

DELAWARE STATE BAR ASSOCIATION
PROFESSIONAL ETHICS COMMITTEE

OPINION 1981-3

AN ATTORNEY'S OBLIGATION CONCERNING THE PAYMENT BY THE
PATIENT-CLIENT OF A PHYSICIAN'S FEES FOR TREATMENT

An area of possible improvement in interprofessional relations may be a greater understanding by the physician of the ethical limitations of an attorney's position with reference to the payment of medical treatment expenses. The obligation of the attorney to the physician to see to the payment of physician's fees in cases in which the attorney enlists the physician's aid in a legal matter is different from the attorney's obligation to see to his client's payment of the physician's charges for treatment.

The Delaware Interprofessional Code, §VII states:

"The attorney and payment of medical fees.

"The attorney should, as a matter of fairness and interprofessional courtesy, do everything possible to assure payment for services rendered by a physician in any matter in which the attorney is involved."

It is not clear whether the Code intends to refer to all services or just those relating to legal aspects of the services. However, since the caption of the section refers to "payment of medical fees" it is reasonable to assume that the section refers to fees for treatment as well as fees for services in legal matters. The phrase "everything possible" must be construed in terms of rulings on legal ethics which have been made on this matter.

The National Code provides:

"Payment of medical fees.

"The attorney should do everything possible to assure payment for services rendered by the physician for himself or his client. When the physician has not been fully paid the attorney should request permission of the patient to pay the physician from any recovery which the attorney may receive in behalf of the patient."

It is appropriate to look to the ABA Ethics Committee rulings which control an attorney's course of action on this question.

"FORMAL OPINION 163
(August 22, 1936)

"The attorney for a plaintiff in a personal injury action should not advise the plaintiff's doctor and hospital of the fact that a settlement of the case has been made and that he holds his client's money and will continue to hold it for a short while so they may attach if the client refuses to pay their reasonable charges.

"CANONS INTERPRETED: PROFESSIONAL ETHICS 11,37

"A member of this Association inquires whether there is any impropriety in the conduct of an attorney for a plaintiff in a personal injury action, in advising his client's doctor and the hospital that the case has been settled, that he holds his client's money and will continue to hold it for a short time so that the doctor and the hospital may attach it if the client refuses to pay their reasonable charges.

"Money of the client or other client property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be

commingled with his private property or be used by him. Canon 11.

"Under this Canon, it is the duty of a lawyer, when he makes a collection, to remit promptly to his client. Opinion 125.

"Every lawyer owes his client a duty not to divulge to others what he learns about his client's business by reason of his confidential relationship. See Canon 37. For an attorney to make disclosures that result in the fund being subjected to an adverse claim, without his client's consent, is a clear violation of this duty. The lawyer is not his client's financial guardian. If he can properly furnish information to the doctor and the hospital regarding his client's funds, so that attachment may be made thereof, why not to the grocer, the tailor, the wine merchant, or any other creditor? He certainly cannot undertake to see that his client's bills are paid. Such a practice would destroy immediately the trust and confidence so essential to the attorney-client relationship; the client would insist that the money collected be paid to him directly; and the entire system of collection by counsel would break down.

"It is our belief, therefore, that however meritorious the claim, and however desirous the lawyer be to recognize it and assist in its collection, he may do so only with his client's consent."

The following opinions also deal with the attorney's duty with regard to prelitigation expenses.

ASA Ethics Opinions 3336

"An attorney has no duty to withhold the amount of a physician's fees from the proceeds of a personal injury settlement where the physician involved treated the client but did not examine the client for litigation purposes, even though the physician prepared a medical report at the attorney's request for use in the settlement negotiations

and part of the settlement was specifically designated as applying to the physician's fees. The attorney's only possible duty, on these facts, is to see that the client pays for the medical report. (A different result might be reached if the attorney had requested the examination or had advised the client to obtain medical services.)"

11 Res Gestae 20 (July-August, 1967)

(Opinion 3-1961)

ABA Ethics Opinions 9175

"A lawyer's clients, plaintiffs, are attended by a physician who subsequently contacts the lawyer stating that he was not paid for services rendered to the clients. Without inquiring of his clients as to the accuracy of the physician's representation, the lawyer assures the physician that the full amount would be paid him before making disbursements from any proceeds recovered in the pending action. After settlement, however, the client informs the lawyer that the physician has been paid in full and instructs him to pay the physician nothing. Aside from the legal matters arising from the lawyer's communication with the physician, upon which the committee does not pass, the lawyer owes no ethical obligation to the physician, such as to pay him, although it would be appropriate to notify the physician in writing of his clients' claim to payment and of his having turned over to the clients their share of the proceeds of the recovery. . . ."

(New York County Lawyers Association, Opinion 239, 3/19/71)

CONCLUSION

While an attorney should try to persuade his client to pay medical expenses, he not only has no responsibility to demand that his client pay the client's medical expenses from funds received in settlement or by judgment; he is prohibited from forcing such payment against his client's wishes.

This opinion was prepared by the Medical-Legal and Dental-Legal Relations Committee and approved by the Professional Ethics Committee.

Dated: April 21, 1981

RICHARDS, LAYTON & FINGER

One Rodney Square, P.O. Box 551

Wilmington, Delaware 19899

Telephone: (302) 658-6541

Fax: (302) 658-6548

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