



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Dennis P. Whalen
Executive Deputy Commissioner

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Donna T. Ahn, Esq.
Office of General Counsel
Medical Society of the
State of New York
420 Lakeville Road
Lake Success, New York 11042

Dear Ms. Ahn:

This is in response to your letter of January 24, 1997 requesting an opinion on the legality of business corporations arranging for physicians to conduct independent medical examinations ("IMEs") on behalf of insurance companies and employers.

In requesting our views on this issue, you note that the State Education Department concluded in a March 11, 1991 opinion letter that the situation described

...wherein an unlicensed business corporation contracts with insurance companies to provide medical evaluations to the insurance companies, bills the insurer for the physician's services, and pays the physician a portion of this amount received from the insurer, appears to be a clear violation of the laws prohibiting fee-splitting. This arrangement represents a total abdication of the professional's responsibility with regard to fees and allows an unlicensed corporate entity to share, and perhaps dictate, the

fees. Any physician participating in such a fee arrangement would be subject to professional misconduct charges and professional discipline.

In addition, the unlicensed business corporation would be subject to criminal charges under Section 6512 of the New York State Education Law for the unauthorized practice of medicine. Such a corporation has no authority to contract for the providing of medical evaluations. Under Section 6527 of the New York State Education Law only a not-for-profit medical or dental expense indemnity corporation or a hospital service corporation organized under the insurance law may employ licensed physicians or enter into contracts with certain groups of physicians to practice medicine on behalf of the corporation for persons insured by the corporation.

You also note that, contrary to the State Education Department's position, certain business corporations involved in these activities have taken the position that such arrangements do not involve illegal fee-splitting because the performance of medical evaluations for an insurance company or employer does not constitute a medical act (i.e. diagnosis or treatment).

In response to your inquiry, I enclose copies of opinions issued by this office dated September 25, 1995, May 2, 1995, October 25, 1994, July 11, 1994, and June 16, 1994, which address the legality of various arrangements between business corporations and physicians performing IMEs for insurance companies or employers. As indicated in these opinions, although arrangements between business corporations and physicians may involve unlawful fee-splitting or the illegal practice of medicine, a business corporation may contract with physicians to perform IMEs if the arrangement is carefully structured to avoid fee-splitting or the brokering of medical services.

You should know, too, that recent case law is at loggerheads with the suggestion made by the business corporations (to which you refer in your letter) that examinations performed by physicians for insurance companies or employers do not constitute the practice of medicine. Indeed, the First Department has held that a company arranging for IMEs for an

insurance company was engaged in the illegal practice of medicine in Accident Claims Determination Corp. v. Durst, 224 A.D.2d 343, 639 N.Y.S.2d 69 (1st Dept. 1996). That the court so held is hardly surprising. The purpose of an IME is to determine the overall health, or lack thereof, of a person, including assessments of specific diseases or medical conditions which may affect the individual's insurability or ability to perform certain tasks in the workplace. In that IMEs involve the diagnosis of individuals, they constitute the practice of medicine as defined in Education Law § 6521.

As you have indicated you were unable to locate a copy of the March 11, 1991 letter from Frank Munoz referenced in your letter, I have enclosed a copy of that letter for your files.

I trust this letter and the accompanying attachments adequately respond to the issues raised in your letter.

Sincerely,

Henry M. Greenberg
General Counsel

Enclosures

HMG/JLD/vg