

# BOYCE, MURPHY, McDOWELL & GREENFIELD

ATTORNEYS AT LAW

Jeremiah D. Murphy  
Russell R. Greenfield  
David J. Vickers  
Gary J. Pashby  
Vance R.C. Goldammer  
Thomas J. Welk  
Terry N. Prendergast  
James E. McMahon  
Douglas J. Hajek  
Michael S. McKnight  
Gregg S. Greenfield  
Tamara A. Wilka  
Roger A. Sudbeck

Norwest Center, Suite 600  
101 North Phillips Avenue  
P.O. Box 5015  
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424  
Telecopier 605 334-0618

Of Counsel  
John R. McDowell

J.W. Boyce (1884-1915)  
John S. Murphy (1924-1966)

May 18, 1994

Re: Request for Ethics Opinion 94-4

Dear

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

## FACTS

You were retained by Client to represent him in regard to personal injuries and property damages suffered by Client in a motorcycle/motor vehicle collision. For treatment of his injuries, Client incurred medical expenses totalling \$23,576.90. Defendant's insurance company contested liability in this matter claiming that Client was also at fault in causing this collision, but after extensive work, insurance company tendered their policy limits of \$25,000, and \$4,500 for property loss. There is no underinsured motorist coverage available.

During the course of your representation of Client, many of Client's medical providers would periodically phone your office and speak with your secretary. Your secretary would inform the medical care providers of the status of the case and would indicate that Client could not pay the medical bills until the case was settled.

Following settlement of Client's claim for the limits of the liability coverage, Client requested that you contact his medical care providers to request that they agree to a reduction in their bills. You further indicate that some medical care providers have agreed to a reduction in their bill. Subsequently, Client informed you that he did not want you to pay his medical care providers out of the proceeds of the settlement. Client instructed you to deduct your fee and costs and then submit the remaining proceeds directly to Client. Client also informed you that he objected to two of the

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bills from the medical care providers because he was unhappy with the medical care provided to him.

When this claim was submitted to the insurance company, you listed the Client's medical bills and made a demand for their payment. You are now concerned that if the medical providers are not paid out of the proceeds of the settlement that they will attempt to collect directly from the insurance carrier who, in turn, may attempt to pursue you or Client for payment of those bills.

Based upon these facts, you have requested an opinion from this Committee as to whether or not you are obligated under the Rules of Professional Conduct to distribute portions of the proceeds of this settlement to your Client's medical care providers.

#### OPINION

Rule 1.15(b) provides:

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

The Comment to Rule 1.15 provides in pertinent part:

Third-parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly, may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third-party.

In the absence of a representation (either verbal or written) to a medical care provider which expressly or implicitly provides that your office will see that they are paid out of the settlement proceeds or a lien or other statutory right, a lawyer has no obligation to protect the interests of a medical care provider. In this case, however, representations were made to the medical care providers periodically by your office. It is unclear from your request precisely what was said to the medical care providers.

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Whether or not the representations made by your office rise to the level of creating a legal duty to protect the medical care provider's interest is a question of substantive law that this Committee cannot decide. If those representations rise to such a level, this Committee is of the opinion that you have an obligation under the Rules to protect the interests of the medical care providers against wrongful interference by Client. See, Comment to Rule 1.15. To fulfill that obligation, you must retain all of the funds in your trust account (including that portion attributable to your fee and costs) until all disputes concerning entitlement to these funds have been resolved. This Committee does not arbitrate or resolve such disputes. You should also be cautioned that under the Comment to Rule 1.15, you should not unilaterally assume to arbitrate such disputes. Civil remedies such as a declaratory judgment action, interpleader, etc. would be appropriate for the resolution of such disputes.

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight, Chairman  
Ethics Committee