August 14, 1995

This in response to your letter of April 19, 1995 to Kathy Ahearn, Esq. and me requesting our opinion on several proposed arrangements between a chiropractor and a physician. You state that before your client enters into any of the proposed arrangements, you wish to confirm that the arrangements do not violate any provisions of the Education Law or the Public Health Law. We cannot confirm for the reasons set forth below.

1. In your first scenario, a chiropractor refers a patient to a physician who has several part-time employees, including the chiropractor, who perform "physiotherapy" on patients. The chiropractor performs this work in his own office and bills the physician on a monthly basis for every treatment performed that month. The issues raised by this hypothetical are similar to those addressed in a previous opinion issued to you on January 22, 1993. A copy of that opinion is attached.

2. Your second hypothetical is the same as the first except that the chiropractor does not refer the patient to the physician. While as a general policy, a physician may hire another health care professional whose practice falls within the scope of the physician's practice, specific situations can raise issues under § 6530 of the Education Law.

Among those issues is whether the chiropractor is being paid in a manner which violates the fee splitting prohibition in Education Law §6530(19). A second issue is whether the arrangement is conducted in a manner that violates Education Law §6530(17), which prohibits a licensee from "exercising undue influence on the patient, including the promotion of the sale of services, goods, appliances, or drugs in such manner as to exploit the patient for the financial gain of the licensee or of a third party." In addition, Education Law §6530(35) prohibits the "[o]rdering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the

patient," which could occur in such arrangements. Finally, if the chiropractor were to give any direct or indirect consideration to the physician in connection with the referral of patients, a violation of Education Law §6530(19), which 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," would occur. All of these potential violations are discussed also in our opinion of January 22, 1993.

3. In your third hypothetical, a neurologist serves as a consultant to a chiropractor and orders certain tests to be performed by the chiropractor as a "technician" for the neurologist. These tests include a "Nerve Conduction Velocity" Test and a "Somatosensory Evoked Potential" Test. The chiropractor is not required to take any specialized training to perform these tests and bills the neurologist for every test performed on a monthly basis. We believe the issues discussed above are also raised by this scenario. There is an additional issue regarding whether the neurologist is "[p]ermitting, aiding, or abetting an unlicensed person to perform activities requiring a license." Education Law §6530(11).

Since our jurisdiction does not extend to chiropractors, this discussion does not address possible statutory prohibitions governing chiropractors.

Sincerely,

Jerry Jasinski
Acting General Counsel

Enclosure

cc: Kathy Ahearn, Esq.
General Counsel and
Deputy Commissioner
New York State
Education Department