

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF THE COUNSEL

August 14, 1989

Dear

I am writing in reply to your letter of June 9, 1989, concerning fee arrangements between physicians practicing in some form of group practice or corporation.

I must initially advise you that this office does not issue declaratory rulings with respect to matters of this nature. The result in any particular situation will depend upon all of the facts relating to the particular arrangements for fee splitting, including the manner in which the arrangement appears to patients or to third party payors.

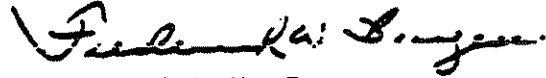
In my opinion, the general concept underlying both the statute and the regulation is that it is improper for unlicensed individuals to have a pecuniary interest in the income derived from the conduct of a professional practice. Of course neither the statute or regulation prohibit individuals holding the same license, engaged in practice together, from sharing fees for professional services. Therefore, the same reasoning would hold it improper for an individual who, although licensed, was not licensed in the same profession or was not engaged in practice with the group or corporation to have a pecuniary interest in the income from a professional practice. With this as a background, it is my belief that the statute and regulations are compatible and do not prohibit an individual licensee practicing together with other similarly licensed individuals from sharing fees received for professional services even if one of those receiving a share of fees is an employee in the practice.

In addition to the fee splitting prohibitions, you should also consider the provisions of §29.1(b)(3) and of §6509-a prohibiting certain payments for referrals, and the possibility that the arrangement between the employer-physician and the employee-physician, if not fully disclosed, may be misleading or even fraudulent. A referral by a physician-employer to a physician-employee is not prohibited, but the patient or third-

party payor may lead one to believe that the two physicians are acting independently.

I hope this is of assistance to you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frederick W. Burgess".

Frederick W. Burgess  
Senior Attorney

cc: Peter Millock, Esq.