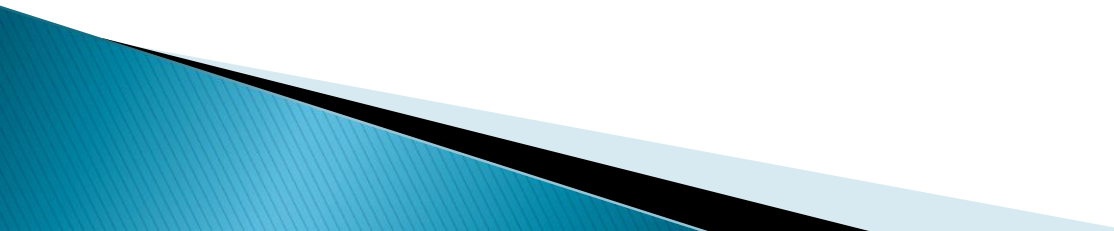


MEDICAL INDIGENCY PRESENTATION

Idaho State Bar
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Idaho Code: Title 31, Chapter 35

- Patient or third-party files an application;
- Automatic lien attaches to the personal property and real property of the applicant;
- Lien may be perfected:
 - as to real property by recording Notice of Lien;
 - as to personal property by filing with the Secretary of State

Idaho Code § 31–3504(4)

Purpose of Bankruptcy

- To give the honest but unfortunate debtor a financial “fresh start” from burdensome debts.
- How?
 - Through the bankruptcy “discharge.”

“Debt” versus “Lien”

- Debt
 - a “liability on a claim.” 11 U.S.C. § 101(12)
- Lien
 - a “charge against or interest in property to secure payment of a debt or performance of an obligation.” 11 U.S.C. § 101(37)
 - ❖ Debts » discharged in bankruptcy
 - ❖ Liens » remain enforceable after bankruptcy discharge

Bankruptcy Discharge

- Releases debtor from personal liability for certain debts
- Permanent injunction
 - No order of reimbursement or promissory note
 - No wage garnishment
 - No telephone calls or letters demanding payment
- Not all debts discharged
 - Automatically non-dischargeable (i.e. support obligations)
 - Non-automatic: creditor must bring adversary proceeding (i.e. debts obtained through fraud)
- Discharge may be denied or revoked (based on fraud)

Liens Survive the Discharge

- “Valid, perfected liens that have not been disallowed or avoided survive the bankruptcy discharge of the underlying debt.”
 - *In re Handy*, 97.3 I.B.C.R. 43 (Bankr. D. Idaho 1997)

Chapter 7: Liquidation

- Trustee gathers non-exempt assets; liquidates the assets; and pays creditors
- No repayment plan
- Majority of cases are “no asset”
- Discharge entered approx. 4 mo. After petition date

Chapter 13: Adjustment of Debts of an Individual with Regular Income

- Debtor retains asset (i.e. home or car)
- Debtor proposes a repayment plan to pay creditor over 3–5 years
- Acts as a consolidation
- Court must approve plan
- Discharge after completion of plan payments

Automatic Stay, 11 U.S.C. § 362

- Effective upon filing of bankruptcy petition
- Relief from the stay
 - By motion with the Bankruptcy Court
 - Allows parties to enforce state law rights and remedies
- Stay continues until earliest of the time:
 - The case is closed;
 - The case is dismissed; or
 - The discharge is granted or denied.
- Action in violation of the stay is VOID

Automatic Stay cont.

- “The automatic stay prohibits the continuation of any proceeding, including administrative proceedings,
 - to assess, enforce or collect any claims against a debtor,
 - or to create, perfect or enforce a lien against the property of the debtor or of the bankruptcy estate. 11 U.S.C. § 362(a)(1), (4), (5), and (6)”

In re Sarty, 99 I.B.C.R. 162 (Bankr. D. Idaho 1994)

Is the County's lien valid if no benefits were paid pre-petition?

- *Handy v. Bonner County*, 97.3 I.B.C.R. 79 (Bankr. D. Idaho 1997)
 - Debtor files application, and County records Notice of Lien
 - Debtor files Chapter 7
 - Application approved *after* bankruptcy discharge
- **Issue:** May the Debtor avoid the lien as unenforceable since the County paid no amounts before the bankruptcy was filed? No.
- **Holding:** The County's perfected lien was valid and enforceable, even though no benefits were paid before the bankruptcy filing.

Application: Pre-bankruptcy denial / Post-bankruptcy approval

- *Johnson v. Minidoka County Comm'r*, 386 B.R. 272 (2008)
- **Facts:** Application filed; Notice of Lien recorded; application denied; hospital appeals; Chapter 7 filed; discharge entered; County approves application
- **Issue 1:** Is the lien valid even though the dollar amount was not quantified pre-bankruptcy?
 - Yes. The lien was perfected when recorded pre-bankruptcy.
- **Issue 2:** Did the hearing post-discharge violate the discharge injunction?
 - No. The proceeding is not to determine debtor's personal liability, but to determine whether the County is liable to the provider.

Third-party application

- **Issue:** Does the lien attach to property of the debtor if the application is filed by a third-party applicant? Yes!
- “Obviously, the lien is meant to attach upon ‘application’ by either the patient or the medical care provider.”
 - *Sacred Heart Medical Center v. Hegel*, 01.1 I.B.C.R. 19 (2001)

After a discharge, must the County process the application?

- Yes!
 - *In re Sarty*, 99.4 I.B.C.R. 162 (Bankr. D. Idaho 1994)
 - *Johnson v. Minidoka County Comm'r*, 386 B.R. 272 (2008)
- Such proceeding:
 - Is to determine whether the county is liable to the provider;
 - It is not to determine the debtor's personal liability.
- The County retains its lien against the debtor's property.

Is the lien valid if the patient withdraws the application?

- *In re Sarty*, 99.4 I.B.C.R. 162 (Bankr. D. Idaho 1994)
- **Facts:** Debtor files application; withdraws application before initial determination; files Chapter 13; County denies application; hospital appeals denial.
- **Issue:** If the patient does not proceed with the application, may the hospital pursue recovery of benefits?
- **Holding:** Yes. The hospital has the right to pursue the application made by the patient.
 - Note: Initial determination was void for violating the automatic stay; any party seeking to continue with proceedings is required by move for relief of stay.

What property is the lien attached to?

- *Mechling v. Bonner County*, 284 B.R. 127 (2002)
 - Facts: Debtors did not own real property at the time the Notice of Lien was recorded, or any time pre-petition.
- **Holding:**
 - Lien is limited to applicant's real and personal property in existence as of the bankruptcy petition date.
 - If the underlying debt is discharged, then the lien does NOT attach to property post-petition.

Note: Decision does not address attachment to after-acquired property in non-bankruptcy context.

How long does the lien survive?

Must it be renewed?

- The “Twinkie” case
 - *In re Hendricks*, 10.1 I.B.C.R. 1 (Bankr. D. Idaho 2010)
- **Facts:** Debtor seeks to avoid the lien, arguing that it lapsed and had not been renewed.
- **Holding:**
 - The 5-year statutory duration for other liens does not apply to the lien under Idaho Code § 31-3504(4);
 - The medical indigency lien has no fixed duration;
 - The lien need not be renewed to be enforceable after a bankruptcy discharge.

Summary

- A debtor's personal liability for medical debts is discharged in bankruptcy.
- A provider has the right to pursue an application after a bankruptcy discharge.
- A County's lien recorded before a bankruptcy
 - Attaches to debtor's property existing at the time of filing;
 - Regardless of who filed the application;
 - Regardless of whether benefits paid before bankruptcy; and
 - Is enforceable after a bankruptcy discharge.

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