

Virginia Personal Injury Playbook: What to Do and What to Avoid



Hey, I'm

BRIAN GLASS

And I actually take cases to trial (many "trial lawyers" don't)

What We'll Cover Today

- **How Insurance Works After a Car Crash**
(the mistake you can make that reduces your bill to zero)
- **Court System**
What really goes on in Court
- **Getting Paid & Protecting Yourself**
You didn't go to school to work for free

Any of this Sound Familiar?



Want More Patients



Not Getting Paid Quickly



Non-Complaint Patients



Embarrassment by Referral Relationship



Patient Settles Case and Never Pays



Being Asked to Reduce Bill



Headache of Insurance



Don't Like Dealing with Lawyers

Why I Give Presentations Like This



Personal Injury Attorney Group (...)



Bill Tonelli · 1h ·

Question for anyone practicing in Virginia — I have a client with a VA auto policy who was injured in a Florida crash. Her providers submitted their bills to medpay as usual, but instead of paying the providers directly (as is typical in FL), the carrier is sending the medpay checks to our office and making us the middleman. Is this common practice for VA policies? Would love to pick someone's brain on this. Thanks in advance!



2

2 comments



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Kash Ali

This is how we like to do it here in Virginia. All funds come to the attorney and then we can negotiate the medical bills down and pass on the savings to the client.

These extra funds often make the client happy and make up for shortcomings on the liability side.

We are also allowed to charge an administrative fee on medpay here in Virginia and DC.

If the money just goes straight to the medical providers, no one else would ever see a penny of it.

Like Reply



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Who Pays? And In What Order?

Sources of Payment After MVA

- **Health Insurance (Primary)**
- **MedPay or PIP**
- **Liability**
- **Uninsured/Underinsured**

VA Code 8.01-27.5

- **A "in-network" provider must submit the claim to health insurance to according to terms of service**
- **Failure to timely submit extinguishes your bill**
- **Knowingly failing to submit is a violation of Virginia Consumer Protection Act**

**Can you contract around
this statute via waiver?**

An in-network provider that provides health care services to a covered patient **shall submit its claim to the health insurer for the health care services in accordance with the terms of the applicable provider agreement or as permitted under applicable federal or state laws or regulations, provided that the covered patient provides the in-network provider with information required by the terms of the covered patient's health care policy's plan documents, including the information that is required to verify the individual's coverage under the health care policy, within not fewer than 21 business days before the deadline for the in-network provider to submit its claim to the health insurer as required by the terms of the provider agreement.**

If an in-network provider does not submit its claim to the health insurer in accordance with the requirements of this subsection, then (i) the covered **patient shall have no obligation to pay** for health care services for which the in-network provider was required to submit its claim, (ii) the in-network **provider shall not have the benefit of the liens** provided by §§ **8.01-66.2** and **8.01-66.9** with regard to health care services for which the in-network provider was required to submit its claim, and (iii) the **in-network provider shall be prohibited from recovering payment** for any of the health care services for which it was required to submit its claim from an insurer providing medical expense benefits to the covered patient under a policy of motor vehicle liability insurance pursuant to **§ 38.2-2201**, by exercising an assignment of the covered patient's rights to the medical expense benefits or by other means.

Virginia Consumer Protection Act Damages

- **Actual Damages or \$500, whichever is greater**
- **3X damages or \$1,000 if factfinder determines violation was willful (whichever is greater)**
- **Attorney's fees and court costs**

**Bottom Line: If you are in-
network, bill the health insurer**

(Or... get out of network)

Subrogation

Will There Be a Lien?

Definitely Owes \$\$

Medicare
Medicaid
Tricare
Federal Employees

Probably Owes \$\$

Works for Big Company

Does Not Owe

Exchange-purchased
plan
State or County
Employee

Sources of Payment After MVA

- Health Insurance (Primary)
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MedPay - Va Code 38.2-2201

- Pays the actual out-of-pocket cost.
- If patient has health insurance, MedPay pays what the health insurer paid + the co-pay
- If patient has no health insurance, MedPay pays the retail rate
- MedPay does not have to be repaid to auto insurer

Sources of MedPay

- **Policy Covering the Vehicle (covers all occupants)**
- **Policy Covering the Driver (covers all occupants)**
- **Policy Covering the Passenger (passenger only)**

All of these coverages "stack"

**If you take nothing else from
this... go home and review your
Assignment of Benefits Form**

It must include everything from 38.2-2201 or it is VOID

Required Notice on Your MedPay AOB

- **"Notice: automobile accident patients** If you have been in an automobile accident, you may be entitled to payment from your automobile insurance if you have medical expense benefits coverage.
- **By signing this assignment of benefits form** you are giving to your health care provider the right to receive some or all of that payment directly from your automobile insurance company.
- **If you have health insurance and your healthcare provider is in-network:** as long as you provide information necessary to verify your health insurance coverage the healthcare provider may only bill the amount you owe for any copayment, coinsurance, or deductibles to your automobile insurance and you may be entitled to any remainder of your automobile insurance benefit.
- **If you do not provide information necessary to verify your health insurance coverage, do not have health insurance, or your healthcare provider is not in your health insurer's provider network:** your health care provider may bill their full charges to your automobile insurance. You may want to consult your insurance agent or attorney before signing or initialing this form. You are not required to sign/initial this form to receive care."

Statutory Liens - 8.01-66.2

- Capped at \$750
- Created by sending written notice to tortfeasor, lawyer for the injured party, or the injured party.
8.01-66.5
- Noticeably absent - Insurance Company

**What if the client tells us not to pay
your lien after we've signed an AOR?**

Lawyers are not allowed to decide who has the right to the disputed funds. We must hold the funds in our trust account and interplead them if the dispute does not resolve.

Virginia Legal Ethics Opinion 1747

Rule 1.15 - Safekeeping Property

- **(b)(4) A lawyer shall promptly pay or deliver to the client or another as requested by such person the funds, securities or other properties in the possession of the lawyer that such person is entitled to receive; and**
- **(b)(5) A lawyer shall not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client, except as directed by a tribunal.**

**But if there is more than one
claim on a finite pool of money,
we can't decide who gets it.**

And there is almost always more than one claim...

Sources of Payment After MVA

- Health Insurance (Primary)
- MedPay or PIP
- Liability
- Uninsured/Underinsured

Liability Coverage

- **All Virginia policies renewing after 2025 have \$50,000/\$100,000 limits**
- **Sources - vehicle, driver, family members**
- **"Collateral Source" Rule**

Sources of Payment After MVA

- **Health Insurance (Primary)**
- **MedPay or PIP**
- **Liability**
- **Uninsured/Underinsured**

Uninsured/Underinsured Motorist Coverage

- All Virginia policies renewing in 2025 have \$50,000/\$100,000 in coverage
- By default, these "stack" on top of the liability... however you can elect to carry "alternative" coverage that doesn't
- Sources - Vehicle, driver, passenger, resident relatives (each of these "stack")

This means that from 2025 forward, you should have almost NO cases without adequate coverage

**A case with low liability limits can
be settled **before** pursuing UIM**

Ways Well-Meaning Chiropractors Hurt the Patient's Case

**Creation of a "new" file
for an existing patient**

**Sloppy notes, long notes,
auto-filled electronic notes**

How Long is Too Long to Treat?

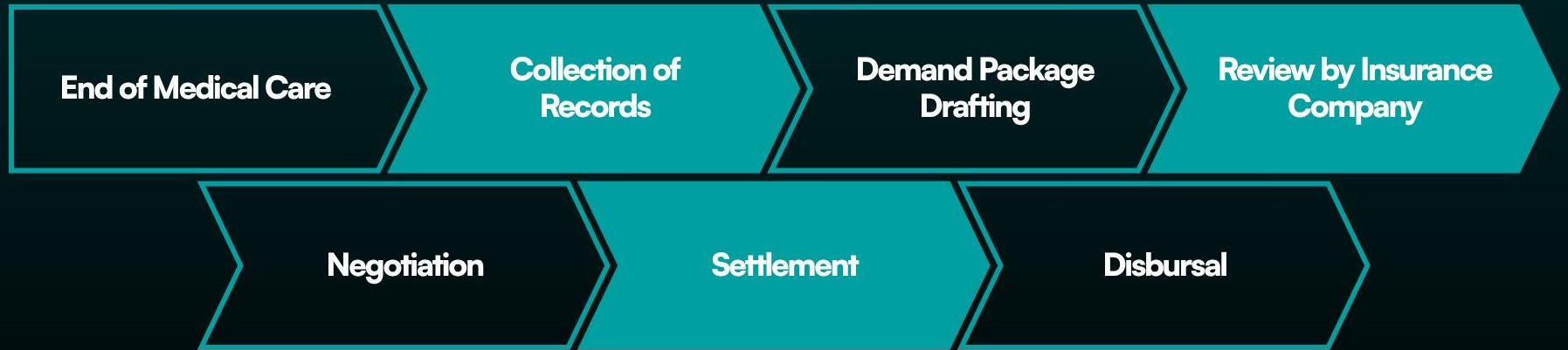
**What is a Reasonable
Charge Per Visit?**

"Practice of chiropractic" means the adjustment of the 24 movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy - Va Code 54.1-2900

Treating Joints, Heads, and Digits

Settlement Processes

Settlement Timelines



How is Pain and Suffering Evaluated?

What Keeps Cases From Settling and What Happens Next?

The Five Main Reasons Cases Don't Settle

**Limited Property
Damage**

Gaps in Care

**Prior Injuries to the
Same Part of the Body**

Liability Disputes

Someone is Being Unreasonable

Contributory Negligence

General District Court - Most Cases

- **\$50,000
Jurisdictional Limit**
- **Bills/Records
Admissible with
Affidavit**
- **Trial ~6-8 Months
from Date of Filing**
- **Judge-Only**
- **All Results are
Appealable**

Circuit Court

- **No Limit**
- **Bills Require Expert Testimony**
- **Records are Not Admissible**
- **You May be Deposed**
- **Trial ~12 Months from Date of Filing**
- **Case Heard by Jury**
- **Trial Lasts 2 Days**

How Lawyers Screw Chiropractors

And How to Protect Yourself

**Not telling you until
the end of the case
that the damage
looks like this**



**Not having good systems in place
to get a demand package out the
door in a timely manner when
you treated on a lien.**

Not Doing the Work with the Client to Maximize the Value of the Case (then telling you to take a reduction)



**Want to See Everything I
Send my Clients at the
Beginning of a Case?**



BenGlassLaw

Gouging You On Reductions

Criteria for Reduction

- **Credible risk that you will get less money after trial**
- **You'd like to be paid now and not wait for trial**
- **You are getting more money than the client**
- **There was no MedPay or Health Insurance**

Reduction Mistakes to Avoid

- Being the only one who reduces
- Reducing when your bill was paid-in-full by MedPay
- Reducing **after** a settlement has been reached

PERSONAL INJURY SETTLEMENT STATEMENT

Client [REDACTED]
[REDACTED]

SUMMARY

Total Settlement	\$58,000.00
Attorney Fee Percentage (33.33333%)	
Total Attorney's Fees	-\$19,333.33
Total Case Expenses	-\$188.54
Total Medical Expenses	-\$557.34
Total Liens	-\$5,124.43
Net Disbursement	=\$32,796.36

Case Expenses Breakdown

Company	Description	Amount
INOVA Physical Therapy	Medical records	\$63.90
Inova Orthopedics (Fairfax)	Medical records	\$44.46
INOVA Fairfax Hospital	Medical records	\$45.18
Ben Glass Law	Firm admin fee	\$35.00

Outstanding Medical Expenses

Provider	Balance Owed
Fairfax County Fire & Rescue	\$357.34
Inova Health System*	\$200.00

**Always ask for the
settlement statement
when you're asked for a
reduction**

Questions?

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