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6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7 IN THE MATTER OF:

R-12-0029

8 RULE 28(A) PETITION TO ADOPT NEW
ARIZONA RULE OF EVIDENCE TO BE
DESIGNATED RULE 412.

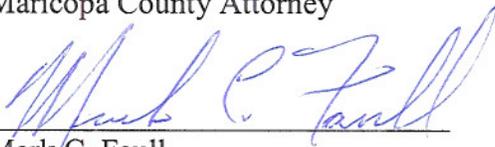
MARICOPA COUNTY ATTORNEY'S
COMMENT TO PETITION TO ADOPT NEW
ARIZONA RULE OF EVIDENCE TO BE
DESIGNATED RULE 412

10 The Maricopa County Attorney submits this comment in opposition to the Rule 28(A)
11 Petition to adopt a new Arizona Rule of Evidence to be designated Rule 412. Medical Expenses.

12 Respectfully submitted this 16 day of May, 2013.

13 WILLIAM G. MONTGOMERY
14 Maricopa County Attorney

15 By:


16 Mark C. Faull
17 Chief Deputy
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MEMORANDUM OF POINTS AND AUTHORITIES

The Rule 28(A) Petition to add a new Arizona Rule of Evidence to be designated Rule 412. Medical Expenses would add a new rule allowing statements of charges for medical, hospital or “other” health care expenses to be admitted into evidence without the party offering those statements of charges actually proving his or her claim that the charges were reasonable, necessary and related to the incident at issue in that case.

Petitioner claims that in cases involving minor injuries, the expense of calling a physician to Court to testify in Court is too great. However, the current Rules of Civil Procedure already account for this issue. Many of these cases involving minor injuries go to arbitration, where the rules allow for the admissibility of the bills under more relaxed evidentiary standards stated in the arbitration rules. A number of these minor cases are resolved at this level and do not proceed to trial. As such, the concern expressed by the Petitioner is not as great as he represents.

Plaintiffs also have protections within the current rules to assist in having the reasonableness of the charges determined prior to trial. They can use Requests for Admissions under Rule 36, Arizona Rules of Civil Procedure, to obtain admissions that the charges are reasonable. If a denial of the reasonableness of the expenses are made and the Court finds there was no good cause for denying the reasonableness of the charges, then the “unnecessary” litigation costs, including any costs associated with having to call the doctor to testify about the reasonableness of the charges, can be shifted to the objecting party. Rule 37(e), Arizona Rules of Civil Procedure.

The Petitioner has presented an exaggerated scenario that all defendants object to the reasonableness of medical bills. However, there is no evidence that defendants routinely take an unreasonable stance in defending cases with regard to the reasonableness of the medical expenses.

1 Most defendants will likely stipulate to the admissibility of medical bills, especially if a treating
2 physician or separate expert is called to testify as to causation. Causation is typically at issue a
3 great majority of the time. When a treating doctor or expert is called to testify about causation, that
4 same doctor can testify about the reasonableness of the related charges.

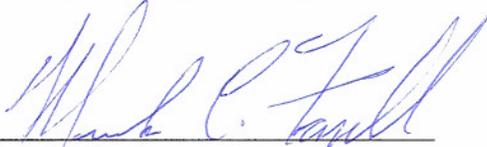
5 The proposed new rule would unfairly prejudice defendants since it also unfairly suggests to
6 the jury that the treatment was also reasonable and related to injuries sustained in the underlying
7 case, even though the Petitioner claims it only addresses the purported reasonableness of the
8 charges. A plaintiff must show that the injuries sustained and the treatment provided are related.
9 Oftentimes the charges may be reasonable for the treatment provided, but the treatment itself was
10 not necessary or was unrelated to the injuries sustained. A plaintiff has the burden of proving his or
11 her case, and this proposed rule could allow them to do an end run around that burden of proof and
12 unfairly shift that burden to the defendant. The safeguards of trial practice and the truth seeking
13 process would be chipped away, merely to convenience a small number of cases.

14 For these reasons, the Maricopa County Attorney opposes the Rule 28(A) Petition to adopt a
15 new Arizona Rule of Evidence to be designated Rule 412. Medical Expenses.

16 Respectfully submitted this 16th day of May, 2013.

17 WILLIAM G. MONTGOMERY
18 Maricopa County Attorney

19 By:

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21 Mark C. Faull
Chief Deputy