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IS IT WORTH THE PRICE OF THE PAPER ON WHICH IT IS WRITTEN?

The Validity of Medical Providers Assignments

I. INTRODUCTION

When preparing to disburse a hard won judgment or settlement to a client injured by a liable third party, attorneys must tread lightly through the minefield of balances due to medical providers and subrogation lien holders. To avoid closed cases from being resurrected, attorneys should seek to eliminate medical bill balances and the last minute appearance of assignees prior to issuing funds. With the First District Court of Appeals decision in *Roselawn Chiropractic Ctr. v. Allstate Insurance Co.*, attorneys must now beware of a plaintiff who assigns potential benefits from an insurance carrier to a medical provider.[1]

"An assignment is a transfer to another of all or part of one's property in exchange for valuable consideration."[2] This procedure ensures that the provider will be paid for the care provided.[3] In the past, it has been unclear whether insurance companies are bound by such an assignment. Liability carriers would directly disburse settlement funds to the unrepresented victim or to the plaintiff's counsel in spite of the receipt of an assignment from a medical provider. To do so after the *Roselawn* decision, could subject the insurance carrier and the plaintiff's counsel to personal liability for failure to honor the valid assignment of a medical provider.

II. INSURANCE COMPANY LIABILITY FOR ASSIGNMENTS

The First District held in *Roselawn Chiropractic Ctr. v. Allstate Insurance Co.*, that when a valid assignment has been made, the obligor must honor the assignment and make payment to the assignee.[4] In *Roselawn*, a Chiropractic doctor had treated a patient for injuries sustained in an automobile collision.[5] Prior to receiving treatment and before filing suit against the alleged tortfeasor, the patient executed an assignment to the Chiropractic doctor of her rights in any proceeds that she would receive from the alleged tortfeasor and/or the alleged tortfeasor's insurance company, equal to the cost of her treatment.[6] Although the Chiropractic physician had sent a copy of the assignment to the insurance company, the insurance company paid the settlement money directly to the injured patient.[7] The insurance company argued that a valid assignment had not been made.[8]

[A]ttorneys must now beware of a plaintiff who assigns potential benefits from an insurance carrier to a medical provider

The court relied on the rule announced in the Ohio Supreme Court's decision in *First Bank of Marietta v. Roslovic*, which held that "an assignee may exercise collection rights against an account debtor if the account debtor receives (1) an indication that the account has been assigned, (2) a direction that the payment is to be the assignee rather than the assignor, and (3) a reasonable identification of the rights assigned."[9] The court noted that "once the account debtor has received reasonable notice of the assignment," it must make payments to the assignee.[10]

Because the insurance company in *Roselawn* received notification from the Chiropractic doctor of the assignment from the patient of her rights to proceeds, the court held that the assignment was valid and the insurance company was obligated to pay directly to the Chiropractic physician instead of the injured patient.[11]

III. ASSIGNMENTS EXECUTED PRIOR TO THE PATIENT FILING A CLAIM AGAINST THE TORTFEASOR

However, in *Knop Chiropractic, Inc., v. State Farm Insurance Co.*, the Fifth District held that the insurance company was not bound by such an assignment, because the parties created the assignment prior to the existence of a civil action by the injured party against the insured.[12] In reaching its decision, the court construed R.C. 3929.06, which allows a judgment creditor to file a supplemental complaint against an insurer who has not paid the judgment creditor an amount equal to the remaining limit of liability coverage provided in the policy within thirty days *after the entry of the final judgment for the plaintiff.*[13] The court noted that at the time the injured party signed the assignment documents, he had not yet filed a claim against the alleged tortfeasor. As such, under the statute, he had no right to file an action against the insurance company at that time and thus could not assign his rights to potential proceeds.[14]

The *Roselawn* court declined to follow *Knop*, pointing out that it does not make sense to require the injured party to sue the alleged tortfeasor and insurance company first to establish liability before an assignment will be valid.[15] The *Roselawn* court noted that adopting such a rule would force parties to litigate.[16] The *Roselawn* court cited to the Ohio Supreme Court's decision in *First Bank*

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of Marietta, holding that the account debtor was obligated to pay the assignee once the account debtor had received proper notice.[17] However, *First Bank of Marietta* did not discuss R.C. 3929.06, nor did it deal with an insurance company as the account debtor.

In *Akron Square Chiropractic v. Creeps*, the Ninth District also rejected the reasoning in *Knop*.[18] The court held that R.C. 3929.06 did not affect an injured party's right to assign potential proceeds from claims not yet filed in court.[19] The court noted that the statute "merely provides a judgment creditor the opportunity to assert a claim for insurance money, if the debtor was insured at the time of the loss."[20] Finally, the court held that the injured party was not required to have filed suit or obtained judgment against the alleged tortfeasor or his insurance company in order to effectuate a valid assignment of potential insurance proceeds.[21]

The Ohio Supreme Court has not yet ruled on the impact of R.C. 3929.06 on an injured party's right to assign proceeds from claims not yet filed, leaving this issue unclear. The Fifth District appears to be the only district to hold that the statute precludes assignment prior to the existence of a civil action by the injured party against the insured. Further, it is unlikely that the statute was enacted with the intent to alter the common law of assignments.

VI. ATTORNEYS AND ASSIGNMENTS

The Eleventh District has held that attorneys are also bound by assignments.[22] In *Hsu*, the injured party granted her medical provider a security interest in any and all proceeds from her pending personal injury action.[23] The document authorized the injured party's attorney to withhold sufficient funds from any settlement, judgment, or verdict as may be due the medical provider for services rendered to the injured party and directed the attorney to pay such funds to the provider.[24] After the personal injury action was settled, the client instructed the attorney to transfer the proceeds to her and not to pay the medical bills.[25] The attorney followed the client's instruction, citing an ethical obligation to his client.[26] The trial court held that a valid assignment had not been created because the document was ambiguously drafted.[27]

The Court of Appeals reversed, holding there was no ambiguity in the document as it explicitly directed the attorney to pay the provider from any settlement and clearly established a security interest as well as an assignment.[28] The court also rejected the attorney's argument that DR 9-102(B)(4) required him to follow his client's instruction with regard to the settlement money.[29] The court reasoned that because the client was not *entitled* to receive the full amount of the settlement, the attorney was not bound by DR 9-102(B)(4).[30] The court further noted that the attorney had signed the document, demonstrating that he had knowledge of the assignment and was thus obligated to pay the provider from the settlement.[31]

In *Dickey v. Burick*, the Fifth District held an attorney personally liable under a doctor's lien.[32] In *Dickey*, the injured party and her attorney signed a "Doctor's Lien" authorizing the attorney to pay the providers for services rendered from any settlement, judgment, or verdict.[33] As in *Hsu*, when the client's claims were settled, the attorney did not pay the providers.[34] The court found the attorney liable under the lien, but also found that the attorney was entitled to indemnification from the client.[35] The court did not accept the attorney's argument that she signed the doctor's liens as the agent of her corporation because her signature did not contain any indicia that she was acting as an agent.[36] The court also held that the filing of bankruptcy by the client had no effect on the attorney's liability to the providers under the liens.[37]

V. WHAT CONSTITUTES A VALID ASSIGNMENT

As the Ohio Supreme Court has held, at a minimum, an assignment should:

1. indicate that the account has been assigned;
2. direct that the payment is to be made to the assignee rather than the assignor;
3. identify the rights assigned.[38]

Further, "[i]f requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor."[39]

VI. CURRENT AND PROPOSED LEGISLATION

Currently, no legislation exists that requires third-party payers to honor assignments entered into between beneficiaries and medical providers, other than hospitals. R.C. 3901.386 requires third-party payers to honor a completed and validly executed assignment of benefits with a *hospital* by a beneficiary.[40]

Proposed Senate Bill 118 would, however, require a third-party payer to accept and honor a completed and validly executed assignment of benefits with *any provider* if the third-party payer and provider have not entered into a contract regarding the provision and reimbursement of covered services.[41] Under the bill, "provider" is defined as "a hospital, long-term care facility, nursing home, physician, podiatrist, dentist, pharmacist, chiropractor, or other licensed health care provider, provider partnership, or professional corporation."[42] Provider also includes any person licensed or otherwise authorized to transport patients.[43] Also under the bill, both the beneficiary executing the assignment and the third-party payer accepting the assignment are liable for the amount due to the provider for services rendered to the beneficiary.[44]

VII. IMPLICATIONS FOR COUNSEL

Armed with judicial approval of their assignments, medical providers are now bringing actions against third-party payers who issue payment directly to the injured party or counsel, if reimbursement to the third-party does not occur. In some instances, third-party payers are addressing this issue by cutting separate checks directly to the medical providers or including the medical provider as a payee on the settlement check. Both of these methods jeopardize counsel's ability to negotiate reductions of balances in instances necessitated by the amount of the final judgment or settlement. Adding payees to the settlement check can slow the settlement process dramatically.

VIII. CONCLUSION

Forewarned with this knowledge, counsel can assess the validity and the effect of assignments. In most cases, assignments are valid if they comply with the rule set out in *First Bank of Marietta*. Practitioners in the Fifth District should be aware of the unique holding that insurance companies are not bound by an assignment created prior to the existence of a civil action by the injured party against the insured. Further, if the General Assembly passes proposed S.B. 118, third-party payers will certainly be required to honor assignments from health care providers. Attorneys should not personally agree that the law office will pay for funds arising out of the subject claim. The attorney should clarify in writing that all monies must be issued upon the client's approval and the client shall direct payment to the subject medical provider. Attorneys must also inform clients of the consequences of entering into an assignment and its effect on the client's net recovery from any final judgment or settlement.

As long as assignments are known to counsel and addressed, then the specter of settlements past will not haunt the financial compensation of the clients and even potentially their attorneys.

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[1] Roselawn Chiropractic Center v. Allstate Insurance Co., 160 Ohio App.3d 297, 299, 2005-Ohio-1327.

[2] Id. at 301.

[1] Id.
[4] Id. at 301-02.
[5] Id. at 298.
[6] Id.
Id.
[8] Id. at 299.
[9] First Bank of Marietta v. Roslovic & Partners, Inc., 86 Ohio St.3d 116, 118-19, 1999-Ohio-89.
[10] Id.
[11] Roselawn, supra note 1, at 299-300.
[12] 2003 WL 22176668
[13] Id. at 3.
[14] Id. at 4.
[15] Roselawn, supra note 1, at 301.
[16] Id.
[17] Id.
[18] 2004 WL 840131 (Ohio App. 9 Dist.)
[19] Id. at 2.
[20] Id. quoting Salem v. Wortman, (Aug. 30, 1978), 9th Dist. No. 8769, at 4.
[21] Id. at 3.
[22] Hsu v. Parker (1996), 116 Ohio App.3d 629, 688, N.E.2d 1099.
[23] Id. at 631.
[24] Id.
[25] Id.
[26] Id.
[27] Id.
[28] Id. at 633.
[29] Id. DR 9-102(B)(4) provides that a lawyer shall "[p]romptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."
[30] Hsu, supra note 22, at 633.
[31] Id.
[32] Dickey v. Burick (2005), 161 Ohio App.3d 224, 2005-Ohio-2601.
[33] Id. at 226.
[34] Id.
[35] Id. at 227.
[36] Id. at 228.
[37] Id. at 229.
[38] First Bank of Marietta, supra note 13, at
[39] O.R.C. 1309.37(C)
[40] O.R.C. 3901.386(B)
[41] 2005 OH S.B. 118
[42] Id.
[43] Id.
[44] Id.