

## An Arm and a Leg: Know Your Rights

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**Note:** *Most of this transcript is machine-generated, so it's NOT letter-perfect. We're doing our best! Also, I've left off the list of new donors at the conclusion. (I spell some of them phonetically in the script, so I can try to avoid screwing them up, but you don't need to see that. Also, not everybody wants their name on the Internet.) - dw*

Hey there-- sometimes we have more rights than we think. And more options. In fact, I am starting to think, that's true a LOT of the time. I mean, actually enforcing our rights, that can be tough. But just knowing that we have them? That seems like a pretty good start.

I've done a bunch of stories recently with NPR and our pals at Kaiser Health News for their Bill of the Month series. And honestly, a lot of them, I do not share on this podcast -- because they're basically dead-end stories. Stories where a super-nice, reasonable, RESOURCEFUL person gets a bill that makes no sense, and goes to work fighting it

... and hits a dead end. Usually these stories have a sort-of-happy ending: The hospital, or the insurance company, or whoever, gets a call from a reporter, and suddenly they're like, "TELL NPR WE'RE FIXING THIS, OK?" And they fix this one thing, this one time.

I mean, pretty much every story in this series ends like that. Which, you know, is good for the individual person -- and maybe there's a little bit of satisfaction in hearing, "SEE? THESE GUYS CAVE WHEN THEY GET CAUGHT."

But it doesn't exactly do much to inspire confidence for the rest of us. It leaves kind of a rotten taste.

One of these stories I did last fall, I really wished it had gone another way: The woman in the story, Tiffany Qiu, was such a fighter, and just a stand-up person. I liked her a LOT, I loved how determined she was, and how thoughtful. But her story was a total dead end until a reporter showed up.

Actually, in the web version of the story, the reporter from Kaiser Health News quoted a professional patient advocate-- someone who helps people fight weird medical bills-- SAYING that, yeah, Tiffany was getting a raw deal, but legally speaking, she didn't exactly have any rights she could enforce.

And then we published the story online, and something interesting happened on Twitter. A lawyer named Jeff Bloom responded to that quote, writing: "Actually, that's not true." He said Tiffany totally had legal rights here-- specific, enforceable ones.

And when I asked, Jeff Bloom got on Zoom, explained the whole thing to me, and laid out a bunch more about our legal rights and how to fight for them. AND a bunch more insight into a bigger question: Why do we run into dead ends so often?

With more advice from people like Jeff, more of us might be able to find more openings.

[THEME MUSIC]

This is An Arm and a Leg-- a show about the cost of health care. I'm Dan Weissmann-- I'm a reporter, and I love a challenge. So my job on this show is to take one of the most enraging, terrifying, depressing parts of

American life-- and I know the last year or so has brought the competition on that front to a whole nother level, but seriously, this one still completely bites-- and produce a show that's entertaining, empowering and useful.

And I think I've got a winner for you this time out. Let's start with that NPR story.

Here's the setup: Tiffany Qiu is a mom in Southern California who needed a pretty straightforward procedure, and wanted to make sure she didn't pay more than she needed to. She worked hard at it, but things didn't go her way.

[THEME MUSIC OUT]

And here's how it sounded on the radio

**Steve Inskip:** We have in hand another baffling medical bill. the story. comes from Dan Weisman, host of the podcast and arm and a leg who talked with Tiffany to find out what happened.

**Dan:** Tiffany Qiu took every precaution before committing to a minor surgery at a local hospital. She called for an estimate. And when the hospital said her share after insurance would be 20% of the bill.

**Tiffany Qiu:** I said, did you talk to my insurance company? You need to double check that.

**Dan:** She knew her policy said she was supposed to pay 30%. They said they were sure. She called back a couple of days later to ask again, said, I talked to my insurance. They said 30% hospital was like, no, no, really 20%. It seemed too good to be true

**Tiffany Qiu:** But I asked them twice and this is a big hospital. I said, okay

**Dan:** Dave surgery, the hospital wants to be paid upfront, which is a surprise. She drills them

**Tiffany Qiu:** Is this all I have to pay? Because this is already a surprise. Is it, will there be any other surprise for me?

**Dan:** And she makes sure to get a receipt. And then, uh, later she gets a bill \$933 and 87 cents. Which is the difference between the 20% she's already paid. And the 30% her insurance would usually expect her to pay. She's like, wow, I got receipts, calls them and calls and calls. The best she gets from them is, OK, we'll send you a detailed statement. But she doesn't get ANYTHING from them, until, six months later... .

**Tiffany Qiu:** In may I suddenly received this collection letter? wow. Collection. My first time

**Dan:** She considered just paying it. She could have.

**Tiffany Qiu:** I said, no, no, no. I'm not paying it because this is not right.

**Dan:** Tiffany does not love this kind of thing. The calls, the emails, the confrontation, but she does it. And she keeps her guard up. When she sends a written dispute letter to the collection agency. It's certified mail. And when they don't respond, she calls, Hey, your letter says, I'm supposed to hear back within 30 days.

They say, Nope, the law gives us 60 days.

**Tiffany Qiu:** I said, really, I'm not a lawyer. But your letter says, will get a response within 30 days.

**Dan:** They say whatever, it's 60 call back later. And when she does, they say, Oh, we've sent it to the hospital. I guess they're looking at it.

**Tiffany Qiu:** Nobody can give me a very clear answer. What's going on? Who is in charge? where the case is. Nobody knows.

**Dan:** And then Tiffany gets lucky. A reporter gets interested in her case, makes a call to the hospital. Suddenly after that one phone call, Tiffany is hearing from a hospital executive with an apology.

**Tiffany Qiu:** That phone call, just magic, solve everything in one hour, not just one day, but one hour.

**Dan:** Taking this road was harder for her and it's not something she would have done when she arrived in the U S from China at age 26.

**Tiffany Qiu:** I have changed a lot: how to see the world, how to do things, how to fight. Including this. I've learned from my kids about U. S. History and politics. And I agree there is something we can do —everybody can do. We need to get pressure to the system to change a little bit over time so that it can get better.

**Dan:** As a proud us citizen, she's doing her bit for NPR news. I'm Dan Weissmann.

So, that's what aired on the radio. The web version of the story had a patient advocate-- somebody who patients hire to help them negotiate lower medical bills-- saying "The simple fact that a hospital staffer misinformed a patient isn't a legal reason to force a hospital to lower a bill"

Jeff Bloom saw that and chimed right in on Twitter: He said, a hospital staffer misinforming a patient, quote, "literally is a legal reason to force them to lower the bill. It's promissory estoppel slash detrimental reliance."

I was like, WHEN CAN WE TALK?

Here's Jeff's deal. He's in the DC area. Out of law school, he worked for a firm that did medical malpractice and personal injury cases. Then he went out on his own. He liked trial work-- which lots of lawyers don't.

**Jeff Bloom:** Being in a courtroom is, uh, nerve wracking. Bad things happen. Clients get perp walked out in handcuffs on occasion, depending on the nature of your practice. And a lot of attorneys don't like to do that.

He did, so he got other lawyers to hire him to go to court for them. And a couple of debt-collection agencies became regular clients.

**Jeff Bloom:** so they would hire me to access trial counsel for these big medical providers.

So if ANYBODY knows how things really work when a medical bill goes to court? It's Jeff. he's the guy that medical providers and debt collectors used to hire to go to court and fight these things out.

**Jeff Bloom:** yeah, I was the bad guy. That's for sure.

Then, a few years ago, he switched sides.

**Jeff Bloom:** I now do the Lord's work and I represent a lot of consumers in protecting them against, you know, nefarious billing practices.

So, OK! Jeff's our guy for this. First thing, I get him to run down for me: What are these terms he threw out on Twitter? Promissory estoppel and detrimental reliance?

Basically, it means: You offered me a deal-- made a promise-- and I took it. Now, you're changing the terms of the deal, you want more from me. I'm asking the court to stop you from collecting more.

Or, his way of putting it:

**Jeff Bloom:** well, then you would basically say, your honor, judge. I relied on what they told me. They gave me a very clear and definite promise. So therefore they should be, and I'll use the Latin words stopped from executing on this collection.

**Dan:** Huh? It sounds so reasonable. It's so simple when you put it that way.

**Jeff Bloom:** It's like, we forget sometimes that all of these cases are just basic contract cases. And we forget that the judges in these courts, they generally want to help the consumer. Right? They're they're people, they generally feel bad about the positions you're in. So you want to just give them an opportunity to help you. That's all you're trying to do in defense of the case. Give the judge an out.

**Dan:** (Laughs) That's nice. I like that. I like that a lot.

Yep. Give the judge an out. Jeff does have a caution, though.

**Jeff Bloom:** All of these collection related theories are our state law. Okay. So they vary depending on what. The state you're in

So, as always, the advice here is: DO YOUR HOMEWORK. But Jeff's other advice is, whatever legal argument you can make, you are really helping yourself if you can bring what he calls an affirmative claim against the other side: In other words, you're making a claim against them-- something they did to you. Something that creates potential liability for them.

**Jeff Bloom:** and you prosecute the case, uh, which I've always found to be like the most helpful thing you can do

Because it's a way to bust past these crazy-making dead-ends.

**Jeff Bloom:** consumers are always super surprised. Why won't they negotiate? Why won't they negotiate with me? Well, it's because you have no leverage, right? You've got to do something to create some form of leverage. You did something else that is unfair to me. That gives me an actionable claim under the wall.

You write that up in a savvy way... well, NOW an attorney from the other side is going to actually LOOK at it.

**Jeff Bloom:** they go back to the medical provider or the deck laughter and say, okay, we've got a case that has some fleas on it. Let's punt. This Let's settle it for less than we normally would. Or if it's really bad, let's drop it.

Jeff says a lot of the time, that attorney and the people they work for, they're not JUST thinking about whether they might lose your particular case.

**Jeff Bloom:** The medical providers in particular-- less so the debt collectors-- they actually do care about their reputation. So if you get them on something that they think is going to bother a judge, who's going to hear a lot of their cases. They are occasionally willing to punt because they don't want to completely destroy their credibility.

**Dan:** Ah, that's very interesting that one of the considerations is like, we don't want to bring this in front of a judge cause we're gonna be in front of that judge for other stuff. And we don't want to show up defending a case that's a real dog.

**Jeff Bloom:** Why poison your whole collections practice by bringing one dog when you're going to have hundreds and hundreds of thousands of dollars worth of other cases next week, right? Uh, so you would never want to screw anything up with like prosecuting in a \$500 claim that isn't quite clean,

And Jeff REALLY knows because-- remember-- that's the side he used to be on. He especially got sent in on cases that, as he says, had some fleas on them.

But this raises a new question. If these folks don't want to go in front of a judge with a lousy case... why did they ever hire him? Like, why did he have a job?

And the answer? It opens up a whole new level of insight. I That's in just a minute.

This episode of an arm and a leg is a co-production with Kaiser health news. That's a nonprofit news service covering healthcare in America. Kaiser health news is not affiliated with the big healthcare outfit. Kaiser Permanente will have a little more information about Kaiser health news. At the end of this episode.

OK, so we know: You threaten to sic the law on someone who's after you for a bill that's actually bogus, they have good reason to cave.

But Jeff says he made his living for years going to court for medical providers and debt collectors to defend pretty bogus claims. Why on earth would they bother to pay him to do that?

**Jeff Bloom:** so one of the problems is, is that there's so many people with their hands in these different cases,

Jeff says a big problem is that SO many people have their hands on any given case: There's the provider and their billing office. Then there's a collection department-- or often an outside collection agency. By the time a lawyer like Jeff sees a case, he says a bunch of people have passed it around, BUT none of them are exactly decision-makers.

**Jeff Bloom:** no one really ever got authority or the discretion. To make a judgment call. Okay. So I show up to court 95% of the time, the person who sends me says, yeah, I couldn't get ahold of the vice president of whatever. I couldn't get approval to, to drop the case. I couldn't get approval. They let you negotiate down the case. And so get in there and present the claim and see what happen.

**Dan:** Holy shit. That is wild to me. That is so revealing.

**Jeff Bloom:** Also a good reason to be really nice to the attorney that's involved in the process, right. He usually has no authority, but if he does be a good guy to him, because he might not care all that much. And he might use that discretion to help you out if he does have it.

**Dan:** All of that is wild—wild that you end up in a courtroom, cause like everybody's too busy, confused...

**Jeff Bloom:** The case isn't worth enough to get anyone's eyeballs on it.

**Dan:** What are we talking about? Like, is \$10,000 enough to get somebody's eyeballs on it.

**Jeff Bloom:** Not always, but, but I get from the consumer perspective, \$1,000 can be life altering. Right? That's the difference from living paycheck to paycheck, to being a little comfortable.

**Dan:** Or being a giant hospital, right? Where people get more than a little comfortable. Holy wow.

**Jeff Bloom:** I feel like I've surprised you too much

**Dan:** Well, no, no, it's so good. It's so good. It's so good. We just don't get inside this enough as consumers. And even as a reporter, it's like: this is such an important conversation to me cause I'm just like, "Oh-- right. Yeah..."

**Jeff Bloom:** The reasons I said earlier that we want to bring an affirmative claim against, uh, on behalf of the consumer, the reason why is one of those things that happens when you make an affirmative claim, it gets people's eyeballs on the file. Your file gets pulled out of the normal usual course of things.

Hopefully, there's an attorney who has better judgment than maybe a medical biller in a warehouse in Michigan somewhere and says, okay, there's something legitimate here. There's something that we want to take a second. Look at this file and see if we can get greater discretion.

**Dan:** This is just amazing to me. Like we kind of know. We know from talking to people on the phone, right? Like as consumers, like you got a bill, it's unreasonable, you talk to somebody and they don't have a lot of authority. They may not have a lot of understanding. They may not — all kinds of things and they're, and the conversation may not get documented or sent on to anybody.

But this degree of like, non-communication, of all of it, it's completely in line with what I know. And it's just somehow, so —it's flabbergasting in a way just to have the confirmation of like, right. This is just how it happens.

**Jeff Bloom:** A big shift moving towards you. And you know, we, we actually, here's the good news. We think of them as very malicious a lot of times. Well, the reality is more of it is this. They have a volume game. And it's hard to get all the different cogs to move in the correct direction. So it just moves.

**Dan:** Holy crap. Uh, and that's good news. Why? Okay. Hmm.

**Jeff Bloom:** I prefer it to malice. I prefer representing stupid clients to, to malicious clients personally.

**Dan:** Fair. Fair, fair, fair. And so what were some of the things that got traction I mean, you did this for years. Like, what are some of the things that would be useful for us to know about,

**Jeff Bloom:** So look at your state's consumer protection laws.

**Dan:** Jeff says, every state has one: the idea is that businesses shouldn't be able to get away with making false or misleading claims. Sometimes medical providers are exempted, so you know: Do your homework. But he says they can be very much worth checking out.

**Jeff Bloom:** **The beauty of a consumer protection statute.**

**Is it often permits you to make a claim. That can pay for the attorney.**

So, maybe you're fighting a bill that's a thousand bucks, and Jeff, for instance costs 400 bucks an hour. That seems like a dead-end, unless you've got a consumer protection law that says the OTHER side is gonna pay Jeff if you win. That's how it works in DC, where Jeff does a lot of work.

**Jeff Bloom:** **This is a super dangerous statute for them because they can be prosecuting a \$1,000 claim against you. And if you really get them on the hook for something and you get a good attorney, who's billing at 300, 400, \$500 an hour.**

**Dan:** NOW you're getting some eyeballs on that file. Now, maybe that particular road isn't open to you: you can't find a law that'll make it worth a lawyer's while-- or a lawyer willing to give it a go. So I asked Jeff, how often do people represent THEMSELVES... effectively?

**Jeff Bloom:** **Uh, I always recommend, if you can get an attorney, get an attorney, it there's a reason why I have a job. So maybe one out of every 25 cases, you'll see a consumer who kind of tripped into something and did it correctly in front of a judge. Usually again, it's not quite doing it quite right.**

**It's giving the judge and opportunity to lock onto something for you. Right.**

**Dan:** So do your homework, AND...

**Jeff Bloom:** **, be a good guy. Don't be threatening. Don't yell at people. Don't ask, just cause of debt, collectors being nasty to you.**

**Judges are your audience. And if you're a good guy, they might help you out.**

So, to bring this back to Tiffany Qiu's story: there's a reason why the patient advocates Kaiser Health News talked to said Tiffany didn't have a legal right to force the hospital to lower the bill. I ran some of what Jeff had to say by some law professors and public-interest lawyers in California, where Tiffany lives. They agreed: Tiffany case, and this promissory-estoppel principle, might not be a slam-dunk in a big courtroom-- lawyers, there's always a wrinkle-- but a judge in small-claims court, or an arbitrator: They're likely to just ask, What seems fair here?

They also reminded me about something Jeff touches on, something we've heard before: If you do it right, just letting folks know you're prepared to haul them into court with a solid claim-- that can get their attention and cooperation.

But as we've also heard before: Doing it right is ... complicated. It takes knowledge and can take a lot of time-- and it helps to have training and practice. And all of this has me thinking: We've been focusing in this show on self-defense against things like unfair bills. Could we go beyond just SELF-defense? Could we build up a kind of legal guerilla army? I mean, it's a BIG project, it would take a long time. And it wouldn't solve everything.

BUT WOULDN'T IT BE FUN? I get notes from people, from time to time, saying: Hey, I'd like to put some of my spare time into helping other people fight weird bills. And I never know quite what to say.

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I'm saying now: I'm personally kind of interested in this idea, of bringing people together-- like, online-- to start figuring out: what are the laws in different states? What resources exist-- what kind of information is out there, and are there people who can... mentor us, to put it to work?

I mean-- I REALLY don't know exactly how to do that. I'm a reporter. I make a podcast. But I'm getting interested in figuring it out. It just sounds fun.

Meanwhile, there are OTHER ways to fight-- including just playing nice, keeping it cool. I got a note recently from Nicole in Milwaukee, with the heading: "WORKS FOR OTHER THINGS TOO"

She had a new laptop, and it seemed like a lemon. She got in touch with the company, and was getting a hard time about her warranty. Then, she writes...

I took a few deep breaths and started over. I asked where the person on the other end was from, learned they were from India and told them I had traveled there in the past and to what cities, and asked how they were doing during the pandemic. I learned they were able to work from home and that their family was all well. I then explained that I had been working long hours during covid in healthcare, had a toddler home with me and lost two family members during this time. I said that the issue started immediately when I got the laptop, but that due to everything going on I just had not had time to call and then send in my laptop, all true. Long story short, he accepted my reasoning and agreed to cover the fix under my warranty for free. 100% it was because I took the advice on the podcast.

I AM TELLING YOU, YOU ARE MAKING MY DAY HERE. Every day.

Please keep these stories coming. They do NOT to have happy endings either. I mean, that's not the world we live in. If it was, I wouldn't need to do this show.

Hit me up at arm and a leg show dot com, slash contact-- OR leave a message on our hotline. Maybe we'll play it! That number is (724) 276-6534; that's 724 ARM N LEG.

724 ARM N LEG.

I'll be back in a couple weeks.

Till then, take care of yourself.

An arm and a leg is produced by me, Dan Weissmann, and edited by Marian Wang. Daisy Rosario is our consulting managing producer. Adam Raymonda is our audio wizard. Our music is from Dave Winer and Blue Dot Sessions.

This season of an arm and a leg is a co production with Kaiser Health News. That's a nonprofit news service about healthcare in america, an editorially independent program of the Kaiser Family Foundation. Kaiser Health News is not affiliated with Kaiser Permanente, the big healthcare outfit. They share an ancestor. This guy, Henry J Kaiser. He had his hands in a lot of different stuff.

Really different. Smelted aluminum. Owned TV stations. Built ships-- and built one of the first big resorts in Hawaii. When he died more than 50 years ago. He left half his money to the foundation that later created Kaiser Health News. You can learn more about him and kaiser health news at arm and a leg show dot com slash kaiser.



Diane Webber is national editor for broadcast and Taunya English is senior editor for broadcast innovation at Kaiser Health News. They are editorial liaisons to this show.

Thanks to Public Narrative -- a Chicago-based group that helps journalists and non-profits tell better stories-- for serving as our fiscal sponsor, allowing us to accept tax-exempt donations. You can learn more about public narrative at [www dot public narrative dot org](http://www.dotpublicnarrative.org).

Finally, thank you to some of the folks who have pitched in at arm and a leg show, dot com slash support. Thanks this time to...

[names redacted]

Thank you!!