



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 25, 1994

Dear

This is in response to your written request of October 20, 1994, in which you ask for clarification of our letter of July 16, 1994 to regarding business corporations which arrange for physicians to conduct independent medical examinations for insurance companies. In that letter we stated that in addition to the arrangement being structured to avoid illegal fee-splitting, the physicians must be selected by the insurer rather than the business corporation to avoid the prohibition against the brokering of professional services. We also stated that a contract between the insurer and each participating physician would document that illegal brokering is not occurring. Last week, however, we were advised that the New York State Insurance Fund, a major client of numerous business corporations engaged in the business in question, would find individual contracts burdensome and will not do business with business corporations if such documentation is required. Although the issuance of individual contracts was the most obvious way to us in which the legality of such business arrangements could be ensured, we did not mean to preclude any other form of documentation that would demonstrate that the prohibition against the brokering of professional services and the prohibition against illegal fee-splitting are not being violated.

We find that the sample documents that you have submitted to us establish that such violations are not occurring in the operation of your business. Because we know that this matter is of concern to numerous other business corporations in this industry, we wish to describe briefly the documentation you have submitted. It consists of the following:

1. A schedule of fees for different types of physician specialists to perform examinations for different types of claims and the administrative fees for different types of claims;

2. A letter sent to insurance company clients containing a list of physician specialists available in certain geographic areas who are available to perform examinations and requesting that the insurer designate the provider it wishes to perform each examination; and

3. An invoice which bills the physician fees separately from the administrative fees.

We believe that the above documents establish that the state policy against the brokering of professional services and the statutory prohibition against fee-splitting are not being violated by your arrangements with the insurance companies and the examining physicians. Any documentation which demonstrates that neither prohibition is being violated is acceptable to this Department.

This letter should not be construed, however, as obviating the portion of our opinion of July 16, 1994, that states that in negotiating with physicians who are willing to perform such examinations, business corporations (or any other type of entity) may not charge physicians a fee for being on the list of available providers or accept any direct or indirect consideration for "matching" them with an insurance company.

. Sincerely,

A handwritten signature in black 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