

Case Law on Series: Assignment of Claims (“Doctor’s Liens”)

The “Case Law on Series” addresses different legal issues of interest to chiropractors. Each part of the series highlights recent, decisions from the Wisconsin State Courts that specifically involve chiropractors or aspects of chiropractic. On occasion, leading opinions from the Wisconsin Attorney General will be cited when those opinions are relevant to the legal issue. This issue in the series addresses the **assignment of a doctor’s claim for reimbursement**; which is otherwise known as a “doctor’s lien”.

Relevant Case: Paul D. Riegleman, D.C. v Erik J. Krieg, Warshafsky, Rotter, Tarnoff, Reinhardt & Bloch, S.C., 2004 WI APP 85, 271 Wis. 2d 798, 679, N.W.2d 857 (2004)

Relevant Facts: Dr. Riegleman provided chiropractic care to Mr. Krieg for a period of approximately three (3) years following an automobile accident. Mr. Krieg had legal representation from the Warshafsky law firm. During his second to last treatment, Dr. Riegleman had Krieg sign a written form entitled “Doctor’s Lien”. Krieg’s attorney, Victor Harding, similarly signed the document acknowledging receipt of the lien and agreeing to honor the terms of that agreement which required payment of the outstanding balance owed to the doctor. Eventually, Krieg and his lawyer obtained a personal injury settlement. After receipt of the settlement proceeds, Krieg allegedly informed his counsel that they should not honor the lien and otherwise make no payment to the doctor from the settlement. The Warshafsky Law Firm ultimately disbursed all of the settlement proceeds to their client and disregarded the request of Dr. Riegleman to pay the balanced owed for treatment care. The decision of the circuit court case was appealed to the Wisconsin Court of Appeals by the Warshafsky law firm.

Legal Issues(s): (1) Was the document signed by the patient legally enforceable as a valid contract? (2) What legal obligations does a lawyer or law firm have after signing or acknowledging such a contract for payment of fees to the treating chiropractor?

Principle Rule of Law: [To Question 1] The document in this case constitutes a valid contract which conveys an assignment. (Riegleman, 679 N.W.2d. 863.) An assignment exists when there is a delegation of performance of the duties of the assignor which are accepted by the assignee (law firm) constituting a promise by the assignee to perform those duties. This contract does not create an equitable lien or common law lien. In order for those types of liens to arise, the lien holder (doctor) must have possession of the insurance settlement proceeds or there must exist evidence that the personal benefit to the patient, derived from the chiropractic services provided by the doctor, enhance the value of the insurance settlement proceeds. This situation also did not constitute a “letter of protection”.

[To Question 2] By the contract authorizing and directing the attorney to pay directly to the doctor such sums as may be due and owing by withholding such sums from settlement, judgment or verdict, the contract created joint and several liability on the part of both the patient and the law firm for payment of the reasonable fees due and owing the doctor. [this legal terminology allows a party to recover amounts due from both or either the patient or his attorney. (Riegleman, 679 N.W.2d. 811.) Adequate consideration was provided to both the patient and law firm because the doctor agreed to furnish medical records and reports; as well as, continued treatment of the patient.

Additional Ruling(s) or Commentary: (1) The court went on to admonish lawyers on their obligations after entering into an assignment of benefits. Initially, the court noted that if “a dispute arises over whether the amount owing [to the doctor] is reasonable and necessary... the attorney “should bring an action for declaratory judgment pursuant to Wis. Stat. §806.04 and seek guidance from the court as to who is entitled to the disputed funds.” After commencing such litigation, the attorney should deposit or file the disputed amount with the clerk of courts office. The court also issued words of advice and caution to attorneys that they cannot ignore these types of assignment of benefits since such conduct is contrary to the rules of professional conduct which require that disputed funds be held in trust until the dispute is resolved. See Supreme Court Rule 20:1.15(d) Riegleman, 639N.W.2d. 866-867.

Other Considerations: A similar issue was raised in the subsequent case of Yorgan v. Durkin, 2006 WI 60, 290 Wis. 2d 671, 715 N.W.2d. 160 (2006). The only major distinction in the Yorgan case was that the lawyer representing the patient did not sign or acknowledge the written assignment of benefits form. Although the lawyer was aware of the “lien” the lawyer did not promise to protect the chiropractor’s interest in the event of settlement. The Appellate Court held that the lawyer could not be civilly liable to the chiropractor under joint and civil liability, as found in the Riegleman decision. It should also be noted that Wisconsin Lawyers have been disciplined for failing to honor letters of protection under new Supreme Court Rules. In early 2009, the State Bar’s Ethics Committee issued a new formal opinion (E-09-01) which clearly defined the duties of a lawyer when the lawyer is aware of the existence of a “doctor’s lien”. A copy of that ethics opinion is reviewed and attached to White Paper #DR2511.

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