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# Idaho's Medical Lien Statute

**Insight — 2/2/2015**

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Idaho law allows hospitals and other healthcare providers to file a lien to help secure payment of treatment to persons who have been involved in an accident or who might otherwise be entitled to recovery from a third party for injuries the patient suffers. The lien statute is, however, limited in scope and must be strictly followed to enforce the lien.

**Medical Liens.** Idaho's medical lien statutes allow hospitals,<sup>1</sup> nursing care providers,<sup>2</sup> and other entities licensed to practice medicine<sup>3</sup> to file a lien "for the reasonable charges for ... care, treatment and maintenance of an injured person, ... or to the legal representative of such person, on account of injuries" caused by another person.<sup>4</sup> Significantly, the lien statutes do not apply to charges for care rendered to all patients; instead, they only apply to charges for care rendered to patients who were injured by the actions of another person (e.g., auto accidents, personal injury cases, assault and battery, etc.). Also, the lien statutes do not enable the healthcare provider to file or enforce a lien against the patient's own property; instead, the lien gives the healthcare provider a right to recover against the person or entity causing the patient's injuries (the "tortfeasor"). The net effect is that the tortfeasor (or their insurer) will want to ensure that the provider is paid as part of any personal injury settlement, or the tortfeasor may remain directly liable to the provider for the cost of the provider's care. The lien does not apply to accidents or injuries that are covered by workers compensation.<sup>5</sup>

Perfecting the Lien. To perfect the lien (*i.e.*, to make it enforceable), the healthcare provider must do the following:

**1. File the Lien within 90 Days.** . Before or within ninety (90) days of discharge or the last date the provider rendered care for the injury, the healthcare provider must file a "Claim of Lien" with the county recorder for the county where the hospital or nursing facility is located or the healthcare provider rendered his or her services. The Claim of Lien must contain the following information:

1. The name and address of the patient as it appears on the healthcare provider's records.
2. The name and address of the healthcare provider.
3. The name and address of the representative of the healthcare provider who is filing the statement.
4. The dates of admission and discharge or services rendered to the patient.
5. The amount claimed to be due for the patient's care.

6. To the best of the healthcare provider's knowledge, the names and addresses of all entities claimed by the patient to be liable for damages arising from the patient's injuries. Although not expressly required, it is also a good idea to include the name of the liable party's insurance carrier, if known.<sup>6</sup>

**2. Send Notice.** Within one (1) day after filing the Claim of Lien, the healthcare provider must mail copies of the Claim of Lien, postage prepaid, to the persons who are claimed to be liable for the injuries (i.e., the tortfeasor). The Claim of Lien must be mailed to the address listed in the Claim of Lien.<sup>7</sup> Although not required, the healthcare provider should also mail a copy of the Claim of Lien to the liable party's insurer and lawyer, if known, to ensure they have notice of the lien and will take steps to pay the lien directly or out of settlement proceeds. Once properly filed, the Claim of Lien is deemed to provide notice of the lien to all persons who are liable for the patient's injuries whether the liable party is named in the Claim of Lien or not. The county recorder is charged with recording the Claim of Lien in the county records.<sup>8</sup>

**Enforcing the Lien.** Once the Claim of Lien is properly filed, the healthcare provider has a claim against the liable party (not the patient) for the amount of the lien against any money that the liable party may owe the patient for the injuries. If the patient sues or otherwise asserts claims against the liable party, the liable party and/or his insurer must ensure that the healthcare provider is paid from any settlement or judgment proceeds or obtain the healthcare provider's release as part of the settlement with the patient. If they do not, or if the patient declines to pursue his claims against the liable party, the healthcare provider may sue the liable party to recover the amount of its lien plus costs and attorneys' fees in pursuing the lien. *See St. Alphonsus Reg. Med. Ctr. v. Bannon*, 128 Idaho 45, 44 (1995). No release, waiver, or judgment by the injured patient is effective against the healthcare provider unless the healthcare provider joins in or executes a release of its lien; accordingly, the healthcare provider may collect against the liable party even if the liable party has already paid the patient. The healthcare provider has two years from the time the Claim of Lien was filed to bring a suit to enforce the lien.<sup>9</sup>

**Patient's Attempts to Reduce the Lien.** Sometimes, the patient or their lawyer will try to convince the healthcare provider to pay the lawyer or reduce its lien amount by one-third or more to compensate the patient or lawyer for his or her time and effort in recovering the settlement or payment from the liable party, which recovery benefits the healthcare provider by creating a "common fund" from which the lien may be collected. However, the Idaho Supreme Court has expressly held that this "common fund doctrine" does not apply to medical liens, and therefore, the healthcare provider is not required to agree to such demands. *White v. St. Alphonsus Reg. Med. Ctr.*, 136 Idaho 238, 242-44 (2001). Similarly, if the patient is a participant in a third party payer program that limits the amount of fees a provider may charge to participants in the program, a patient's lawyer will sometimes argue that the healthcare provider's lien cannot exceed the contractual amount under the payer program. However, the healthcare provider's lien and resulting claim is against the liable party, not against the patient or the patient's payer program. Absent an express

agreement or an Idaho court decision to the contrary, the healthcare provider is not required to reduce its lien amount to match contractual adjustments. Providers may need to check their payer contracts to ensure they do not limit a provider's right to assert usual rates through a lien.

**Patient's Continued Liability.** Although the medical lien does not apply to the patient's property, the lien statute does not erase the patient's contractual or equitable responsibility to pay for the care rendered by the provider. The healthcare provider retains its right to collect for its services directly from the patient or their insurer; however, by doing so, the healthcare provider may be bound by contractual adjustments that might not otherwise apply if the provider pursues its lien against the liable party. Accordingly, the provider may want to carefully consider its potential to recover under the lien statute before submitting claims to the patient's payer.

**Other Liens.** In those cases where the medical lien statutes do not apply (e.g., if there is no personal injury claim involved), healthcare providers may still obtain a judgment or consensual lien that helps secure payment from the insured.

**1. Judgment Lien.** If the patient fails to pay amounts due, the healthcare provider may sue the patient for breach of contract and unjust enrichment. If the claim is worth less than \$5000, the provider may file a small claims court action. If the provider prevails, the provider may obtain a judgment lien which can be used to execute against the patient's property or garnish the patient's financial accounts or paychecks. The provider may also be able to recover its reasonable costs and attorneys' fees in some cases.

**2. Stipulated Judgment and Covenant Not to Execute.** Instead of filing a lawsuit against the patient, the healthcare provider and patient may enter an agreement whereby the patient stipulates to a judgment for the amount due, but the provider executes a covenant not to execute on the judgment so long as the patient makes payments according to terms agreed by the parties. The benefit to this process is that it allows the provider to obtain an expedited, stipulated judgment against the patient upon which the provider may execute if the patient fails to comply with payment terms without having to go through the time or expense of a lawsuit.

**3. Consensual Lien.** . In lieu of judicial liens, the healthcare provider may require that the patient execute a promissory note secured by a deed of trust or other form of security that allows the provider to foreclose the security interest if the patient fails to pay the debt. This gives the provider a source for payment without having to pursue formal litigation to obtain a judgment.

**Conclusion.** The medical lien statute provides a valuable source of security to providers rendering care to patients in personal injury cases; however, the provider must strictly comply with the lien statute's requirements. Other options are available to help secure providers' right to recovery in other situations.

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<sup>1</sup>Idaho Code §§ 45-701 *et seq.*

<sup>2</sup>*Id.* at § 45-704A.

<sup>3</sup>*Id.* at § 45-704B.

<sup>4</sup>*Id.* at § 45-701.

<sup>5</sup>*Id.* at § 45-705.

<sup>6</sup>*Id.* at § 45-702; *see also* §§ 45-704A and 45-704B.

<sup>7</sup>*Id.* at § 45-702; *see also* §§ 45-704A and 45-704B.

<sup>8</sup>*Id.* at § 45-703.

<sup>9</sup>*Id.* at § 45-704.

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