

Letters of Protection- A Hobson's Choice for Patient, Doctor and Attorney
A Personal Injury Lawyer/ Medical Practice Owner's Perspective

A "Hobson's Choice" is a choice that appears to give you more than one option, but in fact only offers one option. So it is with the Letter of Protection (LOP). You, the patient, doctor or attorney, think you have the choice of whether or not to sign it, but you really don't. As a personal injury attorney, advocate and the owner of a medical practice, I understand this predicament all too well from all angles.

After an injury due to the fault of someone else, an injured person may not have money to pay for needed medical treatment. What's the hurt person- often with broken bones and other injuries- to do? Not get care? The solution, and often the only solution, is an LOP. An LOP is an agreement by a physician to render needed care in exchange of a promise be paid out of the proceeds of a law suit at the case's completion. As such, the physician is essentially extending credit to the patients with the promise of a future payment. Importantly, *if there is no recovery from the law suit, the patient is still responsible for the full amount of the treatment.* But as everyone knows but may not say, if the case is not successful the likelihood of the doctor getting paid from a low or middle income patient is remote.

From the patient's perspective, of course, they're forced to incur medical expenses and a debt that they didn't ask for- they were rear-ended in a collision, fell into a hidden hole, or otherwise harmed by the actions of another person. The patient doesn't want to sign away rights to is recovery, but he needs the medical care.

From the doctors' perspective, their life's work is motivated by a passion to make people well and alleviate suffering. They want to treat patients, and most of them don't like dealing with the day to day administrative tasks inherent to running a practice or pursuing collections. Don't get me wrong, doctors, like the rest of us, like *receiving* money, but they want to treat patients, get well paid, and go home. They don't want complications or having to wait for their money while insurance companies and Medicare are cutting their reimbursement rates and their already-high office expenses are rising. And so, the doctor must "choose" between (1) providing care at his own expense (supplies, cost of staff, time, etc.) with a promise (read "hope") of payment in the distant future from an inherently risky source (the case) or having to pursue an injured person for payment or (2) depriving the hurt patient of needed care. Again, to a compassionate doctor, it's a choice with no true option. The patient will get the care and the doctor may or may not get paid.

From the attorney's perspective, I do my best to resolve the case for as much as I can, which often leaves with less money to distribute than the doctor or patient would like. So, I call our client and explain why he, the person struck with lifelong injuries, is walking away with less than he thinks he's entitled to. Then, I pick up the same phone and explain to the doctor why he's only getting a portion of the fee he charged for the services he rendered in good faith. Neither is an easy call for me.

Unfortunately, the "decision" of whether to sign an LOP is in most cases a foregone conclusion, a *fait accompli*. And so we all, doctor, patient and attorney alike, pointlessly agonize over signing it when in truth it is a Hobson's Choice, a decision without a choice. Unless the patient

has health insurance or you know in your heart that the case won't generate enough money to pay the doctor, just sign the accursed LOP and move on.