

1 As a consequence, in personal injury litigation, which makes up the vast majority of civil
2 cases, the injured party is often required to present testimony from a physician that the
3 medical bills incurred are reasonable in amount and were necessary for her proper care and
4 treatment, before such bills can be received in evidence.

5 Meanwhile, physicians are presently charging up to \$2,500 for their court
6 appearances. In substantial injury cases it may be cost effective to have a treating physician
7 or other medical expert testify, however, in cases involving more injuries, it is often cost
8 prohibitive. The result is that many accident victims in the smaller cases can not afford to
9 seek compensation for their medical bills simply because of the cost of proving this element
10 of their damages. The irony of this situation is that the reasonableness and necessity of the
11 medical bills are rarely in dispute, but at the same time, are rarely the subject of a stipulation,
12 because, to do so, would require one side giving up an evidentiary advantage which they
13 presently have.

14 It is a poor reflection on Arizona's jurisprudence to be virtually the only jurisdiction in
15 which medical testimony is necessary in order to admit medical bills into evidence, or in
16 which medical records are not received without a physician's testimony, even though the
17 records themselves show a causal relationship between the injury and the accident event.

18 Thus, in almost all other jurisdictions, under the common law, or by court rule, expert
19 medical testimony is not necessary in order to provide a foundation for the admission of
20 medical bills into evidence. East-West Karate Association, Inc. v. Riquelme, 638 S.2d 604,
21 605 (Fla. App. 4 Dist. 1944); Kay v. Martin, 777 S.W.2d 859, 861 (Ark. 1989); McDonald v.
22 Miller, 518 N.W.2d 80, 86-87 (Neb. 1994); Williams v. Jacobs, 972 S.W.2d 334, 342-343
23 (Mo. App. WD1998); Munro v. Privratsky, 209 N.W.2d 745, 753 (N.D. 1973); Montgomery
24 v. Dennis, 411 A.2d 61, 62 (D.C. App. 1980); Garrett v. Kirschman, 336 So.2d 566, 570-571
25 (Fla. 1976); Kennedy v. Monroe, 547 P.2d 899, 906 (1976); Walters v. Littleton, 290 S.E. 2d

1 839, 842 (Va. 1982); Stanley v. State, 197 N.W.2d 599, 606-607 (Iowa 1972); Biddle v.
2 Piley, 176 S.W. 134, 136 (Ark. 1915); Western Gas Const. Co. v. Danner, 97 Fed. 882, 887
3 (9th Cir. 1899). McCullough v. Ogan, 596 S.W.2d 356, 358-359 (Ark. 1980); Spica v.
4 McDonald, 334 S.W.2d 365, 371 (Mo. 1960); Bell v. Stafford, 680 S.W.2d 700, 702-703
5 (Ark. 1984); Elberts v. Nussbaum Trucking, Inc., 422 N.E.2d 1040, 1043 (Ill. App. 1981);
6 Farmer v. International Harvester Company, 553 P.2d 1306, 1309 (Idaho 1976); Wood v.
7 Elzoheary, 462 N.E.2d 1243, 1245-46 (Ohio App. 1983); Figgs v. City of Milwaukee, 342
8 N.W.2d 254, 257 (Wis. App. 1983); Biddle v. Riley, 176 S.W. 134, 136 (Ark. 1915); Van
9 Brunt v. Stoddard 39 P.3d 621, 626 (Idaho 2001); Burge v. Teter, 808 N.E. 2d 124, 132;
10 Baker v. Huston, 775 N.E.2d 631, 638 (Ill. App. 2002); 22 Am Jur 2d Damages ' 165-172.

11 In Walters v. Littleton, the Court properly identified the policy reason for such a rule.

12 *ATo require plaintiffs in claims such as Walters to produce as witnesses all who*
13 *provided medical services might effectively deny access to the Courts to many who,*
14 *with meritorious, but small claims, cannot afford the high cost of expert medical*
testimony.@

15 In Western Gas Const. Co. v. Danner, supra, an early, precedent setting case, the
16 Court had, under consideration, a claim for medical expenses with no direct evidence that the
17 expenses were reasonable. The Court said at p. 887 of 97 Fed.:

18 *AThe reasonableness of the charge in such cases does not solely depend upon*
19 *the testimony of experts, although such testimony is proper, and entitled to*
20 *weight, and is usually given as an aid to the jury in determining the proper*
21 *amount to be allowed; but the jury have the right, in this connection, to*
22 *consider the character and extent of Plaintiff=s injury, and the extent and*
23 *character of the medical services and treatment he received, and from all the*
24 *evidence determine the amount that should be given.@*

25 In Larsen v. Decker, 196 Ariz. 239, 243, 995 P.2d 281, 285 (App. 2000), Division
26 One of the Court of Appeals missed an opportunity to clarify the law on the foundation
27 necessary for the introduction of medical bills and records into evidence. The Court,
28 citing Patterson v. Horton, 929 P.2d 1125 (Wash. App.1997), affirmed the trial court's

1 rejection of medical bills and records, in the absence of medical testimony. The Larsen
2 decision is being erroneously interpreted by our trial courts to require the testimony of a
3 physician, in every case, before medical bills and records can be received in evidence.

4 The stated purpose of Rule 102 of the Arizona Rules of Evidence, plainly favors a
5 policy which results in the *Aelmination of unjustifiable expense and delay.*@ Requiring a
6 medical expert to attend a trial solely for the purpose of testifying that a medical bill is
7 reasonable or that certain treatment was necessary, when the bills and records themselves
8 provide relevant evidence on these issues, is plainly inconsistent with the mandate of Rule
9 102.

10 The required foundation for the admission of medical bills should be purely a matter
11 of relevancy. In this regard, the Court in Chemco Transport, Inc. v. Conn, 506 N.E.2d 1111,
12 1115 (Ind. App. II Dist. 1987) analyzed and perceptively framed the issue:

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14 *Admissibility of evidence is, first and foremost, a question of relevancy. >When*
15 *evidence is relevant it should be admitted regardless of its weight.= (citations*
16 *omitted) Evidence is relevant if it logically tends to prove a material fact.*
17 *(citations omitted) *** the amount actually paid by [the Plaintiff] may tend to*
18 *prove the reasonable and fair value of the services rendered to him ****
**** In this case, the material fact to be proved was the reasonable and*
necessary medical expenses incurred by Conn as a result of the accident. The
actual amount paid by Conn, as shown by his medical bills, tended to prove the
reasonableness component of the standard. Thus the medical bills were relevant
and properly admitted.

19 In a similar vein, Rule 401 of the Arizona Rules of Evidence provides:

20 *ARElevant evidence means evidence having any tendency to make the existence*
21 *of any fact that is of consequence to the determination of the action more*
22 *probable or less probable than it would be without the evidence.@*

23 If a proper foundation for the introduction of medical bills can be laid by relevant
24 evidence, other than by a medical expert, such evidence should be admissible and can be
25 considered by the jury. Rule 402 of the Rules of Evidence specifically provides that *Aall*
26 *relevant evidence is admissible, except as otherwise provided by the Constitution *** or by*

1 *applicable statutes or rules.*@

2 Thus, there is no reason why relevant evidence on the reasonableness of medical bills
3 and on the necessity of medical treatment should be limited to medical experts and,
4 apparently, no jurisdiction, except Washington, requires this. Furthermore, even though our
5 trial courts require it, there is no Arizona statute or rule of law that requires medical opinion
6 testimony as the exclusive means for the admission of medical bills into evidence. In fact, a
7 contrary policy is exhibited in Rule 74(g), A.R.C.P., which permits medical bills to be
8 received in evidence in arbitration proceedings, without any further proof. In a number of
9 jurisdictions a medical bill, regular on its face, provided by a licensed health care provider to
10 a patient, creates a legitimate inference that the bill is reasonable. East-West Karate
11 Association, Inc. v. Riquelme, supra; Western Gas Const. Co. v. Danner, supra; Montgomery
12 v. Dennis, 411 A.2d 61, 62 (D.C. App. 1980); Walters v. Littleton, supra; Chemco Transport,
13 Inc. v. Conn., supra; Bell v. Stafford, supra.

14 Some other courts, require evidence that a bill has been paid, in order to give rise to a
15 foundational inference that a bill is reasonable. Morsemann v. Manhattan R. Co., 10 NY
16 Sup. 105 (1899); Gumb v. Twenty-Third Street R. Co., 21 N.E. 993 (N.Y.1889); Stanley v.
17 State, supra; Chemco Transport, Inc. v. Conn.; Garrett v. Kirschman, supra; Cason v. Smith,
18 365 So.2d 1042 (Fla. App 1978). Figgs v. City of Milwaukee, supra; Elberts v. Nussbaum
19 Trucking, Inc., supra; Spica v. McDonald, supra.; Baker v. Hutson, supra.

20 In Baker v. Hutson, supra, at p.638 the Court set forth the rationale for the admission
21 of medical bills upon proof of payment.

22 *“The prima facie reasonableness of a paid bill can be traced to the*
23 *enduring principle that the free and voluntary payment of a charge for*
24 *a service by a consumer is presumptive evidence of the reasonable or*
25 *fair market value of that service. (Citations omitted) The premise is that*
26 *a consumer will not willingly pay an unreasonable or unusual charge for*
27 *a service. When a bill has been paid, there is little reason to suspect that*

1 The Clerk of the
2 Arizona Supreme Court
3 1501 W. Washington
4 Phoenix, Arizona, 85007-3231

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