



Committee on Professional Ethics

Opinion #288 - 4/27/73 (6-73)

Topic: Champerty.
Assumption of responsibility
for medical and litigation
expenses.

Digest: A lawyer may advance or
guarantee payment to medical
experts for reports and
consultations for use in
litigation, provided client
is to reimburse lawyer;
however, he may not pay or
guarantee a physician's
charge for medical treat-
ment.

Code: EC 5-8
DR 5-103(B)

QUESTION

1. When is it proper for a lawyer to advance or guarantee the payment of a fee charged by a physician for services to a patient-client?
2. What is lawyer's duty to a physician where there is no advance or guarantee?

OPINION

DR 5-103(B) prohibits a lawyer while representing a client in connection with litigation from advancing or guaranteeing financial assistance to his client except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and the costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses. See also, EC 5-8.

Within this confine, it has been held that a lawyer may employ experts, including medical experts, and assume personal responsibility for the payment of such experts, subject to reimbursement from the client. N.Y. State 37(a) (1968); ABA Inf. 664(1963); ABA Inf. 1005 (1967).

However, a distinction is made between a physician's services in treating a patient-client's injuries and a physician's assistance in connection with the prosecution of a pending claim or matter to be litigated. A lawyer may not advance or guarantee payment of fees for medical treatment of his client, whether or not his client agrees ultimately to reimburse him. N.Y. State 37(a) (1968).

With respect to a lawyer's obligation to his client's physician,

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attention is called to the "Standards of Practice for Doctors and Lawyers" (rev. ed. 1968), approved by both the Medical Society of the State of New York and the New York State Bar Association, which, on page 18, paragraph G, state that "If a lawyer does not advance the payment, he should use his good offices to see that the charges are paid by his client."

This does not mean that a lawyer who did not guarantee payment or agree to pay medical litigation expenses must forsake his client and represent the physician where proper charges are not paid. "While professional courtesy might indicate that the lawyer endeavor to persuade the client to pay such bills, it certainly does not go to the extent of being a professional responsibility." ABA Inf. 1005(1967). The lawyer cannot furnish a doctor-creditor of a client with any more information concerning his client's funds than he could furnish the wine merchant or any other creditor. ABA 163(1936).

Clearly, a lawyer should not use his "good offices" to see that a physician's fee, which is unreasonable, is paid. A bar association is not in a position to set forth a standard of conduct for physicians nor fix fees for a report. However, "Standards of Practice", supra, on page 17, states that "the doctor's charge, if any, for the written report....shall be a reasonable one based on the time involved in preparing the report and on any other factors which govern the doctor's fee to the patient."
