

## **Alabama Rules of Evidence**

### Article IV. Relevancy and Its Limits

#### **Rule 409.**

#### **Payment of medical and similar expenses.**

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

#### **Advisory Committee's Notes**

This rule is identical to Rule 409, Federal Rules of Evidence. Like the federal rule, it excludes evidence that one has paid, or has offered to pay, medical or similar expenses, when that evidence is offered to prove liability. The rule is stated in W.R. Habeeb, Annotation, *Admissibility of Evidence to Show Payment, or Offer or Promise of Payment, of Medical, Hospital, and Similar Expenses of an Injured Party by the Opposing Party*, 20 A.L.R.2d, 291, 293 (1951):

“[G]enerally evidence of payment, or offer or promise of payment, of medical, hospital, or similar expenses of an injured party by the opposing party, is not admissible, the reason often given being that such payment or offer is usually made from humane impulses and not from an admission of liability, and that to hold otherwise would tend to discourage assistance to the injured person.”

The twin considerations of relevancy and public policy underlie this rule just as they do Ala.R.Evid. 407 (dealing with subsequent remedial measures) and Ala.R.Evid. 408 (dealing with offers of compromise). This rule of exclusion is consistent with preexisting Alabama law. See *Burress v. Dupree*, 287 Ala. 524, 253 So.2d 31 (1971); C. Gamble, McElroy's Alabama Evidence § 188.05 (4th ed. 1991); W. Schroeder, J. Hoffman, & R. Thigpen, Alabama Evidence § 4-9 (1987).

As is often the case with general exclusionary principles in the law of evidence, Rule 409 excludes this evidence only when it is offered for the impermissible purpose of proving liability. It will allow the admission of this same evidence when it is offered for some other material purpose in the litigation.

The exclusion provided under this rule is not as broad as the exclusion provided for offers of compromise under Ala.R.Evid. 408. The exclusion of Rule 409 does not extend to evidence of any conduct or statements other than those constituting the “furnishing or offering or promising to pay medical, hospital, or similar expenses.”