

Establishing and Enforcing an Assignment of Benefits Form (“Doctor’s Lien”)

The most prominent decision involving the establishment and enforceability of a chiropractor’s, “doctor’s lien” was established in 2004. That landmark case, Riegleman v. Krieg is a Wisconsin Court of Appeals Decision which was followed as precedent by other cases and ethics opinions involving attorneys which further refined the law on the use and enforceability of the “doctor’s lien”. The Courts have recognized that these types of documents should be more commonly referred to as “letters of protection” or “assignments of benefits”. For purposes of this article, the properly prepared form will be referred to as the “doctor’s lien”. This article addresses the actions which a chiropractor can take during the three (3) common periods of use involving the establishment and enforceability of the doctor’s lien: “creation, implementation, and enforcement.”

A. Gathering information necessary to create the Lien

Upon initial contact, the doctor or his staff will need to make the determination as to whether the patient may be owed some form of liability proceeds from a third party who may be legally responsible for the patient’s injury. These third parties are often automobile liability insurance companies, homeowner’s insurance companies, or workers compensation insurance carriers. As part of the patient’s overall injury “claim” the patient may be legally entitled to payment from the third party for health care treatment expenses related to the injury or accident. These types of “third party” type claims are generally based in liability involving the acts of someone other than the patient and should be distinguished from “first party” type claims which usually involve a contractual relationship directly between the patient and his own insurer, such as health insurance. It should be noted that the responsible automobile insurance company may be the patient’s own insurance company if the other driver was either uninsured or underinsured. There may also be multiple third parties responsible for the patient’s injuries and resulting treatment provided by the doctor.

In addition to analyzing the nature of coverage, the doctor’s office will need to determine and properly identify of participants in the patient’s third party claim. This information

can be obtained as part of the assessment of the patient's history. This important information must either be stated in the written lien or used in relation to the notification of the existence of the written lien. This important information which must be obtained includes:

1. Date of accident;
2. Identity of the individual(s) or entity(s) who may ultimately be liable for the patient's injury and doctor's corresponding care. This information should include name, address, and telephone number. (Note that multiple parties may be responsible for a patient's injuries.)
3. Identify of the company or companies which insurers each of the legally responsible individuals or entities. Information on these insurance companies should include, name, address, adjuster involved with the matter, kind of insurance company, and the applicable claim numbers.
4. Identity of any individual(s) who is providing legal representation of the patient. Note that the specific attorney representing the patient should be identified in addition to that attorney's law firm, address, and telephone number.

In the event that the patient cannot provide all of this information, the doctor's office should insure that the patient is routinely reminded to promptly provide this information as soon as it becomes available. Many offices will have written "intake" forms with a checklist of items which may be required from the patient. As another means of obtaining this information, the doctor's office may wish to request a motor vehicle accident report from the police agency which investigated an automobile accident or injury incident.

Once this basic information is obtained, the doctor can prepare the written lien document. This written form establishes the implicit understanding that the chiropractor agrees to provide continued treatment to a patient with the expectation that the doctor's bill will be paid at a later date by the responsible third party or as part of the action taken by the patient's attorney. The lien form must be freely and voluntarily signed by the patient. In the event that the patient is a minor or has a guardian, the doctor should

insure that parent(s) and the guardian(s) sign and acknowledge the obligations created in the written lien. To verify the voluntary consent to the document, the form can also contain signature lines for witnesses.

B. Notification necessary to implement the Lien

Unlike “first party” claims, the doctor may need to wait months and years before any payment is made towards the outstanding bill by either the responsible third party or the patient’s attorney. The doctor’s office should initially establish a procedure to insure that prompt and appropriate notification is given to the responsible third party and the patient’s legal representative. This notification process is essential to the ability of the doctor to ultimately enforce the terms of the lien against the third party or patient’s attorney. It is important for the chiropractor to receive some form of acknowledgement that (1) the lien was mailed to the appropriate party and (2) that the lien was actually received by the party in order to receive appropriate verification, the doctor’s office may consider sending liens by certified mail with return receipt requested or otherwise establishing a system to insure that the recipient provides some type of written acknowledgement that the lien was actually received. It is essential that the doctor maintain appropriate documentation in the patient’s file verifying that the third party and responsible legal representative received the signed lien form.

There are four (4) situations that can develop during the notification process which can affect the enforceability of the lien:

1. Inadequate acknowledgement or recognition of the lien – Many lien forms will ask the third party or attorney to actually provide a signature acknowledging acceptance or responsibility for the lien. It is common for the third party to

- refuse to sign the lien form or otherwise ignore repeated requests to acknowledge the lien. In these situations, doctors are encouraged to send multiple copies of the lien form to the third party or attorney asking that entity to, at least, acknowledge receipt of the form if the party is unwilling to sign the form. Many attorneys may refuse to sign or acknowledge the form and may only provide a separate written “promise” to “honor” or “respect” the lien provisions under certain circumstances. The doctor should carefully scrutinize those circumstances to maximize the benefit of the lien. When facing this situation with the attorney, the doctor may also wish to put greater pressure on the insurance company to insure that any settlement draft for the patient actually include the doctor’s name as an additional payee.
2. Change of attorney – The patient may change attorneys during the course of the doctor’s care. The doctor should insure that the lien form provides for this situation and makes all attorneys representing the patient responsible for compliance with the lien form. In addition, the office should insure that any new attorney involved in the patient’s case also receives and/or acknowledges the lien form. Patient should have a responsibility to promptly notify the office of any change in their legal counsel.
 3. Changes in the patient’s account balance – Like most lien forms, the form in the Court’s landmark decision did not specify the extent or amount of the patient’s charges which must be satisfied by the third party or attorney. Most lien forms will indicate that “all” charges associated with the treatment for a specific action or injury must be paid by the third party. In order to avoid any

misunderstanding by the patient, third-party, or attorney as to the increasing amount of those treatment charges, doctors are encouraged to regularly provide all of these entities with billing statements. As charges increase, the doctor may wish to supplement the lien form with another document in which the patient approves of the necessity and reasonableness of on-going chiropractic charges.

4. Absolute refusal to acknowledge or accept lien – In some situations, the third party may admittedly refuse to honor the lien. In those situations, the doctor may need to “educate” the third party on the legal viability of these forms resulting from the underlying intent of the patient to have the lien recognized. If refusal continues, the doctor will need to consult with the patient and ultimately make a business decision as to whether to discontinue care or otherwise seek regular cash payments while waiting for the ultimate payment from the third party.

C. Enforcing the doctor’s lien

The doctor’s office should maintain regular contact with the patient and the legal representative/insurer to determine the procedural status of any negotiations or pending judgments. Such periodic contacts should request a perspective on time when proceeds may ultimately be paid to the patient and remind the third party of the enforceability of the lien form. Since the process may take some time, the doctor should also establish an internal system of deadlines when the statute of limitations on directly suing the patient expires. In the event that payment has not been made from the third party by the statute of limitations deadline, the

doctor may need to initiate direct litigation against the patient in order to preserve the right to be paid for treatment.

Payment to the patient will ultimately occur upon several events. Those events include: (1) pre-litigation settlement directly between the patient/attorney and the responsible third party insurer, (2) post litigation settlement between the patient/attorney and third party insurer, and (3) upon ultimate jury verdict or appeal following jury trial. Upon the occurrence of any of these situations, the doctor should promptly write to the attorney and insurance company with copy to the patient. With respect to the notice to the insurance company, the doctor should request that any payment list the doctor as an additional payee or that a separate draft be sent directly to the doctor. With respect to notice to the attorney, the doctor should request that the attorney protect and preserve the full amount of the doctor's lien (treatment expenses) as required by legal ethics and case law.

In most situations, this final notice to the third party and attorney should result in appropriate arrangements for payment of the doctor's lien. In those situations where the patient does not have a legal representative and directly received payment, the doctor may wish to promptly move ahead with litigation directly against the patient and the third party-insurer who disregarded the lien form. In any situation where the attorney questioned aspects of the lien form, the doctor has options available under the rules of ethics to challenge the lawyer's conduct. If a lawyer who signed the lien form disburses funds only to the patient, the doctor can consider filing civil litigation against both the patient and the attorney.

Current case law indicates that both the attorney and patient will be “jointly” and “severally” responsible for the amount of the lien. If the attorney did not sign the written lien, the doctor should ask the attorney to comply with current ethics rules by maintaining the full amount of the treatment charges “in trust” and not payable to the patient until the matter is resolved through appropriate legal means or negotiations. The current ethics opinions indicate that the appropriate legal means would involve the patient’s attorney filing a law suit for “declaratory judgment” to determine what amount from the settlement or verdict must be paid to the doctor. Prior to incurring the cost of representation in these types of proceedings, the doctor may wish to negotiate a reduced amount of treatment expenses which can be paid in satisfaction to the lien.

The doctor should be very familiar with the ethical obligations imposed upon Wisconsin attorneys when dealing with the enforceability of these liens. The applicable ethics opinion is formal opinion E-O9-01 which was published in the Wisconsin Lawyer Magazine of March, 2009. Attorneys in Wisconsin are expected to comply with this legal opinion as it relates to the enforceability of the doctor’s lien. In addition to potential civil liability for the amount of the doctor’s treatment expenses, the attorney may also face disciplinary proceedings by failing to comply with these ethical obligations. As such, an ethics complaint can ultimately be filed by the doctor in relation to the attorneys failure to comply with the written lien.

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