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R- 12-0029

**IN THE SUPREME COURT**

**OF THE STATE OF ARIZONA**

**JACK LEVINE,**

**Petitioner**

**No.**

**RULE 28 (A) PETITION**

COMES NOW Petitioner, Jack Levine, pursuant to Rule 28 (A) of the Rules of the Arizona Supreme Court and hereby submits his Petition for the adoption of a new Rule of Evidence, designated as Rule 412, regarding the foundation for the admission of medical bills into evidence. This new proposed rule is identical in all respects to that of current Rule 413 of the Indiana Rules of Evidence **(Appendix A)**. The new proposed rule is as follows:

**RULE 412. Medical Expenses**

**Statements of charges for medical, hospital or other health care expenses for diagnosis or treatment occasioned by an injury are admissible into evidence. Such statements shall constitute prima facie evidence that the charges are reasonable.**

**GROUNDS FOR THE ADOPTION OF THE PROPOSED RULE:**

Although many of the common law rules of evidence were codified into the Arizona Rules of Evidence in 1977, the proposed rule concerning the admissibility of medical bills was not included, presumably because it was assumed that the admission of medical bills would be governed by Rules 401 and 402 of the Arizona Rules of Evidence and, as such, an

inference that the bills were reasonable would arise from the fact that both the treatment and the bills were rendered by a licensed healthcare provider.

Such an inference may, of course, be disputed by any other party, but such evidence is, at a minimum, admissible and should be considered by the finder of fact together with any other evidence on this issue. Unfortunately, our trial courts have almost uniformly failed to recognize the applicability of Rules 401 and 402 in these circumstances. As a consequence, in personal injury cases, litigants are required to present testimony from a physician that the medical bills incurred are reasonable in amount before such bills can be received in evidence.

Physicians are presently charging up to $2,500 for their court appearances. In cases involving minor injuries, it is far too costly to present such testimony. The result is that many accident victims in the smaller cases can not afford to seek compensation for their medical bills simply because of the high cost of proving this element of their damages thru a physician. The irony of this situation is that outside the courtroom the reasonableness of medical bills are normally not in dispute, but, in the context of litigation, they are almost never the subject of a stipulation resolving this issue, because, to do so, would require one side giving up their ability to impose a significant financial burden on the other side, as a condition for allowing the introduction of evidence that is elsewhere considered routine.

As a result, Arizona is almost alone among the jurisdictions in which medical testimony is required in order to admit medical bills into evidence. This is so, even though under Rules 401 and 402, of our Rules of Evidence, the bills themselves provide the required inference that the bills are reasonable and necessary.

In virtually all jurisdictions, expert medical testimony is not necessary to provide a foundation for the admission of medical bills into evidence. East-West Karate Association, Inc. v. Riquelme, 638 S.2d 604, 605 (Fla. App. 4 Dist. 1944); Kay v. Martin, 777 S.W.2d 859, 861 (Ark. 1989); McDonald v. Miller, 518 N.W.2d 80, 86-87 (Neb. 1994); Williams v.

Jacobs, 972 S.W.2d 334, 342-343 (Mo. App. WD1998); Munro v. Privratsky, 209 N.W.2d 745, 753 (N.D. 1973); Montgomery v. Dennis, 411 A.2d 61, 62 (D.C. App. 1980); Garrett v. Kirschman, 336 So.2d 566, 570-571 (Fla. 1976); Kennedy v. Monroe, 547 P.2d 899, 906 (1976); Walters v. Littleton, 290 S.E. 2d 839, 842 (Va. 1982); Stanley v. State, 197 N.W.2d 599, 606-607 (Iowa 1972); Biddle v. Piley, 176 S.W. 134, 136 (Ark. 1915); Western Gas Const. Co. v. Danner, 97 Fed. 882, 887 (9th Cir. 1899). McCullough v. Ogan, 596 S.W.2d 356, 358-359 (Ark. 1980); Spica v. McDonald, 334 S.W.2d 365, 371 (Mo. 1960); Bell v. Stafford, 680 S.W.2d 700, 702-703 (Ark. 1984); Elberts v. Nussbaum Trucking, Inc., 422 N.E.2d 1040, 1043 (Ill. App. 1981); Farmer v. International Harvester Company, 553 P.2d 1306, 1309 (Idaho 1976); Wood v. Elzoheary, 462 N.E.2d 1243, 1245-46 (Ohio App. 1983); Figgs v. City of Milwaukee, 342 N.W.2d 254, 257 (Wis. App. 1983); Biddle v. Riley, 176 S.W. 134, 136 (Ark. 1915); Van Brunt v. Stoddard 39 P.3d 621, 626 (Idaho 2001); Burge v. Teter, 808 N.E. 2d 124, 132; Baker v. Huston, 775 N.E.2d 631, 638 (Ill. App. 2002); 22 Am Jur 2d Damages ' 165-172.

The sole exception among the jurisdictions in admitting bills on this basis is Patterson v .Horton, 929 P.2d 1125 (Wash. App. 1977). **(Appendix B)** However, even this isolated case cannot be considered persuasive authority on the issue presented here because the court in the Patterson entirely failed to address the essential argument that was raised by Patterson in that case, i.e., that the payment of medical bills, by itself, should create a presumption that the bills are reasonable (supra at P.1130). The Court also erroneously concluded that the inference created by the admission of medical bills would shift the ultimate burden of proof, (supra at P.1131). This is not the case. The burden of proving the reasonableness of the bills to the satisfaction of a judge or jury, at all times, remains with the party offering the bills and their new proposed rule will not change that.

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

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

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

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

Although some have erroneously interpreted Larsen v. Decker, 196 Ariz. 239, 243, 995 P.2d 281, 285 (App. 2000), to require the testimony of a medical expert before medical bills may be received in evidence, when that case is closely examined it will be seen that the Court's decision is actually based on the plaintiff's failure to call a physician to testify on the issue of causation. **(Appendix C)** It is submitted that the Court in Larsen unfortunately missed an opportunity to clarify the law on the foundation necessary for the introduction of medical bills. The Court, citing Patterson v. Horton, supra, affirmed the trial court's rejection of medical bills and records in the absence of medical testimony, overlooking the fact that the issue in Larsen was purely a causation one. As a result, our trial courts have been confused, misinterpreting Larsen to require the testimony of a physician in every case before medical bills can be received in evidence. The adoption of the proposed rule herein would provide guidance for our trial courts, correct the misinterpretations which have developed and relieve a substantial financial burden for many litigants in our Courts.

Rule 102 of the Arizona Rules of Evidence, plainly favors a policy which results in the "*elimination of unjustifiable expense and delay.*" Requiring a medical expert to attend a

trial solely for the purpose of testifying that a medical bill is reasonable, or that certain treatment was necessary, when the bills themselves provide relevant evidence on this issues, is plainly inconsistent with the salutary mandate of Rule 102.

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

> *"Admissibility of evidence is, first and foremost, a question of relevancy. When evidence is relevant it should be admitted regardless of its weight.= (citations omitted) Evidence is relevant if it logically tends to prove a material fact. (citations omitted) *** the amount actually paid by [the Plaintiff] may tend to 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."*

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

> *"Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."*

If a proper foundation for the introduction of medical bills can be laid by relevant evidence without a medical expert, there is no reason why such evidence should not be admissible and considered by the jury. Rule 402 or the Rules of Evidence specifically provides that "*all relevant evidence is admissible, except as otherwise provided by the Constitution *** or by applicable statutes or rules.*"

Thus, there is no reason why relevant evidence on the reasonableness of medical bills should be limited to medical experts and, with one exception, no jurisdiction, requires this. Furthermore, even though our trial courts mistakenly require it, there is no Arizona statute or rule of law that requires medical opinion testimony as the exclusive means for the admission of medical bills into evidence. In Arizona, the benefit of such a rule has been adopted by this

Court in arbitration proceedings under Rule 74(g), A.R.C.P., which permits medical bills to be received in evidence without any further proof.

In a number of jurisdictions a medical bill, regular on its face, provided by a licensed health care provider to a patient, creates a legitimate inference that the bill is reasonable. East-West Karate Association, Inc. v. Riquelme, supra; Western Gas Const. Co. v. Danner, supra; Montgomery v. Dennis, 411 A.2d 61, 62 (D.C. App. 1980); Walters v. Littleton, supra; Chemco Transport, Inc. v. Conn., supra; Bell v. Stafford, supra.

A minority of courts which approve the admission of medical bills without the testimony of a physician, require evidence that a bill has been paid in order to provide a foundational inference that a bill is reasonable. Morsemann v. Manhattan R. Co., 10 NY Sup. 105 (1899); Gumb v. Twenty-Third Street R. Co., 21 N.E. 993 (N.Y.1889); Stanley v. State, supra; Chemco Transport, Inc. v. Conn.; Garrett v. Kirschman, supra; Cason v. Smith, 365 So.2d 1042 (Fla. App 1978). Figgs v. City of Milwaukee, supra; Elberts v. Nussbaum Trucking, Inc., supra; Spica v. McDonald, supra.; Baker v. Hutson, supra.

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

> *"The prima facie reasonableness of a paid bill can be traced to the enduring principle that the free and voluntary payment of a charge for a service by a consumer is presumptive evidence of the reasonable or fair market value of that service. (Citations omitted) The premise is that a consumer will not willingly pay an unreasonable or unusual charge for a service. When a bill has been paid, there is little reason to suspect that the charge is collusive or speculative. The defendant may rebut the prima facie reasonableness of a medical expense by presenting proper evidence casting suspicion upon the transaction."*

## CONCLUSION

Litigants should not be required to provide foundational proof for the introduction of medical bills into evidence by having to call medical witnesses at great expense. Although

virtually no jurisdiction in the country requires this, however, because of the deeply ingrained, but erroneous belief on the part of our trial courts that medical testimony is necessary for the admission of medical bills and records into evidence, many litigants of modest means are being effectively deprived of their rights. The admission of such evidence should be expressly provided for by rule as has been done in Indiana as well as many other jurisdictions, because it would result in predictability in the admission of evidence and would save countless litigants, enormous sums in presenting their claims.

RESPECTFULLY SUBMITTED this 20th day of June 2012.

Jack Levine

Jack Levine
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Petitioner

ORIGINAL AND SIX COPIES of the foregoing hand-delivered, for filing with the Clerk of the Supreme Court this 21st day of 2012 to:

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

# Appendix A

# INDIANA RULES OF EVIDENCE

## Rule 413. Medical Expenses

Statements of charges for medical, hospital or other health care expenses for diagnosis or treatment occasioned by an injury are admissible into evidence. Such statements shall constitute prima facie evidence that the charges are reasonable.

# Appendix B

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84 Wn.App. 531
929 P.2d 1125
**Debra PATTERSON, individually and on behalf of Charli Pike, Breanne Pike, and Brittney Pike, minors, Respondent,**
**v.**
**David HORTON and "JANE DOE" Horton, husband and wife, Linda Horton and "JOHN DOE" Horton, wife and husband, Vaughn Pol and "JANE DOE" Pol, husband and wife, Defendants,**
**and**
**Michael Hundley, a single man, Respondent,**
**and**
**Department of Social & Health Services, and Does II through V, Appellants.**
**No. 18885-6-II.**
**Court of Appeals of Washington, Division 2.**
**Jan. 10, 1997.**

[929 P.2d 1126]

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Gordon Ji Liu, Asst. Attorney General, Olympia, for Appellants.

James Robert Cushing; Christopher John Mahoney, Todd Patrick Kilpatrick, Paine & Kilpatrick Inc. Ps; and James Francois Leggett, Leggett & Kram, Tacoma, for Respondents.

OPINION

SEINFELD, Chief Judge.

This case arises out of a two-vehicle collision in which Debra Patterson and her three children, passengers in Michael Hundley's vehicle, were injured. The Department of Social and Health Services (DSHS) paid the medical bills for Patterson and the children after obtaining their agreement to assign to DSHS their rights to any third party recovery. The trial court, however, applied equitable subrogation principles to deny DSHS its full subrogation rights. DSHS appeals this ruling. Patterson appeals the trial court's dismissal of her action against Hundley for failing to fasten the children's seatbelts properly. Finally, Hundley, who had filed cross-claims against the driver and passenger of the other vehicle, cross-appeals, raising evidentiary and equitable estoppel issues.

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We conclude that the application of equitable subrogation principles in this context conflicts with state statute. Thus, we reverse the trial court ruling against DSHS. We further conclude that the trial court erred in relying on medical bills as proof of [929 P.2d 1127] medical costs without requiring the plaintiff to show that the bills were reasonable and the treatment was necessary. Thus, we remand the matter for recalculation of damages. We affirm the balance of the trial court's rulings.

FACTS

A head-on collision between David Horton's and Michael Hundley's vehicles resulted in injuries to Hundley, Patterson, her three minor children, and Vaughn Pol, Horton's passenger. Patterson applied to DSHS for help with her family's medical expenses. DSHS agreed to pay on the condition that Patterson assign to it the family's rights to recover

damages from a liable third party. DSHS then asserted a statutory lien against any recovery Patterson might have from Horton.

Patterson, individually and on behalf of her children, filed a personal injury action against Horton, Hundley, and Pol. She also sought declaratory relief against DSHS. Pol and Hundley cross-claimed against Horton, and Hundley cross-claimed against Pol. Horton admitted liability, but his only asset, a $50,000 insurance policy, was insufficient to cover all alleged damages.

The trial court dismissed Patterson's action against Hundley, concluding that her action for damages against Hundley for failing to fasten the children's seatbelts did not state a claim upon which relief could be granted. But it granted Patterson's motion for partial summary judgment against DSHS, relying on equitable subrogation principles to effectively bar DSHS from recovering compensation for any of the medical services rendered to Patterson and her children.

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Pol, the most seriously injured party, feared that a recovery in this action might jeopardize his eligibility for disability benefits. Thus, before trial he began negotiating his dismissal separately with Hundley and Patterson. During pretrial proceedings, Patterson and Pol mentioned to the court that Pol intended to stipulate to an "outright" dismissal of his claim against Horton in exchange for dismissal of Patterson's claims against him. [1]

One week later, Patterson and Pol, without notice to Hundley, presented a stipulated order to the judge who was overseeing their settlement conference. The order assigned Pol's right to recover from Horton to Patterson and her children and dismissed Pol's claim against Horton.

When Hundley learned of the order, he moved to vacate it on the basis of lack of proper notice. The assigned trial judge refused to hear the motion and advised Hundley to take the matter up with the settlement conference judge. The settlement conference judge granted the motion to vacate but refused to rule on the validity of Pol's assignment of his claim to Patterson. Patterson and Pol then moved to dismiss Pol under CR 41, this time after giving Hundley proper notice. The assigned trial judge granted this motion without objection.

Twenty-three days before trial, Patterson provided to opposing counsel the medical records she intended to introduce at trial. Hundley objected, asserting that Patterson had not complied with ER 904's 30-day notice requirement. Further, he argued that the documents were inadmissible absent evidence that the medical treatment and bills were necessary and reasonable.

Patterson subpoenaed the physicians, but when they objected to the subpoenas, Patterson called the records'

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custodians instead. The trial court, over Hundley's standing objection, admitted the challenged documents. [2]

Following a bench trial, the trial court found Patterson, the children, Hundley, and Pol all without fault. It determined damages as follows: $41,000 for the children collectively; $47,500 for Patterson; $37,000 for Hundley; and $486,304.64 for Pol.

On appeal, DSHS contends that the trial court erred as a matter of law when it applied equitable subrogation principles to limit [929 P.2d 1128] DSHS's statutory lien and subrogation rights. Patterson argues that the trial court erred when it dismissed her inadequate restraint claim against Hundley. Hundley asserts that the trial court erroneously (1) admitted the medical records; (2) entered the judgment dismissing Pol without ruling on the enforceability of Pol's assignment of his claim to

Patterson; and (3) refused to hear arguments on his motion to vacate the stipulated order.

I

DSHS and Equitable Subrogation

In equity, an insurer's right to recover a subrogation interest is confined to "the excess which the insured has received from the wrongdoer, remaining after the insured is fully compensated for his loss." Thiringer v. American Motors Ins. Co., 91 Wash.2d 215, 219, 588 P.2d 191 (1978). Accordingly, Patterson contends that DSHS cannot assert its subrogation right until she and her children are fully compensated for their loss. We disagree and adopt the reasoning of a recent case from Division One of this court. Paulsen v. Department of Social & Health Servs., 78 Wash.App. 665, 898 P.2d 353 (1995), review denied, 128 Wash.2d 1010, 910 P.2d 481 (1996).

The Legislature may override common law subrogation

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principles by enacting a statute that provides an agency with the power to seek reimbursement through subrogation and, in addition, authorizes the agency to assert a statutory lien to protect its interest. See Rhoad v. McLean Trucking Co., Inc., 102 Wash.2d 422, 427-28, 686 P.2d 483 (1984) (equitable principles do not apply to statutory liens); Department of Labor & Indus. v. Dillon, 28 Wash.App. 853, 855, 626 P.2d 1004 (1981) (statute creating statutory lien for securing reimbursement demonstrates the Legislature's intent to displace equitable principles); cf. Jones v. Firemen's Relief & Pension Bd. of the City of Richland, 48 Wash.App. 262, 267, 738 P.2d 1068 (1987) (Legislature did not express intent to displace equitable subrogation principles when it adopted statutory remedy creating right to subrogation unaccompanied by the right to assert a statutory lien). The Paulsen court, relying on Rhoad and Dillon, held that the Legislature removed the recipient's right to assert common law subrogation principles against DSHS when it adopted statutes providing DSHS with both the right to subrogation and the power to assert a statutory lien. See RCW 74.09.180 and RCW 43.20B.060. Thus, a recipient of DSHS medical benefits may not rely upon equitable subrogation principles even though his damage recovery did not make him whole. Paulsen, 78 Wash.App. at 669-70, 672, 898 P.2d 353.

Patterson claims that Paulsen is factually distinguishable in that Paulsen settled his claim while Patterson recovered her damages through litigation and that, in her case, DSHS might be able to recover its funds by seeking criminal restitution from Horton. She also argues that Paulsen was wrongly decided.

Generally, DSHS will pay for medical care for eligible persons under RCW 74.09. It is not obligated to do so, however, if the claimant's injuries are caused by the negligence or wrongdoing of another. RCW 74.09.180. When DSHS does elect to pay for medical expenses resulting from another's wrongdoing, it is "subrogated to the recipient's rights against the recovery had from any tort

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feasor or the tort feasor's insurer, or both, and shall have a lien thereupon to the extent of the value of the assistance furnished by the department." RCW 74.09.180. Accordingly, DSHS can seek reimbursement through a subrogation claim and the assertion of a statutory lien. [3] RCW 43.20B.060.

[929 P.2d 1129] Although Paulsen later settled with the tort feasors instead of proceeding to trial, we see no reason why that fact changes the analysis. Nor do we see a basis to compel the State to recover its payments in a criminal restitution action when the Legislature provided it with the right of subrogation and the means to enforce that right.

Finally, Patterson posits, for the first time in her reply brief, that RCW 43.20B.060(2) violates the equal protection guaranties of the Federal and State Constitutions. This contention, however, is untimely and unsupported by adequate legal citation or argument. See State v. Lord, 117 Wash.2d 829, 853, 822 P.2d 177 (1991) (holding that appellate court may decline to review argument unsupported by legal authority), cert. denied, 506 U.S. 856, 113 S.Ct. 164, 121 L.Ed.2d 112 (1992); RAP 10.3(a)(5); State v. Peerson, 62 Wash.App. 755, 778, 816 P.2d 43 (1991) (holding that a reviewing court need not address issues of constitutional magnitude first raised in a reply brief), review denied, 118 Wash.2d 1012, 824 P.2d 491 (1992); RAP 10.3(c). Patterson's other attempts at distinguishing

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or discrediting the Paulsen ruling are similarly unpersuasive.

II

Seat Belt Law and Patterson's Cross-Appeal

Patterson, on behalf of her three children, cross-appeals the trial court's dismissal of her claim that Hundley's failure to adequately restrain the children proximately caused their injuries.

The Washington Supreme Court first addressed whether there is a common law duty to wear a seatbelt in Derheim v. N. Fiorito Co., 80 Wash.2d 161, 492 P.2d 1030 (1972), where it held that failure to wear a seatbelt did not constitute contributory negligence. Finding no statutory duty to wear a seatbelt, the Court refused to recognize a common-law duty. Derheim, 80 Wash.2d at 171, 492 P.2d 1030.

In Amend v. Bell, 89 Wash.2d 124, 132-33, 570 P.2d 138 (1977), the Court reaffirmed its ruling in Derheim, again declining to hold that persons riding in a vehicle equipped with safety belts have a duty to properly restrain themselves. The Court reasoned that

> The defendant should not diminish the consequences of his negligence by the failure of the plaintiff to anticipate the defendant's negligence in causing the accident itself. Only if plaintiff should have so anticipated the accident can it be said that plaintiff had a duty to fasten the seat belt prior to the accident.

Amend, 89 Wash.2d at 132-33, 570 P.2d 138.

Since the Amend decision, the Legislature has adopted two public safety laws mandating the use of seatbelts and appropriate safety restraints for children. See former RCW 46.61.687 [4] (enacted by Laws of 1983, ch. 215,

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§ 2; amended by Laws of 1987, ch. 330, § 745) (requiring parents and legal guardians to secure infant passengers with appropriate restraining systems) and RCW 46.61.688 [5] [929 P.2d 1130] (prohibiting the operation of a motor vehicle in which passengers under the age of sixteen are not properly restrained). Although these statutes create an affirmative duty to use a seatbelt, they also contain provisions excluding evidence of seatbelt law violations to prove civil negligence. As a driver's failure to secure a minor passenger is not actionable in an action for damages, the trial court did not err in dismissing the action against Hundley for negligent restraint.

III

Hundley's Cross Appeal

A. Admission of Medical Reports and Bills

In his cross-appeal, Hundley challenges the admission of certain medical bills and records (Exhibits 7-21 & 30-

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31). [6] He claims that the trial court improperly shifted the burden to him to prove the charges unreasonable or the treatment unnecessary. In overruling Hundley's objection to this evidence, the trial court adopted Patterson's argument that payment of the bills created a presumption that they were reasonable and necessary, stating, "if [Hundley] can show that [the bills are] not reasonable and necessary and not causally related to this accident, so be it."

At trial, Patterson relied on the testimony of the records custodians to overcome the hearsay rule and to establish the relevancy of the records. [7] The use of the custodian accomplished the first goal. The Uniform Business Records as Evidence Act, RCW 5.45.020, provides that records kept in the ordinary course of business, "in so far as relevant," may be introduced in a civil case if they are identified and authenticated by the record's custodian. [8] But the custodian offered no testimony regarding the relevancy of the records.

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A plaintiff in a negligence case may recover only the reasonable value of medical services received, not the total of all bills paid. Torgeson v. Hanford, 79 Wash. 56, 58-59, 139 P. 648 (1914). Thus, the plaintiff must prove that medical costs were reasonable and, in doing so, cannot rely solely on medical records and bills. Nelson v. Fairfield, 40 Wash.2d 496, 501, 244 P.2d 244 (1952); Carr v. Martin, 35 Wash.2d 753, 761, 215 P.2d 411 (1950); Trudeau v. Snohomish Auto Freight Co., 1 Wash.2d 574, 585-86, 96 P.2d 599 (1939); Torgeson, 79 Wash. at 58-59, 139 P. 648. In other words, medical records and bills are relevant to prove past medical expenses only if supported by additional evidence that the treatment and the bills were both necessary and reasonable.

[929 P.2d 1131] When evidence is relevant only if supported by proof of supplemental facts, the trial court "shall" conditionally admit the primary evidence subject to the introduction of further "evidence sufficient to support a finding of the fulfillment of the condition." ER 104(b). But, if this condition is not satisfied, the court should strike the primary evidence. 5 Karl B. Tegland, Washington Practice, § 19 (3rd ed.1989). Here, Patterson made no showing of reasonableness and necessity and, thus, never fulfilled the condition. Thus, the trial court erred when it admitted the documents as proof of past medical expenses and when it shifted to Hundley the burden of proving that the costs and care were unreasonable and unnecessary.

The medical records and bills were admissible, however, without a showing of reasonableness and necessity, to prove costs of future treatment. Erdman v. Lower Yakima Valley, Washington Lodge No. 2112, 41 Wash.App. 197, 208, 704 P.2d 150, review denied, 104 Wash.2d 1030 (1985). Patterson could properly use the bills to create a presumption that there will be, at a minimum, a nominal cost for such future treatment. Erdman, 41 Wash.App. at 208-09, 704 P.2d 150 (citing Leak v. United States Rubber Co., 9 Wash.App. 98, 104, 511 P.2d 88 (quoting Webster v. Seattle R. & S. Ry. Co., 42 Wash. 364, 365, 85 P. 2

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1906)), review denied, 82 Wash.App. 1012 (1973)). In the case of future damages, mathematical exactness is not necessary. Erdman, 41 Wash.App. at 208, 704 P.2d 150.

In summary, there is no evidence to support portions of the award for past medical damages. Accordingly, we must remand the matter to the trial court for a recalculation of damages excluding those special damages based upon the challenged medical records and bills.

B. Assignment of Pol's Claim

Hundley next asserts that the trial court should have applied the doctrine of equitable estoppel to prevent Pol from assigning his rights to Patterson. He contends that he relied upon Pol and Patterson's assertions in open court that Pol

would be dismissed outright from the case and, consequently, ceased efforts to negotiate Pol's dismissal. He claims that this caused him harm.

Equitable estoppel requires: (1) an admission, statement, or act inconsistent with a claim later asserted; (2) reasonable reliance on that act, statement, or admission by another; and (3) injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or admission. Robinson v. City of Seattle, 119 Wash.2d 34, 82, 830 P.2d 318, cert. denied, 506 U.S. 1028, 113 S.Ct. 676, 121 L.Ed.2d 598 (1992). The party asserting estoppel must establish not only lack of knowledge of the state of facts, but also the absence of any convenient and available means of acquiring such knowledge. Chemical Bank v. Washington Public Power Supply System, 102 Wash.2d 874, 691 P.2d 524, (1984) (citing Leonard v. Washington Employers, Inc., 77 Wash.2d 271, 280, 461 P.2d 538 (1969)), cert. denied, 471 U.S. 1065, 105 S.Ct. 2140, 85 L.Ed.2d 497 (1985). Estoppel is not favored and a party asserting estoppel must prove each of its elements by clear, cogent and convincing evidence. Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1, 124 Wash.2d 816, 831, 881 P.2d 986 (1994 ).

Hundley's argument fails on prong (1). Hundley claims

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that Pol's statement to the court, in essence, constituted a promise to Hundley that Patterson would dismiss her claims against Pol outright. Patterson, however, explained to the court that the terms of the dismissal would be contingent upon the court's approval. This placed Hundley on notice that the terms of the dismissal might change. Thus, Hundley cannot establish reasonable reliance on the in-court statements.

C. Enforceability of the Assignment

Again asserting his equitable estoppel argument, Hundley contends that the trial court erred when it failed to rule on the enforceability of the assignment. As stated above, Pol was not equitably estopped from assigning his rights to Patterson. Thus, the trial court did not err when it failed to rule on the enforceability of Pol's assignment.

[929 P.2d 1132] D. Trial Court's Refusal to Hear the

Motion to Vacate

Hundley contends that the trial court abused its discretion when it declined to hear Hundley's motion to vacate the stipulated dismissal order. The trial court did not abuse its discretion; its decision not to hear the motion was neither untenable nor unreasonable.

Accordingly, we affirm in part, and reverse in part and remand for proceedings consistent with this opinion.

BRIDGEWATER and ARMSTRONG, JJ., concur.

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1 Trial court approval was necessary because the trial court had not yet appointed a guardian ad litem to represent the children.

2 Hundley waived his objection to Dr. Stewart's bill after Dr. Stewart appeared in court to object to the subpoena. Thus, our decision regarding the medical bills does not include Dr. Stewart's charges.

3 RCW 43.20B.060 provides in relevant part:

(1) To secure reimbursement of any assistance paid under chapter 74.09 RCW ... as a result of injuries to or illness of a recipient caused by the negligence or wrong of another, the department shall be subrogated to the recipient's rights against a tort feasor or the tort feasor's insurer, or both.

(2) The department shall have a lien upon any recovery by or on behalf of the recipient from such tort feasor or the tort feasor's insurer, or both to the extent of the value of the assistance paid....

(3) The lien of the department shall be upon any claim, right of action, settlement proceeds, money, or benefits arising from an insurance program to which

the recipient might be entitled (a) against the tort feasor or insurer of the tort feasor, or both, and (b) under any contract of insurance purchased by the recipient or by any other person providing coverage for the illness or injuries for which the assistance or residential care is paid or provided by the department.

4 Former RCW 46.61.687 provided in relevant part:

(1) After December 31, 1983, the parent or legal guardian of a child less than five years old, when the parent or legal guardian is operating anywhere in the state his or her own motor vehicle registered under chapter 46.16 RCW, in which the child is a passenger, shall have the child properly secured in a manner approved by the state patrol. Even though a separate child passenger restraint device is considered the ideal method of protection, a properly adjusted and fastened, federally approved seat belt is deemed sufficient to meet the requirements of this section for children one through four years of age.

....

(3) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian; nor shall failure to use a child restraint system be admissible as evidence of negligence in any civil action.

5 RCW 46.61.688 provides in relevant part:

(3) Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(4) No person may operate a motor vehicle unless all passengers under the age of sixteen years are either wearing a safety belt assembly or are securely fastened into an approved child restraint device.

....

(6) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in a civil matter.

6 Exhibits 7-12 are the medical billing records from Multi-Care for the treatment of Patterson's children. The balance relate to Pol's treatment, as follows: Exhibit 13, billing records from St. Clare Hospital; Exhibit 14, records and billing from Madigan Hospital; Exhibit 15, health insurance claim form from Lakewood Healthcare Center; Exhibit 16, report and billing statement from Electrodiagnosis & Rehabilitation Associates of Tacoma; Exhibit 17, home health care medical records and bills from Interim Healthcare; Exhibit 18, equipment rental bills and insurance records from Sound Medical Equipment, Inc.; Exhibit 19, bills and treatment records from Physical Therapy Specialists; Exhibit 20, medical records from Harborview Medical Center; Exhibit 21, insurance carrier billing records; Exhibit 30, records from surgery performed by Jeffrey D. Patterson, M.D.; and Exhibit 31, Pol's billing records from Jeffrey D. Patterson, M.D. Hundley did not object to Exhibits 10-12 and, thus, has waived his right to challenge them.

7 Had Patterson given timely notice pursuant to ER 904, she would have eliminated the need to call a witness to authenticate the records. See Miller v. Arctic Alaska Fisheries Corp., 83 Wash.App. 255, 261, 921 P.2d 585 (1996).

8 RCW 5.45.020 provides:

A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

# Appendix C

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**Karen H. LARSEN, a single woman, Plaintiff-Appellant,**
**v.**
**Robert C. DECKER, a single man; Robert C. Decker and CATHY Decker, husband and wife, Defendants-Appellees.**

**No. -0414.**
**Court of Appeals of Arizona, Division 1, Department E.**
**February 17, 2000.**
**As Amended February 22, 2000.**

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Stanley David Murray, P.C. by Stanley David Murray, Phoenix, Attorneys for Appellant.

David M. Bell, J. Gregory Cahill, Phoenix, Attorneys for Appellees.

**OPINION**

TOCI, Judge.

¶ 1 Karen H. Larsen appeals from the judgment awarding her damages resulting from an automobile accident and from the trial court's denial of her motion for new trial. She contends that the court erred in excluding some of her medical records and bills and a Social Security Administration

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("SSA") report finding her permanently disabled after the auto accident. Specifically, she argues that Rule 803(8)(C), Arizona Rules of Evidence ("the Rule"), does not distinguish between factual findings and conclusions for purposes of the admissibility of a public agency report. Although we agree and reject the contrary dictum in Davis v. Cessna Aircraft Corp., 182 Ariz. 26, 36, 893 P.2d 26, 36 (App.1994), we conclude that the trial court did not err in excluding the SSA report on the grounds of unreliability. We further find no abuse of discretion in the exclusion of the medical records and no error in the ruling on her request for new trial. We therefore affirm.

## I. FACTUAL AND PROCEDURAL BACKGROUND

¶ 2 Larsen fell from her bicycle in November 1993, and suffered a broken hip and elbow. In September 1994, Robert C. Decker's car collided with her car at an intersection, and she again sustained a number of injuries.

¶ 3 Decker admitted liability, and trial was confined to Larsen's damages attributable to the auto accident. Although no doctor testified, deposition testimony of Doctors Bodell, Calkins, Calderone, and McLean was presented to the jury.

¶ 4 Larsen claimed a broken elbow, a left shoulder injury that required surgery, and aggravation of her hip injury. She admitted that no spinal damage resulted from the auto accident, but she claimed very significant and continuing back pain.

¶ 5 Decker disputed a connection between her shoulder complaints and the auto accident because Larsen had fallen on the left arm and hand in the bicycle accident, had reported shoulder pain before the auto accident, and diabetes might have contributed to her shoulder problems. Decker also disputed whether the accident had aggravated the prior hip injury and suggested that the back pain was due to aging and degenerative conditions unrelated to the accident. Although Larsen requested damages ranging from $150,000 to $300,000, the jury awarded $24,040.

## II. DISCUSSION

**A. Standard of Review**

¶ 6 We review the trial court's evidentiary rulings for a clear abuse of discretion; we will not reverse unless unfair prejudice resulted, see Gemstar Ltd. v. Ernst & Young, 185 Ariz. 493, 506, 917 P.2d 222, 235 (1996), or the court incorrectly applied the law. See Conant v. Whitney, 190 Ariz. 290, 292, 947 P.2d 864, 866 (App.1997). We view the excluded evidence most favorably to the proponent. See id.

¶ 7 Larsen argues, however, that we should exercise de novo review because interpretation of a rule or statute is a question of law, and the trial court misinterpreted the Arizona Rules of Evidence, citing Perguson v. Tamis, 188 Ariz. 425, 427, 937 P.2d 347, 349 (App.1996) (civil procedure rule's interpretation is a legal issue reviewed de novo). Decker counters that the court's rulings were not based on interpretations of the evidentiary rules but merely on findings of insufficient trustworthiness for the SSA records and of inadequate foundation for some of the medical records and bills.

¶ 8 Before ruling on the proffered evidence, the trial court had to read and understand the evidentiary rules. The court, however, is entrusted with broad discretion in the application of those rules to specific items of evidence. Here, the court had to determine whether the SSA records were sufficiently trustworthy and whether sufficient foundation had been laid for admission of certain medical records. We review these determinations for an abuse of discretion. See Gemstar, 185 Ariz. at 506, 917 P.2d at 235.

**B. Exclusion of the SSA Report**

¶ 9 Hearsay evidence is excluded from trial because it cannot be subjected to cross-examination and cannot be probed for possible errors in perception, memory, sincerity, or clarity. See Morris K. Udall et al., Law of Evidence § 121 (3d ed.1991). The hearsay exception in Rule 803(8)(C) assumes that public agency reports avoid these problems.

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¶ 10 The trial judge, however, excluded the SSA report finding Larsen disabled from working because it was the opinion "of somebody who's not even a medical person" and because it was not "trustworthy enough" and the evidence relied on was not subject to cross-examination. Rule 803(8) provides, "[u]nless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, [or] statements ... in any form, of public ... agencies, setting forth ... factual findings resulting from an investigation made pursuant to authority granted by law" may be admitted as an exception to the hearsay rule. (Emphasis added.)

¶ 11 Larsen argues that the SSA report and findings fall within the Rule's parameters because the report is by a public agency on a matter it had a legal duty to report upon after an investigation made pursuant to legal authority. She analogizes to State ex rel. Miller v. Tucson Associates Ltd. Partnership, 165 Ariz. 519, 519-20, 799 P.2d 860, 860-61 (App.1990), a case in which a United States Geological Survey report was admitted although the author did not testify. Division Two of this court affirmed and overturned a prior holding that opinions were not admissible under Rule 803(8)(C), citing Beech Aircraft Corp. v. Rainey, 488 U.S. 153, 109 S.Ct. 439, 102 L.Ed.2d 445 (1988). Id. at 520, 799 P.2d at 861.

¶ 12 Larsen notes, however, that Davis, 182 Ariz. at 36, 893 P.2d at 36, adopted a contrary view of the Rule. In Davis, we held that a federal statute limited the use of a National Transportation Safety Board report as evidence in a damages action arising from an airplane crash. Id. at 34, 893 P.2d at 34. In dictum, we also suggested that Rule 803(8)(C) distinguished between factual findings and conclusions. Id. at 36, 893 P.2d at 36. We agree that Rainey's more expansive reading allowing admission of both facts and opinions or conclusions is the better interpretation. We therefore reject Davis' suggestion that opinions in public agency reports are not admissible.[1]

¶ 13 Nevertheless, the SSA finding that Larsen was permanently disabled from working and entitled to widow's benefits was based on the physical injuries suffered in both accidents as documented by her medical records and on her subjective pain complaints. The trial court's concern here appeared to be that the SSA proceedings were essentially ex parte, that the Administrative Law Judge ("ALJ") was not qualified as a medical expert, and that none of Larsen's treating doctors had testified and been cross-examined in those proceedings.[2] The court concluded that the report was not sufficiently reliable under these circumstances.

¶ 14 We have found no Arizona case on point, but we do not find Larsen's citation to Goodman v. Boeing Co., 75 Wash.App. 60, 877 P.2d 703, 714-15 (1994), persuasive. There, a Washington court affirmed admission of a SSA finding that the plaintiff was disabled in her suit against her former employer for handicap discrimination. Washington's evidence rule differs significantly from ours, however, and the trial court had carefully examined the disability report, redacted certain parts, invited further redaction, and noted that the report relied on evidence already admitted at the trial. Other courts have excluded SSA findings. See Jones v. Miller, 964 S.W.2d 159, 162 (App. Tex.1998) (SSA notice granting plaintiff disability benefits was properly excluded as unsworn incompetent hearsay in her medical malpractice suit); Keller v. Regan, 212 A.D.2d 856, 622 N.Y.S.2d 612, 614 (1995) (SSA permanent disability findings excludable in administrative proceeding for disability retirement benefits).

¶ 15 We have also looked at federal court interpretations because our Rule is very similar to Federal Rule 803(8). See Tucson Assocs., 165 Ariz. at 520, 799 P.2d at 861 (we may consider federal cases when the federal

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rule is similar). For example, some courts have held that a lack of opportunity for cross-examination in conjunction with a public agency report does not necessarily show untrustworthiness. See In re Japanese Elec. Prods., 72,3 F.2d 238 (3d Cir.1983), rev'd on other grounds, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (reports from evidentiary hearings where no cross-examination occurred may be reliable if prepared under a legally imposed duty and standards). Others have held that lack of cross-examination, though not per se reason to exclude a report, is an element of trustworthiness to consider. See Wilson v. Attaway, 757 F.2d 1227, 1245 (11th Cir.1985).

¶ 16 At least one court has rejected the argument that an author's or investigator's lack of expertise affects admissibility. See Clark v. Clabaugh, 20 F.3d 1290, 1294-95 (3d Cir.1994) (police report on racial violence is presumed admissible; unlike Federal Rule 702, nothing in Federal Rule 803 requires the writer be an expert). Another has upheld exclusion of an employment commission report denying a worker unemployment benefits for having voluntarily left her job because of the report's "prejudicial effect" and because the parties to the report were available to testify in the later constructive discharge suit. See Martin v. Cavalier Hotel Corp., 48 F.3d 1343, 1357-58 (4th Cir.1995).

¶ 17 In this instance, we cannot say that the trial court committed legal error and thus abused its discretion in excluding the SSA report. Although we do not agree that the ALJ's mere lack of medical expertise would justify exclusion, Larsen apparently was the sole source of the information provided to the SSA,[3] and no medical expert appeared or was cross-examined as to her condition or attempted to allocate the cause of her disability between the two accidents. Thus, the trial court could reasonably conclude that sufficient doubts about the report's reliability existed when it was offered here to determine what share, if any, of Larsen's injuries had been caused by Decker.

**C. Medical Records and Bills**

¶ 18 Larsen next contends that the trial court erred in excluding some of her medical records under Arizona Rule 803(6) and that all

of them were admissible business records. The Rule provides that a "report, record, or data compilation, ... of ... conditions, opinions, or diagnoses" is admissible under circumstances not contested here. The Rule disallows such evidence on several grounds, including "to the extent that portions thereof lack an appropriate foundation." Decker argues that the contents of some of the records were properly excluded because no foundation showed that the injuries recorded and corresponding bills for treatment resulted from the auto accident.

¶ 19 Whether business records are sufficiently reliable to satisfy this hearsay exception is for the trial court's sound discretion. See State v. Petzoldt, 172 Ariz. 272, 275, 836 P.2d 982, 985 (App.1991). To be relevant, however, the medical records must be linked to the issues in this case. If the records and bills themselves do not establish the necessary connection, other evidence may be needed. See John William Strong, McCormick on Evidence § 293, at 280-81 (4th ed.1992) (an opinion in a hospital record is uncross-examined and without the expert's explanation and cross-examination at trial, may be excluded if, for example, causation is at issue).

¶ 20 The trial court excluded Exhibit 7, the records and bills of Dr. Chloupek, a medical doctor, and of Dr. Immerman, a chiropractor, both of whom treated Larsen shortly after the auto accident. The records included a patient's medical history form, history of present complaint form, pain chart, report on x-rays, diagnosis, objective findings, and bills for services.[4] The court sustained Decker's objection because Immerman re-took x-rays that had been taken the prior week during Larsen's hospital stay and no testimony showed that either they or the chiropractic treatments were necessary because

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of the auto accident. We find no error. See, e.g., Patterson v. Horton, 84 Wash.App. 531, 929 P.2d 1125, 1130 (1997) (negligence plaintiff cannot rely only on medical records and bills to show medical expenses were necessary and reasonable; other evidence must establish the latter).

¶ 21 The trial court next admitted the report but not the bills of Dr. Calderone, a neurosurgeon whom Larsen had consulted for low back pain. He noted findings from a physical exam and a conclusion that "lumbar spine films ... show some mild degenerative disease." He recommended another MRI and from it reported some "disc herniation" and "mild compression on the thecal sac and the S1 nerve root." In his deposition, Calderone stated that neither the physical examination nor x-rays revealed that Larsen's back complaints were caused by the auto accident. The MRI showed degenerative disc conditions and, although he did not know the source of her back pain, he could not rule out the auto accident. The court agreed that no foundation established that Calderone's bills were caused by and were reasonable and necessary results of the auto accident.

¶ 22 Exhibit 12 contained the records of Dr. Rogers, a chiropractic orthopedist, who Larsen testified had treated her for low back, hip, leg, neck, shoulder, and wrist pain. The packet included insurance claim forms and a diagnosis based on a 1995 MRI that found that Larsen's condition was directly related to the two accidents. Her counsel conceded, however, that Rogers had treated Larsen for injuries from both accidents and had not divided the bills. The court sustained Decker's objection because Rogers could have testified about the division but was not asked to do so.

¶ 23 The court also excluded Exhibits 14 and 15, which consisted only of insurance claim forms from Dr. Topper and Dr. Scott, both of whom treated Larsen in 1997. Topper apparently administered epidural injections and Scott chiropractic treatments. The court sustained Decker's foundational objection.

¶ 24 We do not find an abuse of the trial court's discretion in these rulings. Larsen had to establish a connection between the auto accident

and the need for treatment from these doctors for injuries caused by the auto accident. Because she failed to do so, the court excluded the evidence.

¶ 25 Larsen asserts, however, that we no longer require that medical opinions satisfy the "reasonable degree of medical certainty" standard and thus that Calderone's opinion of a possible link between the accident and Larsen's back pain was enough to admit his bills. Whether Calderone's equivocal testimony on causation was sufficient to permit introduction of his bills and the records of other doctors who treated Larsen for a multiplicity of complaints is best left for the trial court's discretion. We find nothing to the contrary in Butler v. Wong, 117 Ariz. 395, 573 P.2d 86 (App.1977). There, Division Two of this court held that an expert's inconclusive testimony linking an auto accident to deafness was not alone enough to be considered by the jury but that the testimony could be considered when it also eliminated a possible cause of the injury. See id. at 398-99, 573 P.2d at 89-90.

¶ 26 No testimony aside from Larsen's positively attributed her back complaints to the auto accident, and Calderone's equivocal testimony did not eliminate the other explanation—aging—as a cause. We find no abuse of discretion under these circumstances. Larsen's medical records were not automatically admissible without some testimony to establish that treatment by certain doctors for injuries sustained in the auto accident was necessary.

**D. Motion for New Trial**

¶ 27 Third, Larsen argues that the trial court erred in denying her motion for new trial for insufficiency of the evidence. Trial courts have discretion to grant such a motion only when the verdict is against the weight of the evidence. See Styles v. Ceranski, 185 Ariz. 448, 450, 916 P.2d 1164, 1166 (App.1996). We will not reverse a denial of such a motion unless the record and circumstances show it was a manifest abuse of discretion. See id. Further, we give great deference to the jury's factual findings. See

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City of Phoenix v. Mangum, 185 Ariz. 31, 34, 912 P.2d 35, 38 (App.1996).

¶ 28 Larsen is entitled to recover in tort "those damages which are the direct and proximate consequence of the defendant's wrongful acts." Valley Nat'l Bank v. Brown, 110 Ariz. 260, 264, 517 P.2d 1256, 1260 (1974). Further, a damages award is within the jury's province and "will not be disturbed on appeal except where the verdict is so exorbitant as to show passion, prejudice, mistake or complete disregard of the evidence." Id. If, however, the award clearly is unsupported by the evidence admitted, a trial court may grant a new trial. See Anderson v. Muniz, 21 Ariz.App. 25, 28, 515 P.2d 52, 55 (1973).

¶ 29 Unlike Anderson, in this case the evidence did not uniformly and clearly establish a causal connection between all of the medical bills offered and Decker's conduct. As discussed above, much of the medical evidence was equivocal, and thus the jury had to determine how much damage to allocate to the auto accident. Even an apparently inadequate verdict may be adequate when the jury accepts some and rejects other evidence. See id. We find no error.

**III. CONCLUSION**

¶ 30 We affirm the judgment and the trial court's denial of Larsen's motion for new trial.

CONCURRING: RUDOLPH J. GERBER, Judge, and THOMAS C. KLEINSCHMIDT, Judge.

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Notes:

1. Rainey did not decide whether Rule 803(8)(C), Federal Rules of Evidence, distinguished between fact and opinions on one hand and legal

conclusions on the other. See 488 U.S. at 170 n. 13, 109 S.Ct. 439.

2. Larsen argues that the report should be admissible without cross-examination of the report's author. The objection, however, was that the medical experts relied upon by the ALJ had not been cross-examined.

3. In fact, the SSA decision was revisited because information came to light that Larsen had earned wages in 1995, although her application had denied any employment after 1994.

4. Records of Dr. Bodell were included in the packet but these were later admitted with Dr. Bodell's own records.

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