

Digest of Ethics Advisory Panel  
Opinion #91-57, Request #147  
Issued May 23, 1991

An attorney seeks Panel advice concerning the attorney's obligations to both the client and a treating physician under circumstances in which the inquiring attorney executed an attorney-insurance carrier lien to secure payment of the physician's fees on behalf of a client in a personal injury case. The attorney advises the Panel that a chiropractic physician submitted a bill for fifteen-hundred and forty-five (\$1545.00) dollars for services rendered. A bill for emergency medical services in the amount of ninety-seven (\$97.00) dollars was also submitted. The personal injury claim was settled, but the client refused to pay the entire medical billings. The client agreed to pay only five-hundred (\$500.00) dollars of the chiropractic doctor's bill.

The Panel takes the position that the issues raised in this inquiry are governed by the "Interprofessional Code of Cooperation for the Rhode Island Bar Association and the Rhode Island Medical Society" (hereinafter the "Code"). Article 4 of the "Code" provides in pertinent part:

ARTICLE 4

PHYSICIAN'S BILL FOR MEDICAL SERVICES

4.1 It is recognized that a physician's fee for professional services rendered to a patient is the sole legal obligation of the patient and independent of any litigation.

4.2 Attorneys must recognize that they have an obligation to the physicians who supply them with records, reports and bills to cooperate with such physicians in obtaining payment of bills for services rendered to a patient in cases where claims for medical disability are the subject of litigation.

4.3. Attorneys should advise their clients that bills rendered for such medical services by a physician are the sole responsibility of the client and are independent of pending litigation, and that such bills are due and payable when rendered by the physician. Attorneys should also incorporate into their agreements with clients an assurance that treating physicians will be paid any unpaid balances from the proceeds of the case.

4.4 Counsel should obtain authority from the client to pay medical bills directly to the physician in the event of a settlement or judgment in accordance herewith.

The Panel takes the position that the issues raised in this inquiry were addressed in Panel opinions 89-16 and 90-3. In opinion 89-16, the Ethics Advisory Panel advised a lawyer whose client wrongfully refused to release money from an escrow account maintained by the lawyer and two other parties to a transaction that the lawyer should withdraw from representation of the client under Rule 1.16(b)(3) of the Rhode Island Rules of Professional Conduct. Withdrawal under Rule 1.16(b)(3) is proper where the client insists upon pursuing a course of conduct which the lawyer considers repugnant or imprudent. In opinion 90-3, the Panel cited Rule 1.2, entitled "Scope of Representation", in advising a lawyer who feared his/her client did not appreciate the potentially dire legal consequences of the course of action the client sought to pursue. Rule 1.2 provides that a lawyer shall abide by the client's decisions concerning the objectives of the representation. Rule 1.2 also states that the lawyer shall consult with the client concerning the means by which the client's objectives are to be pursued. In opinion 90-3, the Panel determined that the attorney had fulfilled the consultation requirement of Rule 1.2. The Panel opined that the lawyer could not superimpose his/her judgment upon the client, no matter how laudable the lawyer's motives might be.

In light of the above cited opinions, the Panel is of the opinion that the inquiring attorney may move to withdraw from further representation of this client under Rule 1.16(b)(3) if the client insists upon pursuing a course of conduct the attorney considers repugnant or imprudent. The Panel is of the opinion that the attorney may not compel payment to the physicians of the outstanding medical bills from the funds received in settlement of the client's claim. If the matter is not readily resolved, the attorney, as the stakeholder, should pay the funds into the court registry in an interpleader proceeding.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.