



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

HEADNOTE: Ownership of a MRI facility by a physician's P.C. creates an indirect financial relationship such that referrals by the physician to the MRI facility would violate PHL § 238-a.

July 28, 1999

Patrick J. McDonnell, Esq.
McDonnell, Adels & Goodstein, P.C.
5 Dakota Drive, Suite 107
Lake Success, New York 11042

Dear Mr. McDonnell:

I am responding to your July 2, 1999 letter to Henry M. Greenberg. Your question is set forth and answered below. Our response to your inquiry assumes the accuracy of the facts you present; if the facts are not as stated, then this opinion has no force or effect.

The Facts:

A neurologist refers patients to an "MRI facility which does business under an assumed business name, but is owned by the neurologist's professional corporation. The MRI facility is located several miles from the neurologist's office. The narrative reports are issued by a 'consulting radiologist' on the letterhead of the assumed business name. The neurologist bills for the MRI services under his professional corporate name using his tax identification number."

Question:

Are the neurologist's referrals prohibited by Public Health Law (PHL) §238-a(1)(a)?

Answer:

Yes.

Discussion:

PHL § 238-a(1)(a) prohibits a physician from referring patients to a provider of

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four categories of designated health services if the physician has a financial relationship with the provider. X-ray or imaging services are among the four designated categories, and magnetic resonance imaging (MRI) is included in the definition of x-ray or imaging services. See PHL § 238(13). Therefore, if the neurologist has a financial relationship with the MRI facility, he/she may not refer patients to that facility absent a statutory exception to the self-referral prohibition.

Implicit in the facts you present is that the neurologist owns a medical professional corporation (PC). Since you state that the PC owns the MRI facility we conclude that the neurologist has an indirect financial relationship with the MRI facility and so may not refer patients to that facility absent a statutory exception. See PHL § 238(3) which defines financial relationship broadly to include an ownership interest, investment interest or compensation arrangement.

Based on the facts you present, we cannot conclude that any statutory exception to the prohibition applies. Absent such an exception the referrals by the neurologist to the MRI facility are self-referrals and are prohibited. Pursuant to PHL § 238-a(1)(b) the neurologist is prohibited from presenting a bill or other demand for payment for the services performed pursuant to the illegal referral.

You have also inquired about PHL § 238-d which requires disclosure by a referring practitioner if the practitioner has a financial relationship with a provider of the four categories of designated health services, and if the referral is not prohibited by PHL § 238-a(1)(a). Since, as stated above, the referrals are prohibited, PHL § 238-d is not relevant under your facts.

If you have questions regarding the above, you may reach me at 518-486-1336.

Sincerely,

Harriet S. Bougen
Senior Attorney