMISSION:

JOHN W. MACDONALD,
Executive Secretary
and Director of Research.

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LIEN LAW, SECTION 189; PROCEDURE FOR DETERMINING REASONABLENESS OF HOSPITAL LIEN IN ADVANCE OF SETTLEMENT OF PERSONAL INJURY ACTION*

I. The Problem

Lien Law, section 189 was enacted by L. 1936, c. 534[1] except for an amendment of subdivision 4 relating to filing fees (L. 1939, c. 290) it has remained unchanged since its enactment. Subdivision 1 provides that every voluntary and municipal hospital has a lien upon all rights of action, suits, claims, counterclaims or demands of anyone receiving treatment, care and maintenance therein for personal injuries received as the result of the negligence of another within one week prior to admission to such hospital. The lien extends also to the rights of action, suits, claims, counterclaims or demands of the legal representative of the patient, in case of death as the result of such injuries. The lien is "for the amount of the reasonable charges of such hospital, for such treatment, care and maintenance of such injured person at cost rates in such hospital." Its effectiveness is conditioned upon the filing of a notice of lien in the office of the county clerk, and the mailing of such notice to those allegedly liable for the injuries, prior to the payment of any moneys as compensation to the injured person, his attorneys, or legal representatives.

Under subdivision 2 of the statute, the lien attaches to any verdict, decision, decree, judgment or final order; to the proceeds of the settlement or compromise of any suit, action or proceeding effected before any verdict, decision, decree, judgment or final order is rendered; and to the proceeds of the settlement or compromise of any claim, demand or cause of action effected before the commencement of a suit, action or proceeding thereon.

Provision is made in subdivisions 3 and 10 for the enforcement of the lien by suit at law: the suit, under subdivision 3, may be brought within one year from the date of payment against one making payment to the injured person or his legal representative.

Subdivisions 9 and 10 provide a means for avoidance of liability for a double payment of the hospital's charges on the part of the defendant, by deposit of the amount of the settlement or judgment with the county treasurer or, in New York, with the city chamberlain; the hospital may then enforce its lien by a suit at law against the person or corporation claimed to be liable or against the fund on deposit.

The problem involved in this study is the lack of provision for testing the validity and extent of the claimed lien of the hospital, in advance of settlement. When an offer of settlement is made,

* This study was made by the Law Revision Commission, under the direction of the Executive Secretary and Director of Research, who was assisted by Mary A. Beck, Research Assistant.

[1] The statute is set forth in the Appendix, p. 32.

there is no way by which counsel for either side can know whether the lien asserted by the hospital is (1) properly filed and therefore valid, or (2) correct in amount. The only proceeding provided in the statute for the determination of these questions is the action at law to be instituted by the hospital to enforce its lien, *after* payment by a third person to the injured person or *after* deposit of the amount of the settlement or judgment.

II. Judicial Construction of Lien Law, Section 189

A. Amount of Lien

The courts have varied in their interpretation of the proceedings available under this statute to test the amount of the lien. In *Finkel* v. *Kushner*,[2] an offer was made to settle a death action for $5000. The hospital which cared for decedent submitted a bill and filed a lien for $1,848.27, and plaintiff administrator refused to accept the offer of settlement because the amount left for the family of the decedent would be insubstantial. He also objected that the items of the hospital bill were unreasonable, and sought unsuccessfully to arrange a compromise with the hospital. On a motion to set aside the lien, he prayed that a referee be appointed to determine the value of the hospital's services.

The motion and prayer for a referee were denied, on the ground that the statute did not authorize such a proceeding. Hooley, J. said:

> The affidavit in support of the motion asks that an order be made directing that a hearing be held before a referee to determine the fair and reasonable value of the services rendered by the hospital. The hospital submits that it has complied with section 189 of the Lien Law in the filing of its lien and that this court does not have authority to either fix the lien or to refer it to a referee to determine the value of the services. It asserts that the method of enforcing the lien in the event of a dispute as to the value of the services has been prescribed by subdivisions 9 and 10 of section 189 of the Lien Law, which provide that the money may be deposited with the City Chamberlain and that the hospital may enforce its lien by action against the person, persons or corporation claimed to be liable or against the fund deposited.
>
> The statute, however, deals only with the cases where a verdict, decision, decree, judgment or final order has been made or rendered in a suit, action or proceeding, or, with the proceeds of a settlement or compromise received either after or before a suit, action or proceeding has been begun. There is no provision made for a situation where, as here, the settlement has not yet been consummated and where its acceptance will depend on what amount will be available to the family of the decedent after all proper claims are paid. The injured party or his representative is without a remedy to test the reasonable-

[2] 183 Misc. 64 (1944) *aff'd without opinion*, 268 App. Div. 912.

ness of the hospital's lien in such a case and thus is deprived of an opportunity to properly evaluate the entire situation in advance of the settlement, being relegated to a defense in an action as, if and when brought by the hospital after the settlement has taken place.

Under the present conditions settlements are impeded and the injured persons are often compelled to pay bills which they feel are unjust and exorbitant in order to avoid the delay and expense involved in the present awkward methods provided by the statute for determination of the reasonableness of the amount of the lien. Such procedure places an undue hardship upon the person injured or his representative.

The *Finkel* case was cited and followed in *O'Connor* v. *Higgins*,[3] where the Special Term of New York County, McNally, J., denied a motion for the determination of the reasonableness of a lien, before settlement of the action. In *De Sola* v. *Farino*,[4] an order of the Municipal Court of the City of New York, fixing the lien of a hospital over its objection on the motion of defendant, was reversed by the Appellate Term, Second Department, on the ground that subdivision 10 of the section requires that the lien be enforced by action and does not permit it to be determined by motion. On the other hand, in *David* v. *Billor*,[5] a motion by the infant plaintiff to fix the amount of the hospital lien was granted by the Supreme Court, Special Term, New York County, and a referee was appointed to hear and report as to the amount of the lien. The lienor's contention that the lien may be determined and fixed only by plenary suit was rejected. The court said at p. 267–268:

> . . . The only specific reference to actions at law contained in section 189 of the Lien Law appears in subdivision 3 which provides that suits at law *may* be brought to enforce the lien by the lienor within the space of one year from payment, in the event such payment of proceeds of the claim has been made to the injured person without regard to the lien. Subdivision 10 further provides "Any such lien may be enforced by action or law against the person, persons or corporations claimed to be liable or against the fund deposited as hereinbefore provided in any court of record." The use of the words "or law" have no meaning unless to reaffirm the availability of any remedy in law theretofore available. There is here no question of the enforcement of the lien. Its validity is not assailed but the injured person seeks to have its amount fixed. Clearly, the ancient power of equity in the protection of its infant wards and the remedies available to it to accomplish that purpose are includable in that language. Were the provisions of subdivision 3 intended to be all-embracive, no need would arise for the inclusion of subdivision 10. Conversely stated, the specific provision for a permissive suit at

[3] N. Y. L. J. July 13, 1948, p. 66.
[4] 172 Misc. 571 (1939).
[5] 188 Misc. 267 (1946).

law in the specified situation implies, in addition to the permissive character, that other situations remain necessarily subjected not alone to suits at law, but are enforcible broadly pursuant to law. . . .

B. Validity of Lien

Although there is no express provision in the statute for testing the validity of the lien except in a suit at law under subdivisions 3 and 10, the following motions directed to that end have been entertained: application to vacate, cancel or discharge liens (1) because of hospital's refusal to permit examination of records as provided in subdivision 5 of the statute,[6] and (2) because the second filing provided for in subdivision 1 was not made[7]; motion for an order determining distribution of proceeds of settlement of a personal injury action, before release by plaintiff (apparently not an infant) was executed, on which motion it was held that the lien did not attach since the settlement was for less than $300[8]; and motion by infant plaintiff and by the father of the infant, joined as party plaintiff, to have the alleged lien of a hospital determined and, if so determined, its extent fixed, on which motion only the validity of the lien was established[9]. Only in the last case, *Ferguson* v. *Ruppert*, did the hospital object to this procedure, submitting proof by affidavit and exhibits as to the validity and extent of the lien but stating that it "appears specially herein merely for the purpose of furnishing the court with the information herein before set forth and does not submit to jurisdiction of this Court on this application and in this manner to determine the validity of or to enforce its lien, by reason of the fact that said Section 189 of the Lien Law prescribes the manner in which such lien must be enforced if not satisfied" (p. 532). This motion followed a prior application of the infant plaintiff to compromise the action,[10] on which the court withheld approval until the hospital was brought into court to prove the validity and extent of its lien, stating that the hospital is bound to show certain facts before its lien may attach, including the reasonableness of its charges and the cost rates in such hospital. In upholding the validity of the lien on this motion, the court after quoting subdivision 10, said (p. 533):

. . .

However, it seems to me that the lien is subject to an order of this court, upon due notice to all parties interested in a proceeding to vacate the lien for want of compliance with the statutory requirements, even though there is no specific provision in the statute suggesting or providing for that relief. If

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[6] Matter of Larchmont Gables, Inc. et al., Petitioners, Mt. Vernon Hospital, Respondent, 188 Misc. 164 (1946).

[7] Groth v. City of New York, 183 Misc. 1026 (1944); Melichar v. Michelson, 256 App. Div. 962 (1939), appeal dismissed because of settlement, 281 N. Y. 665 (1939).

[8] Rookus v. Janowski, 177 Misc. 1075 (1942).

[9] Ferguson v. Ruppert, 166 Misc. 530 (1938).

[10] Ferguson v. Ruppert, 166 Misc. 427 (1938).

> the lienor does not comply with the provisions in the manner provided to perfect a lien, the parties to the action should not be relegated to a defense in an action to be brought within the time provided for the enforcement of the lien after deposit of the amount of the lien with the city chamberlain or the county treasurer, which for the purposes of subdivision 3 constitutes payment.

In *Finkel* v. *Kushner, supra,* the Supreme Court, Special Term, Kings County, cited the *Ferguson* cases and said (p. 66):

> This Court is in full sympathy with the justice of the procedure suggested in the two cases last cited. However, the view of that court in that respect was obiter dictum. In addition, the whole subject of hospital liens is a creation of the statute and the statute creating the lien has provided the machinery for testing its validity. This court may not create new methods for testing the lien's validity and extent. This is a matter to which the Legislature of the State may well give its attention by adding suitable provisions to section 189 of the Lien Law which would enable a party interested, even before settlement of the action, to test expeditiously the validity and reasonableness of a hospital lien, a subject which has given the Bench and Bar some concern in recent years.[11]

It may be noted that in all the reported cases where the *validity* of the lien is in question, the hospital does not object to adjudication of that issue on motion, whereas where the extent of the lien is in question, it invariably contends that subdivisions 3 and 10 of the statute prescribe an exclusive method for its determination, even though the statute is silent as to procedure in both cases. The only case in which the hospital objected to plaintiff's motion to have the lien "determined" *(Ferguson* v. *Ruppert)* was one where the motion for "determination" of the lien was joined in a motion to fix the extent thereof. The reason for this seems apparent. It is convenient for the hospital to have its lien declared valid at any stage of plaintiff's action, for it obviates the necessity for bringing a separate action. But the extent of the lien is another matter. When an offer of settlement is made in a personal injury or wrongful death action, and where the plaintiff considers the claimed lien excessive in amount, it is a rare plaintiff who prefers to have that amount tied up awaiting a possible action by the hospital, rather than to take the settlement offered and pay what

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[11] The same court in Bogartz et al. v. Astor, 45 N. Y. S. (2d) 74 (1943), had cited Ferguson v. Ruppert in support of the proposition that where a lien has been created by statute and no remedy is provided for its enforcement, resort to a court of equity may be generally had, particularly in view of equity's jurisdiction over the rights of property of an infant. The Bogartz case concerned jurisdiction of the Supreme Court to vacate a notice of lien filed by the employer and the carrier under Workmen's Compensation Law, section 29, although no procedure for vacating is provided in that section. However, it was also held that the court had jurisdiction of the subject matter and that it had acquired jurisdiction of the parties since they had acquiesced in that procedure in prior proceedings.

the hospital claims. While the hospital must prove both the validity and extent of the lien in the action it may bring to enforce the lien, and any new procedure provided for a determination of these issues in advance of settlement would thus make no change in the proof required of the hospital, such new procedure would remove the undoubted advantage the hospital now enjoys of receiving payment in full of its claim without being required to prove its reasonableness.

In *Finkel* v. *Kushner, supra,* $5000 was offered in settlement of a death action. The hospital claimed $1,848.27. Two of the items objected to by plaintiff were the sums of $790 for surgeons' fees and medical consultations, although decedent was a ward patient, and $262.60 for X-rays. It does not appear in the opinion how long decedent was in the hospital. After deduction of the requested attorney's fee and the funeral bill, less than $700 would have been left for decedent's family. In *Ferguson* v. *Ruppert, supra,* the infant plaintiff was in the hospital 76 days. The settlement offered was $1500. The hospital filed a lien for $714.50. The bill is not itemized in the opinion. While these figures have no significance, without more information, as indicating that the charges were or were not reasonable in those cases, they do point up the plaintiff's dilemma.

III. History of Proposed Amendments

The suggestion of the desirability of amending this statute is not a new one. Beginning with the year after the enactment of section 189, many bills have been introduced. These bills fall generally into three groups: those providing a procedure for testing the validity or reasonableness of the lien; those limiting the lien; and those proposing miscellaneous amendments or repeal of the statute. Only the first two groups have been investigated in detail.

The first bill was introduced in 1937[12] Its chief amendment was the insertion of a new subdivision reading as follows:

> At any time after the filing of the lien as herein provided for in subdivision one of this section, the injured person, or his legal representative in case of death, or such hospital may serve a notice of motion, giving not less than five nor more than ten days notice thereof either upon the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party, or upon the attorney or attorneys thereof, if an action is pending, returnable in the court where such action is pending, or if no action has been brought, in any court of record in the county where the said hospital is situated, requiring the court to determine and fix the reasonableness of the lien filed by such hospital. Upon the return of such motion the court may summarily fix the lien upon the papers submitted to it or, in its discretion, may take testimony or refer the matter to a referee, and the court or such referee

[12] Sen. Int. No. 2091, Pr. No. S. 2625 (A. Int. No. 2526).

> upon the hearing pursuant to such motion shall take into consideration the extent of the injury, the nature of the liability, if any, the amount actually recoverable, whether a judgment has been recovered or not, and all other relevant circumstances. Upon the entry of an order upon such motion fixing the lien, a copy of such order with notice of entry shall be served upon the hospital and also upon the person or persons, firm or firms, corporation or corporations liable for satisfaction of such lien hereunder, and the sum fixed in said order shall constitute the extent of the lien provided for in this section.

This bill died in the Judiciary Committee.

In 1941 three bills were introduced. One[13] amended subdivision 2 to provide that "the lien of any such hospital, *subject to the approval of the reasonableness of the amount of such lien by the court*, shall attach . . ." Another[14] was essentially the same as the 1937 bill above, with more elaborate provisions for notice. The third[15] added a new subdivision reading:

> 9-a. A motion to vacate or modify a lien filed pursuant to this section may be made by or in behalf of any party interested therein in any court of competent jurisdiction and the court may grant the relief prayed for or other appropriate relief unless the hospital corporation filing such lien shall prove to the satisfaction of the court that the lien has been filed in accordance with the provisions of this section.

This bill was approved by the Committee on State Legislation of the Association of the Bar of the City of New York,[16] on the ground that relief is desirable from the present apparent necessity for deposit of any settlement or judgment before a lien may be vacated. All three bills were stricken from the Calendar after the third readings.

In 1942 a bill was introduced[17] which added a provision for a motion to determine and fix the reasonableness of the filed lien, identical to the proposal contained in 1941[18] which, as noted above, was essentially the same as the 1937 proposal. The 1942 bill, however, applied only "in cities having a population of one million or more"; it also added a provision, applicable "in cities having a

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[13] A. Int. No. 1789, Pr. No. 2129.

[14] A. Int. No. 1578, Pr. Nos. 1850, 2268, 2740, 2907.

[15] A. Int. No. 505, Pr. No. 518.

[16] 1941 Bull. No. 5, Memo. No. 112, p. 317.

[17] A. Int. No. 1212, Pr. Nos. 1400, 2210, 2451. The Committee on State Legislation of the New York City Bar Association disapproved this bill on the grounds: (1) that there is no necessity for a new method of enforcing liens by motion since the hospital under the present law must prove the reasonableness of its charges, citing Ferguson v. Ruppert; (2) that the bill introduces irrelevant elements into the amount of the hospital's recovery; (3) that even if the court should fix the amount of the lien at less than the reasonable cost, the right of the hospital to a deficiency judgment in another action for the balance due is not cut off, and the bill appears productive of unnecessary litigation and expense. (1942 Bull. No. 8, Memo. No. 182, p. 495.)

[18] See note 14, *supra*.

population of one million or more", that no assignment of any portion of the amount recovered by settlement or after judgment for hospitalization, medical or surgical service shall be valid beyond the amount for which a lien may be filed under this section and that any such assignment shall be subject to the provisions of this section. The latter provision was probably directed toward a practice of hospitals in taking assignments for the total amount of the bill claimed and suing on the assignment, without invoking the provisions of Lien Law, section 189.[19] The bill passed the Assembly but was lost and tabled in the Senate.

From 1937 to 1942, all the bills seeking to amend Lien Law, section 189 as to the amount or validity of the lien followed a general pattern stemming from the original 1937 proposal: they all attempted to provide a procedure, by motion, by which the injured party or his legal representative, the person allegedly liable, or the hospital might have the lien "determined", *i.e.* its validity established, and the amount of the lien fixed. These were all permissive, so that the hospital's right of action after payment to the injured person or after deposit with the treasurer was not abrogated. The first type, proposed in 1937, quoted above and copied with elaborations in one bill of 1941,[20] in the bill of 1942, and in one bill of 1945, adds elements to be considered in fixing the lien which are perhaps not relevant to the "reasonable charges at cost rates" of the hospital. "The extent of the injury" is ambiguous. If it relates to the severity of the injury, it is not necessarily related to the cost of hospitalization. The cost to the hospital of a patient who dies two hours after admission as the result of a fractured skull must be considerably less than the cost of maintenance and treatment of one who suffers a broken leg. Likewise, "the nature of the liability, if any", and "the amount actually recoverable whether a judgment has been recovered or not", constitute factors which counsel might consider in making, accepting, or rejecting an offer of settlement; the hospital could reasonably argue that the uncertainties of a personal injury action bear no relation to the fact that it has expended a certain sum in treating the injured person. It was of course the nuisance of obtaining and the difficulty experienced in satisfying a judgment against the injured person which led to the enactment of this section; it is likewise the parties' uncertainty as to the enforceable extent of the lien and the difficulty experienced in compromising with the hospital which has led to the necessity for amending this section.

[19] See Reddy v. Zurich Gen. Acc. & Liability Ins. Co., Ltd., 171 Misc. 69 (1939); Abbondola v. Kawecki, 177 Misc. 122 (1941).

[20] 1942 Bull. No. 8, Memo. No. 182, p. 495. Comparing this memorandum with the Committee's memorandum on 1941 A. Int. 505, it appears that the Committee has taken the position that while a provision for vacating the lien by motion is desirable, one for fixing the amount of the lien is unnecessary, in view of Ferguson v. Ruppert. The latter case, however, has since been questioned in Finkel v. Kushner, 183 Misc. 64 (1944), and the Appellate Term in De Sola v. Farino, 172 Misc. 571 (1939) had previously reached a contrary result.

It should be noted here that there has been testimony in one case that the charge to a "liability patient", that is, one admitted as the result of an accident, is always higher than the charge for the same services to other patients since there is the possibility that the "liability patient" might recover money in a law suit.[21] This case concerned Kings County Hospital, owned and operated by the City of New York. The charges of a municipal hospital, however, under General Municipal Law section 130, may not in any case exceed actual cost of maintenance. Nothing has been learned of voluntary hospitals' practice in this matter.

The bill of 1941 quoted above[22] contains no criteria for determining the extent of the lien. The proof required of the hospital on such a motion to vacate or modify would be no different from that required in its present action at law, since no factors other than those already contained in the statute could enter the decision. The only difference this amendment would make would be to hasten the judicial determination of the amount of the lien, and thus deprive the hospital of the nuisance value of its subsequent suit at law. If the lien has been properly filed and the claimed amount can be proved, it should be as advantageous to the hospital as to the parties to have it quickly determined. The amount of the lien would then be a known element of the injured person's damages, and each party would be in a better position to offer or accept a settlement.

Except for one bill introduced in 1945, the proposed amendments after 1942 abandoned any attempt to provide a procedure for testing the validity and extent of the lien. All bills except one introduced since then have provided certain limitations on the lien instead. In 1943 identical bills were introduced in both houses.[23] These amended subdivision 1 to exclude "medical and surgical fees" from the lien of the hospital and added the following sentence after the first sentence of subdivision 1:

> Such cost rates shall not be in excess of the schedule of rates currently approved by the industrial commissioner and the superintendent of insurance for cases under the workmen's compensation law.

These bills were not reported out of the Judiciary Committees.

In 1944, a proposed amendment[24] excluded "personal services rendered by any physician or surgeon" from the lien of the hospital.[25] This bill passed the Assembly but was not reported out of the Senate Judiciary Committee.

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[21] Engels v. City of New York, 168 Misc. 753 (1938).

[22] See note 15, *supra*.

[23] S. Int. No. 1475, Pr. No. 1731; A. Int. No. 1221, Pr. Nos. 1372, 2038, 2256.

[24] A. Int. No. 12, Pr. Nos. 13, 337.

[25] Approved by the Committee on State Legislation of the New York City Bar Association with the comment that the amendment was in conformity with public policy as expressed in the Workmen's Compensation Law, which had been amended in 1935 (§ 13-f(1)) to provide that hospitals may not receive remuneration paid to physicians on their staffs for medical and surgical services. (1944, No. 93, p. 267.)

In 1945 three bills were introduced. One, identical with the 1944 bill described immediately above, passed the Legislature but was recalled from the Governor.[26]

Another[27] was identical with the 1942 bill discussed above,[28] except that it applied generally instead of applying only to "cities having a population of one million or more." It was lost and tabled. The third bill was the first of a series of annual proposals to limit the lien to 15 per cent of the amount recovered.[29] It added the following words to the end of the first sentence in subdivision 1:

> "to the extent but not in excess of such sum as is equivalent to fifteen per centum of the amount ultimately recovered by or in behalf of such person upon any and all such rights of action, suits, claims, counterclaims or demands of such person; but such limitation with respect to such lien shall not be deemed or construed to prevent the recovery by such hospital, by appropriate legal proceedings or otherwise, of that part of such charges as exceeds such sum."

This bill died in the Judiciary Committee. It has been introduced each year since then[30] and it has died in Committee each year.

In 1946 the only bill amending Lien Law, section 189 which has passed the Legislature (aside from the 1945 bill which was recalled from the Governor) was introduced.[31] It excluded "personal services rendered by any physician or surgeon" from the lien and added the following sentence after the first sentence in subdivision 1:

> "Where such injured person receives treatment, care and maintenance in a hospital ward, such cost rates shall for the purposes of this section be deemed equivalent to the rates currently agreed upon between the hospitals of the state and compensation insurance carriers for payment in cases under the workmen's compensation law."

This bill was vetoed without memorandum.

IV. Statutes of Other States

Of the twenty-four other American jurisdictions (including the District of Columbia and Hawaii) which have hospital lien laws, nine provide direct limitations on the lien, either by fixing a ceiling

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[26] A. Int. No. 373, Pr. No. 373.

[27] A. Int. No. 154, Pr. Nos. 1154, 1289.

[28] See note 17, *supra*.

[29] A. Int. No. 1273, Pr. No. 1372.

[30] 1946 A. Int. No. 1811, Pr. No. 1966; 1947 A. Int. No. 895, Pr. No. 905; 1948 A. Int. No. 2148, Pr. No. A. 2287 and Sen. Int. No. 2382, Pr. No. S. 2627. The Committee on State Legislation of the Bar Association of the City of New York (1947 Bull. No. 6, Memo. No. 98, p. 285) and the Hospital Association of New York State (Legislative Committee Bulletin No. 46-2, Feb. 28, 1946, p. 3) disapproved this bill.

[31] Sen. Int. No. 556, Pr. No. 568, Pr. No. A. 2231. The bill was introduced at the request of the Hospital Association of New York State as a "defensive measure to end the occasional padding of liens by the inclusion of doctors' bills and inflation of hospital charges" (Hospital Association Legislative Bulletin No. 46-1, Jan. 31, 1946, p. 1).

on charges or by fixing an amount or a percentage of the recovery to which the lien may attach, or by a combination of these limitations. In Texas[32] and Missouri,[33] the "reasonable rates" of the hospital may not exceed $5.00 per day. Texas limits the number of days to 100. Missouri allows in addition for "the reasonable cost of necessary X-ray, Laboratory, Operating Room and Medication service." In Maryland[34] the lien may not exceed such charges as may now or hereafter be allowed by the State Industrial Accident Commission for services rendered in the care and treatment of persons coming under the Workmen's Compensation Act of that state. In Montana[35] the lien may not exceed provisions of the schedule of fees as adopted by the Montana State Medical Association (the lien in Montana, as in several other states, is in favor of doctors and nurses as well as hospitals). In Kansas[36] and Virginia[37] the lien may not exceed $200. In Maryland[38], Missouri[39] and North Carolina[40] the lien attaches only to 50% of the amount paid to the injured person after deduction of the attorney's fees. In Illinois[41] the lien may not exceed one-third of the amount paid or due to the injured person. In Washington[42] *all* liens for service rendered to any one person as a result of any one accident (including hospitals, licensed nurses, practitioners, physicians and surgeons) may not exceed 25% of the amount of the judgment or settlement.

In addition to these stated limitations, latent limitations appear in a few jurisdictions. In Indiana[43] the lien applies only to judgments. This is also true in Hawaii.[44] In Connecticut[45] the lien applies only to the proceeds of accident and liability insurance policies which may be due to the patient.

Several states provide a method for testing the reasonableness of the hospital charges.

The North Dakota statute[46] provides that if it appears at a trial for personal injuries that hospital services were rendered, a search of the records shall be made to ascertain whether a lien has been filed; if it has, mention of that fact and the amount claimed shall be made in the judgment. If the lien is contested, its amount is deposited after collection of the judgment to abide the final event of an action to enforce the lien, "which action must be brought by the hospital or the institution within sixty days after demand

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[32] Appendix p. 65.
[33] *Id.* p. 54.
[34] *Id.* p. 51.
[35] *Id.* p. 55.
[36] *Id.* p. 49.
[37] *Id.* p. 67.
[38] *Id.* p. 51.
[39] *Id.* p. 54.
[40] *Id.* p. 58.
[41] *Id.* p. 45.
[42] *Id.* p. 69.
[43] *Id.* p. 47.
[44] *Id.* p. 70.
[45] *Id.* p. 40.
[46] *Id.* p. 60.

therefor is made by any of the parties interested." This provision has the effect of a provision for motion, but it apparently applies only where judgment is rendered.

The Connecticut statute[47] provides that if the interested parties cannot agree as to the amount due the hospital, either party may bring an action of interpleader. This differs from subdivisions 3 and 10 of the New York statute, for it gives the initiative to either party.

The Arkansas statute[48] provides that the lien may be filed in a pending action and that the court shall then embody in the judgment such an award with respect thereto as the evidence warrants. This makes the hospital a party, but is not mandatory. It also provides,[49] apparently where an action has not been begun, for determination and payment of the hospital lien on *joint* motion of the patient and the hospital. This assumes that the interests of the hospital and of the injured person are one.

The Illinois statute[50] provides that on petition filed by the injured person or the hospital, any court of competent jurisdiction shall on written notice to all interested parties adjudicate the rights of all interested parties and enforce their liens. The lien attaches to settlements. Since the lien is limited to a maximum of one-third of the sum paid or due to the patient, this statute leaves little room for delay or debate, especially in the light of an additional provision[51] that within ten days of the request of the defendant, the hospital must furnish a statement of the nature and extent of the injuries sustained, treatment given, and the history as given by the injured person as to the manner in which the injuries were received.

The Virginia statute[52] provides that the injured person may file a petition in the court that would have jurisdiction of the hospital's claim if that claim were asserted against him by such hospital, and the court shall dispose of the reasonableness of the hospital's claim in a summary way after five days' notice to the hospital; the hospital likewise may have its claim summarily adjudicated in the same manner.

Of these five provisions, three (Connecticut, Illinois and Virginia) avoid the difficulty arising under the New York statute. Roughly half of the states having hospital lien laws avoid this difficulty, either by a quick procedure for adjudication of the amount of the lien or by limitations on the amount of the lien.

V. Other Problems Arising Under Section 189 of the Lien Law

Certain other substantive problems arising under Lien Law, section 189 became apparent in this study of the statute. They are briefly set forth below:

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[47] *Id.* p. 40.
[48] *Id.* p. 35.
[49] *Id.* p. 38.
[50] *Id.* p. 46.
[51] *Id.* p. 46.
[52] *Id.* p. 68.

A. Attachment of Lien to Cause of Action of Infant

There is confusion in the cases as to whether the lien attaches to an infant's cause of action, or only to the cause of action of the infant's father or guardian. It was said in *Ferguson* v. *Ruppert*[53]:

> The plaintiff insists that the infant is not liable for the hospital lien. It is true that at common law the parent or guardian would be primarily liable for necessaries where the infant has no separate estate, and as the infant has no cause of action for recovery of such hospital expenses, the amount thereof may not be taken from the infant's share of the settlement. The injured person indicated in the statute is the person who has received hospitalization and not the parent who has been injured to the extent of loss of services. The plaintiff calls attention to *Clarke* v. *Eighth Ave. R. R. Co.* (238 N. Y. 246), upon the theory that the infant may not recover for medical expenses and the like. Upon a trial of an action, in my opinion, the amount for which a lien for hospitalization has been filed in accordance with the statute may be recovered in an action by the infant. This fact does not preclude recovery in the loss of service action for any other expense for which the guardian or parent becomes liable. The guardian or parent not being liable for the amount of hospitalization could not, in any event, seek recovery as to such lien as a part of his cause of action. If the infant, the injured person, is liable to payment contingent upon recovery by settlement or otherwise, the amount of such lien must of necessity be a part of the damages receivable by such injured person.

In *Abbondola* v. *Kawecki*,[54] where the infant had recovered a judgment for personal injuries and where the father had recovered a judgment limited in amount to the hospital bill, the hospital claimed liens against both recoveries: a statutory lien based on section 189, and an equitable lien based on an assignment by the father prior to the service of the summons. After holding that where the hospital, by taking an assignment, has secured the payment of its *total* bill, the necessity for the lien does not exist and section 189 does not apply, the court said (p. 123–124):

> The respondent hospital cites certain cases in support of its contention that it has valid liens against both recoveries. The cases cited, however, are clearly distinguishable from the facts here. *Ferguson* v. *Ruppert* (166 Misc. 530) merely held that where a lien was filed the infant could properly include hospital expenses as part of his damage. However, it would seem that if the Legislature intended to change the rule that an infant may not recover for medical expenses and that such recovery is limited to the parent who is liable for the payment of the expense incurred, it could, and would plainly have so stated.

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[53] 166 Misc. 530 (1938) at p. 535.
[54] 177 Misc. 122 (1941).

> Here the father recovered in his own action judgment for medical expenses incurred. Under the circumstances there could be no recovery by the infant as well, and the infant made no claim for the same. The judgment in favor of the infant having excluded any recovery for medical expense, no lien based on such medical expense may attach to the infant's recovery. The extent of the defendant's liability was fixed after trial and not by settlement or voluntary payment.

The court then denied a motion to modify a prior order as to the disposition of the proceeds of the infant's judgment. Since the attorney's lien is prior to the hospital lien, the hospital lien attached to the father's recovery (limited in this case to the amount of the hospital bill) only after the attorney's fee had been deducted.

No case has been found where the argument was advanced that the hospital lien attaches neither to the infant's nor to the father's cause of action (except in the case of death of the infant), but that argument might well be made. Subdivision 1 provides that the hospital shall have a lien "upon any and all rights of action, suits, claims, counterclaims or demands of any person admitted to any such hospital and receiving treatment, care and maintenance therein . . . which such injured person or the legal representative of such injured person, in case of death as the result of such injuries, may or shall have, assert or maintain against any such other person . . . for damages on account of such injuries . . ." Since the injured infant has no common law right of action for hospital expenses incurred up to the time of the trial[55], not being liable for them, this would exclude any lien against his recovery. Moreover, throughout the statute "such injured person" must refer to "any person admitted to any such hospital and receiving treatment, care and maintenance therein . . .", which definition would exclude the father or guardian of the injured infant. The injured person is one who suffers personal injuries, not one who suffers legal damage.

A bill was introduced in 1937 to include the cases of guardian or husband in the lien[56]. It would have added a new paragraph (d) to subdivision 2, making the lien attach:

> To any verdict, decision, decree, judgment or final order made or rendered in any suit, action or proceeding brought in any court of this state by the husband or parent or guardian of such injured person for the recovery of expenses incurred or of any loss of services on account of such injuries, and to the proceeds of the settlement and compromise thereof or of any such claim, demand or cause of action effected before the commencement of any suit, action or proceeding thereon.

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[55] The value of prospective medical treatment beyond the date of the trial, however, is an element of damage belonging to the infant, and not to the father. Clarke v. Eighth Avenue R. R. Co., 238 N. Y. 246 (1924).

[56] A. Int. No. 1558, Pr. Nos. 1705, 2530

The bill was recommitted to the General Laws Committee after the third reading. No subsequent similar amendment has been introduced.

The only statute found which attempts to provide for infants' cases is that of North Carolina[57], which provides:

> Where damages are recovered for and in behalf of minors or persons *non compos mentis*, such liens shall attach to the sum recovered as fully and effectively as if the said person were *sui juris*.

The lack of provision in the statutes for such cases indicates that the question, which has surely arisen in other states, is left for judicial interpretation.

If hospital expenses are to be recovered only in the guardian's own action, there is not much security for the hospital, for there is nothing to prevent a guardian from waiving his action; also, the guardian's recovery would ordinarily consist largely or, as in *Abbondola* v. *Kawecki, supra*, entirely, of the hospital expenses incurred. After a substantial fee of the attorney is taken out of this, not much is left for either the hospital or the plaintiff.

If these expenses are to be recovered in the infant's action, the statute should perhaps be clarified, since the cases do not agree.

B. Section Inapplicable to Settlements of $300 or less.

While (as pointed out above) the hospital may insist on payment of its full claim and succeed because of the inconvenience to the plaintiff of waiting for an action at law in which to question the reasonableness of the charges, the plaintiff, on the other hand, may sometimes defeat the lien by settling a claim for $300 or less, in which case the lien does not attach (subdivision 6). It must often happen that a plaintiff would find himself with more in hand by the latter procedure than by making a larger settlement out of which the hospital's claim is satisfied.

The purpose of this provision of subdivision 6 is not clear. There is no doubt that it can be used to avoid the lien where the hospital's claim is fairly large and the injured person's other damage is fairly small. Since the statutory lien makes settlements more difficult[58], this exception may have been designed to facilitate settlements in cases where the value of the claim is small.

C. Ambiguity of Provision as to Reasonable Charges

The provision that the lien shall be "for the amount of the reasonable charges of such hospital, for such treatment, care and maintenance of such injured person at cost rates in such hospital" seems ambiguous, although there has been no apparent difficulty with it, the parties and courts having assumed that "cost rates" govern.

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[57] Appendix p. 46.

[58] Hayt and Hayt, Legal Aspects of Hospital Practices (Hospital Textbook Co., 1938) p. 74.

D. Charges of Physicians and Surgeons

The 1946 statute which was vetoed included a provision that the lien should be "exclusive of personal services rendered by any physician or surgeon." In *Goldwater* v. *Citizens Casualty Co. of New York*[59], a public hospital was permitted to collect a charge for surgical services as a part of the "treatment" given, even though the members of the medical staff of the city hospital were required under the New York City Charter to serve without compensation. This case was an action at law to recover for hospital services rendered to a policeman, the bill for which the insurance carrier had agreed to assume at the time it settled the policeman's claim. Although the suit was not brought under the Lien Law, the opinion implies that the result would be the same (p. 249):

> Section 130 of the General Municipal Law is still in effect to authorize charges for treatment; section 189 of the Lien Law gives emphasis to the right of such institutions to treat patients injured in accidents and to make a proper charge for such services.

In *Roosevelt Hospital* v. *Loewy*[60], however, a voluntary hospital's charge for the services of a staff physician, rendered gratis to the hospital, was excluded from the hospital's lien in an action brought under Lien Law, section 189. The Appellate Term, First Department, said *per curiam* (p. 114):

> It would appear that the reasonable charges of such hospital for which under subdivision 1 of section 189 of the Lien Law a lien is provided for "a charitable institution maintaining a hospital" are such as are incurred by the hospital in operating and maintaining the hospital including any medical services such as those of resident physicians for which the hospital is under direct obligation to pay. The facts outlined distinguish this case from decisions involving either the Workmen's Compensation Law requiring employers to pay for medical services rendered to their injured workmen or public hospitals supported by public funds. The amounts collected by the latter are a part of the public funds used to maintain and support such public hospitals.

In usual hospital practice the hospital does not pay fees as such even to resident physicians: their maintenance and their token salaries, like those of internes, are ordinary items of expense allocated to the various departments in which their services are rendered.[61] In no sense are they paid for professional services, for their services are considered a part of their own education. A house physician, who serves not entirely for the purpose of education

[59] 7 N. Y. S. (2d) 242 (1938).
[60] 185 Misc. 113 (1945).
[61] Roswell, Accounting, Statistics and Business Office Procedures for Hospitals (United Hospital Fund of New York, 1946) p. 271.

might be said to be working for a salary,[62] but that is not on a fee basis.

It would seem that charges for personal services of physicians and surgeons should be excluded from the lien, for fees for these personal services are not expenses incurred by the hospital.

VI. Provisions of Civil Practice Act, Section 374-a

Civil Practice Act, section 374-a, relating to the admissibility of certain written records, was amended by L. 1947, c. 523 by the addition of the following sentences:

> The terms "writing" and "record" as used herein shall include a hospital bill provided it bears a certification by the superintendent, acting superintendent or other head of the hospital that the bill is true and correct, that each of the items shown thereon was necessarily furnished or supplied and that the amount charged therefor is the fair and reasonable value thereof. A bill bearing such certification shall be admissible in evidence under this section and shall be prima facie evidence of the facts therein contained subject, however, to rebuttal by any party affected thereby. The provisions of this section governing the admissibility in evidence of certain hospital bills shall not apply to any action or proceeding in a surrogate's court nor to any action or proceeding in any court instituted by or on behalf of or in the right of a hospital to recover payment for accommodations or supplies furnished or for services rendered by or in such hospital.

If Lien Law, section 189 is amended to permit a motion by either party to vacate or to modify the lien filed by the hospital, the exception made in the last sentence of section 374-a would not seem to apply to that proceeding. A conformity change would be desirable.

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[62] Ponton, The Medical Staff in the Hospital (Physicians' Record Co., 1939) p. 187 *et seq.*

APPENDIX: HOSPITAL LIEN STATUTES

New York Lien Law, § 189

§ 189. Liens of hospitals. 1. Every corporation incorporated under general law or special act as a charitable institution maintaining a hospital in the state supported in whole or in part by charity, and every county, city, town or village operating and maintaining a hospital shall to the extent hereinafter provided have a lien upon any and all rights of action, suits, claims, counterclaims or demands of any person admitted to any such hospital and receiving treatment, care and maintenance therein, on account of any personal injuries received within a period of one week prior to admission to the hospital and as the result of the negligence of any other person or persons or corporation, which any such injured person or the legal representative of such injured person, in case of death as the result of such injuries, may or shall have, assert or maintain against any such other person or corporation for damages on account of such injuries, for the amount of the reasonable charges of such hospital, for such treatment, care and maintenance of such injured person at cost rates in such hospital. No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injury received, shall be filed in the office of the county clerk of the county in which such hospital is located, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, registered and postage prepaid, a copy of such notice with a statement of the date and place of filing thereof to the person or persons, firm or firms, corporation or corporations, alleged to be liable to the injured party for the injuries sustained prior to the payment to such injured person, his attorney or legal representatives, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability. Such filing and mailing shall be deemed to be effective notwithstanding any inaccuracy or omission therein if the information contained therein shall be sufficient to enable the person or persons or corporation alleged to be liable, by the exercise of reasonable diligence, to identify the injured person, the occurrence upon which the claim for damages is based and the name and address of the hospital asserting the lien. Any hospital claiming a lien hereunder shall, in addition to the foregoing, file in the said county clerk's office within five days of the discharge of any injured person, an additional notice of lien, duly verified, which shall show the total hospital charges which have accrued and no lien hereunder shall exceed this amount.

2. The lien of any such hospital shall attach: (a) To any verdict, decision, decree, judgment or final order made or rendered in any suit, action or proceeding brought in any court of this state, by such

injured person, or the legal representative of such injured person in case of death as the result of such injuries, against any other person or persons or corporation for the recovery of damages or compensation on account of injuries sustained through the negligence of any such person or persons or corporation or for the death of such person resulting therefrom, as well as to the proceeds of any settlement of any such verdict, decision, decree, judgment or final order made or rendered in any such suit, action or proceeding.

(b) To the proceeds of the settlement or compromise of any such suit, action or proceeding, effected, before any verdict, decision, decree, judgment or final order is made or rendered therein, by any such injured person or his legal representative in case of death, with any other person, persons or corporation whose negligence is claimed or alleged to have been the cause of said injuries or death, or with any other person or persons or corporations on account thereof.

(c) To the proceeds of the settlement or compromise of any such claim, demand, or cause of action, effected, before the commencement of any suit, action or proceeding thereon, by any such injured person or his legal representative in case of death, with any other person, or persons or corporation whose negligence is claimed or alleged to have been the cause of said injuries or death, or with any other person or persons or corporation on account thereof.

3. After the filing of the notice and mailing of the copy and statement as herein provided, no release of any judgment, claim, or demand by such injured person shall be valid or effective against such lien, and the person or persons or corporation making any payment to such injured person or his legal representative for the injury sustained shall for a period of one year from the date of such payment as aforesaid remain liable to such hospital for the amount of its reasonable charges as aforesaid due at the time of such payment, to the extent of the full and true consideration paid or given to the injured person or his legal representative, less the amount of any other liens or claims against such moneys superior to such hospital lien, and any such corporation or other institution or body maintaining such hospital may within such period enforce its lien by a suit at law against such person or persons or corporation making any such payment or gift.

4. Every county clerk shall, at the expense of the county, provide a suitable, well-bound book, to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this section, he shall enter the name of the injured person, the date of the accident, the name of the hospital or other institution making the claim. The said clerk shall make a proper index of the same in the name of the injured person and shall be entitled to twelve cents for filing each claim, except in the counties comprised within the city of New York, where the filing fee shall be fifty cents in accordance with the provisions of subdivision fifty-six of section one thousand five hundred fifty-seven-a of the civil practice act, and at the rate of eight cents per folio for such entry made in the lien docket and six cents for every search in the office for such

lien claim and twelve cents for filing and entering discharge of lien, except in the counties comprising the city of New York where the fee for filing and entering discharge of lien shall be one dollar in accordance with the provisions of subdivision twenty-three of section one thousand five hundred fifty-seven-a of the civil practice act.

5. Any person or persons, firm or firms, corporation or corporations legally liable for such lien or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the records of any such corporation, or other institution or body maintaining such hospital in reference to such treatment, care and maintenance of such injured person.

6. The lien of any such hospital under the provisions of this section shall not apply to any award or settlement made pursuant to the workmen's compensation law of this state, nor to the proceeds of any such award or settlement, in respect to the injury for which a lien is filed, nor in case the amount paid to the injured person or his representative in the event of death in settlement or compromise is three hundred dollars or less.

7. The provisions of this section to the contrary notwithstanding, the lien herein created shall be subject and subordinate to the lien of the amount recovered by verdict, report, decision, judgment or decree, settlement or compromise, or any attorney or attorneys retained by any such injured person or his legal representative in case of death, to prosecute his claim for damages for personal injuries or for the death of the injured person, having or acquiring by virtue of such retainer a lien on the cause of action of any such injured person, or his legal representative in case of death, or on the verdict, report, decision, judgment, decree made in, or any settlement or compromise of, any such action or claim for damages for personal injuries or for the death of such injured person; and, notwithstanding the provisions of this section, the lien created hereunder in no case shall be operative so as to create a priority or a precedence therefor as against any other lien, debt or claim in the administration of the estate of a decedent or the distribution of damages recovered or obtained on account of a wrongful act, neglect or default causing a decedent's death, and the amount of the debt or claim covered by such lien in such a case shall have the same position as to priority and be payable in the same manner and to the same extent as otherwise provided by law.

8. Execution upon any judgment obtained in an action based upon injuries for which a lien has been filed as herein provided shall be stayed until the lien has been satisfied or discharged in accordance with the provisions of this section.

9. Upon the order of any court of record having jurisdiction in the premises, any person, persons or corporation against whom a lien shall have been filed and served may deposit the amount of any settlement or judgment less the amount of any other liens or claims against such moneys superior to such hospital lien, with the county treasurer in the county in which the lien is filed, except, in a county within the city of New York where such deposit shall be made with the city chamberlain of such city, and the person,

persons or corporation so depositing shall be discharged from all liability in connection with such lien which lien shall attach to the fund so deposited.

10. Any such lien may be enforced by action or law against the person, persons or corporations claimed to be liable or against the fund deposited as hereinbefore provided in any court of record.

Digest of the Statutes of Arkansas (1937)

§ 10819. Scope of lien. On compliance with the requirements of this Act, a practitioner, a nurse, and a hospital and each of them shall have a lien.

(a) For the value of the service rendered and to be rendered by such practitioner, nurse, or hospital to a patient, at the express or implied request of that patient or of someone acting on his behalf, for the relief and cure of an injury suffered through the fault or neglect of someone other than the patient himself.

(b) On any claim, right of action, and money to which the patient is entitled because of that injury, and to costs and attorneys' fees incurred in enforcing that lien.

§ 10820. How lien is established. In order to establish a lien under this Act, a practitioner, nurse, or hospital shall comply with the following conditions:

(1) Notice required. (a) The practitioner, nurse, or hospital shall serve on the patient a written notice of his claim of lien and shall serve a copy of that notice on the tort feasor or on the insurer (if there be any), or, at the discretion of the practitioner, nurse, or hospital, or both; and he shall file in the office of the clerk of the Circuit Court in the county in which his professional, nursing, or hospital service has been or is being rendered, a copy of the notice so served, authenticated by an affidavit to show that the notice and copies of it have been served as required by this act. This notice may be served and recorded at any time while service is being rendered and at any time after the discontinuance of service so long as the claim of the practitioner, nurse, or hospital for compensation for service is not barred by the statute of limitations.

(b) If to the knowledge of the practitioner, nurse, or hospital, the patient against whose claim or right of action it is desired to establish a lien has instituted an action in any court in Arkansas to enforce his claim against the tort feasor responsible for his injury, or against any insurer by which he was insured against loss through injury due to accident or accidental means, the practitioner, nurse, or hospital may, in his discretion, in lieu of or in addition to serving notice of his claim and recording such notice, as authorized by the preceding paragraph, file a notice of his claim, duly authenticated under oath, in the court in which such action is pending; and the filing of the notice of such claim shall be notice thereof to all parties to the action, without the serving of further notice of the recording of the copy of any notice in the office of the clerk of the Circuit Court.

(2) Contents of notice. The notice required by this section shall show so far as is known to the practitioner, nurse, or hospital on whose behalf it is filed or served,

(a) the name and address of the tort feasor and, if a lien is claimed against an insurer, then the name and address of that insurer;

(b) the name of the patient, his usual address, and his whereabouts when the notice is served, if elsewhere than at his usual address;

(c) the name and address of the person claiming the lien, and whether he claims as a practitioner, nurse, or hospital;

(d) the time when, place where, and circumstances under which the alleged fault or neglect of the tort feasor, occurred, and the nature of the injury; and

(e) if the service of the practitioner, nurse or hospital has been completed the amount for which his lien is claimed.

The notice shall be supported by an affidavit by the practitioner, nurse, or hospital, showing that the facts stated of affiant's own knowledge are true and the facts stated on information and belief, he believes to be true.

If the professional, nursing, or hospital service on which the claim of lien is based has not been completed when notice of the claim of lien is served and the amount for which a lien is claimed is not stated in the notice, then the practitioner, nurse, or hospital on whose behalf the notice has been served shall, within sixty (60) days after the termination of his service, serve a supplementary notice on each person previously notified, and file a notice in the court in which the previous notice was filed, showing the amount claimed under the lien.

(3) Method of Service of Notice. Any notice required by this act to be served shall be deemed to have been served,

(a) if delivered to the person on whom it is to be served, or left at his usual place of business or residence with some person of mature years employed or dwelling there; or

(b) if delivered by registered mail at the last known address of the person to be notified, either within or without the State of Arkansas, as shown by the receipt returned by the Post Office Department and by an affidavit by an affiant having personal knowledge of the facts, showing that the notice herein required to be served was enclosed in the letter for which the receipt was returned, when that letter was deposited in the mail.

(4) Amendatory and Supplementary Notices. The fact that a practitioner, nurse, or hospital has filed a notice of the lien as authorized by this act shall not prevent his filing amendatory or supplementary notices of liens subsequently; but every amendatory and supplementary notice shall be served and filed in the same manner as the original notice.

§ 10821. Enforcement of Lien in Pending Action. If a patient has instituted an action in any court in Arkansas to enforce his claim against the tort feasor through whose fault or neglect he was injured, or against any insurer by which he was insured against loss through accident or accidental means, and a practitioner, nurse, or hospital has filed in the court in which the action is pending a notice of his claim of lien, as authorized by this act, the court before which the action is pending shall have jurisdiction with respect to

that claim of lien and shall embody in its judgment such an award with respect thereto as the evidence warrants.

§ 10822. Settlement of patient's claim without settlement of lien forbidden. A tort feasor and an insurer, and each of them, who has been notified, as authorized by this act, of a claim of lien against any claim or right of action that a patient has against such tort feasor or insurer by reason of an injury caused by the fault or neglect of a tort feasor, shall not, within sixty (60) days after the service of such notice, nor at any time after a copy of that notice has been recorded in the office of the clerk of the Circuit Court of the county in which the professional, nursing, or hospital service was rendered, pay to the patient, either directly or indirectly, any money, or deliver to him, either directly or indirectly, anything of value, in settlement or part settlement of the patient's claim or right of action, without having previously

(a) paid to the practitioner, nurse, or hospital that gave notice of such claim or lien, the amount claimed under it; or

(b) received a written release of the claim of lien from the practitioner, nurse, or hospital that gave notice of it, except as otherwise authorized by this act.

A tort feasor and an insurer, and either of them, that has been notified by a practitioner, nurse, or hospital of a claim of lien under this act, and who, directly or indirectly, otherwise than as is authorized by this act, pays to the patient any money or delivers to him anything of value as a settlement or compromise of the patient's claim arising out of the injury done to him, shall be liable to such practitioner, nurse, or hospital for the money value of the service rendered by such practitioner, nurse, or hospital, in an amount not in excess of the amount to which the patient was entitled from the tort feasor or insurer because of the injury.

If the amount for which a tort feasor or an insurer is liable to the patient on account of his injury is not sufficient to pay in full the claims of all practitioners, nurses, and hospitals that rendered service in the case and who have given notice of liens, each such practitioner, nurse, and hospital shall share in the amount payable to the patient in the proportion that his claim bears to the total amount claimed by all other such practitioners, nurses, and hospitals.

§ 10823. Payment of Damages or Insurance Into Court. (1) Any court having jurisdiction in an action by a patient injured through the fault or neglect of another person, against the person whose fault or neglect caused the injury or against an insurer obligated by reason of that injury, and if an action has not been begun, then any court having authority to entertain an action under the circumstances stated above, if and when an action is brought, may, on petition or other procedure conformable to the rules of practice of the court, by the tort feasor or by the insurer who has been notified of a claim of lien under the provisions of this act, receive and impound

(a) the amount claimed by any practitioner, nurse, or hospital under such lien, or

(b) if no amount is named in the notice of the claim of lien that has been served, then the entire amount claimed by the patient

from the tort feasor or from the insurer, or any less amount that the court deems sufficient to pay the amount claimed under such claims of lien or liens as have been served.

(2) The Court may,

(a) on joint motion or petition of the patient and the practitioner or practitioners, nurse or nurses, and hospital or hospitals claiming interest in the money so paid into court, or,

(b) on judgment by any competent court, pay or distribute such money in accordance with that petition, motion, or judgment and pay any remaining balance to the person by whom the money was deposited.

§ 10824. Default of Practitioner, Nurse, or Hospital in Enforcing Lien. If at the expiration of sixty days immediately following the day on which the most recent notice, amendatory notice, or supplementary notice of a claim of lien was filed in the office of the clerk of the Circuit Court, as authorized by this act, and

If, in any event, immediately on the expiration of the period during which the practitioner, nurse, or hospital can enter action to enforce his claim against the patient for compensation for services rendered, the lien remains unsatisfied and unreleased, and no suit by the practitioner, nurse, or hospital by which notice of such lien was filed, to enforce that lien, is pending in any court, the lien shall be void and of no effect.

Any patient against whose claim or right of action any such void lien exists may enforce that claim or rights of action discharged from that lien, on delivering to the tort feasor or insurer an affidavit showing that no action is pending against the affiant to enforce the lien claimed by the practitioner, nurse, or hospital; and on filing a copy of that affidavit with the clerk of the Circuit Court in whose office notice of the lien was originally filed, the clerk shall enter on his docket and file a notation to show that the lien has lapsed and is void.

If the amount claimed under any lien has been paid into court as authorized by this act, and remains in the custody of the court after the lien has become void, on application by the tort feasor of [or] the insurer, by which the money was so paid, supported by a copy of the record of the Circuit Court showing that the lien has lapsed, the court may return the money to the person by whom it was deposited and give him judgment against the lienor for interest on the money during the time it was on deposit and for costs and a reasonable counsel fee.

Any person who, in order to obtain the release of an alleged lapsed lien, makes a false affidavit and delivers a copy of it to any tort feasor or insurer or files a copy of any such affidavit in the office of the clerk of the Circuit Court shall be guilty of perjury and subject to the penalties prescribed for that offense.

If at the expiration of the sixty (60) days period named above, an action is pending by the practitioner, nurse, or hospital to enforce a claim of lien filed by him, the lien shall continue in full force and effect during the pendency of that suit, unless released by the practitioner, nurse, or hospital by whom the claim was filed.

§ 10825. Waiver or Release of Claim of Lien Void. A patient who has been notified by a practitioner, nurse, or hospital of a claim of lien on any claim or right of action that the patient has because of the injury for which service was rendered, shall not waive or release that claim, or any part of it unless

(1) the amount claimed by the practitioner, nurse, or hospital, under the lien, has been paid; or

(2) the practitioner, nurse, or hospital has in writing released his lien.

Any waiver or release given contrary to the provisions of this act shall be void and of no effect.

§ 10826. Release to Be Given. When a lien has been satisfied or waived, the practitioner, nurse, or hospital that established or waived it shall, on written demand and at the expense of the patient, or the person by whom the patient was injured, or by the insurer obligated by reason of such injury, give a written released, duly acknowledged before a justice of the peace or notary public. Any such practitioner, nurse, or hospital that refuses or fails under the circumstances stated, for a period of five days or more after a written demand is made for a release, to execute and deliver it, shall be liable to the demandant for any injury or damage that results from such refusal or failure, and in any event he shall forfeit to the demandant the sum of $25 which may be recovered in any action for damages because of such failure, or in an action of debt before a justice of the peace, as the circumstances of the case require.

§ 10827. Enforcement of Lien. A practitioner, nurse, or hospital that has perfected a lien under the provisions of this act, to secure the payment of a debt for service rendered, may enforce that lien by any proper action against the patient, the tort feasor, and the insurer, jointly or severally, in any court of competent jurisdiction; but no such action shall be begun after action on the debt itself is barred by the statute of limitations. The plaintiff in any such case shall make any and all persons having interests in the subject matter of the action, of whose interests he has knowledge, parties defendant. Any person having an interest in the subject matter of the action who is not made a party to it, may, with the consent of the court, become a party in order to protect his interest. Persons having interest in the subject matter of the action include, within the meaning of this Section, all persons authorized by this act to establish liens to secure their interests, those whose claims against the patients are not, as well as those whose claims against the patient are, due at the time of the commencement of the action.

Any two or more persons having liens on the same or right of action of any patient may join in bringing action setting forth their respective rights in their pleading. An action to which any practitioner, nurse, or hospital having a lien on the subject matter is a party, shall not be dismissed without his consent.

§ 10828. Liens assignable. All liens or claims of liens that accrue to any practitioner, nurse, or hospital under this act are assignable. Proceedings to enforce assigned liens or claims of

liens may be maintained by and in the name of the assignee. The assignee shall have as full and complete power to enforce the lien or claim of lien assigned to him as if proceedings to that end were taken under this act, by and in the name of the assignor.

§ 10829. Subrogation to right of lien. Any person who, with the consent of a patient injured through the fault or neglect of another person, pays to a practitioner, nurse, or hospital, the amount due for service to that patient, shall be subrogated to the rights of the payee with respect to the establishment and enforcement of a lien under this Act.

§ 10830. Survival of liens. If any person, because of minority, mental defect, death or other legal disability, cannot exercise any right conferred on him by this act or discharge any duty imposed on him by it, that right may be exercised, and that duty shall be discharged by his father, mother, guardian, executor, or administrator, as the circumstances of the case require.

* * *

§ 10834. Attorney's liens not affected. Provided the liens herein given shall in no way repeal or affect the statutory liens now provided in favor of attorneys.

Connecticut General Statutes (1941 Supp.)

Sec. 699f. Liens on accident and liability insurance policies in favor of hospitals. Any hospital receiving state aid, *or any hospital owned and operated by a municipality*, which shall furnish medical or other service or materials to any patient injured by reason of any accident not covered by the workmen's compensation act shall have a first lien on the proceeds of any accident and liability insurance policy issued by any company authorized to do business in this state, which proceeds may be due to such patient, either directly or indirectly, to the extent of the actual cost of such service and materials, provided such hospital, after commencing to render such services or provide such materials and before payment by such insurance company, shall serve written notice upon such insurance company at its principal home office, if the company issuing such policy shall be located within this state, and upon the insurance commissioner of this state by registered mail if such insurance company shall be located without the state. Such notice shall be in duplicate and shall contain the name of the injured person, if known, the name of the company or companies issuing such policy and the amount expended and an estimate of the amount to be expended in the services rendered to or the materials provided for such patient. Whenever the liability of such company or companies, either directly or indirectly, to the patient shall have been fixed, such insurance company shall pay directly to the hospital the amount due to it, provided such amount shall be agreed upon by all of the parties interested; and a receipt by such hospital shall be evidence of payment of such amount by such company or companies on account of their liability to the insured. If the interested parties shall not agree concerning the amount due such hospital, either party may bring an action of interpleader to any court having jurisdiction.

Delaware Laws 1931, Ch. 179

Section 1. Every charitable association, corporation or other institution maintaining a hospital in the State of Delaware, supported in whole or in part by private charity, shall have a lien upon any and all claims or demands, all rights of action, suits, counterclaims of any person admitted to any such hospital and receiving treatment, care and maintenance therein arising out of any personal injuries received in any such accident which any such injured person may or shall have, assert or maintain against any such other person or corporation for damages, compensation or other claim on account of such injuries, for the amount of the reasonable charges of such hospital for all medical treatment, care and nursing and maintenance of such injured person while in such hospital, to the extent of the full and true consideration paid or given to, or on behalf of such injured person or his legal representative.

Section 2. Said charitable association, corporation or other institution shall file in the office of the Prothonotary of the County in which such injuries shall have occurred notice in writing, containing the names and addresses of the injured person, the date of the accident, the name and location of the hospital, and, if then known, the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to such injured person by reason of the injuries received, prior to the payment of any moneys to such injured person or his or her legal representative by such person or persons, firm or firms, corporation or corporations to such injured person. Copies of said notice shall be sent by registered mail by the hospital to such injured person and all parties in interest, who may then be known. Thereafter an affidavit by a competent person, acting on behalf of such institution, setting forth such service, and all attempts to serve the same shall be filed in the office of the Prothonotary.

Section 3. The lien of any such hospital shall attach to any verdict, report, decision, decree, award, judgment or final order made or rendered in any action or proceeding in any court of record of Delaware, or any public board or bureau, in any suit, action, or proceeding brought by such injured person, or by the estate of such injured person in case of deaths as the result of such injuries, against any other person or corporation for the recovery of damages or other compensation or payment in any way arising out of injuries received in any such accident, as well as to the proceeds of any settlement thereof, any claim or demand effected by any such injured person or on his behalf, with any other person or corporation in any way liable to said injured person, or his legal representative, in case of death, by reason of said injuries, effected with any other person or corporation on account thereof.

Section 4. After the filing of the notice as herein provided, no release of any judgment, claim or demand by such injured person shall be valid or effectual as against such lien, and the person or persons, firm or firms, corporation or corporations making any

payment to such injured person or his legal representative as compensation for the injuries sustained shall for a period of one year from the date of such payment as aforesaid remain liable to such hospital for the amount of its reasonable charges due at the time of such payment as aforesaid, to the extent of the full and true consideration paid or given to, or on behalf of such injured person or his legal representative, and any such charitable association. corporation or other institution or body maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment.

Section 5. Every Prothonotary shall, at the expense of the county, provide a suitable, well-bound book, to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this act, he shall enter:

The name of the injured person, the date of the accident, the name of the hospital or other institution making the claim, and the filing of an affidavit setting forth the service of, or attempts to serve, of all parties in interest.

And the said clerk shall make a proper index of the same in the name of the injured person; and such clerk shall be entitled to One Dollar ($1.00) for filing each claim, and at the rate of twenty-five cents (25¢) per folio for such entry made in the lien docket and twenty-five cents (25¢) for every search in the office for such lien claim.

Section 6. Any person or persons, firm or firms, corporation or corporations legally liable or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the records of any such association, corporation or other institution or body maintaining such hospital in reference to such treatment, care and maintenance of such injured person.

Section 7. If any section, clause, sentence, paragraph or other part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, or any part thereof, but shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment shall be rendered. It being hereby declared the Legislature would have enacted the remainder of this Act without such part adjudged to be invalid.

District of Columbia Code (Cum. Supp. V 1939) Tit. 24, §§ 22–26

§ 22. Hospitals to have lien for services on recovery in accident cases.—Every association, corporation, or other institution maintaining a hospital in the District of Columbia, which shall furnish medical or other service to any patient injured by reason of an accident causing injuries not covered by the Employees' Compensation Act or the Workmen's Compensation Act, shall, if such injured party shall assert or maintain a claim against another for

damages on account of such injuries, have a lien upon that part going or belonging to such patient, of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages: *Provided,* That the lien herein set forth shall not be applied or considered valid against any one suffering injuries coming under the Employees' Compensation Act or the Workmen's Compensation Act in this District.

§ 23. Same; notice to be filed.—No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the District Court of the United States for the District of Columbia in a docket provided for such liens, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm, or corporation against such liability, where the name of such insurance carrier is ascertained.

§ 24. Same; liability for not paying hospital amount of its lien, etc.—Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of one year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; and any such association, corporation, or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment.

§ 25. Same; permission to examine hospital records.—Any person or persons, firm or firms, corporation or corporations legally liable for such lien or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the

ledger entries and similar records of any such association, corporation, or other institution or body maintaining such hospital for the purpose of ascertaining the basis for such lien.

§ 26. Same; clerk to provide lien docket.—The clerk of the District Court of the United States for the District of Columbia shall provide a suitable bound book to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this Act, he shall enter the name of the injured person, the name of the person, firm or corporation alleged to be liable for the injuries, the date of the accident, and the name of the hospital or other institution making the claim. Said clerk shall make a proper index of the same in the name of the injured person and the clerk shall charge such reasonable fees, not to exceed the sum of $1, as the court may by rule fix for the recording, indexing, and the releasing of the lien so filed.

Idaho Laws 1941, Ch. 118

SECTION 1. Every individual, partnership, firm, association, corporation, institution or any governmental unit or combination or parts thereof maintaining and operating a hospital in this state shall be entitled to a lien for the reasonable charges for hospital care, treatment and maintenance of an injured person upon any and all causes of action, suits, claims, counter claims, or demands accruing to the person to whom such care, treatment, or maintenance was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitated such hospital care, treatment, and maintenance.

SEC. 2. In order to perfect such lien, the executive officer or agent of such hospital, before, or within ten days after, such person shall have been discharged therefrom, shall file in the office of the recorder of the county in which such hospital shall be located a verified statement in writing setting forth the name and address of such patient, as it shall appear on the records of such hospital, the name and location of such hospital, and the name and address of the executive officer or agent of such hospital, the dates of admission to and discharge of such patient therefrom, the amount claimed to be due for such hospital care, and, to the best of the claimant's knowledge, the names and addresses of all persons, firms, or corporations claimed by such injured person or the legal representative of such person, to be liable for damages arising from such injuries; such claimant shall also, within one day after the filing of such claim or lien, mail a copy thereof, postage prepaid, to each person, firm, or corporation so claimed to be liable for such damages, at the address so given in such statement. The filing of such claim or lien shall be notice thereof to all persons, firms or corporations liable for such damages, whether or not they are named in such claim or lien.

SEC. 3. The recorder shall endorse thereon the date and hour of filing and, at the expense of the county, shall provide a hospital lien book with proper index in which he shall enter the date and

hour of such filing, the name and address of such hospital and of such patient, the amount claimed and the names and addresses of those claimed to be liable for damage. Such recorder shall be paid the sum of fifty cents as his fee for such filing.

SEC. 4. No release of such causes of action, or any of them, or of any judgment thereon, shall be valid or effectual as against such lien unless such lien holder shall join therein, or execute a release of such lien, and the claimant, or assignee of such lien may enforce such lien by an action against the person, firm, or corporation liable for such damage, which action shall be commenced and tried in the county in which such lien shall be filed, unless ordered removed to another county by the court for cause. If the claimant shall prevail in such action, the court may allow reasonable attorney's fees and disbursements. Such action shall be commenced within two years after the filing of such lien.

SEC. 5. The provisions of this Act shall not be applicable to accidents or injuries within the purview of the Workmen's Compensation Law of this State.

SEC. 6. An emergency existing therefor, which emergency is hereby declared to exist, this Act is declared to be in full force from and after its passage and approval.

Illinois Stat. Ann. (Smith-Hurd Cum. Supp. 1947) Ch. 82, §§ 97–101

§ 97. Lien created—Notice of lien

Every hospital organized for nonprofit, or hospital maintained and operated entirely by a county, rendering service in the treatment, care and maintenance, of such injured person shall have a lien upon all such claims and causes of action for the amount of its reasonable charges at ward rates in such hospital organized for nonprofit, or hospital maintained and operated entirely by a county up to the date of payment of such damages.

Provided, however, that the total amount of all liens hereunder shall not exceed one-third of the sum paid or due to said injured person on said claim or right of action, and provided further, that said lien shall in addition include a notice in writing containing the name and address of the injured person, the date of the injury, the name and address of the hospital organized for nonprofit, or hospital maintained and operated entirely by a county, and the name of the party alleged to be liable to make compensation to such injured person for the injuries received, shall be served on both the injured person and the party against whom such claim or right of action exists.

Service shall be made by registered mail or in person.

§ 98. Lien to attach to verdict, judgment or decree, etc.

The lien of any such nonprofit hospital, or hospital maintained and operated entirely by a county, shall, from and after the time of service of the aforesaid notice, attach to any verdict, judgment

or decree secured in any suit or action by the injured party based on the negligent or wrongful act, and to any money or property which may be recovered by compromise settlement, or in any suit or action brought by such injured person on account of such claim or right of action. In case of death of the injured person, the lien shall attach to any money or property which may be recovered by compromise settlement, suit or action on account of injuries not resulting in the death of the injured person, or to any verdict, judgment or decree in any suit or action brought by the estate of the injured person against any other person for the recovery of damages on account of injuries not resulting in the death of the injured person.

§ 99. Hospital records accessible to parties to personal injury suit —Hospital to furnish statement of injuries, etc.

Any party to a cause pending in a court of record against whom a claim shall be therein asserted for damages resulting from said injuries shall, upon request in writing, be permitted to examine the records of such hospital in reference to such treatment, care and maintenance of such injured person. Any hospital claiming a lien under this Act shall, within ten (10) days of being so requested in writing by any such party, furnish to such party, or file with the clerk of the court in which said cause is pending, a written statement of the nature and extent of the injuries sustained by and the treatment given to or furnished for such injured person by such hospital and the history, if any, as given by the injured person, insofar as shown by the records of said hospital as to the manner in which said injuries were received.

§ 99. Petition to enforce lien—Attorney's lien not affected

On petition filed by the injured person, or nonprofit hospital, or hospital maintained and operated entirely by a county, any court of competent jurisdiction shall, on written notice to all interested adverse parties, adjudicate the rights of all interested parties and enforce their liens: Provided, however, that nothing herein contained shall affect the priority of any attorney's lien under "An Act creating attorney's lien and for enforcement of same," filed June 16, 1909, as amended.

§ 100. Lien void on failure of hospital to furnish statement

Should any hospital fail or refuse to give or file a written statement in conformity with and as required by Section 3 hereof after being so requested in writing in conformity with Section 3 hereof, the lien of such hospital shall immediately become null and void.

§ 101. Petition to enforce lien—Attorney's lien not affected

On petition filed by the injured person, or non-profit hospital, any court of competent jurisdiction shall, on written notice to all interested adverse parties, adjudicate the rights of all interested

parties and enforce their liens: Provided, however, that nothing herein contained shall affect the priority of any attorney's lien under "An Act creating attorney's lien and for enforcement of same," filed June 16, 1909, as amended.

Indiana Statutes Ann. (Burns 1940 Replacement)

43–501. Lien on judgments for personal injury. Every person, firm, partnership, association, or corporation maintaining a hospital in the state, and every hospital owned, maintained or operated by the state or any political subdivision thereof, shall be entitled to hold a lien for the reasonable value of its services or expenses on any judgment for personal injuries rendered in favor of any person or persons, except persons covered by the provisions of the state or federal Workmen's Compensation Act, or the federal Liability Act, admitted to any such hospital and receiving treatment, care, and maintenance therein on account of said personal injuries received as a result of the negligence of any person or corporation. In order to claim said lien said hospital shall, at the time or after said judgment shall have been rendered, enter, in writing, upon the judgment docket wherein the same is recorded, its intention to hold a lien thereon, together with the amount claimed.

43–502. Junior lien. The lien as provided for in section one [§ 43–501] of this act shall be junior and inferior to all claims for attorney's fees, court costs, and all other expenses contracted or incurred in the recovery of claims or damages for personal injuries as contemplated herein.

Iowa Code (1946)

582.1. Nature of lien. Every association, corporation, county, or other institution, including a municipal corporation, maintaining a hospital in the state, which shall furnish medical or other service to any patient injured by reason of an accident not covered by the workmen's compensation act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages; provided, however, that this lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or his heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient, his heirs, or personal representatives; provided, further, that the lien herein set forth shall not be applied or considered valid against anyone coming under the workmen's compensation act in this state.

582.2. Written notice of lien. No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the district court of the county in which such hospital is located, prior to the payment of any moneys to such injured person, his attorneys or legal representative, as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys or legal representative, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability, if the name and address shall be known.

582.3. Duration and enforcement of lien. Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement, after paying the amount of any prior liens, shall, for a period of one year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; any such association, corporation, or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment.

582.4. Lien book—fees. Every clerk of the district court shall, at the expense of the county, provide a suitable well-bound book to be called the hospital lien docket in which, upon the filing of any lien claim under the provisions of this chapter, he shall enter the name of the injured person, the date of the accident, and the name of the hospital or other institution making the claim. Said clerk shall make a proper index of the same in the name of the injured person and such clerk shall be entitled to twelve cents for filing each claim, and at the rate of eight cents per folio for such entry made in the lien docket, and six cents for every search in the office for such lien claim.

Kansas General Statutes (1945 Supp.)

§ 65–406. Lien upon causes of action for damages accruing to patients. Every hospital in the state of Kansas, which shall furnish emergency medical or other service to any patient injured

by reason of an accident not covered by the workmen's compensation act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien not to exceed two hundred dollars upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the emergency treatment, care and maintenance of such patient in such hospital up to the date of payment of such damages: *Provided, however,* That this lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or his heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient, his heirs or personal representatives: *Provided further,* That the lien herein set forth shall not be applied or considered valid against anyone coming under the workmen's compensation act in this state.

§ 65–407. Same; notice and itemized statement. No such lien shall be effective unless a written notice containing an itemized statement of all claims, endorsed and approved by the patient or his legal representative, the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the district court of the county in which such hospital is located, prior to the payment of any moneys to such injured person, his attorneys or legal representatives, as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys or legal representative, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability, if the name and address shall be known.

§ 65–408. Same; persons liable to hospital; limitation of actions. Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement, after paying the amount of any prior liens, shall, for a period of one year from the date of payment to such patient or his heirs, attorneys or legal representatives, as aforesaid; be and remain liable to such hospital for the amount which such hospital was entitled

to receive as aforesaid; any such association, corporation or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment.

§ 65–409. Same; entering and filing lien; fee. The clerks of the district courts of the several counties of the state shall charge for their services for entering and filing lien statement under this act, a fee of fifty cents. Such fee shall when collected be paid into the county treasury and become a portion of the general fund of the county.

Louisiana Gen. Stat. Ann. (Dart 1939)

4390.5. State hospital—Subrogation to rights of employer against third person injuring employee.—Where a patient in any state supported hospital has been injured by the negligence of another person other than his employer, or by an employer in employment falling outside of the provisions of the Employer's Liability Act, and has a right of action for the recovery of compensatory damages against such person, the board of administrators of such hospitals shall be subrogated to said right of action to the extent of reasonable charges for services rendered to such patient, in accordance with like charges in other hospitals of the first class, including physicians and surgeon's fees.

4390.6. Counsel for hospital—Appointment and fee.—The attorney-general shall designate counsel to represent the hospitals in all cases arising hereunder, and such counsel shall be allowed a fee of ten per cent (10%) of the amount of such charges, to be taxed as costs.

1067.3. Copy of petition in suit for damages or compensation to be served on hospital. Any person who has received treatment in any of the charity hospitals of the state, for injuries which might entitle him to damages or compensation, and who files suit for the recovery of such damages or compensation, shall cause a copy of the petition in any such suit to be served on the hospital from which he received treatment, or on the attorney designated to represent said hospital, at least ten days before the trial of such suit.

1067.4. Duty of court. No court of this state shall proceed with the trial of any suit involving any claim referred to in section 1 [§ 1067.3] hereof, unless a copy of the petition has been served as required in said section.

1067.5. Effect of compromise. No compromise of any claim referred to in section 1 [§ 1067.3] hereof, whether made before or after the filing of suit, shall affect the right of any of the charity hospitals of this state to recover such fees and charges, if any, that may be due said hospital for treatment, from any party or parties, who may be liable for same under any law of this state.

1067.6. Proceedings for recovery of charges. All proceedings for the recovery of any charges or fees due any charity hospital of this state may be presented in any court of this state, in term

time or in vacation, by rule, in a direct action, or by intervention, or by third opposition, and all such proceedings shall be tried or heard summarily and by preference in all courts, after notice of not less than two days to adverse party or parties.

1067.7. Pleadings of hospital prima facie true. Whenever the pleadings filed on behalf of any charity hospital of this state shall be accompanied by an affidavit of any officer of said hospital or of the attorney designated to represent said hospital, that the facts as alleged are true to the best of the affiant's knowledge or belief, all of the facts alleged in said pleadings shall be accepted as prima facie true and as constituting a prime facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the opposing party.

Maryland Code Annotated (Flack 1940), Article 63

46. Every association, corporation or other institution, including a municipal corporation, maintaining a hospital in the State of Maryland, which shall furnish medical or other service to any patient injured by reason of an accident not covered by the Workmen's Compensation Act shall, if such injured party can assert or maintain a claim against another for damages on account of such injuries, have a lien upon fifty per cent. of that part going or belonging to such patient, of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care and maintenance of such patient in such hospital up to the date of payment of such damages; provided, also that the lien shall not exceed the charges as may now or hereafter be allowed by the State Industrial Accident Commission of Maryland for services rendered in the care and treatment of persons coming under the Workmen's Compensation Act of this State; and, provided, further, that the lien herein set forth shall not be applied or considered valid against any one coming under the Workmen's Compensation Act in this State; and provided further, that said lien shall be subordinate only to the lien of any attorney or attorneys for his, her or their professoinal services in collecting or obtaining said damages.

47. No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, the amount claimed, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the Clerk of the Circuit Court, if the services were rendered in the counties, or of the Circuit Court of Baltimore City, if rendered in Baltimore City, prior to the payment of any moneys to such injured person, his attorneys or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, by registered mail, a copy of such notice with a statement of the

date of filing thereof to the person or persons, firm or firms, corporation or corporations, alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys or legal representatives, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier, if known, which has insured such person, firm or corporation against such liability.

48. Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien as set out in Section 46 of this Article or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall, for a period of one year from the date of payment to such patient or his heirs, attorneys or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; and any such association, corporation or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment.

49. Any person or persons, firm or firms, corporation or corporations, legally liable or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the records of any such association, corporation, or other institution or body maintaining such hospital in reference to such treatment, care and maintenance of such injured person.

50. The Clerk of the proper court shall at the expense of the County or City, as the case may be, provide a suitable well-bound book, to be called the Hospital Lien Docket, in which, upon the filing of any lien claim under the provisions of this Act, he shall enter the name of the injured person, the name of the person, firm or corporation alleged to be liable for the injuries, the date of the accident, and the name of the hospital or other institution making the claim. Said Clerk shall make a proper index of the same in the name of the injured person.

On presentation of a release of any lien, the Clerk of the proper Court in which said lien is filed and recorded, shall note in the record the date when such release was filed and he shall note on the release the fact that it has been so recorded. A release so noted, and the record in the Office of the Clerk, shall either of them be *prima facie* evidence of the release of the lien.

The Clerk of the Court shall be entitled to collect not more than One Dollar for the filing, recording and indexing of each lien, and not more than One Dollar for the filing of the release of any lien and noting on the record and on the release the fact that the release has been so filed.

Minnesota Stat. Ann. (West 1947)

514.68. Lien for hospital charges. Any person, firm, or corporation operating a hospital in this state shall have a lien for the reasonable charges for hospital care of an injured person upon any and all causes of action accruing to the person to whom such care was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitated such hospital care, subject, however, to any attorney's lien.

514.69. File with clerk of the district court. In order to perfect such lien, the operator of such hospital, before, or within ten days after, such person shall have been discharged therefrom, shall file in the office of the clerk of the district court of the county in which such hospital shall be located a verified statement in writing setting forth the name and address of such patient, as it shall appear on the records of such hospital, the name and location of such hospital and the name and address of the operator thereof, the dates of admission to and discharge of such patient therefrom, the amount claimed to be due for such hospital care, and, to the best of claimant's knowledge, the names and addresses of all persons, firms, or corporations claimed by such injured person, or the legal representatives of such person, to be liable for damages arising from such injuries; such claimant shall also, within one day after the filing of such claim or lien, mail a copy thereof, by registered mail, to each person, firm, or corporation so claimed to be liable for such damages to the address so given in such statement. The filing of such claim or lien shall be notice thereof to all persons, firms, or corporations liable for such damages whether or not they are named in such claim or lien.

514.70. Clerk to provide record. The clerk of court shall endorse thereon the date and hour of filing and, at the expense of the county, shall provide a hospital lien book with proper index in which he shall enter the date and hour of such filing, the names and addresses of such hospital, the operators thereof and of such patient, the amount claimed and the names and addresses of those claimed to be liable for damages. He shall be paid $1.00 as his fee for such filing.

514.71. Release. No release of such causes of action, or any of them, or of any judgment thereon shall be valid or effectual as against such lien unless such lienholder shall join therein, or execute a release of such lien, and the claimant, or assignee of such lien, may enforce such lien by action against the person, firm, or corporation liable for such damages, which action shall be commenced and tried in the county in which such lien shall be filed, unless ordered removed to another county by the court for cause. If the claimant shall prevail in such action, the court may allow reasonable attorneys' fees and disbursements. Such action shall be commenced within two years after the filing of such lien.

514.72. Not to apply to workmen's compensation. The provisions of sections 514.68 to 514.71 shall not apply to any moneys becoming due under the workmen's compensation act of this state.

Missouri Rev. Stat. Ann. (West 1942)

§ 3621.1. Hospitals to have lien on patient's action for injuries

Every public hospital or clinic, and every privately maintained hospital, clinic or other institution for the care of the sick, which is supported in whole or in part by charity, located within the State of Missouri, or any such hospital duly incorporated under the laws of Missouri providing for the incorporation of eleemosynary institutions, shall have a lien upon any and all claims, counterclaims, demands, suits or rights of action of any person admitted to any hospital, clinic or other institution and receiving treatment, care or maintenance therein on account of any personal injury sustained by such person as the result of the negligence or wrongful act of another, which such injured person may have, assert or maintain against the person or persons causing such injury for damages on account of such injury, for the cost of such services, computed at reasonable rates not to exceed five dollars ($5.00) per day and the reasonable cost of necessary X-ray, Laboratory, Operating Room and Medication service, as such hospital, clinic, or other institution shall render such injured person on account of his injuries; *provided, further,* that the lien herein set forth shall not be applied or considered valid against anyone coming under the Workmen's Compensation Act in this State.

§ 3621.2 Notice

No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be sent by registered mail with return receipt requested, to the person or persons, firm or firms, corporation or corporations, if known, alleged to be liable to the injured party, if known, for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys or legal representative, as compensation for such injuries. Such hospital shall send by registered mail with return receipt requested a copy of such notice to any insurance carrier, if known, which has insured such person, firm or corporation against such liability.

§ 3621.3 Payments to patient after receiving notice of lien—liability to hospital

Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the receipt of such notice in accordance with the requirements of Section 11, without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of 50% of the moneys due to such patient under any final judgment or compromise or settlement agreement after

paying the amount of attorneys' liens, federal and Missouri workmen's compensation liens, and any prior liens, shall for a period of one year, after such settlement is made known to the hospital, from the date of payment to such patient or his heirs, attorneys or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive, as aforesaid, and any such association, corporation or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment.

Montana Rev. Codes (1936)

8395.1. Lien of physicians, nurses and hospitals on causes of action and claims for injuries or death. Whenever a physician, nurse or hospital shall render services in the treatment or care of any person injured through the fault or neglect of another, such physician, nurse or hospital shall have a lien for the value of such services upon the claim and cause of action for such injury, or death resulting therefrom, and upon any judgment recovered on account thereof, and upon all moneys paid in satisfaction of such judgment or in settlement of such claim or cause of action, upon giving notice and complying with the requirements of this act. Such lien, however, shall be subject to any attorney's lien provided for in section 8993. Provided, however, that no lien under this section shall exceed the provisions of the schedule of fees as adopted by the Montana State Medical Association.

8395.2. Notice of claim of lien—service on party liable. Any physician, nurse or hospital claiming such lien shall serve a written notice upon the person or corporation against whom liability for such injury or death is asserted, stating therein the nature of the services and for whom and when rendered and the value thereof, and that a lien therefor is claimed as provided by this act.

8395.3. Same—when filed with clerk of court. If an action is commenced to recover for such injury or death, a duplicate of such notice and claim of lien shall be filed in the office of the clerk of the court in which such action is pending, and such filing shall be notice to all parties to said action of such lien.

8395.4. Failure to recognize claim—liability for. If any person or corporation, against whom a claim is made for damages for personal injury or death, after receiving notice of lien as herein provided, shall make payment to the claimant or claimants, on account of such injury or death, and the amount claimed by any physician, nurse, or hospital for services, as stated in the notice so given has not been paid, such person or corporation shall be liable to such physician, nurse or hospital for the reasonable value of such services.

8395.5. Act not applicable when event covered by workmen's compensation act. This act shall not apply to any injury or death for which compensation is awarded, under or pursuant to the workmen's compensation law of Montana.

Nebraska Rev. Stat. (1944)

52–401. Physician's, nurse's, hospital liens; scope and operation; exception; claim of lien; notice. Whenever any person shall employ a physician, nurse or hospital to perform professional service or services of any nature, in the treatment of or in connection with an injury, and such injured person shall claim damages from the party causing the injury, such physician, nurse or hospital, as the case may be, shall have a lien upon any sum awarded the injured person in judgment or obtained by settlement or compromise on the amount due for the reasonable value of services necessarily performed; *Provided,* that no such lien shall be valid against anyone coming under the Workmen's Compensation Act. In order to prosecute such lien, it shall be necessary for such physician, nurse or hospital to serve a written notice upon the person or corporation from whom damages are claimed that such physician, nurse or hospital claims a lien for such services, and stating therein the amount due and the nature of such services; *Provided, however,* that whenever an action is pending in court for the recovery of such damages, it shall be sufficient to file the notice of such lien in the pending action.

52–402. "Physician," defined. The term "physician" shall include "surgeon," and shall mean one legally authorized to practice his profession with the State of Nebraska and in good standing in his profession at the time.

New Jersey Statutes Annotated (West 1939)

2:60–36. Hospitals entitled to collect for services in accidents; lien upon claims and demands of injured person. Every charitable association, corporation or other institution maintaining a hospital in this state supported in whole or in part by private charity, or owned, operated or maintained by any municipal or county board or body, hereinafter in this article referred to as a "hospital", shall have a lien upon any and all rights of action, suits, claims, counterclaims or demands of any person admitted to any such hospital and receiving treatment, care and maintenance therein, on account of any personal injuries received in any accident as the result of the negligence of any other person, which any such injured person may or shall have, assert or maintain against any such other person for damages because of such injuries, for the amount of the reasonable charges of such hospital for treatment, care and maintenance of such injured person at ward rates in such hospital up to the date of payment of such damages, upon compliance with the provisions of this article.

2:60–37. Notice of lien; filing; contents. A notice in writing containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and, if known, the names of the persons alleged to be liable to make compensation to such injured person for the injuries received, shall be filed in the office of the county clerk of the county in which such injuries shall have occurred, prior to the payment of any moneys to such injured person or his legal representative as compensation for such injuries.

2:60–38. Notice mailed to person liable for payments; statement attached. After the filing of the notice mentioned in section 2:60–37 of this title, the hospital shall mail, postage prepaid, a copy of such notice, with a statement of the date of the filing thereof to the persons alleged to be liable to make compensation for the injuries sustained by such injured person, if their names and addresses shall be known.

2:60–43. To what lien attaches. The lien of any hospital under the provisions of this article shall attach to any verdict, report, decision, decree, award, judgment or final order made or rendered in any action or proceeding in a court of record of this state, or any public board or bureau, in any suit, action or proceeding brought by any such from the injuries, against any other person for the recovery of damages or compensation on account of injuries received in any such accident, as well as to the proceeds of a settlement thereof, or the settlement of any such claim or demand effected by any such injured person with another person whose negligence is claimed or alleged to have been the cause of the accident or effected with any other person on account thereof.

2:60–44. Release of claims; enforcement of lien by action. After the filing of the notice as provided by section 2:60–37 of this article, no release of any judgment, claim or demand by such injured person shall be valid or effectual as against such lien, and the person making any payment to such injured person or his legal representative as compensation for the injuries sustained shall for a period of one year from the date of such payment as aforesaid remain liable to such hospital for the amount of reasonable charges due at the time of such payment as aforesaid to the extent of the full and true consideration paid or given to the injured person, and any such hospital may, within such period, enforce its lien by an action at law against such person making any such payment.

2:60–45. Hospital lien docket; entries in; fees. Every county clerk shall, at the expense of the county, provide a suitable, well-bound book, to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this article, he shall enter:

a. The name of the injured person;
b. The date of the accident; and
c. The name of the hospital or other institution making the claim.

The clerk shall make a proper index of the same in the name of the injured person.

The county clerk shall, for filing each claim, for each entry made in the lien docket and for each search in the office for such lien claim, be entitled to the fees fixed by sections 22:2–19 and 22:4–10 of the title Fees and Costs.

2:60–46. Examination of hospital records. Any person, legally liable or against whom a claim is asserted for compensation for injuries sustained shall be permitted to examine the records of the hospital in reference to the treatment, care and maintenance of the injured person therein.

North Carolina Gen. Stat. (Michie, 1944)

§ 44–49. Lien created; applicable to persons non sui juris. From and after March 26, 1935, there is hereby created a lien upon any sums recovered as damages for personal injury in any civil action in this State, the said lien in favor of any person or corporaton to whom the person so recovering, or the person in whose behalf the recovery has been made, may be indebted for drugs, medical supplies, and medical services rendered by any physician, dentist, trained nurse, or hospitalization, or hospital attention and/or services rendered in connection with the injury in compensation for which the said damages have been recovered. Where damages are recovered for and in behalf of minors or persons non compos mentis, such liens shall attach to the sum recovered as fully and effectively as if the said person were sui juris.

§ 44–50. Receiving person charged with duty of retaining funds for purpose stated; evidence; attorney's fees; charges.—A like lien shall attach to all funds paid to any person in compensation for or settlement of the said injuries, whether in litigation or otherwise; and it shall be the duty of any person receiving the same before disbursement thereof to retain out of any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims for such drugs, medical supplies, and medical attention and/or hospital service, after having received and accepted notice thereof: Provided, that evidence as to the amount of such charges shall be competent in the trial of any such action: Provided further, that nothing herein contained shall be construed so as to interfere with any amount due for attorney's services: Provided, further, that the lien hereinbefore provided for shall in no case, exclusive of attorneys' fees, exceed fifty per cent of the amount of damages recovered.

§ 44–51. Disputed claims to be settled before payments.—Whenever the sum or amount or amounts demanded for medical services or hospital fees shall be in dispute, nothing in this article shall have any effect of compelling payment thereof until the claim is fully established and determined, in the manner provided by law: Provided, however, that when any such sums are in dispute the amount of the lien shall in no case exceed the amount of the bills in dispute.

North Dakota Rev. Code (1944)

35–1801. Hospital Lien: For Services to Injured Persons; Attaches to Rights of Action, Insurance, and Other Claims. Any charitable association, corporation, or other institution maintaining a hospital in this state shall be entitled to a lien for the reasonable value of hospitalization services rendered to a person injured in any accident. The lien shall attach to all rights of action, claims, demands, and judgments recovered on account of the injuries against persons or corporations liable to the injured person in tort for damages occasioned by negligence causing the injuries, and shall

attach to the proceeds of the settlement of such claims or demands, and to insurance of the tort feasor payable by reason of the liability occasioned by such injury, and to any insurance or indemnity payable to the injured person by any insurer.

35–1802. Service of Notice of Intention to File Hospital Lien. A notice of intention to file a hospital lien shall be served upon the person or corporation claimed to be liable for the damages arising from the injury, by registered mail or by personal service in the manner provided for the service of a summons in a civil action. Proof of such service shall be filed with the lien statement.

35–1803. Lien Statement: Contents; Verification; Filing. The lien claimant, at any time after the rendering of the hospital services, or some part thereof, or from time to time as the services are rendered, as the lien claimant may deem best, but not later than thirty days after the services have been rendered and terminated, shall file a lien statement in the office of the clerk of the district court of the county in which the services were rendered containing:

1. The name of the injured person to whom the services were rendered;
2. The address of the injured person as shown upon the records of the hospital or institution;
3. The date upon which the injured person was admitted to the hospital and the date of his release, if he has been released from the hospital at the time of the filing of the statement;
4. The name, if known, of the person or corporation alleged or claimed to be guilty of the negligence causing the injuries, and the address, if known, or ascertainable from the hospital records;
5. The name and address of any person or corporation insuring the tort feasor against liability on account of negligence, if the same are known or ascertainable from the hospital records;
6. The name of any insurer liable for insurance to the injured person, if known; and
7. An itemized statement of the charges for hospital services and the total sum claimed to be due.

Such statement shall be signed in the name of the hospital or institution claiming the lien and verified on behalf of the institution by some person authorized so to do and possessing knowledge of the facts. The verification shall show that the facts therein set forth are true to the best of the knowledge, information, and belief of the person making the same, that the charges for services are the reasonable and usual charges of the institution for such services, and that the sum claimed is due and unpaid.

35–1804. Clerk of Court; Record; Fee. The clerk of the district court with whom the lien statement and proof of service are filed shall endorse thereon the date and hour of filing and shall make an abstract thereof in a book kept for that purpose to be known as "the hospital lien book", which shall be indexed properly and shall contain the name of the hospital or institution filing the lien, the date and hour filed, the amount claimed, the name of the person or corporation against whom it is filed, the name of the person to whom such services are rendered and of any insurer of such injured

person, and the number of the file where the original lien is kept. The clerk shall collect a fee of fifty cents for filing and indexing each lien.

35–1805. Filing is Notice to Whom: Effect of Payment or Release of Claim. The filing of a hospital statement, from the time of filing thereof, shall be constructive notice to all persons of the claim of the hospital and of its right to a lien upon any claim or demand or cause of action against the tort feasors and the insurer or insurers of the tort feasors, or an insurer of the injured person, and no release of any judgment, claim, or demand by the injured person shall be valid or effective as against the lien. The person or corporation making any payment to the injured person, or to his legal representative, as compensation for injuries sustained, in settlement of a cause of action claimed to exist for negligence causing such injuries, or out of insurance carried by the tort-feasor, shall remain liable to the hospital for the amount of the reasonable charges due at the time of such payment to the extent of the full amount so paid or given to the injured person.

35–1806. Hospital Lien Enforced by Action. Any hospital or institution securing a lien under this chapter may enforce its lien in a civil action against the tort feasor, the insurer of the tort feasor, or the insurer of the injured person. A judgment obtained against the tort feasor or any insurer shall not bar the hospital or institution from collecting the amount of its account from the person for whom the services were rendered, or his insurer, unless payment has been made by the tort feasor or his insurer to the hospital, and then only to the extent that payment has been made.

35–1807. Judgment for Damages to Contain Reference to Lien: Proceeds of Judgment Applied on Lien or Deposited. Upon the trial of any action for damages for personal injuries wherein it appears at the trial that services were rendered in hospitalization of the injured person, the court before whom the action is tried shall require the clerk of the district court to search the records for information as to whether a lien has been filed, and if a lien has been filed, mention of that fact and a statement of the amount claimed shall be made in the judgment. If the parties to the action admit the facts set forth in any lien described in the judgment, and the judgment is collected under execution, an amount equal to the amount claimed in the lien shall be deposited with the clerk of the district court for the payment of the lien when the execution is returned. If the lien is contested, the deposit shall be held to abide the final event of an action to enforce the lien, which action must be brought by the hospital or the institution within sixty days after a demand therefor is made by any of the parties interested.

35–1808. Insurance: Payment to Holder of Lien; Deposit with Clerk. If an injured person receiving hospitalization has a contract providing for indemnity or compensation for the sum incurred for hospitalization, the hospital shall have a lien upon the amount payable under such contract, and the party obligated to make reimbursement for the hospitalization under the contract may pay the

sum due thereunder directly to the hospital, and such payment shall constitute a release of the party making the payment under such contract to the amount of the payment. If the amount of the claim is contested, payment shall be made to the clerk of the district court and shall be subject to all of the terms and conditions stated in section 35–1807.

35–1809. Hospital Records Open to Inspection. Any person, firm or corporation legally liable under this chapter and against whom a claim is asserted for compensation for injuries shall be permitted to examine the records of any hospital which has filed a lien statement in reference to treatment, care, and maintenance of the injured person.

35–1810. Workmen's Compensation Bureau Excepted. The provisions of this chapter shall not apply to any money paid or payable under the title Workmen's Compensation of this code.

35–1811. Action on Lien; Limitations. An action to enforce a hospital lien shall be commenced within one year after the filing of the lien, except that when the cause of action against a tort feasor or insurer shall not have become barred or an action is pending involving the question of liability, the lien shall continue in effect until the final termination of such action and for a period of one year thereafter.

Oregon Compiled Laws Annotated (1940)

§ 67–1701. Lien on sum obtained for personal injury: Exception as to persons within Workmen's Compensation Act: Notice of claim of lien. Whenever any person shall receive hospitalization on account of any injury and such injured person shall claim damages from the party causing the injury, such hospital shall have a lien upon any sum awarded the injured person in judgment or obtained by a settlement or compromise on the amount due for the reasonable value of such hospitalization rendered the injured person prior to the date of settlement or judgment; provided, that no such lien shall be valid against anyone coming under the workmen's compensation act.

In order to perfect and prosecute such lien it shall be necessary for such hospital to serve a written notice upon the person or corporation from whom damages are claimed that such hospital claims a lien for such hospitalization and stating therein the amount due and the nature of such hospitalization.

§ 67–1702. Filing notice of lien with county clerk and in pending action; When notice filed: Notice that injured person is receiving hospitalization. In order to perfect such notice of lien as described in section 67–1701, it shall be necessary for such hospital or the owner or operator of such hospital, to file a notice of lien with the county clerk in the county where the said hospital is located. And in event that said injury was received in any other county of this state other than the county where such hospital is located, then in that event, a notice of lien shall also be filed in the county where the said injury occurred; said notice of lien to be

filed within thirty (30) days after the completion of said hospitalization and to contain an itemized statement of the amount claimed; provided, however, that such hospital shall give a written notice within seven (7) days after admission of the said injured party to the said hospital that such injured party is receiving hospitalization; said notice to be made by mailing a copy thereof by United States registered mail, addressed to the party alleged to have caused the injury and to the party being liable for damages on account of same. And in event that an action is instituted in court for the recovery of such damages, such hospital shall file a notice of such lien in the pending action. A copy of such notice shall be served upon each of the parties appearing in said action.

§ 67–1703. Lien on amount payable under indemnity contract: Payment of amount due direct to hospital. In the event that such injured person receiving hospitalization shall have a contract providing for indemnity or compensation for the sum incurred for hospitalization received by such injured person, such hospital shall have a lien upon the amount payable under said contract and the party obligated to make reimbursement for such hospitalization under such contract may pay the sum due thereunder directly to such hospital and such payment shall constitute a full release of the party making such payment under such contract to the amount of such payment.

§ 67–1704. Effect of settlement by person causing injury: Lien not to apply to sum incurred for expenses incurred in securing settlement, compromise or damages. No rights or claims for lien under this act shall be allowed for hospitalization rendered an injured person after a settlement has been effected by or on behalf of the party causing the injury. No lien shall apply or be allowed against any sum incurred by the injured party for necessary attorney fees and costs and expenses incurred by the injured party in securing a settlement, compromise or recovering damages by an action at law.

§ 67–1705. Examination of and copying hospital records. Any party legally liable or against whom a claim shall be asserted for compensation or damages for such injuries shall have a right to examine and make copies of all records of any hospital in reference to and connected with such hospitalization of such injured person.

Rhode Island Acts and Resolves, 1939 Ch. 708

Section 1. Every association, corporation or other institution, including a municipal corporation, maintaining a hospital in the state of Rhode Island, which shall furnish medical or other service to any patient injured by reason of an accident not covered by the workmen's compensation act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient, of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or

compromise to the amount of the reasonable and necessary charges of such hospital up to the date of payment of such damages; *provided, however,* that the lien herein set forth shall not be applied or considered valid against anyone coming under the workmen's compensation act in this state; and *provided, further,* that nothing herein enacted shall be so construed as to give the lien herein created precedence over the lien of an attorney.

Sec. 2. No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the city or town clerk in which such hospital is located, prior to the payment of any moneys to such injured person, his attorneys or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to such injured person, and to the person or persons, firm or firms, corporation or corporations, alleged to be liable to the injured party for the injuries sustained prior to the payment of any moneys to such injured person, his attorneys or legal representative, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability.

Sec. 3. Any person or persons, firm or firms, corporation or corporations, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall, for a period of one year from the date of payment to such patient or his heirs, attorneys or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; and any such association, corporation or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corpporations, making any such payment.

Sec. 4. Any person or persons, firm or firms, corporation or corporations, legally liable for such lien or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the records of any such association or other institution or body maintaining such hospital in reference to such treatment, care and maintenance of such injured person.

Sec. 5. Every city or town clerk shall, at the expense of the city or town, provide a suitable well-bound book to be called the hospital lien docket in which, upon the filing of any lien claim under the provisions of this act, he shall enter the name of the injured person, the name of the person, firm or corporation alleged to be

liable for the injuries, the name of an insurance carrier where the same is known at the time of filing of such notice, the date of the accident and the name of the hospital or other institution making the claim, and said clerk shall index the same in the name of such injured person and such hospital and in the name of such insurance carrier where the name of same is known at the time of filing such notice.

Sec. 6. This act shall take effect upon its passage and shall continue in effect notwithstanding any of the provisions of chapter 2600 of the public laws of 1938, as amended, and of the general laws of 1938, and all acts and parts of acts inconsistent herewith are hereby repealed.

Texas Rev. Civ. Stat. (Vernon 1941)

Art. 5506a. Hospital or clinic's lien for services on cause of action of persons injured

Sec. 1. Every association, individual, corporation, or other institution maintaining a hospital or clinic rendering hospital services in the State of Texas shall be entitled to a lien upon any and all rights of action, suits, claims, counterclaims, or demands of any persons admitted to any such hospital and receiving treatment, care, and maintenance therein, on account of any personal injuries received in any accident as the result of the alleged negligence of any other person or firm or corporation or joint stock association, his, its or their agent, servant or employee, which any such injured person may or shall have, assert, or maintain against any such other person or firm or corporation or joint stock association for damages on account of such injuries, for the amount of the charges of such hospital or clinic for such treatment, care and maintenance as may have been given to the injured persons. Provided the lien provided for herein shall not exist or attach unless the injured person is received in such hospital within seventy-two (72) hours after the happening of the accident causing the injury.

Lien to attach to judgment or orders in action or proceedings

Sec. 2. The lien of any such hospital shall also attach to any verdict, report, decision, decree, award, judgment, or final order made or rendered in any action or proceeding, in any Court in Texas, or any public board or bureau in any suit, action or proceeding brought by such injured persons, by any person entitled thereto in case of death of such injured person against any other person or corporation or joint stock association for the recovery of damages or compensation on account of injuries received in any such accident, as well as the proceeds of any settlement thereof, or the settlement of any such claim or demand effected by any such injured person or other person entitled thereto with any other person or firm or corporation or joint stock association whose negligence is claimed or alleged to have been the cause of the said accident.

Release ineffectual as against claims; exceptions as to liens

Section. 3. No release of any claim or demand on account of any such injuries, or in respect of any such verdict, report, decision, decree, award, judgment, or final order, made or rendered, as hereinbefore mentioned, executed by any such injured person, or by any person entitled thereto, shall be valid or effectual between the parties thereto or otherwise, unless prior to the execution and delivery thereof all such charges of any such hospital or institution or clinic, furnishing hospital services, which has filed its, his, or their lien as hereinafter provided, shall have been paid in full, or to the extent of a full and true consideration paid and given to the injured person by the other party or parties to such release named therein, or paid and given by any other person or corporation in behalf of such other party or parties, or unless such release shall also have been executed by the person, corporation, association, or institution maintaining such hospital; and every such verdict, report, decision, decree, award, judgment, or final order shall remain in force and effect until all such charges of any such hospital or institution shall have been paid in full or to the extent of any such verdict, report, decision, decree, award, judgment, or order; provided such hospital, institution or clinic furnishing said services does not charge more than a reasonable rate for such accommodations, in no event to exceed more than Five Dollars ($5.00) per day for not longer than one hundred (100) days; provided that a notice in writing containing the name and address of the injured person, the date of the accident, the name and location of the hospital or clinic rendering the service, and if known, the name of the person or persons, firm or firms, corporation or corporations, alleged to be liable to pay damages to such injured person for such injuries so received, shall be filed in the office of the County Clerk of the county in which such injury shall have occurred, prior to the payment of any moneys to such injured person or his legal representative or other person entitled thereto as damages for or on account of such injuries. Provided further that this lien shall not attach to any claim for amounts due the injured person under the Workmen's Compensation Act of the State of Texas, or Federal Liability Act, or Federal Longshoremen's or Harbor Workers' Act or Workmen's Compensation Act of Texas, nor to any insurance company, corporation, or joint stock association furnishing hospitalization under the Workmen's Compensation Act of the State of Texas. Provided further, that the lien provided for in this Act shall not attach to any claim for amounts due the injured person by any person, firm, association, corporation, or the receiver, or receivers thereof, owning and/or operating a railroad in this State, where such person, firm, association, corporation, or receiver, or receivers, or his, its, or their employes, maintain a hospital, furnishing hospitalization to injured persons.

County clerk to provide hospital lien docket

Sec. 4. Every County Clerk shall at the expense of the county, provide a suitable, well bound book, to be called the "Hospital

Lien Docket," upon which, on the filing of lien claims under the provisions of this Act he shall enter the name of the injured person, the date of the accident, the name and address of the hospital or clinic or other institution making the claim, and the amount thereof.

And the said Clerk shall make a proper index of the same in the name of the injured person, and such Clerk shall be entitled to twenty-five (25) cents for filing each claim and such fee shall be accountable as fees of office.

The term "corporation," as used in this Article shall include all municipal corporations, as well as all private, public and quasi-public corporations, except county and common and independent school districts.

Hospital records subject to inspection.

Sec. 4a. Any person or persons, firm or firms, corporation or corporations legally liable or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the records of any such association, corporation, or other institution or body maintaining such hospital in reference to such treatment, care and maintenance of such injured person, under such reasonable rules and regulations as such hospital may require; and the hospital record with respect to injured persons may be admitted in evidence in any proceeding with respect to the recovery of damages.

Discharge of lien entered on hospital lien docket

Sec. 4b. To discharge any notices filed under the provisions of this Act the hospital authorities or persons in charge of the finances of said hospital to whom said lien has been duly paid shall execute a certificate to the effect that the claim filed by such hospital for treatment, care and maintenance therein has been duly paid or released and authorizing the Clerk of the County in whose office said notice of hospital lien has been filed, to discharge the same; and thereupon such Clerk shall enter upon the margin of the hospital lien docket in which the said hospital lien notice has been entered, a memorandum of such filing and the date when such certificate of payment or release was filed in his office, which certificate and entry shall constitute a discharge of lien, for which the Clerk shall receive the sum of twenty-five (25) cents and such fee shall be accountable as fees of office.

Partial invalidity

Sec. 4c. If any part of this Act is declared by the courts to be unconstitutional such decision shall not affect the validity of the remaining part of this Act, unless the part held unconstitutional is indispensable to the operation of the remaining part and the Legislature hereby declares that its would have passed those parts of this Act which are valid and omitted any parts which may be unconstitutional, if it had been advised of such unconstitutionality at the time of the passage of this Act.

Insurance excepted from claim of lien.

Sec. 4d. The provisions of this Act shall not give to any such hospital, or any person, firm or corporation claiming under it, any lien, claim, right, or demand upon the proceeds of any insurance policy in favor of the injured party, his beneficiaries, or legal representatives, and none of the provisions of this Act shall have application thereto. Provided, however, this section shall not include public liability insurance carried by the insured to protect him against loss or damage as a result of any accident or collision covered by said public liability insurance policy.

Virginia Code Annotated (Michie 1942)

§ 1560(1). Lien of hospital for charges.—Whenever any person sustains personal injuries caused by the alleged negligence of another and receives treatment in any hospital, public or private, or receives medical attention or treatment from any physician, or receives nursing service or care from any registered nurse in this State, such hospital, physician or nurse shall each have a lien for the amount of a just and reasonable charge for the service rendered, but not exceeding two hundred dollars in the case of a hospital, fifty dollars for all physicians and fifty dollars in the case of all nurses, on the claim of such injured person or of his personal representatives, against the person, firm or corporation whose negligence is alleged to have caused such injuries, unless the injured person, his personal representatives or members of his family, is paid under the provisions of the Workmen's Compensation Act, but such lien shall be of inferior dignity to the claim or lien of the attorney or attorneys of such injured person or of his personal representatives for professional services for representing such injured person or his personal representatives in his claim or suit for damages for such personal injuries. Any municipal corporation or any person, firm or corporation who may pay such charges, shall be subrogated to the lien provided for by this act.

Provided, however, that in cases of personal injuries resulting in death and settlement therefor by compromise or suit under the provisions of sections fifty-seven hundred and eighty-six–fifty-seven hundred and ninety, inclusive of the Code, the liens herein provided for may be asserted against the recovery, or against the general estate of the decedent, but not both. If asserted against the recovery and paid, such liens shall attach pro rata to the amounts received respectively by such beneficiaries as are designated to receive the moneys distributed and in their respective amounts; and such beneficiaries, or the personal representative for their benefit, shall be subrogated to the liens against the estate of such decedent provided for by section fifty-three hundred and ninety of the Code.

§ 1560(2). Written notice required.—No such lien shall be created or become effective in favor of any such hospital, physician or nurse unless and until a written notice setting forth the name

of the hospital, physician or nurse, as the case may be, the name of the injured person, and the date and place such person is alleged to have sustained injuries, shall have been served upon or given to the person, firm or corporation whose negligence is alleged to have caused such injuries or to the attorney for the injured party. Such notice when served upon or given to either shall have the effect of making such party liable for the reasonable charges for the services rendered the injured person to the extent of the amount paid to or received by such injured party or his personal representatives exclusive of attorney's fees, but not in excess of the maximum amounts prescribed in section 1560(1). Nothing herein contained shall be construed as imposing liability on any person, firm or corporation whose negligence is alleged to have caused injuries to the person so receiving such service or on the attorney for the injured party where no settlement is made, or, in case of an attorney, where no funds come into his hands, or where no judgment is obtained in favor of such injured party or his personal representatives, nor as imposing liability on anyone who has not received notice as required herein unless liability is imposed by a court as provided in section 1560(4).

§ 1560(3). Hearing and disposal of claim of unreasonableness.—Should the person who received treatment in any such hospital, or services at the hands of any such physician or nurse or his personal representatives, question the reasonableness of the charges made therefor, he may file, in the court that would have jurisdiction of such claim were the same asserted against him by such hospital, physician or nurse, a petition setting forth the facts and the court shall hear and dispose of the same in a summary way after five days' notice to such claimant; and also in such case the claimant may file such petition in the court having jurisdiction were the claim asserted against the injured party or his personal representatives, and after five days' notice the court shall hear and dispose of same in a summary way.

§ 1560(4). Petition to enforce lien.—If a suit be instituted by such injured person or his personal representatives, the hospital, physician or nurse may, in lieu of proceeding according to sections 1560(2) and 1560(3), file in the court wherein such suit is pending a petition to enforce the lien given hereunder, which petition shall be heard and disposed of in a summary way.

§ 5390. Order in which debts of decedents to be paid.—When the assets of the decedent in hands of his personal representative, after the payment of funeral expenses, not to exceed two hundred dollars, and charges of administration, are not sufficient for the satisfaction of all demands against him, they shall be applied:

First: To debts due the United States;

Second. To claims of physicians, not exceeding fifty dollars, for services rendered during the last illness of the decedent; and accounts of druggists, not exceeding the same amount, for articles furnished during the same period; and claims of professional nurses,

or other person rendering service as nurse to the decedent, at his request or the request of some member of his immediate family, not exceeding the same amount, for services rendered during the same period; and accounts of hospitals and sanitariums, not exceeding the same amount for articles furnished and services rendered during the same period; . . .

Washington Rev. Stat. 1932 (Remington, 1940 Supp.)

§ 1209–1. Persons entitled, services, and subjects. Every operator of a hospital and every duly licensed nurse, practitioner, physician and surgeon rendering service for any person who has received a traumatic injury shall have a lien upon any claim, right of action and/or money to which such person is entitled against any tort feasor and/or insurer of such tort feasor for the value of such service, together with costs and such reasonable attorney's fees as the court may allow, incurred in enforcing such lien: *Provided, however,* That nothing in this act shall apply to any claim, right of action or money accruing under the Workmen's Compensation Act of the State of Washington, and: Provided, further, That all the said liens for service rendered to any one person as a result of any one accident shall not exceed twenty-five (25) per centum of the amount of an award, verdict, report, decision, decree, judgment or settlement.

§ 1209–2. Claim of lien, contents, and filing. No person shall be entitled to the lien given by the preceding section unless he shall, within twenty (20) days after the date of such injury, or, if settlement has not been a[e]ffected with and payment made to such injured person, then at any time before such settlement and payment, file for record with the county auditor of the county in which said service was performed, a notice of claim stating the name and address of the person claiming the lien and whether he claims as a practitioner, physician, nurse or hospital, the name and address of the patient and his place of domicile, if other than his actual address, the time when and place where the alleged fault or negligence of the tort feasor occurred, and the nature of the injury, the name and address of the tort feasor, if same or any thereof are known, which claim shall be subscribed by the claimant and verified before a person authorized to administer oaths.

§ 1209–3. Recordation of lien claim. The county auditor shall record the claims mentioned in this chapter in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed.

§ 1209–4. Waiver of lien by taking note. The taking of a promissory note or other evidence of indebtedness for any services performed, as provided in this act, shall not discharge the lien therefor unless expressly received as a payment for such services and so specified therein.

§ 1209–5. Settlement and discharge of lien. No settlement made by and between the patient and tort feasor and/or insurer shall

discharge the lien against any money due or owing by such tort feasor or insurer to the patient or relieve the tort feasor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of any such claim of lien, signed by the claimant, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tort feasor and/or insurer, then such written release or waiver shall be delivered to the tort feasor and/or insurer.

§ 1209–6. Enforcement by action—Payments as evidence. Such lien may be enforced by a suit at law brought by the claimant or his assignee within one (1) year after the filing of such lien against the said tort feasor and/or insurer. In the event that such tort feasor and/or insurer shall have made payment or settlement on account of such injury, the fact of such payment shall only for the purpose of such suit be *prima facie* evidence of the negligence of the tort feasor and of the liability of the payer to compensate for such negligence.

Hawaii Revised Laws (1945)

Sec. 8757. Liens for services in personal injury cases. Whenever any person recovers judgment for damages for personal injuries to himself or to another, any hospital which has furnished room, board, supplies, facilities or accommodations to the injured person in connection with the care, or treatment of such injuries, and any dentist, doctor, physician or surgeon who has treated the injured person for such injuries, shall have a lien, subject to any common law lien, on such judgment or the proceeds thereof for the agreed or reasonable value of the services performed or the agreed or reasonable value of the room, board, supplies, facilities or accommodations so furnished, as the case may be, if, before satisfaction of judgment is docketed, such dentist, doctor, physician, surgeon or hospital files in the office of the chief clerk of the circuit court of the circuit in which judgment was recovered, or, in the case of a judgment recovered in a district court, in the office of the clerk of the district court of the district in which judgment was recovered, a notice setting forth the agreed or reasonable value of the services performed or the agreed or reasonable value of the room, board, supplies, facilities or accommodations furnished, as the case may be. In the event the available proceeds of the judgment are insufficient to satisfy in full the liens herein provided for, such proceeds shall, after all common law liens have been satisfied in full, be distributed pro rata between the lienors without any priority among them.

§ 8758. Judgment debtor may pay money into court. If the judgment debtor so elects he may pay the amount of the judgment to the chief clerk of the circuit or clerk of the district court in which such judgment is rendered and thereby be released from any further obligation to the judgment creditor and to the lienor.

In the event the judgment debtor pays the amount of the judgment to such clerk the lien shall attach to the sum so paid.

§ 8759. Enforcement of lien. Such liens may be enforced upon the petition of the lienor to the circuit judge at chambers in the judicial circuit in which judgment was rendered, and jurisdiction is conferred upon the circuit judges at chambers to hear and determine all proceedings brought or instituted to enforce and foreclose such liens, and the proceedings had before the circuit judge at chambers shall be conducted in the same manner and form as ordinary foreclosure proceedings.

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