



# Ohio Board of Professional Conduct

## OPINION 2023-10

Issued October 6, 2023

Withdraws Adv. Op. 1995-12

### **Lawyer's Obligation When Letter of Protection Issued to Medical Services Provider**

**SYLLABUS:** A lawyer, with a client's consent, may prepare a letter of protection that guarantees that proceeds from a future settlement or judgment will be withheld to pay a medical services provider. A lawyer may decline to follow a client's instruction not to pay medical care providers from proceeds obtained by settlement or award when the client entered into a written agreement to pay the provider from the proceeds through a letter of protection. A lawyer must hold disputed funds involving two or more persons with a lawful interest in the funds in a lawyer's trust account until the dispute is resolved.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



# Ohio Board of Professional Conduct

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**APPLICABLE RULES:** Prof.Cond.R. 1.8, 1.15

**QUESTION PRESENTED:** Whether a lawyer may follow a client's instructions to pay all proceeds from a settlement or judgment to the client when the client agreed to pay a medical services provider out of the proceeds through a letter of protection.

**ANALYSIS:** A medical provider providing services to personal injury plaintiff may request a letter of protection from the patient's lawyer guaranteeing that the expenses for the client's medical care will be paid from any proceeds. The lawyer, with a client's consent, may draft the letter of protection to a medical service provider in anticipation of payment from funds to be received by the lawyer for the client through the resolution or adjudication of the client's personal injury claim. The letter is typically signed by the lawyer and medical provider. Letters of protection can raise various legal issues for lawyers. *See e.g., Solon Family Physicians, Inc. v. Buckles* (1994), 96 Ohio App. 3d. 460 (holding that a "letter from attorneys to doctor providing medical services on accident

victim's behalf was sufficient to give rise to a surety relationship and made attorneys liable for accident victim's medical bill."); *but see Ohio State Univ. Hosps v. Evans*, 5th Dist. Licking Case No. 95 CA 00019, 1995 Ohio App. LEXIS 4682, (Sept. 21, 1995)(language in letter of protection did not create a surety.) Any legal issues that may be raised by the question presented are outside the scope of this advisory opinion.

### *Letter of Protection*

A lawyer should advise the client of the consequences of a letter of protection, specifically that the client, acting through the lawyer, has entered into a legal agreement with the provider. A letter of protection guaranteeing to withhold payment from a client's settlement or award proceeds is permissible and distinct from a guarantee by the lawyer that all medical expenses as to that provider will be paid out of any settlement or judgment proceeds.<sup>1</sup> The lawyer should indicate in the letter to the provider that the lawyer is not promising to pay the provider from his or her own personal funds and that the lawyer will hold any disputed funds in a lawyer's trust account in the event a dispute about payment to the provider arises. Some providers may require that the client and lawyer sign an agreement prepared by the provider that should be carefully reviewed by the lawyer and possibly modified to protect the client's interests.

Prof.Cond.R. 1.15(d) classifies the funds held by a lawyer in which a third person has a "lawful interest" as a "statutory lien, a final judgment, or a *written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds \* \* \* \**" *Id.* (emphasis added). A lawyer is required to "promptly deliver any funds or other property that the client or third person is entitled to receive." Prof.Cond.R. 1.15(d). The key language in the rule is the phrase "entitled to receive." *See e.g., Disciplinary Counsel v. Joltin*, 147 Ohio St.3d 490, 2016-Ohio-8168 (lawyer disciplined for failing to distribute proceeds due to provider through a letter of protection.) Due to the client's written agreement with the provider through the letter of protection issued by the lawyer, the provider has a "lawful interest" in a portion of the settlement or award proceeds. Prof.Cond.R. 1.15(d). The disbursement of all the proceeds to the client at the client's

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<sup>1</sup> In addition, a lawyer may not agree to directly pay a third-party or advance funds for the medical treatment of a client because the services are not a legitimate expense of litigation. *Stark Cty. Bar Assn. v. Williams*, 137 Ohio St.3d 112, 2013-Ohio-4006.

direction, when the provider retains a lawful interest, is contrary to the rule's requirement to promptly deliver funds that the client or a third party is "entitled to receive." The lawyer may decline to follow a client's instruction to disburse all the proceeds to the client when a third person, in this instance a medical provider, has a lawful interest in part of the proceeds through the issuance of a written letter of protection.

#### *Lawyer Handling of Disputed Funds*

When a lawyer receives the proceeds from settlement or a judgment, the lawyer must place the funds in lawyer's trust account and notify all persons with a lawful interest of the receipt of the proceeds. Prof.Cond.R. 1.15(d). Absent a client's objection to disburse funds which are due by agreement, a lawyer has an obligation to disburse the funds to the recipient of the letter of protection. CT Eth. Op. 01-05 (2001). If the client instructs the lawyer that the funds are not to be transferred to the medical services provider, the lawyer should advise the provider and simultaneously advise the client that the provider has been notified. Once a dispute over funds has arisen between two or more persons with a lawful interest, a lawyer is required to hold the funds until the dispute is resolved. Prof.Cond.R. 1.15(e); Adv. Op. 2007-07; see TX Eth. Op. 625 (2013). Also, a lawyer should not "unilaterally assume to resolve the dispute between the client and third person." Prof.Cond.R. 1.15, cmt.[4]. To do otherwise would place the lawyer in a position to determine disbursement that may not be in accord with a future legal ruling. The Board recommends that the lawyer remind the client of the client's legal obligations to the medical services provider to promote resolution of the issue. The lawyer may also negotiate on the client's behalf for a reduction in the amount owed to the provider. Any portion of the proceeds not the subject of the dispute should be promptly distributed to the client. Prof.Cond.R. 1.15(e).