



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

John R. O'Connell, M.D., M.P.P., M.P.H.
Commissioner

January 22, 1993

Dear Mr

This is in response to your letter to me of December 14, 1992 in which you question whether a certain arrangement between a physician and a chiropractor is permissible under § 6530 of the Education Law. We do not believe the arrangement is permissible under either §§ 6530 or 6531 of the Education Law for the reasons set forth below.

BACKGROUND

Under the scenario you describe, a patient receiving worker's compensation or no-fault insurance coverage visits a chiropractor. The chiropractor determines that the patient needs a certain type of treatment which is not reimbursable by either insurer if a chiropractor provides the treatment. The chiropractor refers the patient to a particular physician who agrees that such treatment is necessary and writes an order to that effect. The chiropractor then performs the treatment as the physician's "technician", and the treatment is billed by the physician. The physician pays the chiropractor for the "technical" portion of the services rendered (i.e., the amount the chiropractor would ordinarily charge for this type of treatment), and the physician keeps the balance of the payment.

ANALYSIS

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 scenario you present, the chiropractor is indirectly giving the physician consideration for, in effect, referring the patient back to him or her and vice versa.

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." In the fact pattern you describe, the physician proposes to bill the third-party insurer for both his or her examination of the patient and the services performed by the chiropractor and then pay the chiropractor an amount equal to the chiropractor's customary charge for such services out of the fee received. Since a chiropractor is not licensed to practice medicine, a physician may not split fees in the manner proposed with a chiropractor.

Section 6530(17) of the Education Law prohibits the use of "undue influence on the patient, including the promotion of the sale of services, goods, appliances, or drugs in such manner as to impact the patient for the financial gain of the licensee or of a third party." In the scenario you describe, the entire scheme under which the patient is referred to a particular physician for the purpose of providing both the chiropractor and the physician with a means of receiving payment for the rendering of certain otherwise non-covered services by the chiropractor. As such, the arrangement clearly exploits the patient and the third party insurer for the financial gain of the licensee and chiropractor.

We also call to your attention the fact that under § 6531 of the Education Law, absolutely no sharing of fees received under the Workers' Compensation Law is allowed even among professional partnerships or corporations. The proposed arrangement would therefore be prohibited under this section as well.

I trust that the above discussion sufficiently sets forth our position.

Sincerely,



Peter J. Millock
General Counsel