ADVISORY ETHICS OPINION 95-01

SYNOPSIS:

In the absence of an enforceable lien, properly perfected, or in agreement consented to by the client, an attorney does not violate the Code of Professional Responsibility by failing to forward funds obtained in settlement of litigation to parties who provided medical care to the plaintiff.

FACTS:

A Vermont attorney represented a plaintiff in a personal injury case and following settlement, paid all claims to those health care providers who had filed written claims for compensation. The requesting attorney undertook to complete the matter for another attorney not now practicing, whose file contained correspondence with an out-of-state chiropractor indicating that he had treated the plaintiff. Nothing in the file made any claim for compensation from the proceeds of the settlement and, in fact, correspondence to the chiropractor from previous attorney contained the following paragraph:

> "If you have not already done so, please forward to me a complete copy of your medical records. I need to have the medical bills, whether paid or not, by any insurance carrier."

Subsequent to disbursement of all of the funds to the claimants and the client, an attorney for the chiropractor now maintains that the chiropractor "also had a lien on the client's file." The file contains no correspondence from the chiropractor that would indicate the desire for or an expectation of payment from the proceeds of the case. the requesting attorney subsequently received a document located in the chiropractor's file which contains the usual authorization to release medical information, a request for payment of benefits to provider of care directed to (blank) insurance company, and an Attorney Representation and Protection of Balance, all of which were signed by the client but which do not identify any physician, insurance company, or responsible attorney.

Attorney's request to the chiropractor's out-of-state attorney for additional proof that a proper claim had been made and supplied to attorney's predecessor has not met with any response.

OPINION:

It is the committee's opinion that the attorney has not violated any ethical consideration or disciplinary rule in making payments to known claimants and to the client. Obviously, attorneys are bound by their representations and, if the original attorney handling the case had represented to the chiropractor, or led the chiropractor to believe, that he would make reimbursement, then he must perform in accordance with those representations. Absent an agreement on the attorney's part, however, there is no violation of ethical considerations by failing to forward funds to such a provider of medical care. Our consideration is colored by the substantive law of Vermont by which providers of medical care, other than hospitals, do not customarily become entitled to "liens" on the proceeds of any third-party recovery.

CONCLUSION:

The requesting attorney was under no obligation to see the payment of any obligation of the client to the chiropractor under the circumstances recited above. An attorney has no duty, other than to avoid misrepresentation, to one not his client.[1]

[1] See DR 7-102 and Ethics Opinion No. 80-1 issued by the Alaska Bar Association.