

The attorney has settled and asked us to take less than our billed amount

This process is one of the most demeaning and contentious payment problems. I take offense to an attorney that did little more than shuffle paperwork for a settlement and then tries to become the hero by telling the patient they will receive cash in their pocket until the “mean and nasty insurance company and doctor” want to take money out of their pocket to get your bill paid. The attorney expects to get paid his “fair share” (usually 1/3) for no work. If a case actually goes to trial that’s a different story. I have a little more compassion for the attorney.

In California the law is made up of both legislative regulation which usually starts the law in motion and case law (that which is heard and decided before a judge) which happens after the law is written. This case law is stronger in a court setting. There are four cases that have very strong bearing on this process that you need to be aware of. Unfortunately, if you are in another state, you will have to do some research to find your case law.

Victor R. Miller v. Jack L. Rau

This case found that when a third party is notified of the lien they are required to follow it regardless of whether they agree to it or not.

City and County of San Francisco v. Robert J. Sweet

This case found that a medical lien is NOT subject to reduction as a part of common funds which an attorney’s fee is subject to. Even though the attorney may agree to accept 1/3 of the funds received, that comes out of common funds left over AFTER full payment of full medical fees.

Kaiser Foundation Health Plan, Inc. v. Heroico M. Aguiluz

This case found that the attorney having side stepped the above requirement by giving the full amount to the patient did not comply with the medical lien requiring payment to the medical provider. Therefore the attorney was held liable and required to pay the medical bill out of his pocket and seek reimbursement from the patient who he gave the money to incorrectly.

Fireman’s Fund vs (I’m not sure of the other party’s name)

This case found that an insurance company stating that they do not agree to nor comply with medical liens is held to the same standards as an attorney when they are notified of the lien. They were required to pay the doctor and seek reimbursement from the patient they had previously paid.

Put these together and it means that all you have to do is have the patient sign a legal contract with you. It’s called the Doctor - Patient Irrevocable Lien. In order for it to be a binding contract two copies must be signed with original signatures (your’s and the patient’s) and an original must be given to both parties. Without this step the lien is worthless legally and can be thrown out of court. If you desire to pre-sign both copies and have your staff date your signature after the patient has signed both copies you can do this. Just make sure they get an original copy before they leave the office.

Once this is done all you have to do is mail copies via certified mail, return receipt requested, to prove that the parties were notified of the legally binding contract - the lien. It is an agreement by you and the patient that directs all parties to follow it’s requirements. Mail copies to any and all parties that may possibly become involved in payment sometime in the future.

1. The attorney for the patient.
2. The other driver’s insurance company.
3. The other driver if you know who and where.
4. The attorney for the other insurance company.
5. Any change in attorneys.
6. The patient’s health insurance company (even Kaiser). If they are going to pay any part of any bill for services resulting from this accident they are accepting responsibility and are due to pay your bill also.
7. If they were a passenger or driving someone else’s care, the car insurance of that car.

8. Their own car insurance even if they don't have med-pay. If they later can collect on uninsured or under insured motorist provision you want your part of it to come to you.
9. If the injury is connected with Workers Compensation, the WC company.
10. The home owner's insurance if applicable.
11. Get a little creative but get protected.

The law is specific. If any money is paid, the patient is directing ALL parties through a legally binding contract to pay your bill first or at least make payment to them AND you as co-payees up to the amount of payment being made. If anyone tries to circumvent this and make payment to the patient or anyone else not in line with a medical lien they can be held personally fully responsible for payment of your bill up to the amount paid and have to seek reimbursement from the patient. Once payment is offered, you do not have to accept less than what has been paid or your full bill whichever is less. If you do accept less you have the right to collect the balance from the patient or send to collection if you choose to. You don't have to pay the attorney out of YOUR money. It's not the patient's money. They only get what's left after paying all legal obligations in full including your bill. If you do agree to accept less than full payment make sure you **DEMAND** an accounting of full disbursement of all funds connected with the case to make sure you aren't getting cheated before you cash the check.

The only way an attorney can try to get around this is to admit to the law, choose to not make any payments out of funds received and present the money to a court and ask that the judge take it as an interpleader. This means that the judge will have to review the case, the law, the bills and make a legal decision as to who gets what money. The judge has to follow the law and will be on your side.

The thing attorneys try to do is take their 1/3 out for expenses and place the other 2/3 with the interpleader stating that since there is disagreement as to who gets what, they are backing out of the case with their expenses covered and will not be a party to the contestation. Sorry. Doesn't work that way. In order to go through this process the attorney MUST serve you with legal notice of the presentation to the court. As soon as you receive notice immediately send a registered letter to the court AND the attorney stating that the entire amount received in the case is in contest and that the entire amount received must be placed with the court. Now the attorney doesn't get his share up front. He has to get in line to get 1/3 of common funds AFTER all medical liens are paid in full or up to the amount received whichever is less. You win!! This isn't a hard process. It only delays payment for a while but you'll get more than what the attorney offered.

Some doctors think they won't do this for fear of antagonizing attorneys and never getting referrals from them. Ask any good doctor in general practice and you will find that very few referrals come from attorneys. Most of the time it's in reverse. We see the patient first and then the patient finds an attorney who tries to cheat us. If you have a good attorney you are willing to work with let them know you know the law and expect them to abide by it. If they aren't find another. When the patient comes in initially ask them if they have an attorney. If not have your choice of attorney arrange a free consultation for them if they go any farther in care. It protects you.