

## Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 96-03

Approved April 26, 1996

**Issue:** What are the ethical obligations of an attorney who has negotiated an agreement with medical providers on behalf of a personal-injury client whose debts are subsequently discharged in bankruptcy?

**Opinion:** Absent dishonesty, fraud, deceit or misrepresentation, the attorney has no ethical obligation to honor personally the client's agreements to pay medical providers out of a settlement or judgment. Disputes resulting from the failure of an attorney to make payment for services rendered by the medical providers should be treated as questions of substantive law, including state and bankruptcy law, and should be examined under traditional contract, agency, and bankruptcy doctrines rather than as questions of the ethical propriety of the attorney's actions. (fn1)

**Analysis:** In a personal injury action, attorneys on behalf of their clients often negotiate agreements with medical providers for the care the client receives or has received in conjunction with the injury. Such agreements contractually obligate the client, but not the attorney, to pay medical providers for those services out of, or at the time of, any settlement or judgment. Prior to the settlement or judgment, the client may file a bankruptcy and may be discharged of certain of these medical-cost obligations.

The factual background of the present issue is not substantially different from that addressed by Utah Ethics Advisory Opinion No. 98. (fn2) In that opinion it was determined that imputation of an ethical obligation for an attorney's failure to pay a third party for services could create the possibility that the Bar could initiate disciplinary actions against a lawyer for the mere failure to pay creditors. Such a possibility was determined to be beyond the scope of the Bar's role in maintaining ethical standards among its members. This conclusion seems particularly valid when, as postulated in the present factual variation, the debts themselves may be legally discharged through a bankruptcy proceeding and when such a discharge may

have been avoided through proper documentation by the medical provider.

Notwithstanding the foregoing, however, Rule of Professional Conduct 4.1 provides:

In the course of representing a client, a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 4.3(b) provides:

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Based on the foregoing rules, an attorney's dishonesty, fraud, deceit or misrepresentation in conjunction with obtaining the medical services could subject the attorney to disciplinary action. For example, an attorney who (1) knows that his client intends subsequently to discharge medical debts in a bankruptcy proceeding, or intends to have his client seek a discharge of such debts in bankruptcy, (2) uses a form of documentation that the attorney knows will not withstand a bankruptcy, and (3) affirmatively states that the medical provider will be paid at settlement or judgment, will have committed an ethical violation.

However, in the absence of these independent ethical considerations, an attorney's obligations for client-related medical expenses are to be considered as contract, agency, bankruptcy or other substantive issues rather than ethical issues.

## Footnotes

1. This Opinion does not deal with agreements that expressly impose an obligation on the attorney or create a lien on the funds that are handled by the attorney. In those cases, the specific language of the agreement would control and might impose obligations on the attorney directly or as a trustee of the funds.

2. Ethics Adv. Op. 98, 1989 WL 509364 (Utah St. Bar 1989).

## Rules Cited:

4.14.3