

June 19, 1995

Susan W. Berson, Esq.
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237 Park Avenue
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Dear Ms. Berson:

This is in response to your letter of June 2, 1995 requesting an opinion as to whether a laboratory is violating the prohibition against the corporate practice of medicine by employing physicians to perform certain tissue examinations and prepare pathology reports. According to your letter, none of the pathologists employed by the laboratory have an ownership interest, send tissue samples to the laboratory or have any direct contact with the patients whose samples are tested. All billing for the performance of the examinations is done in the name of the laboratory.

The prohibition against the corporate practice of a profession is founded in case law and based upon the premise that licenses to practice a profession are granted to individuals, not to entities. See Matter of Co-operative Law Co., 198 N.Y. 479(1910); United Calendar Manufacturing Corp. v. Huang, 94 A.D.2d 176 (Second Dept. 1983); State of New York v. Abortion Information Agency, 37 A.D.2d 142 (First Dept. 1971), aff'd 30 NY2d 779. However, case law also makes it clear that corporations may engage in the practice of a profession if expressly authorized to do so by state statute. See People v. Woodbury Dermatological Institute, 192 N.Y. 454 (1908); Albany Medical College v. McShane, 104 A.D.2d 119 (Third Dept. 1984).

Several statutes, such as Public Health Law Articles 28, 36 and 40, authorize corporations to engage in the practice of a profession. However, if a corporation is licensed pursuant to a specific statute, its authority to practice a profession is limited to the scope of activities authorized by the specific license and governing statute and regulations.

Corporations which have been permitted by the New York State Department of Health to operate a laboratory pursuant to Public Health Law Article 5, Title V are authorized to perform a

"microbiological, serological, chemical, hematological, biophysical, cytological or pathological examination of materials derived from the human body, for the purpose of obtaining information for the diagnosis, prevention, or treatment of disease or the assessment of health conditions."

For a laboratory to perform such examinations properly, the laboratory may need to retain a person who is licensed as a physician to direct the laboratory or perform the analysis of the specimens. See 10 N.Y.C.R.R. Part 19, and §§58-1.4 and 58-1.13(c)(2). Thus, to the extent that a physician is retained by a laboratory to direct or perform laboratory examinations which are within the categories stated on its permit, the laboratory is authorized to employ physicians and engage in activities which may constitute the practice of medicine.

I hope this adequately responds to your inquiry.

Please feel free to contact Judy Doesschate, Esq. of my staff at (518) 473-3239 if you have further questions regarding this matter.

Sincerely,

Jerry Jasinski
Acting General Counsel

JJ/JLD:vmg