

July 11, 1994

Dear

This is in response to your letter to me of May 27, 1994, in which you question whether a professional services corporation ("P.C.") may retain other physicians to perform independent medical examinations for insurance companies. The legality of such an arrangement depends upon the nature of the arrangement for the reasons discussed below.

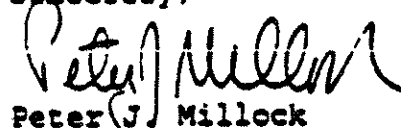
Obviously, any physician who is a shareholder of a professional services corporation may perform independent medical examinations on behalf of the P.C. for an insurance company. Similarly, a legitimate physician employee of the P.C. who receives a fixed salary not determined by the number of patients that the physician examines may perform medical examinations on behalf of the P.C. by which s/he is employed.

If, however, your client proposes to subcontract the performance of independent medical evaluations to physicians who are neither shareholders nor employees of the P.C., we believe a violation of Article 131-A of the Education Law would occur. Although such an arrangement would not constitute fee-splitting since all participants in the arrangement would be physicians, the arrangement would violate Education Law §6530(18), which prohibits "[d]irectly 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." If the P.C. were to receive any consideration for any match the P.C. makes between the insurance company and the physician for the purpose of performance of an independent medical examination, such activity would violate the above prohibition. In other words, a P.C. cannot receive compensation for the brokering of professional services rendered by professionals who are neither members nor employees of the P.C. Please note that not all subcontracts between physicians would necessarily involve such illegal brokering and our opinion is based on the agreement you describe.

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I trust that you will advise your client accordingly.

Sincerely,

A handwritten signature in dark ink, appearing to read "Peter J. Millock". The signature is fluid and cursive, with the first name "Peter" and last name "Millock" clearly distinguishable.

Peter J. Millock
General Counsel