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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 81-1004
of	:	APRIL 7, 1982
GEORGE DEUKMEJIAN Attorney General	:	
Ronald M. Weiskopf Deputy Attorney General	:	

THE HONORABLE JIM ELLIS, STATE SENATOR, THIRTY-NINTH DISTRICT, has requested an opinion on the following question:

May a general business corporation not licensed as a medical corporation lawfully engage licensed physicians to perform preemployment physical examinations on and diagnose and treat employment-related injuries sustained by employees of another entity with whom it contracts to furnish those services if the physicians performing them are independent contractors and not employees of the general business corporation?

CONCLUSION

A general business corporation that is not licensed as a medical corporation may not lawfully engage licensed physicians to perform preemployment physical examinations on and diagnose and treat employment-related injuries sustained by employees of another entity with whom it contracts to furnish those services even though

the physicians performing them do so as independent contractors and not employees of the general business corporation.

ANALYSIS

This opinion discusses the legality of certain aspects of the operation of a newly devised business entity, the "industrial medical center," which has been described in connection with the opinion request as follows: In recent months a number of general business corporations, not licensed as medical corporations but styled as "industrial medical corporations," have started to operate what are called "industrial medical centers." They lease space for operations and contract with licensed physicians to perform preemployment physicals on and to diagnose and treat employment-related injuries sustained by employees of the state, of local governmental agencies, and of large corporations or other entities with whom they also contract to furnish those services. The patient-employees do not themselves pay for the medical services rendered; consideration instead is paid by the employer to the industrial medical corporation for them. The contracting physicians in the operation are not employees of the industrial medical corporation but rather are independent contractors who are compensated on a fixed fee basis by it.[1] While the operation employs administrative and support personnel to assist the physicians, the preemployment physicals as well as the diagnoses and treatment of employment related injuries are performed exclusively by the licensed physicians under contract with the industrial medical corporation; the employees of the corporation do not perform any of those professional medical services.

We are asked about the legality of this endeavor and specifically whether the "industrial medical corporation," as a general business corporation not licensed as a medical corporation, may lawfully engage licensed physicians to perform preemployment physical examinations and to diagnose and treat employment related injuries for another entity with whom it contracts to furnish those services. Since that activity clearly constitutes the "practice of medicine," its being undertaken by the industrial medical corporation would contravene the prohibition against a corporation engaging in that

[1] We do not have a specific contract before us and this opinion proceeds on the assumption that the contracting physicians in fact and in law *are* independent contractors. Needless to say the substantive provisions of a particular contract may prove them to be employees, even if their status is purportedly set forth therein as independent contractors. (See 55 Ops.Cal.Atty.Gen. 103, 106 (1972); 38 Cal.Jur.3d, *Independent Contractors*, § 2-5; cf. *Albaugh* v. *Moss Construction Co.* (1954) 125 Cal.App.2d 126, 132.) In any event our conclusion does not depend on how the relationship between the industrial medical corporation and the contracting physicians is styled. (See fn. 4, *post*; *People* v. *Pacific Health Corp.* (1938) 12 Cal.2d 156, 158 quoting *Pacific Employers Ins. Co.* v. *Carpenter* (1935) 10 Cal.App.2d 592, 601-602; see also fn. 5, *infra*.)

practice unless its so doing falls within a recognized exception to the general rule against corporate practice. Inasmuch as we find that not to be the case with the industrial medical corporation we conclude that it may not lawfully engage licensed physicians to perform preemployment physical examinations and to diagnose and treat employment-related injuries for another entity with whom it contracts to furnish those services.

Section 2052 of the state's Medical Practice Act (i.e., Bus. & Prof. Code, div. 2, ch. 5, §§ 2000-2515)[2] declares it to be illegal for any person to practice, attempt to practice, or to advertise or hold himself/herself out as practicing medicine in this state without a valid certificate of licensure. For the purpose of the act the term "person" is limited in meaning to "a natural person" (§ 2033) and with limited exception it declares corporations and other artificial entities to have "no professional rights, privileges or powers" thereunder. (§ 2400.)[3] Accordingly it has been stated as being settled that as a general rule a corporation may neither engage in the practice of medicine directly, nor may it do so *indirectly* by "engaging [physicians] to perform professional services for those with whom the corporation contracts to furnish such services." (*Pacific Employers Ins. Co.* v. *Carpenter* (1935) 10 Cal.App.2d 592, 594; see also *id.* at 595-596; *Benj. Franklin L. Assur. Co.* v. *Mitchell* (1936) 14 Cal. App.2d 654, 657; *People* v. *Pacific Health Corp.* (1938) 12 Cal.2d 156, 158-159; 63 Ops.Cal.Atty.Gen. 729, 732 (1980).) Basically, this prohibition is "designed to protect the public from possible abuses stemming from the commercial exploitation of the practice of medicine" (*County of Los Angeles* v. *Ford* (1953) 121 Cal.App.2d 407, 413) and it has been said "to be against public policy to permit a 'middleman' to intervene for profit in establishing the professional relationship between members of said profession and members of the public." (*Pacific Employers Ins. Co.* v. *Carpenter*, *supra*, 10 Cal.App.2d at 595.) As was pointed out in a recent opinion of this

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[2] All unidentified statutory references will be to the Business and Professions Code, chapter 5 of division 2 of which constitutes the State Medical Practice Act. (§ 2000.)

[3] Section 2402 provides that the restrictions on corporate practice found in section 2400 do not apply to a professional medical corporation practicing pursuant to the Moscone-Knox Professional Corporation Act (Corp. Code, tit. 1, div. 3, § 13400 et seq.), the "only profit corporations authorized to practice medicine and to operate health care service plans by the Medical Practice Act . . . ." (57 Ops.Cal.Atty.Gen. 231, 234 (1974).) That is not the case of the "industrial medical corporation" about which we are asked since we are told it is a general business corporation *not* licensed as a medical corporation. Section 2400 itself permits the *employment* of physicians by licensed charitable institutions, foundations or clinics, *if* the entity involved makes no charge for the professional services that are rendered. That too is not the situation with the industrial medical center for it charges for the professional services performed thereat. Further, it is not a *non-profit* medical service corporation formed for the purpose of defraying or assuming the cost of professional services of healing art's licentiates. (Corp. Code, § 9201; *California Physicians' Service* v. *Garrison* (1946) 28 Cal.2d 790; 54 Ops.Cal.Atty.Gen. 126, 127, fn. 2 (1971); cf. *Complete Serv. Bur.* v. *San Diego Med. Soc.*, *infra*, 43 Cal.2d at 209-210.)

office, the reasons underlying the proscription are two: first, that the presence of a corporate entity is incongruous in the workings of a professional regulatory licensing scheme which is based on *personal* qualification, responsibility and sanction, and second, that the interposition of a lay commercial entity between the professional and his/her patients would give rise to divided loyalties on the part of the professional and would destroy the professional relationship into which it was cast. (See 63 Ops.Cal.Atty.Gen., *supra*, at 732-733; 39 Ops.Cal.Atty.Gen. 155, 156-157 (1962).)

However, the general rule against corporate practice is not absolute as exceptions to it have been found which, basically put, permit (1) nonprofit corporations, (2) fraternal, religious, hospital, labor, educational, and similar organizations, (3) corporations having an interest in the health of its employees to contract with physicians to provide medical services for *their* people at a reduced cost, and (4) for certain licensed health care institutions to do the same as part of their delivery of health care. Essentially we are asked whether the activities of the industrial medical corporation/center described in the request falls within the exceptions, for most assuredly they appear to be embraced by the general prohibition on the corporate practice of medicine.

In *People* v. *Pacific Health Corp.* (1938) 12 Cal.2d 156, at the time when the rule against corporate practice was first being stated, a distinction was made with respect to its application between (a) a general stock corporation operated for profit contracting with physicians to furnish medical services to its subscribers culled from the general public at large and (b) fraternal, religious, hospital, labor and similar benevolent organizations furnishing medical services to their own particular members. (12 Cal.2d 157, 158, 159-160.) The court found the latter activity not to offend the policy behind the rule:

> "[A] fundamental distinction must be made between defendant and these other institutions. 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 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 non-profit 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.)[4]

(See also *Benj. Franklin L. Assur. Co.* v. *Mitchell*, *supra*, 14 Cal.2d at 658-659.)

—In *Complete Serv. Bur.* v. *San Diego Med. Soc.* (1954) 43 Cal.2d 201, the court found that the principle against the corporate practice of medicine would not be contravened "by permitting a group of interested persons to form a *nonprofit* corporation to secure *for themselves* medical services at low cost. (*Id.*, at 209; see also Corp. Code, 9201; *California Physicians' Service* v. *Garrison* (1946) 28 Cal.2d 790; but see 11 Ops.Cal.Atty.Gen. 236, 237 (1948).) It held that a nonprofit medical service corporation (CBC) could be lawfully established toward that end (cf. Corp. Code, §§ 9200, 9201) and that it could lawfully contract with a panel of physicians and compensate them on a unit basis (approximately 50% of scheduled fees collected by CBC after services were rendered) to provide medical services to its 10,000 subscribers who would pay the corporation for those services according to a schedule of fees. (43 Cal.2d at 205, 209-

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[4] It is interesting to note how the court rejected PHC's contention that since the doctors were neither employed by PHC on a salary basis nor directed by it, but were compensated for actual services rendered and were therefore independent contractors, PHC was to be absolved of the charge of practicing medicine:

"*We are unable to agree that the policy of the law may be circumvented by technical distinctions in the manner in which the doctors are engaged*, *designated or compensated by the corporation*. The evils of divided loyalty and impaired confidence would seem to be equally present whether the doctor received benefits from the corporation in the form of salary or fees. And freedom of choice is destroyed, *and the elements of solicitation of medical business and lay control of the profession are present whenever the corporation seeks such business from the general public and turns it over to a special group of doctors*. As the court said in *Pacific Employers Ins. Co.* v. *Carpenter*, *supra*, 10 Cal.App. (2d) 601: 'But we need not quibble here over the use of terms as it is immaterial whether the appointed practitioners are termed employees, agents or appointees of the petitioner. *The fact remains that petitioner's agreement was to furnish*, in consideration of the premium paid by the insured, *the services of doctors* and dentists *who were to be* appointed, *engaged*, hired or employed *by petitioner for the purpose of furnishing such services*. Any such agreement is clearly condemned as unlawful and against public policy by the authorities above cited.'" (12 Cal.2d at 158-159.)

Again the manner in which the physicians at the industrial medical center are compensated is thus not a determinative factor herein. (See fn. 1, *ante*.)

213.)[5] (On the facts of that case, the court also found there to be no lay interference with the medical practices of the associated doctors on the panel. (*Id.*, at 211.))

—In *County of Los Angeles* v. *Ford* (1953) 121 Cal.App.2d 407 the court held that *accredited nonprofit educational institutions* (cf. Welf. & Inst. Code, § 202) could contract with a county board of supervisors to have licensed medical practitioners on its faculty render medical services (diagnoses and treatment) to indigent patients in a county hospital for compensation by the county "without violating the principles upon which the rule against corporate medical practice rests." (*Id.* at 414.) Not only did the educational institutions come within the exception for "philanthropic institutions" set forth in *Pacific Health Corp.* (*id.*, at 413), but significantly, they neither engaged in soliciting or in offering medical services to the public generally nor had any contact at all with the public or the patients and consequently played no part in the physician-patient relationship which the prohibition was designed to protect. (*Id.*, at 414.)

—Finally, in later years it was also held that certain *licensed health care institutions* such as hospitals and clinics may lawfully engage physicians as independent contractors who *retain their* "*freedom of action*" to furnish medical services within an established licensed health care delivery system. (*Blank* v. *Palo Alto-Stanford Hospital Center* (1965) 234 Cal.App.2d 377, 390 (hospital engages a partnership of physicians to run the diagnostic radiology department; division of fees appropriate); *Letsch* v. *Northern San Diego County Hosp. Dist.* (1966) 246 Cal.App.2d 673, 676-677 (ditto); see also 25 Ops.Cal.Atty.Gen. 198, 205-206 (1955) (physician may be employed on a salary basis in an employer's or employee's clinic; cf. Health & Saf. Code, § 1203(c)(d)).)[6]

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[5] Since we were not presented with a specific contract detailing the fee arrangement between the industrial medical corporation and its panel of physicians (see fn. 1, *ante*) we cannot consider whether that aspect of its operation is proper. Accordingly we do not dwell on the court's exposition on those arrangements and whether they might constitute fee splitting here. (Cf. Bus. & Prof. Code, § 650.) Suffice it to say that in *Complete Service Bureau* the court found no impropriety either in the fact that the panel of physicians were compensated on a unit basis, that being customary with medical service groups, or in the fact that only half of the fee paid the corporation by the subscriber would be remitted to the doctor who treated the patient since that realistically reflected overhead, the expense of which the corporation bore. (43 Cal.2d at 213.) Since the rendition of that case however, section 650 has been substantively amended.

[6] It has also been found however that a hospital may not *hire or employ* licensed physicians to render medical services on its behalf under an arrangement where the hospital exercises control or direction over the physician's practice. (55 Ops.Cal.Atty.Gen. 103, 108-109 (1972) (proprietary hospital and physician director of its electroencephalography department); 54 Ops.Cal.Atty.Gen. 126, 128-129 (1971) (employment of licensed physician in emergency room); 11 Ops.Cal.Atty.Gen. 236, 239 (1948) (hospital and pathologist).) Again without a specific contract

We do not believe that the "industrial medical corporation/center" comes within the purview of these exemptions.

To begin with, it is a general business corporation that is *organized for profit*, which removes it from the latitude given *nonprofit* noneducational and nonhealth care delivery corporations to contract with physicians to provide professional services to their subscribers. (*People* v. *Pacific Health Corp.*, *supra*, 12 Cal.2d at 160; *Complete Serv. Bur.* v. *San Diego Med. Society*, *supra*, 43 Cal.2d at 205, 209-213.) Moreover, the fact that the industrial medical corporation is organized for profit, which *profit* is to be derived from a commercial exploitation of the practice of medicine and more particularly from its establishing and administering the physician-patient relationship, makes its operation even more suspect and its interposition into the professional relationship between the physicians whom it engages and the patients whom it sends to them even more questionable. (Cf. *People* v. *Pacific Health Corp.*, *supra*, 12 Cal.2d at 160; *County of Los Angeles* v. *Ford*, *supra*, 121 Cal.App.2d at 43.) As noted introductorily, it has been said "to be against public policy to permit a 'middleman' *to intervene for profit* in establishing the professional relationship between members of [the medical] profession and members of the public." (*Pacific Employer's Ins. Co.* v. *Carpenter*, *supra*, 10 Cal.App.2d at 595.)

Second, the "industrial medical corporation" is *not* an institution which is traditionally thought of as being within the health care delivery system as are hospitals and clinics, and therefore it cannot avail itself of the latitude provided those entities to contract with physicians to render services to others. (*Blank* v. *Palo Alto-Stanford Hospital Center*, *supra*, 234 Cal.App.2d at 390; *Letsch* v. *Northern San Diego County Hospital Dist.*, *supra*, 246 Cal.App.2d at 676-677; 25 Ops.Cal.Atty.Gen., *supra*, at 205-206.) And surely, even aside from its being organized for profit and its charging fees for medical services rendered, it still bears no resemblance to the "benevolent" association spoken of either in Business and Profession Code section 2400 (see fn. 3, *ante*) or the types of associations mentioned in *Pacific Health Corp.*, *supra*, 12 Cal.2d at 160. (See also *Benj. Franklin L. Assur. Co.* v. *Mitchell*, *supra*, 14 Cal.App.2d at 659.)

Thus if it is to find succor at all in the exemptions hitherto provided corporations to "practice medicine" by engaging physicians to provide services to others, it must be in the above quoted and emphasized language in: (a) *People* v. *Pacific Health Corp.*, *supra*, 12 Cal. 156 which distinguished the general stock corporation organized for profit from the entity in which "the medical service is rendered to a limited and particular group as a result of cooperative association, or as a result of employment by some corporation which has an interest in the health of its employees [because there] [t]he public

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to scrutinize we do not discuss this aspect of the arrangement between the industrial medical corporation and the treating physicians. (See fn. 1, *ante*.)

is not solicited to purchase the medical services of a panel of doctors . . ." (12 Cal.2d at 160) or in (b) *County of Los Angeles* v. *Ford*, *supra*, 121 Cal.App.2d 407 which found significant the facts that "the schools were [not] soliciting the public or offering medical services to the public generally [and that] they have no legal or factual contract with the public or with the hospital patients . . . [and as such] play no part in the relationship of doctor and patient." (121 Cal.App.2d at 414.) However, we do not believe that these convenient exerpts can shield the industrial medical corporation from the general prohibition against the corporate practice of medicine.

While it is true that the industrial medical corporation does not actually solicit or offer the provision of medical services *to the public generally*, neither does it work with a meaningfully defined limitation on those to whom it will provide its services. We are told that it contracts to serve such diverse groups of prospective patients as employees of corporations and employees of governmental entities, and it appears that its services are available to *any* corporation or other entity, public or private, willing to avail itself of them. That general availability distinguishes the industrial medical corporation/center from the institution which makes medical services available to a "*limited and particular group* as a result of cooperative association" such as the members of a fraternal association (*People* v. *Pacific Health Corp.*, *supra*, 12 Cal.2d 156), the infirm indigent at a county hospital (*County of Los Angeles* v. *Ford*, *supra*, 121 Cal.App.2d 407), or the subscribers (be they legion) to a health plan (*Complete Serv. Bur.* v. *County of San Diego Med. Soc.*, *supra*, 43 Cal.2d 201) or even the employees of a large corporation solicitous of their health (*People* v. *Pacific Health Corp.*, *supra*, 12 Cal.2d at 160). With respect to the last group too, inasmuch as the operation of the industrial medical corporation is directed toward providing medical services to the employees of *other* entities, it is a far cry from being "some corporation which has an interest in the health of *its* employees" contracting with physicians to do so. (*Ibid.*; cf. Lab. Code, § 4600.) More important though, unlike the school in *Ford* or the corporation in *Pacific Health Corp.*, the industrial medical corporation *actively solicits* clientele and in so doing plays a positive role in establishing the physician-patient relationship which the proscription against the corporate practice of medicine is designed to protect.

The industrial medical corporation is a lay commercial enterprise that is organized for profit which it expects to derive from creating and administering the professional relationship between physicians whom it engages and their patients who are employees of entities with whom it contracts to furnish medical services. It actively solicits corporations to permit it to become the "middleman" in establishing that professional relationship and to thereafter "administer" it (e.g., billings, etc.). The activity thus described, albeit a variation on the theme, clearly is of the type that has consistently been assailed as constituting the corporate practice of medicine.

We therefore conclude that the operation of the industrial medical corporation described herein is illegal, i.e., that a general business corporation that is not licensed as a medical corporation may not lawfully engage licensed physicians to perform preemployment physical examinations and to diagnose and treat employment related injuries sustained by employees of another entity with whom it contracts to furnish such services even though the physicians performing them do so as independent contractors and not as employees of the general business corporation.

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