

The Trouble with Trial Lawyers, Part II

Shawn Steel, JD

What to Do When the Lawyer Will Not Honor Your Lien

The ugly side of a trial lawyer often shows itself after the case is settled. Trial lawyers often forget that they pull a fiduciary duty when they manage an attorney/client "trust" account. In fact, the main reason lawyers lose their licenses is because they commit fraud through their trust account. When a PI case is settled, a lawyer will deposit sums of money into the case's trust account, with the ethical responsibility of paying the doctor; paying his/her costs and fees; and paying the client. However, if a personal injury case does not have a satisfactory conclusion for the trial attorney, the attorney will be tempted to substantially reduce the doctor's fee in order to get his/her client to sign the final papers, so the attorney's fees are paid in full.

In fact, many trial attorneys believe it is appropriate and proper to regularly "discount" a doctor's fee in order to get their own fees paid in full. Of course, this is grossly insensitive and unfair. Some attorneys reduce the doctor's fee even if it is a good settlement out of a callous disregard for the rights of the doctor and the doctor's obligations to his/her clinic and family.

Some lawyers will not even discuss how or why the fee is reduced. The doctor will open up the mail one day and simply find a check for partial payment of fees along with a letter that declares the fees are paid in full. No negotiations are conducted.

What's A Busy Practitioner to Do?

Should the doctor hire a lawyer? Should the doctor begin a campaign of multiple phone calls to try to reason with the attorney? We believe that neither approach serves a doctor's best interest. Instead, we offer a three-part proposal that is proven effective for our clients for several years.

1. Send a 72-hour demand letter. When a lawyer isn't playing fair, don't try to reason with the lawyer over the phone. Lawyers laugh at telephone calls but respect written communications. A letter tends to keep the lawyer more honest.

Sample 72-hour warning letter.

HOWARD FIGHTBACK, DC

8383 Wilshire Boulevard #640

Beverly Hills, CA 90021

CERTIFIED MAIL

John Dewey, Esq.

Dewey, Cheatum & Howe

1900 Century Blvd

Redwood, CA 95000

Re: Demand for Payment in 72 Hours

Our Patient/Your Client: William Victim

Date of Accident: January 1

Amount of Lien: \$1,500.00

Dear Mr. Dewey:

Enclosed please find a copy of the medical lien signed and dated by yourself. This lien guarantees that your office will pay our office once the case is settled. We understand that the case was settled recently, and that our patient has already received this compensation.

We assume that you will honor your lien contract, but your delay is causing us concern. Accordingly, we demand full and immediate payment of \$1,500.00 (see accompanying copies of bill and report). I am sure you are familiar with the provisions of the Rules of Professional Conduct of the State Bar of California. The Bar charges you as fiduciary for monies collected in this case.

If payment is not made, we will have no alternative but to file a lawsuit against you and your firm. We prefer not to take these measures, but unless receive the payment within 72 hours from the date of this letter, we will be forced to take these measures.

Sincerely,

Howard Fightback, DC

cc: William Dunn

Encls. Medical Lien

Medical Report

Medical Bill(s)

Letter from President of the State Bar of California, P. Terry Anderlini

Lawyers are habitually trained to respect deadlines and threats. As we suggest, if you know the case is settled and the attorney is not paying your fees in a fair manner, you need to issue your demand letter. The demand letter is short and to the point. It should give the lawyer a specific amount of time in which to respond, or consequences will happen. We believe that when the attorney is not playing fair and is the fiduciary to the trust account, he/she has a higher than normal duty that holds that any check generated by the trust account is handled in an ethical manner. This opens the door for a state bar review.

Naturally, we recommend if the lawyer does not bother to respond to your 72-hour demand that at the 73rd hour, you generate a formal complaint to the state bar (see attached copy of state bar complaint for California). Generally, any letter will do as long as it describes the attorney's full name and legal address correctly. Some state boards are more assertive at disciplining attorneys than others. Many state bars or regulatory agencies are criticized for being too relaxed on attorneys, and the discipline monitors are quite sensitive to bad publicity. We encourage the doctor to fill out a form that takes only a few minutes to turn the lawyer in. It costs very little time (and no money at all). It creates a hazard for the attorney, particularly if he/she is subject to prior complaints and present investigations on other manners. Naturally, the lawyer has never had a complaint filed against him (or her), and the state bar might not think that not paying the doctor is such a terrible act. However, if the lawyer has a checkered past, the bar may be very interested in pursuing your complaint. You have to try it to see if it works.

COMPLAINT FORM

Date _____

(1) Your name and address _____

(2) Telephone number: Residence _____ Work _____

(3) The name, address, and telephone number of the attorney being complained about. (See note below.) _____

(4) Have you or a member of your family complained about this attorney previously? Yes ___ No ___ If yes, please state to whom the previous complaint was made, its approximate date and disposition. _____

(5) Did you employ the attorney? Answer yes or no and, if "yes," give the approximate date you employed him or them and the amount, if any, paid to him.

(6) If your answer to 5 above is "no," what is your connection with the attorney? Explain briefly. _____

(7) Write out on a separate piece of paper and send with this form a statement of what the attorney did or did not do that you are complaining about. Please state the facts as you understand them. Do not include opinions or arguments. If you employed the attorney, state what you employed him to do. Sign and date such separate piece of paper. Further information may be requested. (Attach copies of pertinent documents.)

(8) If your complaint is about a lawsuit, answer the following, if known:

(a) Name of court (for example, Superior or Municipal - in what county)

(b) Title of the suit (For example, Smith against Jones)

(c) Number of the suit _____

(d) Approximate date the suite was filed

(e) If you are not a party to this suit, what is your connection with it? Explain briefly.

NOTE: If you are complaining about more than one attorney, write out the information about each in answer to questions 3 through 8 above on separate sheets if necessary.

Mail to:

Office of Chief Trial Counsel/Intake

State Bar of California

1149 South Hill Street

Los Angeles, CA 90015-2299

Signature _____

2. Sue the lawyer. There is no more pathetic lawyer in all the land than the one stuck in small claims court having to explain to a hundred of your friends why he or she cheated the doctor. Most small claims judges are lawyers themselves. They know what trial lawyers do. Some are unfair, but most are good. In California, hundreds of lawyers have been sued by doctors and have won. To be prepared, the doctor must have their original file; their client (hopefully); the demand letter trying to get the bill paid; and the original lien the lawyer signed. The beauty of the original lien is that is a signed ad dated contract in which the attorney promised to pay the doctor upon conclusion of the case - not a partial settlement, but full payment. The traditional attorney/doctor lien contract is binding in all jurisdictions. It is a matter of simple contract law. If your state recognizes a lien law,

you must exercise this document on every personal injury case. Some states have protected doctors' fees, but only to a limited instance. Other states have a wide-ranging number of mechanisms to protect a doctor's fee.

How Costly Is it for the Doctor to Go to Small Claims Court?

While the cost is insignificant, it may take a couple of hours of the doctor's time. So, is it worth the doctor missing patient appointments to enforce the lien? We believe the answer is yes, and it is necessary because of the money alone. Doctors believe they cannot challenge an attorney in court, as they are subject to abuse, but the doctor that defends their just and reasonable fees in court will discover several nice bonuses. Many lawyers don't want to go to small claims court and will pay after they have been served with the lawsuit. By going to court, the doctor increases his or her personal confidence, and it is clear that the lawyer, having been sued once, will never want to take advantage of that doctor again. Finally, the doctor will gain a reputation within the small personal injury community as a person not to be tampered with. These extra benefits are much greater than merely getting the fee paid.

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