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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-410
	:	
of	:	<u>June 14, 1979</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Warren J. Abbott	:	
Assistant Attorney General	:	
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SUBJECT: EMPLOYMENT OF PSYCHOLOGIST—A proprietary hospital may not employ a psychologist on a salaried basis and collect fees for such psychological services rendered, while a nonprofit hospital may employ a psychologist on a salaried basis only if the hospital is a nonprofit, philanthropic corporation servicing its members.

The Honorable Paul B. Carpenter, Senator for the Thirty-Seventh District, has requested an opinion on the following question:

May either a proprietary or a nonprofit hospital employ a psychologist on a salaried basis to render psychological services on behalf of the hospital and bill and collect a fee for such services?

CONCLUSION

A proprietary hospital may not employ a psychologist on a salaried basis to render psychological services on behalf of the hospital and bill and collect a fee for such services. A nonprofit hospital may employ a psychologist on a salaried basis only if the hospital is a nonprofit, philanthropic corporation providing services to its members.

ANALYSIS

Under the Psychology Licensing Law (Bus. & Prof. Code § 2900 *et seq.*)¹, no person may engage in the practice of psychology without a license granted under that law. (§ 2903.) The law prohibits the practice of psychology by corporations (§ 2907)² excepting professional psychological corporations formed under the Moscone-Knox Professional Corporation Act (Corp. Code § 13400 *et seq.*) and especially licensed by the Psychology Examining Committee of the Board of Medical Quality Assurance. (§§ 2907.5, 2995–2995.8.) Section 2903 defines the practice of psychology to include “. . . rendering or offering to render for a fee to individuals, groups, organizations or the public any psychological service”³

¹ All section references are to the Business and Professions Code unless otherwise indicated.

² Section 2907 provides:

“Corporations shall have no professional rights, privileges, or powers, and shall not be permitted to practice psychology, nor shall the liability of any licensed psychologist be limited by a corporation.”

³ Section 2903 states as follows:

“No person may engage in the practice of psychology, or represent himself to be a psychologist, without a license granted under this chapter, except as otherwise provided in this chapter. The practice of psychology is defined as rendering or offering to render for a fee to individuals, groups, organizations or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

“The application of such principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders of individuals and groups.

“Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive.

“As used in this chapter, ‘fee’ means any charge, monetary or otherwise, whether paid directly or paid on a prepaid or capitation basis by a third party, or a charge assessed by a facility, for services rendered.”

The question presented is thus whether the act of either a proprietary or nonprofit hospital⁴ employing a psychologist on a salaried basis to render psychological services on behalf of the hospital and in turn billing and collecting a fee for such services constitutes the practice of psychology by a non-licensed hospital and is therefore prohibited. In 58 Ops. Cal. Atty. Gen. 755 (1975) we analyzed the question of whether a licensed psychologist could, under the Psychology Licensing Law, be employed by any person or corporation other than a psychological corporation. We concluded that a licensed psychologist may not be lawfully employed by any person or corporation other than:

1. A psychological corporation duly certified pursuant to the Moscone-Knox Professional Corporation Act (Corp. Code § 13400 *et seq.*), and sections 2995 through 2996.6 of the Psychology Licensing Law;
2. Pursuant to the statutory exceptions for salaried employees set forth in sections 2909 and 2910 of the Psychology Licensing Law.⁵
3. A nonprofit, philanthropic corporation or association providing services to its members; or;
4. A licensed physician or another licensed psychologist.

That opinion would appear to answer the question presented with the conclusion that a psychologist may not perform psychological services as an employee for a hospital, which hospital in turn bills and collects a fee for such services, unless the hospital is a nonprofit, philanthropic organization providing services to its members. That opinion also followed a long line of opinions issued by this office which concluded that unless permitted by statute or unless the practice comes within the nonprofit-philanthropic exception, a corporation may not practice medicine,⁶ and the hiring of a doctor on a salaried basis by a

⁴ For purposes of this opinion, we have assumed that the hospitals involved are corporations, either proprietary, formed under the General Corporation Law (Corp. Code § 100 *et seq.*) or nonprofit, formed under the General Nonprofit Corporation Law (Corp. Code § 9000 *et seq.*).

⁵ Section 2909 permits a licensed psychologist to perform as such as an employee in certain jobs such as for a school psychologist, governmental organizations or governmentally supported nonprofit community agencies. Section 2910 permits a licensed psychologist to perform as such as a salaried employee of “accredited or approved academic institutions, public schools or governmental agencies” under specific conditions, one of which is that the psychologist does not offer services to the public for a fee. We do not understand the hiring of a psychologist by the type of hospitals in question to come within either section 2909 or 2910.

⁶ In this opinion, as in 58 Ops. Cal. Atty. Gen. 755, we have assumed that the rules as to the practice of physicians and surgeons would be applicable to licensed psychologists except where there is a clear statutory difference such as sections 2909 and 2910, and the charitable exemption

corporation which in turn provides medical services for a fee constitutes that prohibited practice. See 11 Ops. Cal. Atty. Gen. 236 (1948); 54 Ops. Cal. Atty. Gen. 126 (1971); 55 Ops. Cal. Atty. Gen. 39 (1972); 55 Ops. Cal. Atty. Gen. 103 (1972); 55 Ops. Cal. Atty. Gen. 324 (1972); 57 Ops. Cal. Atty. Gen. 231 (1974).⁷

No statutes have been enacted nor have any reported Judicial decisions been issued since our 1975 opinion which would cause us to change our analysis or reasoning in those prior opinions. We thus affirm our prior opinions and particularly the conclusions and analysis relating to nonprofit corporations contained in 58 Ops. Cal. Atty. Gen. 755, 758–761.

It is thus concluded that a hospital may not employ a psychologist on a salaried basis to render psychological services on behalf of a hospital and bill and collect a fee for such services, unless the hospital is a nonprofit, philanthropic corporation or association providing services to its members or meets some statutory exception to the prohibition against corporate practice of medicine.

We feel compelled to note, however, that the exact extent of the nonprofit exception to the prohibition against corporate practice of the healing arts is not established. This exception was judicially created by dictum in *People v. Pacific Health Corp.* (1938) 12 Cal. 2d 156. There, the court, in comparing various types of organizations which allegedly hired physicians and offered medical services, to the for-profit corporation providing medical services in return for premiums, stated: .

“ . . . In nearly all of them, the medical service is rendered to a limited and particular group as a result of cooperative association through membership in the fraternal or other association, or as a result of employment

contained in section 2008. This conclusion is buttressed by the fact that the Psychology Examining Committee, which administers most of the provisions of the Psychology Licensing Law, is part of the Board of Medical Quality Assurance (§ 2920), and the similarity of many of the licensing provisions of the two laws.

⁷ In 25 Ops. Cal. Atty. Gen. 198 (1955) we recognized the statutory authority under then Health and Safety Code section 1203 for an employer’s or employee’s clinic to hire a physician on a salaried basis, and in 58 Ops. Cal. Atty. Gen. 291 (1973), we concluded Health and Safety Code section 1203 (c) permitted the employment of a physician by a licensed community clinic, provided the clinic made either no charges or the charges were based solely on ability to pay.

Also, in 58 Ops. Cal. Atty. Gen. 571 (1975) we concluded that the Federal Health Maintenance Organization Act of 1973 (42 U.S.C. § 300(e)) supersedes the California Medical Practices Act, and therefore, health maintenance organizations may do business as corporations and may directly employ licensed physicians.

by some corporation which has an interest in the health of its employees. The public is not solicited to purchase the medical services of a panel of doctors; and the doctors are not employed or used to make profits for stockholders. In almost every case the institution is organized as a nonprofit corporation or association. Such activities are not comparable to those of private corporations operated for profit and, since the principal evils attendant upon corporate practice of medicine spring from the conflict between the professional standards and obligations of the doctors and the profit motive of the corporation employer, it may well be concluded that the objections of policy do not apply to nonprofit institutions. This view seems almost implicit in the decisions of the courts and it certainly has been the assumption of the public authorities, which have, as far as we are advised, never molested these organizations.” (12 Cal. 2d at 160.)

The court did not articulate any ground rules by which nonprofit organizations could hire or pay for the services of doctors or other professionals and still not violate the Medical Practices Act. The cases since *Pacific Health* have also failed to analyze this nonprofit exemption, although several have concluded that the activities involved were permissible, relying on the *Pacific Health* dictum. See *Complete Sev. Bur. v. San Diego Med. Soc.* (1954) 43 Cal. 2d 201, 210–211 (medical services furnished to members by a nonprofit corporation upheld); *County of Los Angeles v. Ford* (1953) 121 Cal. App. 2d 407, 413 (contract between a county hospital and two nonprofit medical schools to have salaried faculty members provide training and patient care in hospital held valid); *Blank v. Palo Alto-Stanford Hospital Center* (1965) 234 Cal. App. 2d 377, 390 (contract between nonprofit corporation hospital and radiologists whereby hospital provided radiological services through the doctors and hospital received 66²/₃ percent gross fees while radiologists received 33¹/₃ percent upheld); and *Letsch v. Northern San Diego County Hosp. Dist.* (1966) 246 Cal. App. 2d 673, 676–677 (similar contract with a hospital district upheld on authority of *Blank* case).

The Legislature has never completely accepted the nonprofit exemption created by the court. In 1951, section 2008 was amended (Stats. 1951, ch. 298) to provide an extremely narrow exception which would allow the Division of Licensing of the Board of Medical Quality Assurance to approve “. . . the employment of physicians and surgeons on a salary basis by licensed charitable eleemosynary institutions, foundations or clinics or by approved medical schools operating clinics therewith, if no charge for professional services rendered patients is made by any such institution, foundation, clinic or school.” The Psychology Licensing Law, of course, does not even contain this exemption. (§ 2907.)

Given the response of the Legislature to the cases, and the unknown extent of the judicially created exemption, we are constrained to follow our previous opinions. We

recognize that if squarely faced with the issue, the appellate courts might extend or expand the exemption. As we stated in 55 Ops. Cal. Atty. Gen. 103 at 107, however:

“ . . . Nevertheless, it is the view of this office that any reevaluation of the long standing proscription against the unlicensed corporate practice of medicine in any form should and must fall within the exclusive province of the Legislature.”
