

**THIS OPINION IS MERELY ADVISORY AND IS NOT BINDING ON  
THE INQUIRING ATTORNEY, OR THE COURT, OR ANY OTHER TRIBUNAL.**

DELAWARE STATE BAR ASSOCIATION  
COMMITTEE ON PROFESSIONAL ETHICS

Opinion - 1992-3  
March 3, 1992

A member of the Delaware Bar has asked the Committee to state whether the Committee's Opinion 1981-3, entitled "An Attorney's Obligation Concerning the Payment by the Patient-Client of a Physician's Fees for Treatment," remains an accurate statement of the Committee's position on the issue addressed therein.

FACTS

The inquiring attorney has received from a physician who treats the attorney's client an agreement in essentially the form appended to this Opinion. The form, drafted as a statement of the patient-client, provides in part, "I hereby direct and authorize my attorney . . . to pay promptly all unpaid medical service and laboratory bills, medical report fees, and/or appearance fees . . . ." The statement goes on to forbid the attorney to distribute any monies from legal settlements until the attorney has confirmed in writing that all of the physician's bills and related invoices have been paid in full. There are signature lines on the form for the patient-client, for a witness to the patient-client's signature, and for the attorney. The physician has asked that the attorney and the client sign the agreement form.

In the past, the attorney has relied on this Committee's Opinion 1981-3 in refusing to execute agreement forms such as the one requested by the physician.

ISSUE PRESENTED

Whether, with the consent and knowledge of the client, the attorney can properly execute a particular form of agreement which provides that payment for health-care services rendered to the attorney's client be made to the client's physician by the attorney from any funds obtained on behalf of the client.

## CONCLUSION

An attorney has a duty to provide his client with a full explanation of the practical and legal ramifications of an agreement such as the one requested by the physician. If the client, after having received that explanation, voluntarily chooses to enter the agreement, there is nothing in the attorney's ethical obligations which precludes his entering it as well.

## DISCUSSION

Opinion 1981-3 addresses the "ethical limitation of an attorney's position with reference to the payment of medical treatment expenses." Opinion 1981-3 at 1. The Opinion cites that former Delaware Interprofessional Code, which states that an attorney should "do everything possible to assure payment for services rendered by a physician in any matter in which the attorney is involved." Id. The Opinion then notes that the phrase "everything possible" must be construed in a manner consistent with rulings on the ethical obligations attorneys have to their clients. Id.

The Opinion also quotes ABA Ethics Committee rulings which, as does the following passage, emphasize the primacy of an attorney's obligation of loyalty to his client and the importance of an attorney's securing his client's informed consent to actions the attorney undertakes:

Money of the client or other trust 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.

[I]t is the duty of a lawyer, when he makes a collection to remit promptly to his client.

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. 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' consent.

Id. at 2-3 (quoting ABA Ethics Committee Opinion 163) (emphasis added; citations omitted).

The Opinion concludes as follows:

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.

Id. at 4.

The Committee continues to support the conclusion set forth in Opinion 1981-3. Nevertheless, a key difference exists between the factual situation assumed in that Opinion and that situation presented here. In Opinion 1981-3, the Committee was concerned with an attorney entering into an agreement with his client's physician, without the client's consent and to the possible detriment of the client's interests. The proposed agreement in this instance requires the client's participation and consent to be effective.

The ethical questions turns on whether the client knowledgeably consents to the agreement. If the client, after having had the contents and consequences of the agreement explained to him, decides that it is in his best interest to sign the form and to have his attorney sign it, then the ethical obligations addressed in opinion 1981-3 are no bar to the agreement.

TO WHOM IT MAY CONCERN:

This is to authorize any health care providers including physicians, medical attendants, nurses, technicians, physical therapists or others to furnish my attorney, \_\_\_\_\_ of \_\_\_\_\_ your custody or under your control regarding the patient whose name appears below. I hereby waive any privilege I have to said information to my attorney.

PROTECTION OF INTEREST FOR UNPAID MEDICAL CHARGES

I hereby direct and authorize my attorney, \_\_\_\_\_ to pay promptly all unpaid medical service and laboratory bills, medical report fees, and/or appearance fees.

I direct you, as my attorney, to contact \_\_\_\_\_ office after the settlement of my claim, and obtain from his office a complete statement of my account to insure that his charges are PAID IN FULL even if this means taking money from my share of the settlement proceeds. I UNDERSTAND THAT INTEREST WILL ACCRUE AT 1 1/2% AFTER NINETY (90) DAYS ON ANY UNPAID PORTIONS OF MY ACCOUNT(S).

In addition, I request that NO DISTRIBUTION OF MONIES BE MADE TO ME UNTIL SUCH TIME YOU HAVE CONFIRMED IN WRITING THAT MY MEDICAL BILLS WITH \_\_\_\_\_ AND THE \_\_\_\_\_ HAVE BEEN PAID IN FULL. I ALSO INFORM YOU AS MY ATTORNEY NOT TO TAKE ANY ACTION TO COMPROMISE OR REDUCE MY MEDICAL CHARGES WITHOUT FIRST OBTAINING WRITTEN PERMISSION.

As my attorney in this claim, I hereby request that you conform with the above listed instructions completely and absolutely. I also understand that these instructions cannot be altered or changed without the written consent of \_\_\_\_\_.

A copy of this authorization shall have the same force and effect a the original. I understand I am fully responsible for payment of all bills incurred regardless of the outcome of litigation.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1992.

\_\_\_\_\_  
PATIENT'S SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
ATTORNEY

\_\_\_\_\_  
PRINTED NAME