

September 25, 1995

Ruth G. Hirshfeld, Esq.
Ruskin, Moscou, Evans and Faltischek, P.C.
170 Old Country Road
Mineola, New York 11501-4366

Dear Ms. Hirshfeld:

This is in response to your August 16, 1995 letter regarding the legality of an arrangement between a business corporation, referred to in your letter as XYZ Corp., performing certain administrative services on behalf of an insurance company or self-insured payor (the "Payor"), and physicians performing independent medical exams (IME). You state that XYZ Corp. is retained by the Payor to arrange for the performance of an IME upon the Payor's insured who has submitted a claim. XYZ Corp.'s responsibilities include submitting a list of physicians to the Payor for the Payor to select the physician who will perform the IME, picking up copies and delivering all medical documentation, as requested, coordinating and collating all medical reports and delivering them to the Payor. You note that the physician prepares the medical report in its entirety and only has contact with XYZ Corp. as a conduit for the Payor. You have asked the following questions with regard to this arrangement:

Question 1: Can XYZ Corp., as an agent of the Payor, submit one bill to the Payor for the services of both the physician and the administrative services that XYZ Corp. performs and, after it has received payment from the Payor, pay the physician with an XYZ check.

Answer: XYZ Corp. may submit one invoice to the Payor for both the physician's services and the administrative services as long as the invoice separates the physician's fees from the administrative fees. If the physician fees and administrative fees are combined in one indistinguishable amount, XYZ Corp. is arguably billing for the physician services on behalf of itself and therefore, engaged in the unauthorized corporate practice of

medicine. Additionally, since the lump sum would include the fee for the physician's services, the physician is engaged in illegal fee-splitting when XYZ Corp. retains a portion of the amount billed.

Question 2: Can XYZ Corp. engage the services of a "Medical Director", either on its staff or hired as an independent contractor, and bill to the Payor under XYZ Corp.'s name for the totality of the services?

Answer: We cannot provide a definitive response because you have not stated what functions a "Medical Director" would perform. Assuming the activities of the "Medical Director" would require a license to practice medicine, XYZ Corp. may not bill the Payor for the Medical Director's services under XYZ Corp.'s name. If the Medical Director were providing services which require a license to practice medicine pursuant to Education Law Article 131, the corporation would also be engaged in the unauthorized corporate practice of medicine.

Question 3: If the Payor hires a medical professional corporation (P.C.) to perform IMEs and the P.C. contracts with various specialist physicians to perform the IMEs, can XYZ Corp. perform its administrative services (as described in the main body of your letter) and bill the P.C. on a per IME basis with payment due regardless of the amount of reimbursement made by the Payor to the P.C.?

Answer: As indicated in the enclosed July 11, 1994 opinion, a P.C.'s retention of physicians who are neither shareholders nor employees of the P.C. to perform IMEs is likely to be a violation of Education Law §6530(18). With regard to the other aspect of your question concerning the potential payment to XYZ Corp., enclosed is a copy of a May 2, 1995 letter which this office provided to your firm concerning the problems associated with a per patient administrative services fee.

Sincerely,

Jerry Jasinski
Acting General Counsel

Enclosures

JJ/JLD/vg