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May 16, 1979

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ATTORNEY GENERAL OPINION NO. 79-85

Betty A. Bomar, Acting Director
Crime Victims Reparations Board
503 Kansas Avenue
Topeka, Kansas

Re: State Boards, Commissions and Authorities--
Crime Victims Reparations Board--Awards,
Assignments and Liens

Synopsis: A hospital, doctor or medical clinic may not place a lien on a reparations award except as permitted by K.S.A. 1978 Supp. 74-7313(d); however, a hospital, medical center or doctor may take an assignment of a reparations award, but to the extent that the award is for a loss accruing in the future, such medical providers may only accept the assignment to the extent that "the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee." K.S.A. 1978 Supp. 74-7313(e).

* * *

Dear Ms. Bomar:

At the request of the Crime Victims Reparations Board, you have submitted questions arising under the Crime Victims Reparations Act (K.S.A. 1978 Supp. 74-7301 et seq.). Since both the concept and practice of crime victim reparations are of recent origin in Kansas, there are no Kansas cases bearing precisely on your inquiry. Therefore, of necessity, our response is predicated on our reading and interpretation of the pertinent statutes.

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You inquire if it is permissible for a hospital, doctor or medical center to take an assignment of benefits or file a lien against benefits which may be recovered under the Crime Victims Reparations Act. As to the latter issue of whether a lien may be placed on an award made pursuant to the Act, generally speaking, creditors' claims against any award are unenforceable. However, K.S.A. 1978 Supp. 74-7313(d) states the general rule and an exception for medical services providers as follows:

"An award shall not be subject to execution, attachment, garnishment or other process, except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that such creditor has provided products, services, accommodations the costs of which are included in the award." (Emphasis added.)

Therefore, only creditors who have provided products, services or accommodations and whose charges have been recognized by the Crime Victims Reparations Board in making the award to the claimant, are entitled to utilize legal process to enforce their claims against the award. Providers of medical products, services or accommodations whose costs were not included in the award may not enforce their claims against the award, although nothing is to prevent such providers from using legal process against other assets or income of the claimant, unless otherwise prohibited by law.

We next address the issue of the assignment of reparations awards. The Act itself does not expressly authorize or prohibit the assignment of reparations awards. Yet, had the legislature intended that no assignments were to be made by reparations recipients, it could have so specified, as it did in the Employment Security Law. See K.S.A. 1978 Supp. 44-718(c).

In addition, by creating a special limitation on the assignment of benefits for future losses, K.S.A. 1978 Supp. 74-7313 clearly implies the general assignability of reparations awards. Subsection (e) of that statute provides in part as follows:

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"Any assignment or agreement to assign any right to reparations for loss accruing in the future is unenforceable, except . . . an assignment of any right to reparations for allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee."

Thus, the assignment of benefits awarded to claimants for loss accruing in the future are unenforceable except in the two situations specified in K.S.A. 1978 Supp. 74-7313(e). In our view, no such proscription against the assignment of benefits based on future loss would have been necessary if assignments generally were not permitted.

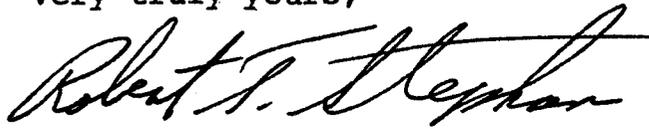
Therefore, without considering the validity of any particular assignment, it is our opinion that a hospital, medical center or doctor may take an assignment of a reparations award, but to the extent that the award is for a loss accruing in the future, such medical providers may accept the assignment only to the extent that "the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee." K.S.A. 1978 Supp. 74-7313(e). However, such assignment is not effective against the State until notice of the assignment has been given and received and in the case of a partial assignment, such assignment is unenforceable without the consent of the State. See 6 Am. Jur. 2d Assignments §76 (1963). The general authority for the promulgation of rules and regulations to accomplish the intent of the Act would normally authorize the Board to adopt a standard procedure for direct payments under the terms of an assignment. See K.S.A. 1978 Supp. 74-7304(b), (c).

Thus, it is our opinion that a hospital, doctor or medical clinic may not place a lien on a reparations award except as permitted by K.S.A. 1978 Supp. 74-7313(d); however, a hospital, medical center or doctor may take an assignment of a reparations award, but to the extent that the award is for a loss accruing in the future, such medical providers

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may only accept the assignment to the extent that "the benefits are for the cost of products, services or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee." K.S.A. 1978 Supp. 74-7313(e).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:gk