

Update Regarding Physician's and Letters of Protection

On May 8th 2012 Governor Malloy signed into law Senate Bill 99 **AN ACT CONCERNING LETTERS OF PROTECTION**. The bill was introduced by the Judiciary Committee in February and passed through the house and Senate relatively rapidly. The bill seems to have addressed a growing trend by physicians and therapists who don't willingly or reasonably cooperate with their patient's attorney when providing medical services or expert opinions.

When they started practice, most doctors just wanted to be good physicians and had little or no training in the "business of medicine". They went to medical school to be doctors and just wanted to provide good quality care to their patients. In exchange for that care, they expected to be paid handsomely. In the "good old days" that's how things worked. Nobody warned them that some day their patients may need a written or spoken opinion for their care to be covered. No one told them that reimbursement for their hard work may be coming from a source other than the patient's private health insurance or the patient directly.

Medicine has changed and doctors now have to work smarter, harder and see more patients just to be remunerated less. Reimbursements from many carriers are now below the doctor's overhead to provide the service. Many doctors refuse to see patients under a Letter of Protection Some doctors will see patients under a Letter of Protection but refuse to opine on the facts surrounding the patients' injuries. Others see a Letter of Protection as carte blanche to charge unconscionable fees for reports, expert testimony and even the care they provide in an effort to make up for losses in other parts of their practices. These doctors are the reason that this new law will protect the public's interest.

Here is the Bill that was signed: *Any physician licensed under chapter 370 of the general statutes and any physical therapist licensed under chapter 376 of the general statutes shall, during the consultation period with a patient who has suffered a personal injury and prior to any treatment of such patient, disclose to such patient in writing: (1) Whether such physician or physical therapist would provide services to such patient on the basis of a letter of protection issued by an attorney representing the patient in a personal injury action, which letter promises that any bill for services rendered by such physician or physical therapist to such patient will be paid from the proceeds of any recovery the patient receives from a settlement or judgment in such action or, if there is no recovery or the recovery is insufficient to pay such bill, that such bill will be paid by such patient; and (2) the estimated cost of providing to the patient or an attorney representing the patient in a personal injury action an opinion letter concerning the cause of the personal injury and the diagnosis, treatment and prognosis of the patient, including a disability rating.*

The effect of this bill is that patients will know up front and in writing if their doctor is willing to treat them under a Letter of protection. It will also define the obligations and expectations of the doctor, patient and attorney regarding their responsibilities. Doctors will know that they may be called upon to provide expert



A MEDICAL-LEGAL NEWSLETTER FOR PERSONAL INJURY ATTORNEYS BY DR. STEVEN W. SHAW

opinions regarding causation, diagnosis, treatment, prognosis and disability and be paid a pre-defined fee for the service. Patients will be informed and intelligently select doctors that have declared their willingness to put their care ahead of immediate reimbursement. Attorneys will not be blindsided by doctors that refuse to provide their opinions or do so for fees that are so outrageous that the case is impossible to settle.

Whether a doctor will actually incorporate this into their practice will remain to be seen. The intent is good and protects all parties. Unfortunately, there will be many doctors that use this law as a shield to protect themselves from getting involved in the care of a patient with pending litigation. They may intentionally inform patients that they will not accept a LOP to keep the patient out of their office, even if they are contracted providers for the patient's insurance. They may also set the fee so high for the reporting of their opinions that attorneys will have no choice but to advise their clients to seek the care of other physicians more willing to cooperate in the system.

At Shaw Chiropractic we have always accepted LOPs on patients. We have never charged fees for routine reports. Our reports always address causation, diagnosis, treatment, prognosis and impairment. That's why it makes sense to work with a practice that understands your clients' medical needs and your documentation requirements. Contact me on my cell at 860-538-2347 if you have any questions or comments.

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