

Ethics in Medical Lien Factoring

Factoring exists in other industries, and there the price of receivables depends on the creditworthiness of the account debtor. In the personal injury space, however, the price of medical liens depends on the merits of the legal case, or rather, the likelihood of the plaintiff's favorable recovery. Because the lawyer's close friend or loved one has more at stake on the lien than the attorney, the attorney may be tempted to share legal impressions, confidential information or other information about the merits of the case, in an effort to subtly suggest that the relative not discount the lien. Again, because of the way the attorney calculates contingency fees, the attorney's revenue is unaffected by the tip.

Ultimately, whether personal injury lawyers purchase medical liens directly, purchase them through an alter ego, own a passive interest in a factor or have a close personal relationship with someone who does, the risks of conflicts, collusion and disclosure are real. Lawyers should be particularly vigilant in recognizing these potentially problematic relationships, identifying their ethical risks, and taking steps to confront and resolve those risks. **NL**

1. See Standing Comm. on Ethics & Prof's Responsibility, Formal Op. 53 (2017).
2. See *In re Cellino*, 21 A.D.3d 229, 798 N.Y.S.2d 600 (2005), *reinstatement granted*, 37 A.D.3d 1206, 827 N.Y.S.2d 901 (2007).
3. See *id.*
4. See *id.*
5. See Nev. R. Prof'l Conduct R. 8.4(a).
6. See *In re Cellino*, 21 A.D.3d at 235, 798 N.Y.S.2d at 606.
7. See Formal Op. 53.
8. See *id.*
9. See Nev. R. Prof'l Conduct R. 1.7(a)(2).
10. See *id.* at cmt. 26.



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