

## **PUBLIC POLICY STATEMENT ON THE USE OF LETTERS OF PROTECTION WITH ESTABLISHED PATIENTS**

Letters of protection (LOP), generally, are legal instruments creating a contractual agreement between a physician and a patient's attorney. LOPs are often used to guarantee payment to the physician by a patient's attorney when that attorney's client does not have insurance or resources to pay the physician's fees after an injury allegedly caused by a third party. The guarantee of payment is usually conditioned upon a successful outcome (either in settlement or by judgment) by the plaintiff attorney and his/her client in a tort action.

In and of itself, an LOP is not an ethically prohibited contractual arrangement. The use of LOPs, however, with established patients, particularly those with health insurance, may pose ethical risk for the practitioner. LOPs, on their face, generally guarantee payment of the full amount of the physician's fees, irrespective of any negotiated discount and/or reduced reimbursement rates with health insurers. Thus, the physician may be provided with an agreement by the patient's attorney that will provide the physician higher reimbursement than if he/she submitted the fees to the health insurer, albeit receipt of which is likely extended over a longer period of time.

On occasion physicians have required patients to provide an LOP from the patient's attorney before the physician would treat the patient. Requiring an LOP from an established patient who has health insurance previously accepted by the practitioner may place the physician's financial interests ahead of the patient's welfare.

Principle VIII of the American Medical Association Principles of Medical Ethics provides that "A physician shall, while caring for a patient, regard responsibility to the patient as paramount". American Medical Association Opinion 8.03 Conflicts of Interests: Guidelines provides:

Under no circumstances may physicians place their own financial interests above the welfare of their patients. The primary objective of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. For a physician to unnecessarily hospitalize a patient, prescribe a drug, or conduct diagnostic tests for the physician's financial benefit is unethical. If a conflict develops between the physician's financial interest and the physician's responsibilities to the patient, the conflict must be resolved to the patient's benefit.

Refusing to treat an existing patient who has a policy of health insurance accepted by the physician because the patient or patient's attorney refuses to provide an LOP to the physician may well be found to be an unethical act by the Board, in violation of the West Virginia Medical Practice Act and may subject a physician to discipline by the Board. While physicians generally are free to choose who they serve and should expect to be paid for their services, there are limitations that will apply, particularly once a patient- physician relationship exists.

American Medical Association Opinion 8.11 provides:

Physicians are free to choose whom they will serve. The physician should, however, respond to the best of his or her ability in cases of emergency where first aid treatment is essential. **Once having undertaken a case, the physician should not neglect the patient.** (Emphasis added).

American Medical Association Opinion 8.115 Termination of the Physician-Patient Relationship provides:

Physicians have an obligation to support continuity of care for their patients. While physicians have the option of withdrawing from a case, they cannot do so without giving notice to the patient, the relatives, or responsible friends sufficiently long in advance of withdrawal to permit another medical attendant to be secured.

Thus, a physician may not neglect his/her patient once the relationship is established. If the physician wishes to withdraw, he/she must provide enough time for the patient to establish care with a new provider (generally thirty days).

For most practitioners however, there will be an additional ethical question in considering not treating or dismissing a patient for not signing an LOP. Physicians routinely enter into provider agreements with health insurance companies. These provider agreements typically require a physician to treat its members unless the physician has a closed panel (which is also subject to a number of requirements by the health insurers). Additionally, provider agreements generally allow physicians to submit reimbursement claim for patients who were injured by another party, giving the health insurer a right to subrogate against that third party. AMA Opinion 9.12 Patient-Physician Relationship: Respect for Law and Human Rights provides:

The creation of the patient-physician relationship is contractual in nature. Generally, both the physician and the patient are free to enter into or decline the relationship. A physician may decline to undertake the care of a patient whose medical condition is not within the physician's current competence. However, physicians who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, or any other basis that would constitute invidious discrimination. **Furthermore, physicians who are obligated under pre-existing contractual arrangements may not decline to accept patients as provided by those arrangements.** (Emphasis added).

Thus, refusing to treat or dismissing an existing patient who has health insurance and with whose health insurer the physician is a contracted provider may be found to be in violation of the Medical Practice Act and may subject the physician to discipline by the Board. While there may be exceptions to this, the Board urges the practitioner to reflect and use caution when utilizing a LOP.

The Board may discipline a physician or a podiatrist for violating any provision of the Medical Practice Act or a rule or order of the board. W. Va. Code §30-3-14(c)(17). This includes dishonorable, unethical or unprofessional conduct, including:

Conduct which is calculated to bring or has the effect of bringing the medical or podiatric profession into disrepute, including, but not limited to, any departure from or failure to conform

to the standards of acceptable and prevailing medical or podiatric practice within the state, and any departure from or failure to conform to the current principles of medical ethics of the AMA available from the AMA in Chicago, Illinois, or the principles of podiatric ethics of the APMA available from the APMA in Bethesda Maryland. For purposes of this subsection, actual injury need not be established.

11 CSR 1A §12.2(d). (Emphasis added).

The Board recommends that physicians and podiatrists reflect carefully before accepting a letter of protection, especially in the situation of an existing patient with health insurance. The practitioner should consider:


1. Do I have an existing patient-physician relationship with this individual?
2. Does accepting the LOP put my financial interest before the welfare of the patient?
3. Am I obligated to treat this patient due to a preexisting contract (e.g. a health insurer provider agreement)?
4. If I decide not to treat or to dismiss this patient, have I provided adequate time and referrals to ensure the patient's continuity of care and general welfare?

However the practitioner answers these questions, the overarching principle to guide the practitioner should be the welfare of the patient. If the practitioner decides to utilize a LOP, he/she may wish to include a provision in the agreement that the practitioner will first attempt to bill the insurer in the customary manner, and only upon rejection by the insurer of the claim will the LOP go into effect.



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John A. Wade, Jr., M.D., President



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Adopted by the West Virginia Board of Medicine