

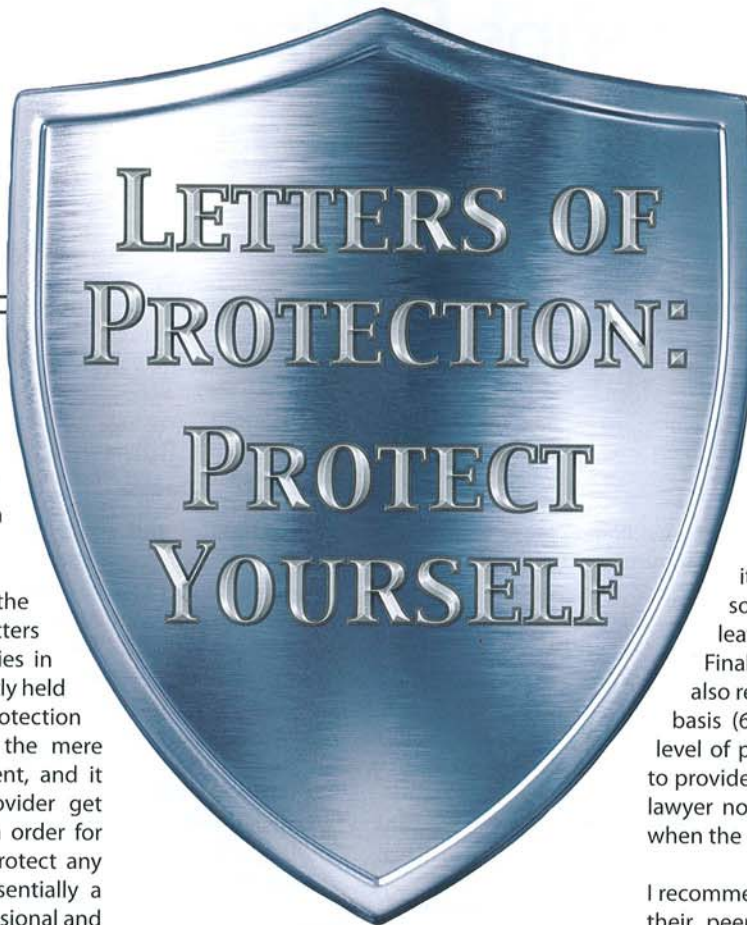


Medicine and the Law

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By Gary S. Lesser, Esq.
Lesser, Lesser, Landy & Smith



Letters of Protection (LOP) continue to be a minefield for medical professionals. This article is a brief overview of the Ethics Rules and some common sense guidelines that can be of great assistance so medical professionals can have maximum protection in LOP scenarios.

Florida Bar Ethics Opinions 02-04 is the key Ethics Rule in dealing with Letters of Protection and liens of third parties in general. The Florida Bar has consistently held that lawyers who sign letters of protection are obligated to honor them, but the mere signature of a patient is not sufficient, and it is essential that the healthcare provider get the lawyer's signature on the LOP in order for the lawyer to be legally bound to protect any outstanding balance. The LOP is essentially a "contract" between the medical professional and the attorney to protect the provider's bill so the attorney signature is essential.

There are definite remedies for a medical professional against a lawyer who violates a Letter of Protection that he has signed. Many medical professionals are increasingly reporting lawyers who violate LOPs to the Florida Bar for disciplinary review. (Generally speaking, the Florida Bar does not tolerate lawyers who violate agreements that they enter into directly and/or on behalf of their own clients, especially where this can be shown to have been done intentionally, though "intent" is not an issue of the LOP itself. The lawyer who signs an LOP is obligated to protect the bill balance period.) The other primary remedy is to sue the attorney for breach of contract, and medical professionals are increasingly suing attorneys for failing to honor an LOP that the lawyer has signed but refuses to honor. Courts are consistently finding in the favor of the healthcare providers in such cases.

Frequently, there is a dispute between the client/patient and the medical provider, and the lawyer's ethical obligations are very clear. The lawyer can help to try to negotiate a dispute but that is all. Ethics Opinion 02-4 specifically states that "the lawyer cannot take it upon himself or herself to decide who is entitled to what," and the lawyer under Rule 5-1.1(e) and (f) must notify the client and the medical provider of the receipt of the funds, "but the lawyer must retain the disputed funds or property in trust until the dispute is resolved."

Most importantly, the healthcare provider should protect themselves at the very beginning of the LOP process, by making sure that the LOP is signed by the lawyer, who is then bound to protect the monies in question. Again, failure of a lawyer to honor a signed LOP without protecting the medical professional is resulting in more Florida Bar disciplinary proceedings and successful civil case outcomes against the lawyer. But more protection at the beginning is always better.

Specifically, the medical professional can get its best protection by having an attorney prepare an LOP for its own office to send to other lawyers to sign, rather than simply signing the LOP provided by the lawyer's office. The primary reason for this is that not all Letters of Protection are the same. A medical professional's counsel can draft an LOP which provides more protection, including an attorney's fee provision for the prevailing party should there be a breach of the LOP, as well as notice requirements that the lawyer must inform the physician within a certain time period if he is discharged, and that the failure to do so within that period of time would result in that lawyer still being liable for the bill balance in question. That legal position is harder to defend, but certainly will result in a greater likelihood that the healthcare provider will be notified when there is a lawyer change on a case, so they can try to get a new LOP with the new attorney, who does not really have to honor the LOP from the prior attorney since he was not a party to that previous agreement.

Other beneficial terms for a medical professional's LOP would include specifically stating that depositions, expert witness time, record reviews, etc. are not covered by the LOP and need to be paid in advance by the lawyer. While this may seem obvious, it's always better to explicitly state something in an agreement rather than leave it open for argument at a later date. Finally, the medical professional's LOP can also require case status updates on a regular basis (60 days is standard). This is another level of protection by compelling the attorney to provide a case status (which also reminds the lawyer not to "forget" the medical professional when the case is over).

I recommend that medical professionals contact their peers to learn about the reputation of the lawyer who sends you his or her own LOP. Since lawyers are ethically and legally obligated to honor LOPs signed they sign, this shouldn't normally be an issue. But there are certain lawyers who do have a reputation for not honoring LOPs, so doing a little research and homework beforehand is the most important first step. But the smartest way for a healthcare provider to protect itself under a Letter of Protection situation is to have its own LOP which contains additional protections, and such an LOP can be drafted by many qualified lawyers in town. In the event that an attorney fails to honor a signed letter of protection, there are multiple remedies, including Florida Bar disciplinary proceedings, as well as bringing civil action against the attorney, who hopefully would be wise enough to seek a non-litigation resolution.

The Medical professionals can really do well in the LOP arena, but they need to make sure they know who they are dealing with, and that they take the above steps to make sure they are maximally protected. ☀

Gary S. Lesser is the Managing Partner of Lesser, Lesser, Landy & Smith, PLLC and is the current Chair of the Palm Beach County Bar Association Medical/Legal Committee.