MY PERSONAL INJURY PATIENT NEEDS TREATMENT…NOW WHAT HAPPENS WHEN IT COMES TO REIMBURSEMENT OF MY MEDICAL BILLS?

"Can Your Personal Injury Chiropractic Fees Be Protected?"

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While chiropractic physicians provide a service that benefits their patients' health, this service is not performed for free. Like every other profession in this country, chiropractic physicians want to be paid for the services they provide. The problem is that chiropractic physicians do not always have access to the same payment streams that other medical disciplines do. Especially in a personal injury case, chiropractic doctors often have to wait to be paid for their services until a patient has settled with an at-fault party's insurance company. This inevitably limits chiropractic physicians' options and puts them at the mercy of personal injury lawyers representing the doctor's patient. The below fact scenario helps to illustrate the predicament that many chiropractic physicians find themselves in.

> While stopped at a red light, Plaintiff Patty's car is violently struck from behind by Defendant Dan. Dan is a horrible driver and can't be bothered to look at the road in front of him. His twitter feed is much more important.
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> As a result of the accident, Patty sustains numerous back injuries. In an effort to relieve her excruciating pain, Patty visits her local chiropractic physician who likes his patients to refer to him as "Dr. Health". After the normal intake paperwork is signed, Patty gets her first treatment. Being ecstatic by how good she now feels, Patty visits Dr. Health's clinic twenty more times, amassing a bill in excess of $5,000.
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> During treatment, Patty visits a lawyer. The lawyer dutifully collects Patty's medical records and bills, including Dr. Health's. He is aware that Patty owes Dr. Health $5,000. After long discussions with Dan's insurance company, the lawyer obtains a settlement for Patty's claims. Patty's lawyer receives the check, pays the medical bills he feels are appropriate and disburses the rest to Patty. As to Dr. Health, the plaintiff's lawyer sends a check in the amount of $1000. Not once did the lawyer contact Dr. Health and inquire as to whether

> he would agree to only take $1000 for his services.

What are Dr. Health's options? Could the chiropractic doctor sue Defendant Dan's insurance company for the money? Pursuant to the Ohio Supreme Court's decision in *West Broad Street Chiropractic v. American Family Insurance*, 122 Ohio St.3rd 497, 2009-Ohio-3506, that is not an option. The doctor does not have standing or a controversy to sue the defendant or its insurance company under a third-party assignment.

How about suing the plaintiff's lawyer? Dr. Health has a contract for services with Patty, not her lawyer. As such, the doctor would not have standing unless there was some other cause of action such as a contractual relationship or misrepresentations from the lawyer. These situations do not arise often.

Sue Patty? Dr. Health can, but that is not always the best business professional practice. Eat the cost? That may be the best political option.

Ohio Rules of Professional Conduct

There are, however, better options if the chiropractic doctor looks to the Ohio Rules of Professional Conduct. If Dr. Health would have had Patty sign a Guarantee of Medical Payments from Specific Claim Funds (hereinafter "Payment Guarantee") AND properly serve the document on the patient's personal injury lawyer, he most likely would have been protected against the lawyer's whims. Dr. Health would have placed himself in a position whereby he could require Patty's lawyer to respect his fees and provide him with adequate accounting of the settlement. More importantly, patient's attorney would have to keep the chiropractic clinic's fees in trust until any dispute between the patient and doctor concerning proper compensation is resolved.

The name is long, but the concept behind the Payment Guarantee is simple. Essentially, it works in conjunction with Rule 1.15(d) of the Ohio Rules of Professional Conduct to make it an ethical violation for a lawyer to disregard a chiropractic physician's fees. In fact, Rule 1.15 is titled "Safekeeping Funds and Property". While excerpts from legal codes are often complex to the doctor's clinic, it is helpful to begin by looking at the actual language of Rule 1.15(d), which states:

> Upon receiving funds or other property in which a client or third person has a lawful interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the ***lawyer has actual knowledge*** and shall be limited to a statutory lien, a final judgment addressing disposition of the funds or property, or a ***written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds or property.*** Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, *confirmed in*

> *writing*, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property. (Emphasis added.)

Not all that clear? Let's break it down. Pursuant to Rule 1.15(d), a lawyer is ethically required, upon receiving settlement funds, to notify his client and any third-party that may have a legal interest in the funds. A third-party would probably have a legal interest in the case with a written patient executed "Guarantee of Payment from a Specific Claim Funds". Further, Rule 1.15(d) requires that a lawyer give an accounting regarding the funds to an interested third-party when requested. What happens when a lawyer fails to do one of these things? The lawyer will be subject to a possible ethics complaint. If used properly and responsibly, Rule 1.15(d) is a powerful tool to make sure that chiropractic physician's fees related to the Guarantee of Payment are protected until the matter is resolved.

The Importance of a Full Accounting

As such, the Payment Guarantee comes into play. As seen above, Rule 1.15(d) specifically states that an interest in settlement funds can arise from "a written agreement by the client…guaranteeing payment from the specific funds…" The Payment Guarantee creates the legal interest in settlement funds on the part of a third-party, *i.e.* a chiropractic physician, that triggers a lawyer's ethical obligations under Rule 1.15(d). The lawyer is then ethically required to safeguard any settlement funds in favor of both the client and the chiropractic physician. Further, the lawyer has to provide a full accounting of the settlement funds to the chiropractic physician if requested. The Payment Guarantee creates the vehicle upon which chiropractic physicians can begin the process of potentially obtaining fair compensation for their services.

The Importance of Actual Notice

The obligation of a lawyer to safeguard funds does not arise in a vacuum. If one were to carefully read Rule 1.15(d), they would notice that it states: "For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge…" If a lawyer does not have knowledge of a chiropractic physician's interest in settlement funds; the lawyer is not ethically required to notify the chiropractic physician of said funds or safeguard them for the chiropractic physician's benefit. Therefore, upon learning that a patient is being represented by a lawyer for injuries that the chiropractic physician is treating the patient for, said physician must notify the lawyer of his/her interest. This should be done multiple ways to ensure that the lawyer is properly notified and served.

Send a copy of the Payment Guarantee via certified mail, fax and/or e-mail. However, do not just stop there. It is imperative that the clinic demands a written confirmation from the lawyer that he/she has received the Payment Guarantee and is fully aware of it. If the lawyer refuses written acknowledgment,

then if the Payment Guarantee was sent certified mail you need to keep the returned green card. If sent via fax or email, you need to keep the confirmation and make sure your clinic follows up with a phone call confirming receipt of the Payment Guarantee. The clinic should then document who at the lawyer's office they talked with, the date, and the time. Further, it is recommended that a follow up email or fax providing the confirming information in detail. Then, the clinic should save this information in the patient's business file. The clinic's failure to obtain this confirmation can be the difference between receiving fair compensation for services provided and/or a unilateral reduction of the clinic's fees related to the personal injury claim. The clinic could even receive nothing for its provided health services.

Safeguard the Doctor's Medical Bills

While Rule 1.15(d) creates an ethical duty on the part of a lawyer to safeguard funds, a situation may arise when the patient does not want the lawyer to pay the chiropractic physician for his/her services. When this happens, a lawyer has an ethical duty to respect the decisions of his/her client. Rule 1.15 again covers this situation. Rule 1.15(e) states:

> When in the course of representation, a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claim interests, **the lawyer shall hold the funds or other property pursuant to division (a) of this rule until the dispute is resolved.** The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute. (Emphasis added.)

Pursuant to the above rule, the lawyer is required to hold the funds if a dispute arises as to who is entitled to the funds. The lawyer cannot distribute the funds until the dispute has been resolved. The lawyer, however, is not the party that can resolve the dispute. A separate action may need to be filed by the chiropractic physician in order to resolve the dispute. Another option to consider is possible arbitration or mediation.

This all inevitably leads to the question: What happens if the lawyer still does not respect the chiropractic physician's fees? Unfortunately, the Payment Guarantee is still just a contract between the chiropractic physician and the patient. It does not create a right of action on the part of the chiropractic physician against the attorney. The recourse that a chiropractic physician has is that he/she can file an ethical complaint against the lawyer. This is not something that any lawyer wants. Therefore, a Payment Guarantee can be a powerful tool in order that the chiropractic physician's medical bills remain in a safe trust account until the matter is resolved.

Do I have to Bill Medicaid?

Recently, the issue has come up as to whether a chiropractic physician is required to bill Medicaid for services provided to a patient who receives Medicaid benefits. The short answer is yes, while the long answer is no.

First, Medicaid does not cover all services performed by a chiropractic physician. In fact, Medicaid covers very few. Pursuant to O.A.C. 5160-8-11, only mechanical manipulation of the spine to correct a subluxation is considered a covered service. Even though Medicaid only covers this one type of service, the law dictates that as a default, all services that are provided to a Medicaid eligible patient must be submitted to Medicaid.

There is, fortunately, an exception to this submission requirement. O.A.C. 5160-1-13.1 dictates that a medical provider is not required to bill Medicaid for covered services provided to a patient if three conditions are met. The medical provider must: (1) notify the patient in writing that the provider will not bill Medicaid for any services provided; (2) have the patient agree in writing to be personally liable for payment for all services provided; and (3) explain to the patient that the services provided may be covered by Medicaid and that another care provider may render the services at no cost to the patient. In regards to services not covered by Medicaid, only requirements 1 and 2 listed above need to be met.

Again, this is where the Payment Guarantee comes into play. Contained in its language is all three elements listed above. The Payment Guarantee includes a section informing the patient that some of the services provided may be covered by Medicaid and that the physician is not billing Medicaid for said services. It goes on to state that the patient may be able to receive the services from another provider with no cost to the patient. Finally, this section re-affirms the patient's obligation to fully pay for the services provided.

The Medicaid section of the Payment Guarantee should be individually acknowledged by the patient. While very few patients will be Medicaid beneficiaries, it is best that all patients acknowledge the Medicaid language. In some cases, a patient may neglect to inform their physician that he/she receives Medicaid benefits.

Back to Dr. Health

Now, let's look at the fact scenario again, but this time Dr. Health uses a Payment Guarantee.

When Patty comes into Dr. Health's clinic, along with the usual intake documents, Dr. Health now has Patty sign a Payment Guarantee. Upon learning that Patty is being represented by a lawyer, Dr. Health promptly sends a copy of the Payment Guarantee to the lawyer. Dr. Health then follows up and gets confirmation that the lawyer has the Payment Guarantee and has actual knowledge of Dr. Health's interest in any settlement funds. Now, when the lawyer receives the settlement funds, he is ethically obligated to notify Dr. Health. Furthermore, Dr. Health can now demand a full accounting of the settlement funds from the lawyer, including the lawyer's fee. While this may not result in the full payment of the $5000 to Dr. Health, it puts him in a much better position to receive fair compensation for his services.

Our firm has examples of the Payment Guarantee documents. If you are interested in the purchase of these legal documents, please contact us. However, we must reiterate that these documents are for **educational purposes only** with no guarantee of results. We urge you to contact your legal counsel for their review of the

documents prior to its use and submission to your patients.

About the Author: **Keith M. Karr**: Ohio attorney and founding principal of Karr & Sherman Co LPA. He has represented the **Ohio State Chiropractic Association**, with success on many landmark cases protecting Chiropractic Doctors and their patients. He has argued successfully numerous times before the Ohio Supreme Court. Mr. Karr has authored other publications in **Ohio Trial** magazine, such as *"Are Chiropractic Physicians Expert Witness in a Personal Injury Case?"* and *"Medical Assignments, Is It Worth The Price Of The Paper On Which It Is Written?"* Mr. Karr has also lectured previously for the OSCA, Ohio State Bar Association, Columbus Bar Association, Chiroltd, Seminars, ChiroHealth Educational Seminars and National Business Institute. Please see a detail biography at **karrsherman.com**.

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