



MICHIGAN ASSOCIATION OF CHIROPRACTORS

## **Important News for Chiropractors Providing Care for Auto No-Fault Patients!**

### *Moving Forward After the Troubling “Covenant” Decision*

By: Leslie Kohn, Esq.  
Michigan Auto No-Fault Attorney  
MAC Member Benefits Attorney

*Disclaimer: This article is information-only and does not constitute legal advice regarding any specific matter or situation. Legal advice may be given only on the basis of specific facts relayed by a client to an attorney.*

*In the June edition of the eJournal, we told you about a recent Michigan Supreme Court decision that prohibits medical providers from suing no-fault insurance companies on behalf of auto accident patients for payment of services rendered. This troubling decision pits patients against providers when insurers refuse to pay and marks a radical departure from more than 20 years of case law from the Michigan Court of Appeals, who repeatedly held that healthcare providers had a statutory cause of action against no-fault insurers.*

*Unfortunately, the decision begs more questions than it answers. The Court offered little or no guidance on critical issues surrounding the implementation of their decision. The MAC is working with noted auto no-fault legal expert and MAC member benefit attorney Leslie Kohn on strategies chiropractors who have lawsuits against auto no-fault companies for unpaid patient bills can use moving forward. Below is an article from Attorney Kohn on this important matter.*



On May 25, 2017, the Michigan Supreme Court issued a published Opinion, *Covenant Medical Center, Inc. v State Farm Mutual Automobile Insurance Company*, No. 152758, 2017 Mich. LEXIS 971 (May 25, 2017). This decision must be understood by those chiropractors treating automobile accident injury patients seeking payment of charges from no-fault carriers.

Prior to *Covenant, supra*, chiropractors were able to retain their own attorney and file their own lawsuit against a no-fault insurer in a District or Circuit Court to secure payment of outstanding charges for treatment rendered to the patient/insured. In *Covenant, supra*, the Michigan Supreme Court reversed decades of consistent, well settled precedential

Court of Appeals case law which entitled healthcare providers to litigate an independent direct cause of action against a no-fault insurer to recover no-fault (medical expenses) benefits. The Michigan Supreme Court declared that healthcare providers do not possess a statutory (premised upon language in the No-Fault Act) cause of action against a no-fault insurer to recover allowable expenses incurred by the insured patient.

## **CHIROPRACTIC RESPONSES TO THE COVENANT DECISION**

### **1. Secure a Signed Assignment from the Patient**

In Footnote 40 of the *Covenant, supra*, decision the Michigan Supreme Court afforded healthcare providers with a potential alternative legal basis upon which to sue the no-fault insurance carrier and declared that:

*“...Moreover, our conclusion today is not intended to alter an insured’s ability to **assign** his or her right to past or presently due benefits to a healthcare provider. See MCL 500.3143...” (Emphasis added.)*

The author will provide, immediately upon request, two sample Assignments. Once the chiropractor possesses the executed Assignment, the doctor will be able to initiate litigation against the no-fault carrier or continue to litigate against the no-fault carrier in an already existing provider lawsuit.

This approach seems to be the most common method of protecting the chiropractor’s interest. Unfortunately, the validity/enforceability of these Assignments will be challenged.

The no-fault insurers may or may not recognize these Assignments as binding. Many commercial insurance policies, see Geico, Progressive, Auto-Owners, Allstate, Titan, Farm Bureau, etc., contain Anti-Assignment clauses. The Geico policy language, for example, specified that:

*“SECTION V-GENERAL CONDITIONS  
§4-ASSIGNMENT  
Your rights and duties under this policy may not be assigned  
without our written consent.”*

Unless and until a Court declares that the Assignment is unenforceable as violating the terms and conditions of the insurance contract, securing a signed Assignment from your patient may be a viable short-term remedy, since once signed, the doctor can litigate directly against the no-fault insurer.

The long-term consequences may be devastating for the patient/insured. If a Court later decides that the Assignment violated the insurance contract, then the Court could declare

the entire policy void as of the date it was written. Your patient therefore would be deprived of a lifetime medical expense benefits and the right to sue the at-fault driver/owner for noneconomic (pain and suffering) benefits.

## **2. Assert an Enforceable Lien Against the Patient's Lawsuit(s)**

The *Covenant, supra*, decision does not deprive the patient of the right to sue the no-fault insurance carrier seeking payment of the outstanding charges owed to the chiropractor. This author, immediately upon request, will provide a sample enforceable Lien. Once receipt of this Lien is acknowledged by the attorney representing your patient, in a lawsuit currently pending or pre-suit, that attorney must protect the chiropractor's claims for payment of outstanding charges and pay those expenses from any settlement, judgment, verdict, etc. Should that attorney ignore or otherwise violate the terms and conditions of the Lien, the chiropractor would be entitled to sue the patient's attorney to collect payment of the amount owed.

## **3. Sue the Patient for Payment of the Charges Denied by the No-Fault Carrier**

This author obviously does not recommend this approach, as it destroys the doctor-patient relationship, discourages care (patient refusing treatment to avoid exposure to an increasing outstanding balance) when continued care is necessary, etc.

In a lawsuit brought by the chiropractor against the patient, the no-fault insurer is arguably required to provide the insured with complete protection from economic loss for benefits provided under person protection insurance. No-fault carriers must act at all times to assure that the insured patient is not exposed to harassment, dunning, disparagement of credit, or lawsuit as a result of a dispute between the healthcare provider and the insurer. Thus, if the chiropractor sues the patient because the no-fault carrier has denied payment, that patient might end up being represented by an attorney retained by that no-fault carrier. The treating chiropractor would not want the no-fault carrier to be aligned with the patient both against the provider.

## **MOVING FORWARD**

Since the patient's right to litigate against the no-fault carrier and seek payment of denied/outstanding charges owed to the chiropractor is not at all affected by the *Covenant, supra*, decision, this author believes that the most efficient remedy is for the chiropractor to make certain that the patient has, at the outset, retained a qualified/experienced attorney. While the no-fault carrier is voluntarily paying chiropractic expenses, that lawyer is merely behind the scenes (not being paid any attorney fees) advising and assuring that all no-fault benefits are being paid by the carrier timely and in the correct amounts. Should the no-fault insurer ever deny paying chiropractic expenses, that patient's lawyer, who has always been involved, will then be able to promptly file a lawsuit naming the patient as the Plaintiff in the appropriate court

alleging wrongful termination and seeking payment of no-fault (chiropractic expenses) benefits.

*Disclaimer from the Author: The contents of this article are the opinions of this author only. Other attorneys may communicate advice that is contradictory. The legal community has not yet reached consensus on the only or best response to the Covenant, supra, decision.*

*Leslie Kohn is an attorney who provides experienced legal representation for Michigan doctors of chiropractic. He serves as the MAC member benefit attorney and is known for his expertise in all matters pertaining to auto no-fault injury claims and his successful advocacy in many areas on behalf of treating chiropractors and their patients. His firm is located in Southfield.*