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September 21, 1994

Re: Request for Ethics Opinion 94-15

Dear

You have requested an opinion from this Committee based upon the following facts:

FACTS

A person is injured in an accident. The injured person obtains medical treatment from a physician. The injured person hires an attorney to pursue his claim against the alleged tortfeasor. While this claim is pending, the attorney advises the injured person not to pay the physician's bill for services. This advice is based upon the expectation that the tortfeasor will be ultimately responsible.

Based upon these facts you have asked this Committee whether or not such action by an attorney is appropriate under the South Dakota Rules of Professional Conduct.

OPINION

It is the opinion of this Committee that the South Dakota Rules of Professional Conduct do not contain an express prohibition against an attorney advising his client not to pay a physician's bill. Neither Rule 2.1 or 4.4 appear to be directed toward this situation.

While this Committee cannot find any specific Rule of Professional Conduct prohibiting such advice, this Committee seriously questions the propriety of such advice. An attorney rendering such advice certainly subjects the client to attempts by the provider for collection including further litigation.

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Additionally, such advice subjects the attorney and the Bar as a whole to criticism by the health service community and society in general. As is stated in the Preamble to the South Dakota Rules of Professional Conduct some issues "must be resolved through the exercise of sensitive, professional and moral judgment guided by the basic principles underlying the rules..." This Committee questions whether or not such advice would be consistent with the Preamble or in the client's best interest.

Thank you.

Sincerely,

Michael S. McKnight, Chairman
Ethics Committee