



ON TARGET

**2019 Annual Convention
November 1-3, 2019**



50th Anniversary Celebration

BE A PART OF HISTORY!

The Presidential
Road to OSCA's 50th
Anniversary, Pt. II

\$5,000 Ohio
Chiropractic
Foundation Student
Scholarship

What Can Happen if
the Patient Takes the
Doctor's Money from
the Clinic's Billings?

2019 OSCA Annual
Convention
Information &
Registration

What Can Happen if the Patient Takes the Doctor's Money from the Clinic's Billings?

By Keith M. Karr, ESQ.
Karr & Sherman Co., LPA

Patient Gets Treatment. Clinic Bills For Treatment To First Party Insurance. Insurance Company Pays Patient Directly. Patient Takes The Money And Does Not Pay Clinic. Now What???

Chiropractic doctors face significant challenges that doctor's in other fields may not face. Principal among these is that many chiropractic doctor's patients don't have insurance or the means to pay for the care that they so desperately need. Even when they do have insurance, whether it be health insurance, UM/ UIM coverage or medical payments coverage, many patients' insurance companies send payments for chiropractic care directly to the patient. These payments are most likely remitted to the chiropractic physician. Chiropractic doctors can seek to protect themselves by having the patient sign a First-Party Assignment, but this does not always guarantee that the patient will remit the payment to the doctor. The below fact scenario helps illustrate the dilemma that many chiropractic physicians find themselves in.

Patty Patient was involved in a car accident. As a result, she visits Dr. Health's chiropractic clinic to receive care. As part of the intake process, Dr. Health has Patty sign a First-Party Assignment. This assignment states that Patty assigns any rights she has to medical payment benefits and other insurance benefits as a result of the accident.

Dr. Health treats Patty over the course of three months and amasses total bills of \$4,000. These bills get submitted to Patty's insurance company. Instead of sending a check to Dr. Health, Patty's insurance company sends a check for \$4,000 directly to Patty. This check is made out to Patty. Staring down a check for \$4,000, Patty does what many people would do; she cashes the check and goes shopping. As expected, Dr. Health gets nothing for all of his hard work.

First Party Assignment

The question arises, what are Dr. Health's options? He actually has more options than first appear. There is always the usual option, sue Patty for the \$4000. But is \$4000 the limit of what Dr. Health can receive? The answer is most likely no.

Dr. Health's first option revolves around his contractual relationship with Patty. The First-Party Assignment signed by Patty assigns all of Patty's rights to receive all proceeds from her insurance company that arise from the accident. This right, however, only goes up to the amount charged by Dr. Health for his services. The assigned proceeds can come from health insurance, medical payment coverage or uninsured/underinsured motorist coverage.

Upon Patty signing the First-Party Assignment, Dr. Health needs to send the assignment to Patty's insurance company. Dr. Health then needs to follow-up with Patty's insurance company to make sure that it has received the assignment and has actual knowledge of Dr. Health's rights. It is important that the insurance company have actual knowledge. If it does not, the First-



Party Assignment will provide Dr. Health with no recourse in relation to Patty's insurance company. What effect does this all have? If Patty's insurance company has actual knowledge of the First-Party Assignment, then it now has obligations to Dr. Health. It essentially creates a contract between Patty's insurance company and Dr. Health. Therefore, if the insurance company pays Patty instead of Dr. Health, the Clinic will probably be able to sue the insurance company directly for breach of contract. In this situation, Dr. Health will probably be able to recover the \$4,000 from Patty's insurance company, depending on all facts.

Ohio Civil Theft Action: O.R.C. 2913.02 et seq

Dr. Health's second option is against Patty directly. Contained in the First-Party Assignment is language concerning O.R.C. 2307.60, which allows a person to be sued civilly for a "theft offense". In defining a "theft offense", O.R.C. 2913.02(A) (1) states:

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent...

When Patty signed the First-Party Assignment, she gave Dr. Health ownership over any insurance proceeds Patty may receive as a result of the accident, up to the amount of Dr. Health's bills. When Patty did not remit the \$4,000 check to Dr. Health, she knowingly exerted control over property that belonged to Dr. Health without his consent. Therefore, Patty probably committed a "theft offense" as defined above.

Since Patty has most likely committed a "theft offense", Dr.



Health is entitled to seek damages against Patty in excess of the original \$4,000. Dr. Health will still be required to sue Patty, but pursuant to O.R.C. 2307.61, if successful, he will be able to collect damages in the form of three times the original amount taken, plus actual costs and reasonable attorney fees.

Does Dr. Health actually have to sue Patty for O.R.C. 2307.60 to be effective? Like above, the clinic has additional options. First, the clinic can sue the patient as indicated above. Also, in lieu of suing Patty, Dr. Health will want to bring to Patty's attention the language in the First-Party Assignment laying out the consequences of a "theft offense". This may cause Patty to think twice about taking the \$4,000 for her personal use. At the very least, Dr. Health will be able to inform Patty of his rights if a lawsuit is filed. While there are no guarantees in life, this might give Dr. Health the ability to better resolve the issue without having to go through the time and trouble of filing a lawsuit.



Keith M. Karr is the principal attorney with the law firm of Karr & Sherman Co LPA. He has published several articles for the Ohio Trial Lawyers Association (now

Ohio Association for Justice) and the Ohio State Chiropractic Association. Mr. Karr has argued before the Ohio Supreme Court several times. He is also the founder of the Ohio Chiropractic Foundation. Please visit the law firm's web site at karrsherman.com for more information.

Copyright by Karr & Sherman Co LPA, 2019. All rights reserved. This material is being presented for EDUCATIONAL purposes only. Please consult with your personal legal counsel prior to implementing any of the contents in your chiropractic and/or medical practices