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PERSONAL INJURY / LEGAL

Are Lawyers Who Pocket Your MedPay Committing Fraud?

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The following is a controversial statement: Attorneys who collect and keep your MedPay might be committing insurance fraud. There, I said it. Now allow me to explain.

The average medical payments provision in a standard auto insurance policy states that it will cover "reasonable medical and funeral expenses." In most cases, reasonable medical expenses includes ambulance, ER treatment, surgery, chiropractic, etc. Notice the list does not include reasonable attorney's fees and costs; nor can you reasonably argue that such fees and costs are included in the definition of "reasonable medical and funeral expenses."

A Common Scenario

A PI patient sees their chiropractor for treatment and that DC submits reasonable billing to the patient's MedPay (or worse, an attorney will insist on submitting the DC's bill to the MedPay "for them"). Let's use a $3,000 DC bill as an example. Then the PI attorney contacts the MedPay insurance carrier and requests that the $3,000 MedPay check be sent to their office. Once the check is sent to the attorney's office, your check is immediately deposited into the attorney's client trust account until the case is resolved.

Once the case resolves, the attorney merges the settlement funds with your MedPay funds and takes their fee on both. The dishonest lawyer then approaches the DC and begins negotiating their bill as if they had received nothing. Once the reductions are complete, the attorney "pays" the medical providers, the client and then themselves (assuming a 33 percent fee, the attorney now takes $1,000 out of the $3,000 MedPay and transfers it out of their trust account and into their bank account).

Why That's a Big Problem

I know some chiropractors are reading this and thinking, "*Ya, that's what happens all the time …what's the problem?*" and attorneys thinking, "*I do that on every case and I know there is nothing wrong with it…I recovered the MedPay and I deserve a fee out of it.*" Here's the problem: it could be fraud.

For example, California Penal Code § 550 (a)(6) states that it is unlawful to "knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit" and section (b)(1) goes further in stating that it is also illegal to make any written statement that "is intended to be presented to any insurer ... knowing that the statement contains any false or misleading information."

When the attorney sent the DC's $3,000 bill to the insurance company and demanded MedPay pay that bill, the insurance company's MedPay department reviewed the bill for reasonableness and to ensure that the billing codes were all for covered activities/treatments; and then paid the bill accordingly.

If the attorney had been honest with the MedPay adjuster, they would have submitted a chiropractic bill for $2,000 and a $1,000 bill for attorney's fees (seeing as that is how the money was actually spent in the end); and if the MedPay adjuster had received that bill, they would have

denied $1,000 of it because attorney services are not covered under MedPay. The attorney knew this and thus provided what amounts to a knowingly "misleading" bill to the adjuster for payment. Some argue this is classic fraud.

It is worth noting that the situation is the same if instead of taking a fee on the MedPay, the attorney simply passes the $1,000 on to the client. Unless the client paid that $1,000 for out of pocket, qualifying medial expenses, the client is not entitled to MedPay funds any more than a lawyer is.

Compounding the attorney's problem, the moment they transferred the $1,000 from their trust account into their personal account, they might have been in violation of CA State Bar Rule 1.15 which deals with the way in which attorneys must keep and maintain client funds. It is deceptively simple and has been the subject of a litany of litigation; however, some seminal cases have made clear that "when an attorney receives client money on behalf of a third party, he has a fiduciary duty to the third party," and that an attorney can be civilly liable for conversion if they misappropriate funds from their trust account to themselves (*Simmons v. State Bar* (1969) 70 Cal.2d 361.)

Attorneys who engage in this type of behavior also open themselves up to violations of Business and Professions Code § 6106 (the commission of an act involving moral turpitude) and can face suspension or disbarment by the state bar.

Why It's Happening – and What You Can Do About It

At this point you may be wondering why you've never heard of anyone facing discipline for this. My hunch is that it is such a common practice – and so difficult for an insurance company to track what happens to the MedPay funds once they are dispersed to the attorney (ostensibly to be held for or immediately disbursed to the medical provider) – that no one is shedding light on such transgression.

I also believe attorneys have convinced themselves that they are entitled to these funds. Often MedPay is billed contemporaneous with treatment at the beginning of a case. The minimal MedPay policy runs out after a few months and then the case may take years to fully resolve, at which point the MedPay is simply combined with the settlement funds and the DC is none the wiser.

The fact is, even if it weren't illegal, it's unethical. MedPay is designed to permit people to get some amount of treatment immediately after an accident and not have to worry about the cost. Additionally, it is designed to allow medical providers to get paid faster on PI cases, rather than treat on a lien and wait sometimes years to possibly be paid.

If your MedPay is being sabotaged by a PI lawyer, push back. Explain to them why what they are doing is wrong. If they don't yield, push harder. This system simply needs to change and chiropractors are in the perfect position to do something about it.

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