

ETHICS ADVISORY PANEL  
Opinion #92-25, Request #246  
Issued May 20, 1992

An attorney seeks Panel advice regarding his obligations under the following circumstances. The attorney represented a client who received medical treatment from a neurologist. The client agreed to pay for the services as they were rendered. Soon thereafter, the payments became delinquent and the physician became reluctant to continue the treatment. The attorney convinced the doctor to maintain treatment, however the doctor insisted that payments remain current or late charges would be imposed. Eventually, an award was received and at the insistence of the client, the attorney withheld payment to the doctor for the outstanding medical bill.

The Panel directs the attorney's attention to Article 4 of the "Interprofessional Code of Cooperation for the Rhode Island Bar Association and the Rhode Island Medical Society" which provides:

ARTICLE 4  
PHYSICIAN'S BILL FOR MEDICAL SERVICE

4.1 It is recognized that a physician's fee for professional service 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 co-operate 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 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.

It is the belief of this Panel 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 believes that the attorney may not compel payment to the physician 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 consider filing an interpleader action in the appropriate forum.