

Trial News

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Practice Tips...

Medical Liens

Health care providers treat injured persons. Usually the medical bills for those services are paid by insurers, or by the injured person himself. However, a health care provider can also file a lien on a personal injury claim. This column will discuss what a medical lien is and how a medical lien may affect settlement of a personal injury claim.



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Background

In 1937 the legislature gave health care providers an additional remedy for collecting their fees for providing professional services: the medical lien RCW 60.44.010 authorizes medical liens and provides in part:

Every ambulance, hospital, and every duly licensed nurse, practitioner, physician, and surgeon rendering service, or transportation and care, for any person who has received a traumatic injury shall have a lien upon any claim against any tortfeasor and/or insurer of such tortfeasor for the value of such service, together with costs and such reasonable attorney's fees as the court may allow, incurred in enforcing such lien.

It is important to recognize that the lien is not against the plaintiff, it is against the tortfeasor or the tortfeasor's insurer. This is one reason why defense counsel sometimes request a hold harmless at the conclusion of a case.

When to File Medical Lien

The medical lien must be filed within 20 days of the date of injury or the date care is provided, or the date that settlement and payment of the claim occurs, whichever is later. RCW 60.44.020

Where the Lien is Filed

RCW 60.44.020 states what information must be put into the medical lien and that the lien is to be filed with the county auditor of the county in which the service was rendered. You can see if any medical liens have been filed by requesting that the county auditor do a records search. You can do this by mail at a cost of eight dollars for every five years that you ask the auditor to check. If you go in person to check the records there is no charge.

Limitation on Lien

There is a limitation on the amount that can be claimed in a medical lien. RCW 60.44.010 provides that all the said liens for service rendered to any one person as a

result of any one accident or event shall not exceed twenty-five percent of the amount of an award, verdict, report, decision, decree, judgment, or settlement.

Satisfaction of Lien

The medical lien statute provides two ways in which a medical lien may be discharged. The first is for the health care provider to file a release of lien in the court where the action is filed. The second way to discharge the lien is to have the "settlement provide for the payment and discharge of such lien." RCW 60.44.050

Settlement of a Personal Injury Claim Where a Medical Lien Filed

When a personal injury claim is settled, the defense has a legitimate interest in seeing that they do not later have to pay some additional amount because a medical lien has been filed. Typically the defense will ask the plaintiff to sign a hold harmless agreement. It seems to me that a hold harmless signed by the plaintiff doesn't provide much protection for the defense, since many plaintiffs would not have the finances necessary to honor the hold harmless agreement.

If the defense asks you as the plaintiff's attorney to sign a hold harmless, you should decline. I never sign them. I don't think it is proper for the plaintiff's attorney to contribute something of value in order to settle a case. For any attorney who is continuing to sign hold harmless agreements I suggest that you look at the typical loan documents your bank will request you to fill out in order to obtain a home loan. Most have language that would require you to disclose that you have agreed to hold harmless numerous defense counsel, insurance companies, and private individuals. I have never had an insurer refuse to settle a claim because of our firm's refusal to sign a hold harmless agreement.

A reasonable solution, one that provides real protection for the defendant and his insurer, is for defense counsel to check with the county auditor in any county where the plaintiff received treatment, and then provide in the settlement documents that all medical liens shall be paid out of the settlement proceeds. By statute this will discharge any medical liens that health care providers have against the defendant and his insurer.

Robert K. Dawson is a partner in the Seattle firm of Pence & Dawson; his practice is limited to plaintiff's personal injury cases.