810.04 PERSONAL INJURY DAMAGES - DAMAGES - MEDICAL EXPENSES.[1]

(Use for claims arising before 1 October 2011. For claims arising on or after 1 October 2011, use N.C.P.I.-Civil 810.04A, 810.04B, 810.04C or 810.04D.[2])

Medical expenses include all [hospital] [doctor] [drug] [*state other expenses*] bills reasonably[3] [incurred][4] [to be incurred in the future][5] by the plaintiff as a [proximate result of the negligence] [result of the wrongful conduct] of the defendant.

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1. The evidence may be such as to require elaboration of this instruction in one or more of the following respects. The treatment need not be successful to make the expense recoverable. *See Heath v. Kirkman*, 240 N.C. 303, 310, 82 S.E.2d 104, 109 (1954).

Additional medical expenses caused by the negligence of the original treating physician are recoverable, unless the injured person was negligent in selecting the original physician. *See Bryant v. Dougherty*, 267 N.C. 545, 549–50, 148 S.E.2d 548, 552–53 (1966); *Bost v. Metcalfe*, 219 N.C. 607, 609, 14 S.E.2d 648, 651 (1941).

The medical expenses of an unemancipated minor are not recoverable by the minor. *See Emanuel v. Clewis*, 272 N.C. 505, 509, 158 S.E.2d 587, 590 (1968).

2. *See* 2011 N.C. Sess. Laws 317 § 1.1 (modifying 2011 N.C. Sess. Laws 283 § 4.2).

3. *NOTE WELL: To satisfy the "reasonableness" requirement, medical expenses must be both "reasonable in amount" and "reasonably necessary."* Jacobsen v. McMillan*, 124 N.C. App. 128, 135, 476 S.E.2d 368, 372 (1996).*

Under N.C. Gen. Stat. § 8-58.1, a "rebuttable presumption of the reasonableness" of the amount of medical expenses is established by "competent testimony" of that amount accompanied by "records or copies of such charges." *See Jacobsen*, 124 N.C. App. at 133–34, 476 S.E.2d at 371–72. This "presumed fact" is "deemed proved" and the jury must be instructed "accordingly" unless the opposing party "go[es] forward with evidence to rebut or meet the presumption[.]" N.C. Gen. Stat. § 8C-1, Rule 301 (2009). *See also McCurry v. Painter*, 146 N.C. App. 547, 552, 553 S.E.2d 698, 702 (2001) (holding that where "[d]efendants presented no evidence" nor "rebut[ted] the reasonableness of the amount of [plaintiff's] medical charges on cross-examination," the reasonableness of the amount of those charges was "conclusively established"); *cf. Osetek v. Jeremiah*, 174 N.C. App. 438, 440, 621 S.E.2d 202, 204–06 (2005) (finding no error in refusal to instruct jury to accept "as conclusive and binding" that the medical charges testified to by plaintiff were "reasonable in amount" where defendant challenged the "legitimacy" of plaintiff's treatment and whether the charges were caused by the collision at issue), *aff'd per curiam*, 360 N.C. 471, 628 S.E. 2d 760 (2006); *Griffis v. Lazarovich*, 161 N.C. App. 434, 442, 588 S.E.2d 918, 924 (2003) (holding that an instruction on reasonableness presumption "would have been redundant and confusing to the jury" where the parties stipulated to the amount and to the reasonableness of plaintiff's medical expenses).

However, application of the reasonableness of amount presumption in no way precludes a jury from finding that "medical expenses were not reasonably necessary for the proper treatment of [a party's] injuries." *Jacobsen*, 124 N.C. App. at 135, 476 S.E.2d at 372. In this regard, note that "if lay and expert evidence demonstrates a causal relationship between the negligent act and [the] plaintiff's injuries, the medical charges for these injuries are admissible." *McCurry*, 146 N.C. App. at 549, 553 S.E.2d at 700–01.

If the requirements of N.C. Gen. Stat. § 8-58.1 have been completely satisfied and the opposing party has not met its burden under N.C. Gen. Stat. § 8C-1, Rule 301, the following instruction may be given:

To be reasonably incurred, medical expenses must: 1) be reasonable in amount, 2) must have been reasonably necessary for the proper treatment of the plaintiff's injury, and 3) must have been incurred as a proximate result of the defendant's negligence. In this case, the plaintiff [has testified] [presented testimony] regarding the amount of *his* medical bills and has introduced into evidence [records] [copies] of those bills. Under these circumstances, the law considers the bills reasonable in amount and you must so find. However, in order for you to find the plaintiff's bills were reasonably incurred, the plaintiff must also prove by the greater weight of the evidence that the medical expenses shown on the bills were reasonably necessary for the treatment of plaintiff's injuries and that the expenses were incurred by the plaintiff as a proximate result of the defendant's negligence.

4. The cases speak of "actual" expenses. *See Taylor v. Boger*, 289 N.C. 560, 570, 223 S.E.2d 350, 356 (1976); *Williams v. Charles Stores Co.*, 209 N.C. 591, 601, 184 S.E.2d 496, 502 (1936). If the expense has been incurred, there need not be evidence of actual payment. *See Williams*, 209 N.C. at 601–02, 184 S.E.2d at 502. Further, the fact that medical expenses were paid by the plaintiff's employer, his medical insurer, or some other collateral source generally does not deprive the plaintiff of the right to recover them. *See Cates v. Wilson*, 321 N.C. 1, 5, 361 S.E.2d 734, 737 (1987); *Fisher v. Thompson*, 50 N.C. App. 724, 731, 275 S.E.2d 507, 513 (1981).

5. If there is evidence of future medical expenses, whether temporary or permanent, give N.C.P.I.-Civil 810.16 ("Personal Injury Damages-Future Worth in Present Value"). In addition, if there is evidence that the medical expenses will be permanent, give N.C.P.I.-Civil 810.14 ("Personal Injury Damages-Permanent Injury"). *See also Taylor*, 289 N.C. at 570, 223 S.E.2d at 356 (holding that future actual expenses must be reasonable).