Dynamic Chiropractic

PERSONAL INJURY / LEGAL

The Trouble with Trial Lawyers, Part I

Shawn Steel, JD

When it comes to a chiropractor's personal injury practice, the chief concern should be predatory tactics of the trial attorney. Trial attorneys frequently cause more damage and turmoil to the doctor's practice than defense attorneys and insurance attorneys combined.

The challenges from trial lawyers are three fold:

1. interference and/or hostility for the doctors right to seek Medpay or PIP benefits;

2. failure to honor the doctor's lien or to protect the doctor's fee; and

3. failure for equitable distribution on fees upon settlement.

Jumping Your Medpay or PIP

A crucial element for the clinic when caring for a personal injury patient is to have some of their fees paid from the patient's own auto insurance carrier. The payment process is called Medpay in some states; in others, it is called PIP (personal injury protection).

This insurance is first-party insurance. Patients are entitled to have their medical bills reimbursed by their own insurance carriers to whatever limits of their coverage. Historically, when patients paid out-of-pocket for their medical expenses from automobile accidents, they submitted proof of payment to their insurance companies for reimbursement. About 25 years ago, it became fashionable to employ assignment of benefits (AOB), which allowed doctors to directly receive the benefits from the patients' insurance companies. Patients no longer had to pay out-of-pocket.

For years, this system worked. However, with the increasing tension between third-party insurance carriers and trial lawyers, trial lawyers saw their profits emasculated. Third-party carriers were winning the war against MIST (minor impact soft tissue) cases overwhelmingly in most jurisdictions.

Insurance companies invented a new subscience called biomechanical accident analysis to convince juries that minimal impacts could not cause injury. The doctors, however, were still been getting paid through the patients' auto insurance. In the last 10 years, lawyers have also used the AOB and had their clients sign the document.

The auto insurers face a conflict. They receive AOBs from doctors and lawyer. Whom should they pay? Because a lawyer's power is more intimidating than a doctor's, the insurance company opts to pay the lawyer. Doctors are outraged and feel helpless. They invest considerable time, staff and resources in treating patients, yet attorneys jump their fees and keep them in their "trust" account.

What Is to Be Done?

I recommend an efficient three steps to minimize your time and maximize the chance of recovery.

1. If an attorney has "taken" the Medpay, you need to immediately send a cease and desist letter to the attorney to demand those funds be transferred to you in 72 hours. The letter (see sample letter on p. 42) is an effective device to get the lawyer's attention. Lawyers are not used to receiving demand letters from the treating doctor. The treating doctor is usually too nice, humble or afraid to do anything more than make forlorn phone calls. Stay off the telephone and use the letter. It is particularly important that the doctor and the patient sign it. When the lawyer's client signs the demand letter, the attorney is virtually committing malpractice by ignoring the client's written demand.

2. The doctor needs to rescind the lawyer's AOB. If your Medpay is being sidetracked by the trial lawyer, immediately have your patient sign the recision of AOB for the attorney. Fax and mail a copy of the recision agreement to the patient's insurance company to demand that they immediately cease and desist any of the doctor's fees being paid to the trial lawyer. Doctors don't realize that many trial attorneys have their own patients sign the trial lawyer's assignment of benefits. The recision should cut it off.

3. For the trial attorney who refuses to disgorge the doctor's money, we recommend that the doctor file a formal complaint with the state bar for wrongful handling of trust account funds. We also recommend the doctor demand that an investigation be undertaken, and second, an action of small claims against a trial attorney. Those tactics will be discussed in a later article.

Sample 72-Hour Warning Letter

HOWARD FIGHTBACK, DC
8383 Wilshire Boulevard #640
Beverly Hills, CA 90021
CERTIFIED MAIL
John Dewey, Esq.
Dewey, Cheatum & Howe
1900 Century Blvd
Redwood, CA 95000
Re:Demand for Payment in 72 Hours
Our Patient/Your Client : William Victim
Date of Accident : January 1
Amount of Lien : $1,500.00
Dear Mr. Dewey:
Enclosed please find a copy of the medical lien signed and dated by yourself. This lien guarantees that your office will pay our office once the case is settled. We understand that the case was settled recently, and that our patient has already received this compensation.
We assume that you will honor your lien contract, but your delay is causing us concern.
Accordingly, we demand full and immediate payment of $1,500 (see accompanying copies of bill and report). I am sure you are familiar with the provisions of the Rules of Professional Conduct of the State Bar of California. The Bar charges you as fiduciary for monies collected in this case.
If payment is not made, we will have no alternative but to file a lawsuit against you and your firm. We prefer not to take these measures, but will unless we receive the payment within 72 hours from the date of this letter.
Sincerely,
Howard Fightback, DC
cc: William Dunn
Encls. medical lien medical report medical bill(s) letter from president of the State Bar of California, P.
Terry Anderlini

Shawn Steel MA,JD
Beverly Hills, California

FEBRUARY 2001

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