N.C.P.I.—CIVIL—810.44C
WRONGFUL DEATH DAMAGES—MEDICAL EXPENSES—NO STIPULATION, NO REBUTTAL EVIDENCE
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810.44C WRONGFUL DEATH DAMAGES—MEDICAL EXPENSES[1]—NO STIPULATION, NO REBUTTAL EVIDENCE

(Use for claims arising on or after 1 October 2011[2] when the plaintiff has offered evidence of the amount paid or necessary to be paid, and the defendant has not offered rebuttal evidence. For claims arising before 1 October 2011, use N.C.P.I.—Civil 810.44.)

Medical expenses include all [hospital] [doctor] [drug] *[state other expenses]* bills reasonably incurred[3] by *(name deceased)* as a [proximate result of the negligence] [result of the wrongful conduct] of the defendant.

To be reasonably incurred, medical expenses must have been: (1) reasonably necessary for the proper treatment of *(name deceased)*,[4] (2) incurred as a [proximate result of the defendant's negligence] [result of the defendant's wrongful conduct] and (3) reasonable in amount.

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1 N.C. Gen. Stat. § 28A-18-2(b)(1).

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

3 *NOTE WELL: N.C. R. Evid. 414 limits medical expenses evidence to amounts actually paid to satisfy the bill or, if not yet paid, the amount that would satisfy the bill: "Evidence offered to prove past medical expenses shall be limited to evidence of the amounts actually paid to satisfy the bills that have been satisfied, regardless of the source of the payment, and evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied. This rule does not impose upon any party an affirmative duty to seek a reduction in billed charges to which the party is not contractually entitled." The Rule does not change existing law that the fact that medical expenses were paid by the* deceased'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).*

4 "The fact that a provider charged for services provided to the injured person establishes a permissive presumption that the services provided were reasonably necessary but no presumption is established that the services provided were necessary because of injuries caused by the acts or omissions of an alleged tortfeasor." N.C. Gen. Stat. § 8-58.1(c).

To show that the amount of claimed medical expenses is reasonable,[5] the plaintiff must prove by the greater weight of the evidence the amount actually paid for medical services (and the amount necessary to satisfy medical expenses that have not yet been paid). If you find that the plaintiff has proved [this amount] [these amounts], then the law presumes that [this amount is] [these amounts are] reasonable. I charge you that this presumption is binding on you. This means that if you find by the greater weight of the evidence the amount actually paid for medical services (and the amount necessary to satisfy medical expenses that have not yet been paid), then you also must find that the medical expenses were reasonable in amount.

Additionally, the plaintiff must prove by the greater weight of the evidence that the medical services performed were reasonably necessary for

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5 N.C. Gen. Stat. § 8-58.1(b) (2011) establishes a "rebuttable presumption of the reasonableness" of the "amount paid or required to be paid in full satisfaction" of medical charges. The plaintiff, guardian, administrator or executor is "competent" to give evidence of these amounts if records or copies "showing the amount paid or required to be paid in full satisfaction of such charges accompany such testimony." *Id.* § 8-58.1(a). If the provider testifies that a charge was "satisfied by payment of an amount less than the amount charged, or can be satisfied by payment of any amount less than the amount charged, then with respect to the provider's charge only, the presumption of reasonableness of the amount charged is rebutted and a rebuttable presumption is established that the lesser satisfaction amount is the reasonable amount." *Id.* § 8-58.1(b).

A "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).

the treatment of *(name deceased)* and that the services were necessary as a [proximate result of the defendant's negligence] [result of the defendant's wrongful conduct]. [I already have instructed you on the definition of proximate cause, and that definition applies equally here.][6]

6 Do not give this sentence in intentional tort cases.