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THE NATION'S MEDICAL QUANDARY CONCERNING HOSPITAL AND PHYSICIAN LIENS: WHO SHOULD PICK UP THE CHECK?

I. INTRODUCTION

Imagine that the year is 2001, and you are a doctor in the emergency room of a busy, downtown New York City hospital. A trauma patient enters the ER with gunshot wounds to the abdomen. You move frantically to treat the patient, saving his life. Not a modest victory to say the least. When your next paycheck arrives, however, you learn that the patient had no medical insurance and that he could not pay any of the expenses incurred during treatment. You inquire to your supervisor concerning your right to recovery if the patient were to win a civil suit against his attacker. The supervisor replies cheerily that the hospital would be able to recover its costs under New York law by placing a medical lien on any recovery. "But what about me," you reply, "how about a little something, you know, for the effort?"

In the United States, physicians possess both a right and a duty to treat all injured persons, even those who cannot afford to pay for the cost of their treatment.¹ In addition to this generally accepted principle, forty-two states have enacted statutes providing hospitals with the authority to obtain reimbursement through a medical lien after treating an indigent patient injured through the tortious or negligent act of another.² Two years ago, the Supreme

1. As an initial matter, the term "hospital" as it is used throughout this paper differentiates between for-profit and non-profit hospitals. Depending upon each state's medical lien statutes, these two types of hospitals could possess conflicting views regarding physicians' liens, or they could be in agreement. In Missouri, for instance, for-profit hospitals cannot recover under the Hospital Lien Act, as Section 430.230 limits the lien power to those hospitals supported in whole or in part by charity. Hospital Lien Act, MO. REV. STAT. § 430.230 (2000). Thus, as shall be discussed further in the Hospitals' Argument section of the paper, the non-profit hospitals in Missouri would have an incentive to keep physicians from obtaining this lien power. For-profit hospitals, on the other hand, whose physicians would be able to recover if such a statute were to be created, would be in favor of such a statute. Throughout this paper, the term hospital shall refer to those hospitals that are able to recover under the state's hospital lien statute and who would have an incentive to keep physicians and other health care providers from obtaining that power. Additionally, the term "physician" shall refer to those physicians, and in most cases, all other health care providers, who would benefit from the enactment of a physician's lien statute. Physicians of this type include those who do not work for a hospital and those who work for hospitals but are non-salaried or non-staff and as such, they would not stand to recover from a lien placed by the hospital.

2. *Bergan Mercy Health Sys. v. Haven*, 620 N.W.2d 339, 345 (Neb. 2000).

Court of the state possessing the oldest such statute, Nebraska, articulated the underlying reasoning behind these statutes. The Court declared that the existence of such liens lessens the overall burden incurred by hospitals and other medical providers in treating non-paying accident victims.³ At the same time, they encourage such personnel to extend their services to indigent persons who are injured through the conduct of another.⁴ However, as demonstrated by the introductory hypothetical, while these statutes provide incentives for hospitals to treat such persons and guarantee that they will be at least partially reimbursed for the care that they provide, the statutes, by themselves, do not solve all of the problems involved with treating destitute individuals. The critical issue is whether physicians and other health care providers, other than hospitals, should also be reimbursed for costs they sustain in treating such patients. In the past, narrow interpretations of general hospital lien statutes have excluded doctors, chiropractors, and other health care workers in some jurisdictions, forcing workers of this type to find alternative means of recovering these costs. Sometimes, however, they are unable to recover at all.

As a solution to these instances of narrow interpretation, a few states have enacted statutes specifically granting physicians the same lien power as hospitals. Whether these enactments constitute success stories or examples of unnecessary or inequitable legislation depends upon the perspective of the party judging the actions. The points of view of hospitals, physicians, and certain types of insurance carriers often differ considerably on these points, as shall be demonstrated. This paper will focus upon one such state wherein these parties have recently played out their arguments, Missouri, and will compare the actions taken by both the Missouri Legislature and the Missouri Supreme Court to those taken by other states that have recently dealt with the issue.⁵

Through 1998, Missouri medical lien law contained only a hospital lien statute, leaving physicians and other health care providers without direct statutory means for recovering costs when treating indigent patients injured by third parties. This state of affairs began to change in 1999, with the introduction of House Bill 343 to the Missouri House of Representatives.⁶ The bill's proponents claimed it would provide health care clinics and certain

3. *Id.*

4. *Id.*

5. See Jay. M. Zitter, Annotation, *Physicians' and Surgeons' Liens*, 39 A.L.R. 5th 787, 797-98 (1996). As of 1996, a total of six other state courts, those of California, Illinois, Montana, Oklahoma, Virginia, and Wisconsin, recognized either a common law or statutory right for physicians to have a lien on proceeds paid by a third party to a patient. *Id.*

6. Professional Registration/Licensing, 1999 Mo. Laws 362 (originally introduced as H.B. 343, 90th Gen. Assem., 1st Reg. Sess. (Mo. 1999)).

health care providers with the same rights in regards to liens as those statutorily guaranteed to hospitals.⁷ When passed by the Missouri Legislature, signed into law, and codified as Section 225 of Chapter 430 of the Missouri Statutes, the statute's language was intended to give physicians and other health care providers lien recovery power equal to that of hospitals.⁸ However, the bill's passage and the health care workers' victory that accompanied it proved to be short-lived.

A technicality in the drafting of the statute rendered its proposed intent inconsequential, as less than three years later the Supreme Court of Missouri held the physician's lien law unconstitutional, concluding that it was not germane to the rest of the bill in which it was contained.⁹ After this development, Missouri doctors, chiropractors, rehabilitation specialists, and other healthcare providers carried on without a direct authority for filing medical liens.¹⁰

As stated, some parties to the issue, including hospitals, considered this turn of events as a restoration to the status quo, feeling that physicians should not be placed upon a footing equal to that of hospitals.¹¹ Physicians, meanwhile, contended that they should be reimbursed for their work for the same reasons as hospitals and that a statute guaranteeing that right was necessary to ensure such a result.

Another turn of events took place in 2003, but this time it was the hospitals' victory that proved to be short-lived. With the signing of Missouri House Bill 121 in June of 2003, which reenacted the physician's lien voided by the *SSM Cardinal Glennon v. State of Missouri* decision of 2002, health care providers subsequently regained the lien powers formerly conveyed to them by the provision previously held unconstitutional.¹²

The arguments of all of the pertinent parties will be discussed more deeply following a description of Missouri's recent statutory and common law

7. *Id.*

8. MO. REV. STAT. § 430.225 (2000) (repealed by H.B. 121, 92nd Gen. Assem., 1st Reg. Sess. (Mo. 2003)).

9. *SSM Cardinal Glennon Children's Hosp. v. State of Missouri*, 68 S.W.3d 412, 418 (Mo. 2002). According to Missouri law, a bill containing more than one subject is unconstitutional, unless the Court is convinced beyond a reasonable doubt that one of the subjects was the original intent. *Id.* at 417. If this is found to be the case, then the portion representing the original intent is retained and the rest is severed. *Id.* Here, Bill 343's title "professional licensing," related to the subject matter of the bill other than the physicians lien, and thus, the lien language was severed as unconstitutional. *Id.*

10. Telephone Interview with Phil Greathouse, Attorney, Blanchard, Robertson, Mitchell & Carter (January 27, 2003).

11. *Id.*

12. MO. REV. STAT. § 430.225 (2003) (originally introduced as H.B. 121, 92nd Gen. Assem., 1st Reg. Sess. (Mo. 2003)).

developments concerning physicians' liens. The related statutes of Oklahoma and Montana follow those of Missouri for comparison purposes, as their design and operation mirror Missouri's more closely than any of the other states that have enacted such pieces of legislation.¹³ Both Oklahoma and Montana possess physician's lien statutes, in addition to common law rulings concerning the validity, scope, and operation of such statutes.¹⁴

II. STATUTORY DEVELOPMENTS REGARDING THE PHYSICIAN AND HOSPITAL LIEN STATUTES OF MISSOURI, OKLAHOMA, AND MONTANA

A. *Missouri*

As previously stated, until 1999, and before its reinstatement in 2003, Missouri law did not contain a statute with a general "medical lien" provision that established a statutory foundation for all health care providers and institutions to file liens.¹⁵ However, Missouri Statute 430.230 granted to every public hospital, as well as private hospitals supported in whole or in part by charity, a legal right to place a lien on causes of action of any person admitted for treatment against a third party whose negligence or wrongful act caused the injuries.¹⁶ Additionally, Missouri Statute 430.235 specifically establishes the validity of hospital liens against medical benefits paid to public assistance recipients.¹⁷ The Missouri Supreme Court's decision in *SSM Cardinal Glennon v. State of Missouri* briefly revoked the statutory authority granting physicians or other health care providers the power to file a lien to recoup their own such costs.¹⁸ From its inception, until the *Cardinal Glennon* decision, and again after the passing of House Bill 121, the language of Section 430.225 has embodied this authority.¹⁹

The original passing of Section 430.225, attached to House Bill 343, entitled "Liens of Hospitals and Health Practitioners," succeeded in expanding Missouri's hospital lien law by granting to "clinics, health practitioners, and other institutions" the same rights granted to hospitals concerning their ability to file liens.²⁰ As described in the *Cardinal Glennon* decision, during the first

13. See Meta Calder, *Florida's Hospital Lien Laws*, 21 FLA. ST. U. L. REV. 341, 370 (1993).

14. *Id.* Other states having provisions allowing for physicians' liens include Arizona, Arkansas, Hawaii, Louisiana, Nebraska, New Jersey, Oregon, Virginia, and Washington. *Id.*

15. Glenn E. Bradford & Amy Kiefer Hanson, *Liens, Assignments, Subrogation and Other Traps for the Claimant's Lawyer*, 53 J. MO. B. 248, 250 (1997).

16. MO. REV. STAT. § 430.230 (2000).

17. MO. REV. STAT. § 430.235 (2000).

18. *Cardinal Glennon*, 68 S.W.3d at 418.

19. MO. REV. STAT. § 430.225 (2003) (repealed by H.B. 121, 92nd Gen. Assem., 1st Reg. Sess. (Mo. 2003)).

20. *Id.*

regular session of the Missouri Congress in 1999, three separate bills were presented in the Missouri Legislature that sought to achieve this end.²¹ The first bill, House Bill 140, entitled "Health Care Liens," would have allowed health care practitioners and all private health care institutions to file liens against any person who had received services from the provider.²² This broad grant of power would have placed all other medical providers on a level identical to that of hospitals in recovery power when treating indigent patients claiming damages against third parties. Also, H.B. 140 proposed an additional alteration to Section 430.250, entitled "Liability for Failure to Pay a Hospital."²³ The proposed change would have limited the aggregate total of all potential liens on the patient's recovery.²⁴ This addition would have had the effect of placing a cap on the potential recovery of all parties filing liens under this section to a total of fifty percent of the overall recovery.²⁵ If the total amounted to less than their costs, the parties would split the fifty percent in proportion to their claims.²⁶

The second bill offered in the Missouri Legislature in 1999, Senate Bill 409, purported to accomplish many of the same goals as H.B. 140.²⁷ These objectives included allowing health practitioners, hospitals, and clinics to file liens on any claims a treated patient may have for the negligent or wrongful acts of a third party and the placement of a fifty percent cap on the lienholders' potential aggregate recovery value.²⁸ Unlike H.B. 140, however, S.B. 409 progressed out of the committee phase, as the Senate Civil and Criminal Jurisprudence Committee passed the bill on February 24, 1999.²⁹ This may reveal that more support for the subject of physician lien rights existed within the Senate, or at least within that Committee, than in the House of Representatives or the House's Judiciary Committee in particular, which did not pass the similar H.B. 140 earlier that same month.³⁰ Also of note with regards to S.B. 409 is that the bill's Current Bill Summary section, located on the Missouri House of Representatives website, states that H.B. 343 contained

21. *Cardinal Glennon*, 68 S.W.3d at 414.

22. H.B. 140, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. S.B. 409, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999).

28. *Id.*

29. Mo. S.B. 409, available at <http://www.senate.state.mo.us/99info/actions/SB409act.htm> (Missouri House of Representatives, House and Senate Joint Bill Tracking website).

30. H.B. 140, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999), available at <http://www.house.state.mo.us/bills99/action99/aHB140.htm> (activities history at the Missouri House of Representatives, House and Senate Joint Bill Tracking Resource website).

many of the provisions that were originally found within S.B. 409.³¹ At the very least, this signals a connection between S.B. 409 and the provisions within H.B. 343, the bill that the governor eventually signed into law later in 1999.

Finally, the third bill, Senate Bill 515, was first read to the Senate after actions involving the previous two had ceased.³² Reviewing the language of each of the three bills reveals that they contain nearly identical provisions regarding medical liens.³³ All three bills sought to create a new Section 430.225 that would have incorporated an expansive definition of a “health practitioner,” and all three would have amended portions of Sections 430.230, 430.235, and 430.250 in order to grant lien authority to such practitioners.³⁴ Finally, similar to S.B. 409, the Current Bill Summary of S.B. 515, located on the Missouri House of Representatives website, states that one of the provisions from S.B. 515, concerning the fifty percent cap, was incorporated into the truly agreed version of H.B. 343.³⁵ Again, this signals the close relation that H.B. 343 had with the other medical lien bills that came before it.

Finally, with the passage of H.B. 121 on June 20, 2003, which possesses identical language to the text of H.B. 343, Missouri physicians and other health care providers finally have statutory lien authority.³⁶ And by entitling the bill “Chiropractic Care; Managed Care; Liens of Hospitals and Health Care Professionals,” it appears that an argument similar to that put forth in the *Cardinal Glennon* case for rendering the pertinent portion of the bill unconstitutional would fail.³⁷

B. Oklahoma

31. Mo. S.B. 409, available at <http://www.house.state.mo.us/bills99/bills99/sb409.htm> (current bill summary at the Missouri House of Representatives, House and Senate Joint Bill Tracking Resource website).

32. Compare S.B. 515, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999) (Senate first read on March 1, 1999), with Mo. H.B. 140, available at <http://www.house.state.mo.us/bills99/action99/aHB140.htm> (1999) (last action taken on February 16, 1999), and Mo. S.B. 409, available at <http://www.house.state.mo.us/bills99/bills99/sb409.htm> (1999) (last action taken on Feb. 24, 1999).

33. Mo. S.B. 515; Mo. H.B. 140; Mo. S.B. 409.

34. Mo. S.B. 515; Mo. H.B. 140; Mo. S.B. 409 (proposing broad definitions of “health practitioner” that included physicians, surgeons, licensed physical therapists, occupational therapists, dentists, podiatrists, optometrists, pharmacists, chiropractors, psychologists or professional counselors, nurses, social workers, or mental health professionals).

35. Mo. S.B. 515, available at <http://www.house.state.mo.us/bills99/bills99/sb515.htm> (1999) (current bill summary at the Missouri House of Representatives, House and Senate Joint Bill Tracking Resource website).

36. H.B. 121, 92nd Gen Assem., 1st Reg. Sess. (Mo. 2003) (enacted as 2003 Mo. Laws 225); H.B. 343, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999) (enacted as 1999 Mo. Laws 362).

37. Mo. H.B. 121 (enacted as 2003 Mo. Laws 225).

Oklahoma's hospital lien language entitles all hospitals within the state to file medical liens, while the statute's substance parallels Missouri's Section 430.230.³⁸ Oklahoma also possesses a physician's lien statute, which also includes language similar to Missouri's provisions.³⁹ It entitles every treating physician to file a lien upon claims of persons injured through the negligence or wrongful act of another.⁴⁰

C. *Montana*

Montana possesses a number of statutes that establish general medical liens for health care providers and define the scope and applicability of such liens.⁴¹ Part 11(1)(b) of section 71-3-1114 of the Montana Code contains a catalog of individuals and entities who possess a right to file a lien for the value of services rendered on any claim or cause of action that the injured person or their estate may have for injury or death.⁴² In effect, this statute combines the physician's lien and the hospital lien statutes seen in the previous states' statutory schemes, while the substantive rights embodied within it remain the same. Montana's statute does not place limitations on the types of hospitals or health care facilities that may file such liens, resembling the inclusive language of the Oklahoma statute in that regard.⁴³ Finally, mirroring other provisions of applicability in the previous two states, Montana's Code also declares that these sections of the Code do "not apply to compensation awarded to workers for injur[ies], disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana."⁴⁴

III. JUDICIAL INTERPRETATION OF EACH STATE'S PHYSICIAN AND HOSPITAL LIEN STATUTES

A. *Missouri*

With the issuance of an opinion in early 2002, the Supreme Court of Missouri eradicated the Missouri state legislature's attempt to fill a void in the medical field by declaring unconstitutional the portion of a statute authorizing

38. OKLA. STAT. ANN. tit. 42, § 43 (West 2000); MO. REV. STAT. § 430.230 (2000).

39. OKLA. STAT. ANN. tit. 42, § 46 (West 2000); MO. REV. STAT. § 430.225 (2000) (Mo. H.B. 121).

40. OKLA. STAT. ANN. tit. 42, § 46.

41. MONT. CODE ANN. §§ 71-3-1111 – 71-3-1118 (1999).

42. MONT. CODE ANN. § 71-3-1114 (1999). The list of individuals and entities capable of filing such a lien include: physicians, nurses, physical therapists, occupational therapists, chiropractors, dentists, hospitals, ambulatory surgical facilities, psychologists, licensed social workers, and licensed professional counselors. *Id.*

43. MONT. CODE ANN. § 71-3-1114 (1999); OKLA. STAT. ANN. tit. 42, § 43 (West 2000).

44. MONT. CODE ANN. § 71-3-1118 (1999).

physicians and other health care practitioners to file liens on claims made by patients that they treated.⁴⁵ The Court in that case, *SSM Cardinal Glennon Children's Hospital v. State of Missouri*, did not base its opinion upon anything improper with regards to the purpose behind the lien authorization.⁴⁶ Rather, it held the lien portion of the statute unconstitutional because it consisted of a severable portion of the larger bill, House Bill 343.⁴⁷ The lien language did not affect the viability or workability of the rest of the provisions in the bill, and therefore, the Court severed Section 430.225 and declared it void.⁴⁸ The result left physicians and other health care providers, who cannot recover under the Hospital Lien statute, without a statutory claim in these situations.

Though not the result physicians in Missouri desired, the reasoning behind the Court's decision in *Cardinal Glennon* cannot be questioned. The Senate introduced House Bill 343 in January of 1999, and its main body comprised several provisions concerning professional registration.⁴⁹ A subsequent amendment made on April 27, 1999 added Section 430.225 to the bill, and this represented the only portion of the bill relating to medical lien law.⁵⁰ When the bill became law in this form, it presented a violation of Sections 21 and 23 of Article III of the Missouri Constitution, which respectively prohibit a changing of purpose through amendment and a limitation on the scope of a bill to one subject.⁵¹ These issues came before the Missouri Supreme Court three years later in *Cardinal Glennon*, and the Court properly voided Section 430.225 on those grounds.⁵²

B. Oklahoma

In *Balfour v. Nelson*, the seminal case defining the scope of Oklahoma's physician's lien statute, the Supreme Court of Oklahoma articulated the legislative intent behind the existence of such a lien.⁵³ The facts of the case stated that a doctor treated a patient who had been injured by a tortfeasor.⁵⁴

45. *SSM Cardinal Glennon Children's Hosp. v. State of Missouri*, 68 S.W.3d 412, 418 (Mo. 2002).

46. *See id.*

47. *Id.*

48. *Id.*

49. *Id.* at 414.

50. *Id.* at 415.

51. MO. CONST. art. 3, § 21 ("No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose."); MO. CONST. art. 3, § 23 ("No bill shall contain more than one subject which shall be clearly expressed in its title . . .").

52. *Cardinal Glennon*, 68 S.W.3d at 418.

53. *Balfour v. Nelson*, 890 P.2d 916, 919 (Okla. 1994).

54. *Id.* at 917-18.

Subsequently, the doctor sought to enforce a lien on the settlement proceeds.⁵⁵ The court stated that the legislative intent of Section 46 was to “encourage physicians to provide medical services to persons who have been injured by another and have insufficient funds or insurance to pay for the services when delivered.”⁵⁶ Additionally, the court stated that the statute was enacted to further ensure that physicians are paid for their services after the patients they have treated have been compensated.⁵⁷ In support of its determination, the court cited an earlier Court of Appeals of Oklahoma decision, *Balfour v. Jacobs*.⁵⁸ The *Jacobs* case first presented the issue to an Oklahoma Court of Appeals of how to construe a physician’s lien once it has been determined that such a lien exists.⁵⁹ The court in *Jacobs* held that “the enforcement procedure should be liberally construed so that the intention of the Legislature will be given effect.”⁶⁰ Incorporating this holding into its reasoning, the Supreme Court of Oklahoma liberally construed Section 46(C) so that it did not bar a timely refile of a lien after the one-year time limit had expired.⁶¹

The reasoning of the *Balfour v. Nelson* decision shall be discussed in detail later in the paper, in support of the existence of a physician’s lien statute in addition to a general hospital lien statute in a state’s statutory scheme.

Prior to these clarifications of legislative intent involving physicians’ liens, the Supreme Court of Oklahoma, in its 1980 opinion *Vinzant v. Hillcrest Medical Center*, solidified a limiting aspect of Oklahoma’s hospital lien statute.⁶² In *Vinzant*, the court held that the language of the hospital lien statute explicitly raised attorney liens to a level superior to that of hospital liens.⁶³ The court explained the legislative reasoning behind such a scheme by declaring that a contingent fee is the customary arrangement with negligence cases, and any recovery in such a case results from the skill of the attorney.⁶⁴ This decision simply affirmed the plain meaning of the statute, recognizing attorneys’ liens as a significant limitation to potential hospital recovery. Because the physician’s lien statute contains language identical to the hospital lien statute, it can be reasoned that a similar, plain-meaning interpretation should connect the two, and the limitation would apply equally to both statutes.

55. *Id.*

56. *Id.* at 919 (interpreting OKLA. STAT. ANN. tit. 42, § 46 (West 2000)).

57. *Id.*

58. *Nelson*, 890 P.2d at 920.

59. *Balfour v. Jacobs*, 867 P.2d 1364, 1366 (Okla. Ct. App. 1993).

60. *Id.*

61. *Nelson*, 890 P.2d at 920.

62. *Vinzant v. Hillcrest Med. Ctr.*, 609 P.2d 1274, 1277 (Okla. 1980).

63. *Id.*

64. *Id.*

C. Montana

The Supreme Court of Montana has dealt with issues involving medical liens on two occasions. The first, *Anesthesiology v. Blue Cross and Blue Shield of Montana*, came in 1990 and involved the question of whether amendments made to the Montana Insurance Code in 1987 affected a health service corporation's inability to file a lien under Section 71-3-1111 of the Montana Code.⁶⁵ Prior to the 1987 amendments, health service corporations, such as Blue Cross, were precluded from filing liens under the physicians' lien statute because they were not specifically mentioned in the extensive list of potential claimants.⁶⁶ Blue Cross argued that the 1987 amendments to the Montana Insurance Code, which eliminated health service corporations' exclusion, revealed that the legislature intended to extend the right to file physicians' liens to corporations as well.⁶⁷ The Court, however, noted that the legislature failed to mention the physicians' lien statutes in the 1987 amendments and that their intent to preclude any possible argument was evidenced by the fact that the insurance code begins with the phrase: "For the purposes of this code."⁶⁸ The Court held that without specific evidence of the legislature's intent to extend Section 71-3-1114 to such corporations, it would not infer such intent.⁶⁹

In a more recent opinion from the Supreme Court of Montana, *Mountain West v. Hall*, the Court resolved a dispute involving attorney fee apportionment in the context of the enforcement of medical liens.⁷⁰ For present purposes, the issues of the case are not as important as the Court's acknowledgement of the statutory right of a hospital and of a physician to file liens for medical services rendered pursuant to Section 71-3-1114 of the Montana Code.⁷¹

IV. THE POTENTIAL CONSEQUENCES OF THE LACK OF A PHYSICIAN'S MEDICAL LIEN STATUTE: THE NEW YORK EXPERIENCE

Comparing Missouri's statutes and recent case law to those of Oklahoma and Montana displays that until very recently, Missouri law has lacked a significant means of recovery for physicians who treat injured patients because of the absence of a physicians' lien provision. However, the extent to which Missouri physicians would benefit from possessing a separate statutory basis

65. *Anesthesiology, P.C., v. Blue Cross and Blue Shield of Montana*, 806 P.2d 16, 17 (Mont. 1990).

66. MONT. CODE ANN. § 71-3-1114 (1999).

67. *Anesthesiology*, 806 P.2d at 18.

68. *Id.*

69. *Id.*

70. *Mountain W. Farm Bureau Mutual Ins. Co. v. Hall*, 38 P.3d 825, 826 (Mont. 2001).

71. *Id.* at 827.

may not be readily apparent. It might be assumed, for example, that without a separate provision, doctors, chiropractors, and other health care providers could have simply ridden the coat tails of their employer-hospitals in obtaining payment. However, the history of physicians' rights in New York epitomize how, before Section 430.225 was reinstated, Missouri physicians could have been frozen out of recovering any reimbursement for their services.

In its 1945 opinion, *Roosevelt Hospital v. Loewy*, a New York Supreme Court held that the hospital lien statute did not provide a lien for physicians to recover for services rendered, stating that even if charges for medical and surgical services were payable, they were incurred as part of the hospital's overall operation and maintenance.⁷² This meant that if recovery were available on the grounds that a physician incurred some expense, any proceeds received for those services should go to the hospital.⁷³ In *Roosevelt*, the physician had agreed not to charge the hospital and render his services for free, and therefore, the hospital had no obligation to pay him.⁷⁴ However, in agreeing to this arrangement, the doctor did not specifically discharge his ability to recover from the patients for services rendered.⁷⁵ This potential solution was taken from him when his patients could not afford to pay because of the court's decision and the fact that New York law does not contain a separate physicians' lien.⁷⁶

Rather than address this problem and the possible inequities resulting from it, another New York court cited *Roosevelt* as supporting authority in deciding *Reardon v. Spagna* nine years later.⁷⁷ In *Reardon*, two doctors filed liens upon the settlement of a suit for personal injuries, where they had treated the plaintiff who had been injured by the alleged tortious acts of the defendant.⁷⁸ The court declined to find support for a doctor's lien present, either in the statute or under a city charter provision, and dismissed the doctor's claim.⁷⁹

Lastly, in 1956, a New York hospital, in an apparent endeavor to avoid such an unjust result for its physicians, attempted to force a patient to execute an assignment in favor of both the hospital and unnamed staff physicians.⁸⁰

72. *Roosevelt Hosp. v. Loewy*, 55 N.Y.S.2d 414, 416 (N.Y. Sup. Ct. 1945).

73. *Id.* at 415.

74. *Id.*

75. *See id.* at 416-17

76. *Id.* at 416.

77. *Reardon v. Spagna*, 130 N.Y.S.2d 206, 207 (N.Y. Sup. Ct. 1954), *rev'd on other grounds*, 134 N.Y.S.2d 843 (N.Y. App. Div. 1954).

78. *Id.*

79. *Id.* at 207-08 (discussing two doctors working at Kings County Hospital treated the plaintiff and then filed liens on their own behalf, and the court found no provision in New York law establishing a "doctor's lien," and dismissed the doctors' claims).

80. *Glazer v. Dep't. of Hosp.*, 155 N.Y.S.2d 414, 415 (N.Y. Sup. Ct. 1956).

This action resulted in a lawsuit, *Glazer v. Department of Hospitals*.⁸¹ In its opinion from the case, the court described the legislative history of a proposed physicians' lien as additional reasoning behind preventing this type of occurrence.⁸² The court stated that an attempt was made through the introduction of legislation to grant this type of relief to physicians, but because the proposed bill failed to pass, the New York legislature rejected the suggestion that physicians were entitled to such a lien.⁸³ Thus, the court held that allowing an assignment such as the one in the present case would allow a court to substitute its judgment for the intent of the legislature.⁸⁴ Thus, New York physicians, unlike the charitable hospitals for whom some of them often render their services, remain without a right to file liens to recover compensation for the services they provide.

V. THE NEW YORK CRYSTAL BALL

While it is certainly understandable that a court would refrain from displacing legislative intent with its own judgment, this does not solve the problems inherent to the system currently found in New York. There, hospitals must distinguish between salaried staff and non-salaried staff and then determine, often long after the event, which physicians actually worked on the patient, for how long, and how much those services cost the hospital.⁸⁵ Then, they must add only the total amount available to be redeemed under the hospital statute to the amount of the lien that the hospital places on any recovery by the patient in his civil action.⁸⁶ When compared to other states that have separate statutes, this organization places a limit upon the total amount of money recoverable between the doctors and the hospitals because they must recoup their costs under the same lien. As seen in states such as Oklahoma, when separate acts contain physicians' and hospital liens, physicians and hospitals may attach separate liens that may each total no more than one-third of the total recovery.⁸⁷ A separate statutory scheme would thus be more beneficial, for both hospitals and doctors, than a one-statute system, as the total recoverable sum could exceed one-third of the total settlement or award.

Taking the example of New York law and its negative effects on physicians, Missouri physicians and hospitals should have been wary as to the

81. *Id.*

82. *Id.* at 416.

83. *Id.* (stating that a bill containing a physician's right to a lien was defeated in the New York Legislature on March 29, 1949).

84. *Id.* at 417.

85. *Roosevelt Hosp. v. Loewy*, 55 N.Y.S.2d 414, 416 (N.Y. Sup. Ct. 1945).

86. N.Y. LIEN LAW § 189 (McKinney 1993).

87. OKLA. STAT. ANN. tit. 42, § 43 (West 2000); OKLA. STAT. ANN. tit. 42, § 46.

potential effects that the presence or absence of such statutes might have. Although it was true, as stated in *Cardinal Glennon*, that the Missouri legislature failed to pass three separate bills concerning the addition of a physicians' lien amendment to the hospital statute, this does not necessarily mean that the Missouri situation before the passage of H.B. 121 was identical to that of New York's from the 1950s.⁸⁸ First of all, the presence of three separate bills in the first Missouri legislative session from 1999 revealed that support for this concept existed. Additionally, divisiveness concerning the language of the different proposed bills clearly did not exist, as each bill's content mirrored the other. The fact that the amendment to H.B. 343 added many of these same ideas in the same session as the one wherein the other three proposals did not pass may reveal the presence of a compromise.⁸⁹ Regardless of the true reasoning behind H.B. 343's passage with the medical lien provision attached, to claim that the legislative intent clearly objected to the presence of a physician's lien would be erroneous. If no such support existed for the passing of a physicians' lien statute, then no bill would have been generated at all, let alone two from each of the two houses of the legislature.⁹⁰ Without clear intent, perhaps derived from the debates that occurred on the floor of the Senate during discussion of H.B. 343, it remains unclear whether a decision based solely on the merits of Section 430.225, and not on a technicality, would have gone the hospitals' way.

Now that Section 430.225 has again become part of Missouri's statutory scheme, Missouri physicians and other health care providers need not be concerned that their situation will mimic that of New York's. However, physicians in every state in which the legislature presented but did not pass a bill containing a physicians' lien should be wary. A court in such a state could follow the New York example in restricting their lien availability in an effort to avoid supplanting legislative intent with those of the judiciary.

A. *The Physicians' Argument: The Necessity of a Physician's Medical Lien Provision for Recovering Unpaid Costs*

Physicians base their primary argument for their need to file such liens on the belief that they should be paid for the work they perform.⁹¹ In that regard, they feel that they should be placed on a footing equal to that of hospitals.⁹² In supporting the struggle for the creation of separate physicians' lien statutes that

88. *Cardinal Glennon*, 68 S.W.3d at 414.

89. *See id.* at 415.

90. S.B. 515, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999); H.B. 140, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999); S.B. 409, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999); H.B. 343, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999).

91. Greathouse, *supra* note 10.

92. *Id.*

accomplish this objective, Jay Zitter's American Law Reports article, "Physicians' and Surgeons' Liens," states that: "Physicians can no longer afford to allow some of their patients not to pay their bills, and they must use all available legal methods to insure at least partial compensation from whatever source possible."⁹³ Many changes in the medical and insurance fields have occurred since the 1950s, and the costs for treating patients continue to rise for physicians as well as for hospitals. In addition to Oklahoma and Montana, many other states, including California,⁹⁴ Virginia,⁹⁵ and Wisconsin,⁹⁶ have accepted this fact and have recognized the validity of either statutory or common law physicians' lien claims.

Some members of the Missouri Legislature clearly felt that a need existed for a physicians' lien statute in 1999. Three separate bills attempted to remedy the problems inherent in the absence of a separate statute, but none of them acquired enough support on their own until an amendment to House Bill 343 seemed to satisfy their purpose.⁹⁷ But as discussed above, a glitch in the drafting process caused that attempt to fail.⁹⁸

Because the Supreme Court of Missouri did not reach the issue of the validity of a physicians' lien statute in *Cardinal Glennon*, deciding the case instead upon a technicality in drafting, the question remains whether the outcome truly benefited the medical community.⁹⁹ The parties who brought the suit consisted of privately maintained hospitals, supported in whole or in part by charity.¹⁰⁰ Prior to filing the suit, these hospitals concluded that the change to the hospital lien law threatened to reduce the amounts available to them in attempting to recover their unpaid costs.¹⁰¹ This argument, however, does not relate to the extent to which the amendment was germane to the rest of the bill. The objection to the bill's amendment did not address the substance of the medical lien provision, even though its substance represented the primary concern of the hospitals.¹⁰² Rather, it went to an error in the drafting process.¹⁰³ But for the technicality, would the hospitals have succeeded in arguing that physicians and other health care providers should not possess

93. Zitter, *supra* note 5.

94. Nicoletti v. Lizzoli, 124 Cal. Rptr. 685, 690 (Cal. Ct. App. 1981).

95. Holley v. The Manfred Stansfield, 186 F. Supp. 805, 809 (E.D. Va. 1960).

96. In re Harris, 50 B.R. 157, 160 (Bankr. E.D. Wis. 1985).

97. H.B. 343, 90th Gen. Assem., 1st Reg. Sess. (Mo. 1999) (enacted as Professional Registration/Licensing, 1999 Mo. Laws 362).

98. See, e.g., *Cardinal Glennon Children's Hosp. v. State of Missouri*, 68 S.W.3d 412, 418 (Mo. 2002).

99. See *id.* at 417-18.

100. *Id.* at 416.

101. *Id.*

102. See generally *id.* (noting no objection to the substance of the medical lien provision).

103. *Id.* at 414.

these lien powers because it would hinder their overall ability to recover the full amount of their own liens? Comparing by analogy the hospital lien law to the ability of hospitals and physicians to recover under Missouri's Workers' Compensation Law, it can be seen that, on its merits, the logic of the hospitals' argument could be subjected to serious questioning. A 2001 decision from the Missouri Supreme Court provides a sufficient basis for such an analogy.

In *Curry v. Ozarks Electric Corporation*, the court cited a Missouri statute that authorizes health care providers, including hospitals as well as physicians, to file claims for direct payment in regards to workers' compensation payments.¹⁰⁴ The statute, section 140.13(1) of Chapter 287, the Workers' Compensation Law, states that "a hospital, physician, and other health care providers selected by the employee at his own expense . . ." shall have a right to bill and collect fees for services rendered to an employee due to a work-related injury.¹⁰⁵ This provision places physicians, hospitals, and other health care providers on equal footing in terms of recovering these types of fees.¹⁰⁶ Would it make sense then to place all types of health care providers on equal footing with respect to recovery under the types of liens previously discussed? It could be argued that the authors of H.B. 343 possessed such intent when they amended it to include Section 430.225 in the Hospital Lien Act.¹⁰⁷

Missouri Workers' Compensation Law grants physicians and hospitals equal rights with respect to recovering costs incurred while treating injured workers.¹⁰⁸ In both situations, the medical entities attempt to recover money from third parties in order to pay for the patient's expenses. In the case of injured employees, the employer represents the third party mandated by law under the Workers' Compensation statute to pay for a certain amount of the fees.¹⁰⁹ In the case where an indigent patient seeks to recover damages for injury caused by the negligent or tortious acts of a third party, the hospital and/or physician must attempt to recover the money from any settlement or award resulting from a suit against the tortfeasor. It could be argued that these situations are identical in nature, the only difference being the identity of the third party.

Proponents of a statutory physicians' lien also put forth the argument that it would be unfair to deny physicians payment for their services while allowing plaintiffs to include payments for physicians' services in their settlement

104. *Curry v. Ozarks Elec. Corp.*, 39 S.W.3d 494, 496 (Mo. 2001).

105. MO. REV. STAT. § 287.140 (2000).

106. *Id.*

107. H.B. 343, 90th Gen. Assem., 1st Reg. Sess. (Mo. 1999) (enacted as Professional Registration/Licensing, 1999 Mo. Laws 362).

108. MO. REV. STAT. § 287.140 (2000).

109. *Id.*

arrangements or in their awards.¹¹⁰ This occurs in situations where injured plaintiffs factor in the amount of money that they would have had to pay to their physicians, chiropractors, rehabilitation specialists, etc., if they would have had the money to pay them at the time of the treatment. Plaintiffs can then recover this money from the tortfeasor, and without a statutory physicians' lien in place, they get to keep the money that was "earmarked" in the settlement talks or in the award for physicians' fees.¹¹¹ In this way, physicians could argue, the patient can be unjustly enriched by not paying a portion of their medical bills and yet still being reimbursed for such expenses.

Regardless of these rationales, as seen by their passage of H.B. 121 a year after the *Cardinal Glennon* decision, the Missouri Legislature obviously intended to provide physicians and other health care providers with such a statutory remedial measure. By acting quickly, they prevented the possible creation of a situation similar to that found in New York. Had they not, then it would have been possible for a Missouri court to view the legislature's failure to pass one of the three separate physicians' lien bills in 1999 as evidence of their intent to exclude such a measure. The court could have claimed a desire to avoid displacing legislative intent with its own rulings, similar to the *Glazer* opinion from New York.¹¹²

Finally, from a general policy standpoint, it would be beneficial to society as a whole to develop within physicians the mindset that they will be paid for their work despite their patients' lack of funds or insurance. Dishonoring physicians' liens would have the effect of limiting physician willingness to spend time treating such patients when they know that the costs for doing so would be coming out of their own pockets. Instead, they would want to devote all of their practice to treating patients with money or insurance because in treating these types of patients rather than indigent ones, they would rarely lose money by treating a patient. Such a mindset would be very detrimental to the poorer members of society because, in effect, this would increase the possibility for them to be turned down when seeking medical care.

B. Lacking the Enactment of a Physicians' Lien Statute, Physicians May Still Possess Means for Recovering Unpaid Costs

Prior to the Missouri Legislature passing H.B. 121, the sole authority under which physicians could have argued to possess lien powers would have been the hospital statute, by construing it as a general medical lien statute. As

110. Greathouse, *supra* note 10.

111. *Id.*

112. *Glazer*, 155 N.Y.S.2d at 416.

shown in *Cardinal Glennon*, however, this would have been ineffective.¹¹³ Realizing that schemes such as the one from *Glazer* are ineffective, hospitals interested in helping their staff physicians could have helped them recover some of the money owed to them by solving this dilemma using one of many potential solutions.¹¹⁴ Obviously no longer pertinent in Missouri, these methods could still be utilized by hospitals in states that do not have statutory physicians' liens. For instance, hospitals in such states could make the treating physician their agent, representing them in the recovery under the hospital lien. By doing so, the doctor would be paid the total amount of the lien initially, recouping his share before the hospital takes the remainder as recovery for the amount of its costs. However, as previously discussed, this solution has a limitation if the amount of the separate interests of the physician and the hospital total more than a fixed fraction of the total recovery. The hospital lien statutes of each state delineate this percentage.¹¹⁵ For instance, Missouri's Hospital Lien Statute limits the recovery to one-half of the award or settlement, after attorneys' fees have been deducted.¹¹⁶ If the costs incurred by the hospital and the doctor exceeded the value of the award or settlement, then the lien amount would not be enough to satisfy both claims. In this situation, the physician and the hospital could follow the pattern proposed in bills such as Missouri S.B. 515, which would have given a fraction of the fifty percent to each party in proportion to the relative sizes of their claims.¹¹⁷ When confronted with such a proposition, however, hospitals could insist on recovering the entire lien amount themselves, with the interest of the physician becoming a secondary concern.

Another alternative chosen by some doctors in Missouri prior to the passage of H.B. 121 was to file a hospital lien with the insurance company or with the plaintiff's attorney despite the fact that no statutory authorization existed for such a lien.¹¹⁸ Part of the success of these efforts can be attributed to the "popular misconception," described by Glenn Bradford and Amy Kiefer Hanson in their article appearing in the *Journal of the Missouri Bar*, that lawyers believe that a general "medical lien" exists that covers all health care

113. *Cardinal Glennon*, 68 S.W.3d at 414 (stating that Sections 430.230 through 430.250 of the Missouri hospital lien law pertained only to hospitals).

114. *Glazer*, 155 N.Y.S.2d at 420 (discussing how a hospital tried to force a patient to sign a contract allowing the treating physicians to file a lien for their services even though New York courts had held that such a lien was not valid in New York law).

115. See, e.g., *Burrell v. S. Truss*, 679 N.E. 2d 1230, 1231 (Ill. 1997) (describing the Illinois law, whereby the amount was fixed at one-third of the total recovery obtained through settlement or through the award of a court).

116. MO. REV. STAT. § 430.250 (West 2000).

117. S.B. 515, 90th Gen Assem., 1st Reg. Sess. (Mo. 1999).

118. Greathouse, *supra* note 10.

providers.¹¹⁹ In addition to the presence of this misconception, in the same article, Bradford and Hanson advise plaintiffs' attorneys to account for any such claims prior to paying out the proceeds of the settlement in order to prevent their clients from possibly facing liability on such claims later.¹²⁰ Better practice, they claim, insists that all outstanding medical expenses should be settled prior to paying out the proceeds of the settlement.¹²¹ In this manner, the attorney for the plaintiff could prevent exposing the client to possible liability if at a later time the physician's lien becomes effective. Even if these types of liens are never deemed to be valid, plaintiffs have an interest in paying such liens before dispersing the award to their clients so as to avoid angering local physicians as well as possibly receiving phone calls from them regarding payment for their services.

In executing other such unauthorized liens, some doctors employed by hospitals have filed liens on behalf of their employing hospital, "doing business as [the doctor's name]."¹²² In this manner, they attempt to circumvent the lack of a physician's lien statute and recover through the hospital lien statute.¹²³ Obviously, however, physicians could encounter problems should their employer-hospital file its own lien and the two try to recover simultaneously. The plaintiff will only be willing to pay the hospital lien, in whatever form, once.

Based, in part, upon the presumptions mentioned in Bradford's article, bluffing the existence of a physicians' lien statute was sometimes successful in Missouri when directed at insurance companies.¹²⁴ When dealing with such companies, especially those located outside of Missouri, some physicians succeeded in simply filing Physicians' Liens under Section 430.225, even though it had been held unconstitutional.¹²⁵ The physicians and their attorneys rationalized this attempt in two ways. First, most out-of-state insurance companies presumably do not follow Missouri common law decisions closely enough to recognize that the statutory basis for such a lien had been declared unconstitutional.¹²⁶ Additionally, even though the statute had been declared

119. Bradford & Hanson, *supra* note 15, at 250.

120. *Id.*

121. *Id.* In addition to ensuring that a client will not be subjected to such possible medical expenses after receiving the settlement or award, Bradford states another motivation for ensuring that all medical debts have been paid prior to disbursing the remaining funds: "health care providers are frequently willing to discount their bills at settlement." *Id.*

122. Greathouse, *supra* note 10.

123. MO. REV. STAT. § 430.230 (2000).

124. Greathouse, *supra* note 10.

125. Cardinal Glennon Children's Hosp. v. State of Missouri, 68 S.W.3d 412, 418 (Mo. 2002).

126. Greathouse, *supra* note 10.

unconstitutional, it was still on the books, making it less likely that unknowing insurance companies would challenge such a claim.

Secondly, even if the insurance companies did take note of the *Cardinal Glennon* decision and its consequences, they presumably would not want to anger a large number of physicians in a concentrated region of the country by refusing to satisfy the liens.¹²⁷ Also, similar to plaintiffs' attorneys, insurance companies have an interest in satisfying all outstanding liens before paying out the remaining proceeds resulting from the injury.

Unlike plaintiffs' attorneys, however, insurance companies have an additional motivation for not letting outstanding liens go unpaid because doing so could expose them to double damages. This situation could result if they fail to collect from their clients for satisfying such a lien, and then they are subsequently forced to pay the amount of the lien to the doctor. If this situation were to occur, they essentially would have been forced to pay their client's bill out of their own pocket.¹²⁸

C. *The Hospitals' Argument: The Enactment of Acts Allowing Physicians' Liens Negatively Affect Their Own Powers of Recovery*

Hospitals that can recover under Missouri's current Hospital Lien Act possessed an economic interest in preventing physicians and other health care providers from gaining lien power equal to theirs. As stated in *Cardinal Glennon*, the introduction of a physicians' lien statute threatened to reduce the amounts that might otherwise have been available to them to recover unpaid fees, and preventing this represented their primary motivation for opposing the passage of such legislation.¹²⁹ They possibly feared that once physicians were placed on an equal footing to hospitals with regard to lien recovery power, one more hand would be sharing in the pot. Add to this the fact that Missouri Section 430.225 contains a prohibition on balance billing, which prevents health care providers from pursuing the balance of their bills due from the patient after they only recovered partial payment under the lien, and hospitals still possess a very deep interest in recovering all that they can with their initial lien.¹³⁰

A hypothetical involving Missouri Section 430.225 demonstrates this vested interest. Assume that a Missouri hospital incurred costs of \$2,500 in treating an indigent patient injured by a third party, and a physical therapist incurred costs of \$1,250 in treating the same individual. If the patient

127. *Id.*

128. *Id.*

129. *Cardinal Glennon*, 68 S.W.3d at 416.

130. E-mail from Gerald M. Sill, J.D., Senior Vice President & General Counsel, Missouri Hospital Association (Jan. 28, 2003) (on file with author).

recovered \$4,800 in settling with the third party, both the hospital and the therapist would file liens with the plaintiff's attorney seeking to recover at least a portion of their costs. Section 3 of Missouri Statute 430.225 limits total recovery by all lienholders to fifty percent of the total settlement or award.¹³¹ With this cap in place, only \$2,400 (assuming no attorneys fees or other expenses existed) would be available to satisfy both liens, and the statute declares that all lienholders share in proportion to the claim that each bears to the total amount of all other liens.¹³² Based upon this, the hospital could recover only \$1,600 while the therapist would recover \$800. Without the physician's lien statute in place, the hospital would stand to recover \$2,400, nearly recouping all of its costs incurred in treating the patient. Instead, with Section 430.225 in effect, it would receive \$800 less.

In addition to this purely economic rationale, Missouri hospitals also argued that physicians should not be entitled to such liens because they differ from hospitals that possess the ability to recover under such statutes as Missouri's Hospital Lien Act in a very important way.¹³³ Generally speaking, physicians are not charitable institutions. Hospitals claim that, in part, the hospital lien statutes were designed to ensure that charitable institutions are paid for the care that they provide.¹³⁴ Most physicians are, or work in conjunction with, for-profit entities. As such, they should not be allowed to take advantage of such statutes. Obviously, this argument, along with all of the other rationales presented by the hospitals, failed to persuade the Missouri Legislature to keep Section 430.225 from becoming law, but their arguments could still apply in states that do not yet possess physicians' lien provisions.

D. Arizona: Possible Source of Statutory Compromise

The Arizona statute entitling health care providers to file liens on the settlements or awards recovered by persons receiving services presents a unique and novel concept in the area of medical liens.¹³⁵ Section 33-931 of the Arizona Revised Statutes contains a potential compromise concerning the dispute between hospitals and other health care providers concerning the availability of these types of liens.¹³⁶ The statute accomplishes this through a two-step process. First, Section A authorizes a lien recovery right to a very broad range of institutions and health care providers.¹³⁷ Presumably, this

131. MO. REV. STAT. § 430.225 (2000) (repealed by H.B. 121, 92nd Gen. Assem., 1st Reg. Sess. (Mo. 2003)).

132. *Id.*

133. Sill, *supra* note 130.

134. *Id.*

135. Calder, *supra* note 13, at 370.

136. ARIZ. REV. STAT. ANN. § 33-931 (West 2003).

137. *Id.* Stating that:

language would please physicians and other health care providers if the prior medical lien statute in place in a particular state entitled only hospitals to recover in such instances. In Missouri, prior to 2003, for instance, the addition of this language would have provided physicians and all other health care providers with the lien powers that Section 430.225 provided prior to its being held unconstitutional.¹³⁸ The Arizona statute provides a qualification to these general lien powers, however, whose inclusion, no doubt, serves to gain the approval of all of the hospitals in Arizona.

Section C of Section 33-931 provides that “liens perfected pursuant to this article by a hospital have priority for payment overall other liens authorized by this article.”¹³⁹ This provision would please hospitals because it would ensure that they would receive as much reimbursement of their services as possible, based on the size of the settlement or award, regardless of the presence of any other health care providers’ liens. This provision would become effective whenever the amount of the lien exceeded the amount of the settlement or award recovered by the plaintiff/patient. It would also affect liens in states that have caps in place limiting the percentage of the recovery that can be obtained through a medical lien. For instance, Missouri’s statutes set the cap at one-half of the total recovery.¹⁴⁰

Under a statutory system such as Arizona’s, hospitals maintain their superiority to other health care providers and do not have to worry about being placed on a footing equal to that of physicians, nor would they have to worry about another mouth at the table, subjecting them to a lesser share. At the same time, physicians and other health care providers could view this statute as a definite improvement over systems in which they lack any authority to establish such claims. Additionally, if Arizona’s design were in place in Missouri, physicians and other health care providers would be entitled to the full amount of their lien, up to the one-half limitation, if a hospital were not involved in the treating of the plaintiff/patient. Granted, this would not place them in the same position as they now find themselves under Section 430.225, but this statute would have presumably been more agreeable to the hospitals that fought to have Section 430.225 declared unconstitutional in 2002.

[E]very individual, partnership, firm, association, corporation or institution or any governmental unit maintaining and operating a health care institution or providing health care services in this state . . . is entitled to a lien for the customary charges for care and treatment or transportation of an injured person, on all claims of liability or indemnity . . . on account of the injuries that gave rise to the claims and that required services.

Id.

138. MO. REV. STAT. § 430.225 (2000) (repealed by H.B. 121, 92nd Gen. Assem., 1st Reg. Sess. (Mo. 2003)).

139. ARIZ. REV. STAT. ANN. § 33-931 (West 2003).

140. MO. REV. STAT. § 430.250 (2000).

VI. CONCLUSION

As previously stated, the legislatures of nearly every state have enacted statutory provisions entitling hospitals to recover costs incurred during the treatment of an indigent individual through the filing of a lien on the patient's settlement or award.¹⁴¹ The concept of a medical entity recovering its costs through the filing of a lien has therefore reached nearly unanimous acceptance across the country. The rationale for the existence of such provisions, encouraging the treatment of indigent individuals and allowing medical institutions to recoup the reasonable costs incurred during treatment, has been accepted as well. The concept of entitling physicians and other health care providers to similar liens, however, has not achieved similar universal support.

While valid arguments exist on both sides calling for the exclusion or inclusion of statutory physicians' liens, the ultimate decision concerning these provisions rests with the legislature of each state. And so, with the introduction of a number of bills in 1999, the Missouri legislature was presented with a decision concerning the possible creation of such a statute. The way in which the legislature settled the issue, attaching it very late in the developmental process to a bill that in no way related to medical lien law, left it ripe for the Supreme Court of Missouri to strike it down as unconstitutional as soon as a case concerning its operation came before it. *Cardinal Glennon* presented such a situation, and the Court rightfully held Missouri Section 430.225 unconstitutional.¹⁴²

The problem that existed in Missouri after *Cardinal Glennon* was unique in that it did not involve a state legislature debating the need for a physicians' lien statute and deciding whether or not to pass such a measure. The actions taken by the legislative and judicial branches of government in Missouri created a much cloudier situation. In truth, many attorneys were not even aware of the *Cardinal Glennon* decision or its repercussions. The fact that the legislature tacked the physicians' lien statute onto another bill as a rider shortly before the bill was passed does not paint a very clear picture of legislative intent. Were attorneys to infer from this action that the legislature did not care enough about it to make it its own bill, and therefore, should they disregard such claims by physicians? Or are they to assume that the issue was important enough to pass and that, therefore, these liens should be enforced regardless of a technicality in the drafting process?

Clearly, the Missouri Legislature felt that the reenactment of a physicians' lien statute was the most fair and sensible alternative, as it entitles physicians to recover money for services that they have rendered. Also, the recovery power under the Missouri's medical lien acts now mirrors the powers available

141. See *Bergan Mercy Health Sys. v. Haven*, 620 N.W.2d 339, 345 (Neb. 2000).

142. *Cardinal Glennon*, 68 S.W.3d at 418.

to the medical community under the Workers' Compensation statutes, helping make Missouri law more uniform.

But as seen with Arizona, other solutions could have been found, and states considering similar issues would do well to at least consider all of them, regardless of the current state of their law, as they may find a more equitable option than that currently found in their statutory scheme. Perhaps though, the physicians' arguments were correct, and Missouri law contains the fairest treatment of hospitals and physicians concerning liens of this type. Or perhaps the hospitals have the stronger argument when they contend that the design of the hospital lien acts is intended solely to benefit charitable institutions in recovering payment for the care they provide. Based upon this contention, it would be unfair for them to only recover portions of their costs while "for-profit" physicians are partially reimbursed. Or perhaps the most appropriate settlement of this dispute can be found in Arizona law, where hospital liens receive priority, but where all medical providers are entitled to file such liens. This system helps to ensure that hospitals will receive all that they can, while providing physicians with recovery power in cases where the settlement amount is large or where a hospital is not involved. Regardless of the solution, hospitals, physicians, and the congressmen of every state would do well to remember that the needs of patients should come first, and the decision as to who picks up the check at the end of the day should be secondary at best.

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