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Creditors' Rights - Physicians' Liens on Patients' Tort Claim

Clayton R. Smalley

University of Michigan Law School

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RECENT LEGISLATION

CREDITORS' RIGHTS—PHYSICIANS' LIENS ON PATIENTS' TORT CLAIMS—A recent Illinois statute creates a lien in favor of licensed physicians for their reasonable charges for treating persons injured by the negligent or wrongful act of another. The lien attaches to all claims or causes of action of the injured person against the person causing the injury, whether settled by litigation or by settlement. The maximum amount recoverable under the lien is one-third of the sum paid or due to the injured party, and the lien is expressly made to survive his death. The physician must serve notice of his assertion of the lien on both the injured party and the person liable for the injury. On ten-days' written notice, any party to the action may have access to the physician's records concerning his treatment of the injured party. The lien is made inferior to attorneys' liens, does not apply at all in workmen's compensation cases, and may be enforced in the courts of the state. *Ill. Rev. Stat.* (1959) c. 82, §§101.1-101.6.¹

Although doctors are similar to lawyers in that the peculiar nature of their profession often requires them to render services regardless of their client's inability to pay, the common law never favored the medical profession with the sort of protection afforded attorneys in their judgment lien.² The claims of the medical profession for services rendered remained almost completely unsecured until the 1930's. When legislative aid came in that decade — perhaps in large part due to a combination of widespread financial irresponsibility and rising automobile injuries — it came primarily in favor of hospitals rather than private practitioners. This trend has continued until the present time.³ As a result, while the District of Columbia and thirty of the fifty states now have lien legislation in favor of hospitals,⁴ only nine of these extend the acts to include physicians.⁵ Although naturally

¹ Charity hospitals in Illinois have been accorded an almost identical lien since 1939. *Ill. Rev. Stat.* (1959) c. 82, §§97-101.

² *Albee v. King*, 17 N.J. Misc. 180, 7 A. (2d) 291 (1939).

³ In 1930 only one state (Nebraska) had such legislation; by 1940 twenty jurisdictions had passed lien acts; by 1950 the number had risen to 24; at present the number stands at 31 (including the District of Columbia). The acts of Alaska and Massachusetts were first passed in 1959.

⁴ Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, Texas, Virginia, and Washington. An interesting possible explanation for the absence of similar legislation in Pennsylvania is the fact that an act giving attorneys in that state a judgment lien was declared unconstitutional as special legislation in *Laplacca v. Philadelphia Rapid Transit Co.*, 68 Pa. Super. 208 (1917), *affd.* 265 Pa. 304, 108 A. 612 (1919). See note, 68 *UNIV. PA. L. REV.* 277 (1920).

⁵ Arkansas, Hawaii, Illinois, Montana, Nebraska, New Jersey, North Carolina, Virginia, and Washington. A proposal to extend the benefits of the New York Hospital Lien Act [32 N.Y. Consol. Laws (McKinney, 1940; Supp. 1959) §189] to physicians was defeated in the New York legislature on March 29, 1949. See 1949 N.Y. Legis. Index, Senate Intro. No. 2045, Senate Print No. 2253. Nurses are given a lien in the statutes of Alaska, Arkansas, Montana, Nebraska, North Carolina, Virginia, and Washington. Dentists are included in

differing as to detailed provisions, the statutes are remarkably similar in their basic approach and most important provisions. The judicial gloss which they have acquired in the past thirty years may therefore profitably be referred to in appraising the newest Illinois version. The right of action created by these statutes in favor of the lienholder is clearly not against the injured patient, but rather against the person (or corporation) causing the injuries.⁶ In some ways it is analogous to the remedy provided by garnishment laws,⁷ or to an assignment by the injured party to the lienholder of at least a portion of his cause of action,⁸ or to a subrogation of the lienholder to the right of action against the tortfeasor.⁹ Actually, of course, it is none of these; rather, like other statutory liens, it is a completely new remedy created where none existed before. Courts have differed widely concerning the type of construction which this sort of legislation should receive. Some say the statutes are remedial and therefore to be liberally construed.¹⁰ Others regard the acts as in derogation of the common law and therefore to be strictly interpreted.¹¹ It would seem that this split of authority reflects more properly a difference in judicial attitudes toward the broadening of creditors' remedies than differing concepts of the actual nature of the rights created. In any case, these differing reactions may be either explicitly or implicitly at the root of a particular court's decision on such questions as whether the statute is to operate retroactively,¹² how strictly the statutory requirements as to notice must be followed in order to perfect the lien,¹³ or whether the lien will attach when the injured party

the acts of Hawaii, New Jersey, and North Carolina. The lien in Connecticut (which attaches only to proceeds of the tortfeasor's insurance) extends to ambulance operators. A statute giving a lien to hospitals does not impliedly include the physicians employed by the hospital. *Glazer v. Department of Hospitals of New York City*, 2 Misc. (2d) 207, 155 N.Y.S. (2d) 414 (1956).

⁶ *Buchanan v. Beirne Lumber Co.*, 197 Ark. 635, 124 S.W. (2d) 813 (1939); *Hospital Authority of City of Augusta v. Boyd*, 96 Ga. App. 705, 101 S.E. (2d) 207 (1957).

⁷ *Hospital Authority of City of Augusta v. Boyd*, note 6 supra.

⁸ *Albee v. King*, note 2 supra. At common law rights of action for personal injury were not assignable. See the interesting discussions in *Richard v. National Transport Co.*, 158 Misc. 324, 285 N.Y.S. 870 (1936), and *Glazer v. Department of Hospitals of New York City*, note 5 supra.

⁹ La. Rev. Stat. (1950) §§46.8-46.15, instead of giving a lien, provides that the state's charity hospitals will be subrogated to their patients' tort claims.

¹⁰ *Buchanan v. Beirne Lumber Co.*, note 6 supra; *Groth v. City of New York*, 183 Misc. 1026, 54 N.Y.S. (2d) 534 (1944), app. dismissed 75 N.Y.S. (2d) 523 (1947).

¹¹ *Ellington v. Bradford*, 242 N.C. 159, 86 S.E. (2d) 925 (1955); *Layton v. Home Indemnity Co.*, 9 Wash. (2d) 25, 113 P. (2d) 538 (1941).

¹² Holding statute to operate prospectively only: *Heights Hospital, Inc. v. Patterson*, (Tex. 1954) 269 S.W. (2d) 810; *Layton v. Home Indemnity Co.*, note 11 supra.

¹³ Compare *Layton v. Home Indemnity Co.*, note 11 supra, and *Groth v. City of New York*, note 10 supra (lien allowed despite failure strictly to comply with notice provisions), with *Livingston v. Zimmerman*, 5 App. Div. (2d) 812, 170 N.Y.S. (2d) 103 (1958), and *Melichar v. Michelson*, 256 App. Div. 962, 9 N.Y.S. (2d) 1016 (1939), app. dismissed 281 N.Y. 665, 22 N.E. (2d) 488 (1939), motion granted, 281 N.Y. 671, 22 N.E. (2d) 868 (1939) (lien denied because of failure to comply with notice provisions).

is an indigent,¹⁴ a married woman,¹⁵ or a minor.¹⁶ Since there appears to have been as yet no judicial construction of the Illinois hospital lien act¹⁷ or of its new counterpart in favor of physicians, it cannot be stated with assurance whether the Illinois courts will choose the strict or the liberal approach to the statutes. Perhaps a strict construction is more probable, however, in view of a long line of Illinois decisions interpreting the Illinois attorneys' lien act¹⁸ strictly, as being in derogation of the common law.¹⁹ Such a construction would be unfortunate when applied to creditors' remedies in favor of the medical profession, in view of the special degree of public benefit involved in its services and the obligation imposed by its code of ethics never to refuse treatment because of the patient's inability to pay. That statutes in derogation of the common law are to be strictly construed is not, after all, a maxim of inevitable application.²⁰ It is rather, like other canons of statutory construction, a rule of thumb expressing the probable intent of the legislature in the absence of other evidence to the contrary. It is to be hoped that when they consider the hospital and physicians' lien statutes, the Illinois courts will not immediately invoke strict construction merely by analogy to the attorneys' lien laws, without first considering whether there is not persuasive evidence that in the case of the medical profession a more liberal approach was intended by the legislature.

Clayton R. Smalley

¹⁴ *Garner v. City of Houston*, (Tex. 1959) 323 S.W. (2d) 659 (lien did not apply).

¹⁵ *Dawson v. Hospital Authority of Augusta*, 98 Ga. App. 792, 106 S.E. (2d) 807 (1958) (lien applied).

¹⁶ Compare *Abbondola v. Kawecki*, 177 Misc. 122, 29 N.Y.S. (2d) 530 (1941) (lien did not apply), with *Ferguson v. Ruppert*, 166 Misc. 530, 3 N.Y.S. (2d) 9 (1938) (lien applied). N.C. Gen. Stat. (1950; Supp. 1959) §44-49 provides: ". . . Where damages are recovered for and in behalf of minors or persons non compos mentis, such liens shall attach to the sum recovered as fully and effectively as if said person were sui juris." See *Ellington v. Bradford*, note 11 *supra*.

¹⁷ Ill. Rev. Stat. (1959) c. 82, §§97-101.

¹⁸ Ill. Rev. Stat. (1959) c. 13, §14.

¹⁹ *Mason v. Papadopoulos*, 12 Ill. App. (2d) 140, 138 N.E. (2d) 821 (1956); *De Parcq v. Gardner*, 336 Ill. App. 144, 83 N.E. (2d) 32 (1948); *Cazalet v. Cazalet*, 322 Ill. App. 105, 54 N.E. (2d) 61 (1944); *Coyle v. Velie Motors Corp.*, 305 Ill. App. 135, 27 N.E. (2d) 60 (1940); *Mayer v. Yellow Cab. Co.*, 247 Ill. App. 42 (1927).

²⁰ The canon may be, and often is, made expressly inapplicable to particular statutes. E.g., Ill. Rev. Stat. (1959) c. 106½, §4(1) (Uniform Partnership Act).