



STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 122

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

January 5, 1994

Dear

I am writing in response to your letter of October 26, 1993 to Florence Abrams of this office questioning whether a proposed arrangement between a chiropractor and physician was lawful. Your client who is employed full-time as a pathologist for a county examiner's office was solicited to enter into a business relationship with a chiropractor in which he would be deemed the chiropractor's "employer". This physician's responsibilities would be to examine the chiropractor's patients periodically and refer them back to the chiropractor for treatments which are not reimbursed by third party insurers when provided by a chiropractor. Billing for these treatments would be done by the physician. The physician and the chiropractor would each take a percentage of the reimbursement. The chiropractor would maintain his own office and practice.

Among the statutory violations such a scheme involves are the following:

1. Section 6530(18) of the Education Law prohibits "directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient or in connection with the performance of professional services." In the situation you describe, the chiropractor would receive substantial consideration from referring patients to the physician since the doctor is providing the chiropractor with the means of obtaining payments from a third party insurer that s/he otherwise would not be able to obtain. The physician is also receiving substantial consideration for, in effect, referring the patient back to the chiropractor because he is receiving a portion of the fee for each treatment the chiropractor provides.

2. Section 6530(19) of the Education Law prohibits a licensee from sharing his or her fees for professional services with anyone other than "a partner, employee, associate in a professional firm or corporation, professional

subcontractor or consultant authorized to practice medicine, or a legally authorized trainee practicing under the supervision of a licensee." Given the fact that the relationship in question constitutes a cross-referral arrangement rather than a true employment arrangement, the fact that the physician and the chiropractor are each receiving part of the fee for services rendered results in a violation of this section.

3. Section 6530(17) of the Education Law prohibits a licensee from "exercising undue influence on the patient, including the promotion of the sale of services, goods, appliances, or drugs in such manner as to exploit the patient for the financial gain of the licensee or of a third party." A cross-referral scheme of the nature proposed to your client exemplifies the type of undue influence on a patient for the benefit of the provider or providers furnishing goods or services to which this provision was meant to apply.

4. Section 6530(35) of the Education Law makes it an act of professional misconduct to order excessive tests, treatment or use of treatment facilities not warranted by the condition of the patient. Inherent in the cross-referral scheme described in your letter is the ordering of excessive treatments for the financial benefit of both providers.

Because the Department's jurisdiction does not extend to chiropractors, this discussion does not address possible violations of the statutory violations governing chiropractors. Similarly, we have not addressed any criminal charges that could be brought against the professionals.

Your letter is the second letter received by this office in recent months inquiring about the activities of Michael Passet, Esq. and his clients. I have forwarded copies of the first letter and supporting documentation received by this office to this Department's Office of Professional Medical Conduct, the Office of the Deputy Attorney General for Medicaid Fraud and the Office of the Professions in the New York State Education Department for any investigation those offices may wish to undertake and will do the same with your letter.

Thank you for reporting the activities in relation
to this office.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Peter J. Hillock", written in a cursive style.

Peter J. Hillock
General Counsel