

Letters of Protection

I can understand why some attorneys have concerns with regard to issuing letters of protection to doctors. Attorneys have little certainty of what the final outcome of a case may be. That uncertainty means an unlimited protection of a physician's fee may not be in the best interest of the client. Second, many doctors have no consideration of the client or attorney when treating patients. This can result in provider specials disproportionate to the case value. When this happens, and the doctor is unwilling to cooperate with the attorney, the client often leaves the attorney's office with the feeling that they were poorly represented. Furthermore, because there are abuses by physicians with regard to their management, attorneys have no control over their client's exposure to greedy or incompetent physicians once an LOP has been issued..

The flip side of this is the doctor's perspective. With or without LOPs, doctors regularly have their fees disregarded by attorneys. This is after they have graciously extended the courtesy of credit and waited six months to several years for reimbursement. As an example, earlier today I spoke with a radiologist with regard to his willingness to accept my patients on an attorney's LOP. He laughed and said *"LOPs aren't worth the paper they are written on. I would rather accept Medicaid patients. At least with them I can cover the cost of the x-ray film"*. He found that many attorneys in his town have no regard for his bills and did not pay him despite the LOP. I let him know that he had recourse but he convincingly explained that he doesn't have the resources, time or energy to fight with lawyers.

Wait a minute. There is another involved party. Your **CLIENT**. In the absence of health benefits, they have no access to care if doctors won't accept LOPs. Unfortunately, many of them have contributed to the problem by instructing lawyers to withhold doctor payments. Some are more generous and instruct the attorney to ask for a reduction even though the resolution is more than adequate to satisfy all outstanding bills and fairly compensate them for the injuries. An example of this happened today when I discovered that a case settled and my bill, which the attorney agreed was reasonable and appropriate, was not paid. When I asked the attorney why he did not honor my bill he said *"Steve, you know I would never stiff you. However, the client instructed me in writing not to pay you. The letter indicated that they would pay you directly. I knew they wouldn't but what choice did I have?"*. I wasn't happy but I reluctantly acknowledged his predicament. Many doctors are not as understanding as I am and as a result refuse to accept patients when the attorney representing the client is a known non-payer. Some refuse litigation cases across the board.

This sad polarization of views leaves the good attorneys, doctors and patients suffering. Patients lose access to care, attorneys are unable to gather necessary medical documentation, doctors limit their capacity to fill their practices and earn a reasonable living. There are no winners when even one of the involved parties is unwilling to participate (perhaps with the exception of the carriers).



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

Here's my position on the matter. If an attorney is unwilling to give me a letter of protection the message is clear; *"Treat my client but I will not pay you out of settlement"*. I expect every attorney to provide me with some kind of binding document so that the client knows that they have authorized an irrevocable agreement to pay the doctor.

If the attorney has legitimate considerations as described in the beginning of this newsletter I offer the following suggestion. Have the client sign an **irrevocable** authorization for you to issue a **irrevocable** LOP. If there is continued concern with regard to the potential for excessive billing on the part of the physician I suggest that limits be applied to the LOP. Limits can take the form of a cap on the amount of an LOP. The limit can also be set as a percentage of the settlement after legal fees and costs. Both the LOP and the Client Agreement should include an understanding that any disputed funds will be held in escrow.

The client's authorization to issue a LOP may be included in the engagement letter and then fully reviewed with the client just as a doctor should review an informed consent. Reasonable clients would expect an attorney to protect the doctor. The ones that don't have little respect for the attorney or doctor and are better served by a lawyer and doctor of lesser competence and ethical fortitude.

In summary, the LOP protects all involved parties. The LOP allows the attorney establish and maintain good relations with the doctors they need on their present and future cases. Clients are given access to the care they desperately require for their injuries at the time they need it. Doctors are fairly and reasonably compensated for the work they have performed. The only losers are the attorneys, doctors and clients who abuse the LOP to gain a short term advantage. In the long run, when the smoke clears, only those who have acted with dignity will still be standing.

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