

Distinctions and Legal Implications of a "Doctor's Lien" as Compared to a "Letter of Protection"

There are two (2) documents commonly used by Personal Injury Attorneys in situations where a client has an increasing or outstanding invoice for treatment provided by a healthcare provider. In Wisconsin, those two documents are commonly referred to as a "Doctor's Lien" (otherwise known as an Assignment of Benefits) and a Written Letter of Protection. Samples of both of these documents are available at the **Forms** page of this website. This article reviews the general nature of both documents; as well as, the legal implications which distinguish both of these documents.

A "Doctor's Lien" is a written agreement in which a third party (typically the patient's Attorney) creates a legal right of a third party (typically the healthcare provider) to receive a defined amount (typically the outstanding invoice) out of the proceeds or recovery ultimately paid to the client/patient. In a personal injury scenario, the Attorney and/or the patient are signing a document which acknowledges the right of the healthcare provider to receive an amount from the overall recovery obtained by the patient, either through settlement or jury verdict. This "lien" or assignment to settlement proceeds, is actually transferred to the healthcare provider as a legal interest which must be satisfied from the proceeds ultimately obtained by the patient/Attorney's client. In most situations, the doctor's lien is signed and acknowledged by both the patient and the patient's legal counsel.

A "Letter of Protection" is simply a letter or other form of document in which the patient or his/her legal representative simply acknowledge the right to compensation of the healthcare provider and affirmatively assert that an adequate or sufficient amount of funds will be preserved from the settlement or verdict in order to "satisfy" the outstanding invoice. This document does not commonly confer a legal interest to the healthcare provider for full reimbursement. In addition, this document is often vague as to the exact amount of compensation or extent of interest which the healthcare provider can assert against the patient in order to "satisfy" the interest of the healthcare provider.

The Letter of Protection is commonly signed or acknowledged only by the patient's Attorney.

Given the nature of these documents, there are generally three (3) notable differences in the legal implications of each document. Those distinctions are summarized below:

1. Creation of Legally Recognized Right or Interest - Under Wisconsin Law, an assignment of benefits or "Doctor's Lien" creates a legally recognized right of the healthcare provider to be an actual party or litigant in the applicable litigation. As a party in the litigation, the healthcare provider can insure that he/she is involved in all important court proceedings, actually participates in the presentation of evidence, and has an interest in a portion of the settlement or verdict proceeds. Because of the interest conferred upon the healthcare provider, the party responsible for payment to the patient will often name or identify the healthcare provider on any settlement draft. As a consequence of this legally conferred right, the healthcare provider may actually be named in the lawsuit or has the right to "intervene" in that lawsuit after it is started. Under either scenario, healthcare providers will often need to retain legal counsel to assist in preserving their interest throughout the course of the litigation.

In contrast, a Letter of Protection does not commonly create an existing legal interest which would entitle the healthcare provider to actively participate in any litigation. Moreover, the healthcare provider is often not identified on any settlement proceeds from an insurance company or other responsible party. As a consequence, a doctor holding a Letter of Protection often is unaware of the actual status of any litigation since no legal rights are recognized or otherwise conferred upon the healthcare provider.

2. Priority of Payment - "Doctor's Lien" generally confers upon the healthcare provider an interest to recovery which is similar to that of the legal representative. Unless specified otherwise, the healthcare provider has the priority to potentially receive the full amount of the patient's outstanding invoice or charges. Although

such amount is always subject to challenge as to the reasonableness or necessity of treatment, the healthcare provider with a Doctor's Lien can assert the right to full recovery for any outstanding patient charges. That right to reimbursement is often regarded as comparable to the rights of the legal representative for payment of their attorney's fee under a contingent fee arrangement with the client/patient.

The priority to payment with a Letter of Protection is often limited to an amount which merely "satisfies" the claim of the healthcare provider. As such, the patient can often argue that a reduced or compromised amount only needs to be withheld and otherwise paid to the healthcare provider. As a result, the payment to the healthcare provider is less "prioritized" with the Letter of Protection as compared to an Assignment of Benefits.

3. The Parties Responsible for Reimbursement - Under an Assignment of Benefits/"Doctor's Lien", a healthcare provider may recover its unpaid invoice in Wisconsin against both the patient and his/her Attorney only in those situations where the patient's Attorney actually signed the "Doctor's Lien". An Attorney's failure to advise the healthcare provider of a settlement/verdict when a "Doctor's Lien" is in existence may constitute an ethical violation in this State and ultimately result in the Attorney being personally responsible for satisfaction of the lien should that Attorney disburse funds to the patient without satisfying the interest of the healthcare provider under the "Doctor's Lien".

In situations involving Letters of Protection, an Attorney cannot typically be held personally responsible for satisfaction of the healthcare provider's invoice. Although the Attorney continues to have ethical responsibilities to preserve or otherwise retain sufficient funds in order to honor the Letter of Protection, the right to eventually recover any unpaid portion directly from the patient's Attorney does not exist under a Letter of Protection. As a consequence, many Attorneys will not sign "Doctor's Liens" and will merely provide Letter of Protection.

In the event that a chiropractor is named as a litigant in any civil litigation because of the existence of an Assignment of Benefits, it is very important that the doctor promptly file responsive pleadings in that litigation and seek appropriate legal advice. The overall objective of the doctor to recover patient fees is highly dependent upon the resolution of that litigation. Moreover, a chiropractor should promptly respond to any notices from a patient's Attorney which inform the doctor of a settlement or verdict and the doctor's right to compensation. Appropriate legal counsel can again provide valuable assistance to a chiropractor in following those legal procedures available to ensure total or maximum recovery of outstanding fees from the patient's settlement or verdict proceeds.

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