

## **DOCTOR NEWSLETTER NO. 3: LIEN PROTECTION**

### **DOES YOUR LIEN PROTECT YOU?**

By far, the number one topic that comes up in conversation between our office and doctors offices is that of the lien payment concept. Naturally, as this is the primary method of payment on personal injury cases, most doctors want to make sure that they are adequately protected. Add to that the fact that many attorneys refuse to honor the liens of the doctors, or find a way to dispute the validity, and a real cause for concern exists. Currently, there is a lot of discussion among attorneys as to how to avoid paying liens, as the hospitals and HMOs have abused the process to the extent that many people seriously injured via personal injury accidents have become indebted as opposed to receiving a net settlement recovery. The most egregious example is where a hospital receives payment from a HMO under a contract they voluntarily entered into. Upon settlement of a third party personal injury case, they then ask for the difference between 100% of an inflated "market" rate and what they contracted to accept. Many attorneys have faced the prospect of a bankrupt defendant, a \$100,000.00 liability policy and \$500,000.00 in medical bills. The hospital lien by statute is more than the settlement, despite agreeing to accept much less pursuant to the contract they signed. The hospital is "gracious" enough in most cases to accept the entire settlement without going after the client personally for the total difference amount. In this case there are no attorneys fees, and the client receives no recovery.

In response to this abuse, many new lien laws are being created, along with a lot of resentment among attorneys regarding the signing of liens. Based on this current climate, it is now more important than ever to work with a firm that will respect and honor the terms of your lien. Those of you that have worked with our office know that we will not distribute the settlement funds of any case without first honoring your lien.

Below are some suggestions for creating the strongest possible lien rights.

Explain to the patient that your lien is a legally binding contract, and that regardless of eventual settlement of their case, or not, they are responsible for the balance owed.

- Inform the patient that the purpose of the lien is simply to defer the time of payment from when service is rendered to the point that their case is completed.
- Have the patient initial, in writing, that they have been advised of the above.
- Make sure to gather the names, addresses and telephone numbers of all insurers, attorneys, and personal representatives of the patient, and make your lien known to all.
- Have the patient sign two copies of the lien. Save one for your files in case the other becomes lost, and forward the second to his/her attorney for signature and return to your office.
- Avoid accepting faxed liens, unless your lien contains language to the effect that, "a photo-copy of this document shall be as legally binding as though original."
- Even though you may assume the attorney has a copy of the lien he/she signed, send a copy return receipt requested to the adjusters on the file and to the attorney, to document the file that they had notice of the lien.
- In litigated cases, obtain the court and case number of the action and file a NOTICE OF LIEN, after serving the document on all parties attorneys involved in the action, and completing the proof of service.