

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-327
Issued: January 1988

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May an attorney charge a fee to a physician or health care provider who is paid out of the proceeds of a client's settlement with an insurer or third party if the physician or health care provider was not put on notice of the attorney's expectations and did not explicitly or tacitly approve of the attorney's "working on its behalf"?

Answer: No.

References: KBA/KMA and LBA/JCMA Interprofessional Codes; Michigan Ops. C-226(1982); CI-846(1982); and CI-928(1983).

OPINION

A question that has arisen from time to time is whether an attorney can, as a routine practice, pay a physician or other health care provider for medical services rendered to the attorney's client, out of the proceeds of a settlement with an insurer or other third party, and deduct a collection fee or other charge against the physician or other health care provider.

The KBA/KMA and LBA/JCMA Interprofessional Codes both make it clear that bills for such medical services are the responsibility of the client, although the attorney should seek to protect the interest of the physician or health care provider as a matter of professional courtesy. The Codes suggest that the attorney request authorization from the client to make such payments at the time of employment, or at least at the time of disbursement. Neither Code suggests that an attorney may automatically charge an additional attorney fee to the physician or health care provider for forwarding such payments.

Nothing in this opinion is intended to affect the substantive law of subrogation.

This opinion was referred and approved by the Physician/ Attorney Liaison Committee.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.