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THE HONORABLE BURT MARGOLIN, MEMBER OF THE ASSEMBLY, has requested an opinion on the following aspects of newly enacted Business and Professions Code section 654.2:

1. What is the meaning of the term "organization" as it is used in section 654.2, i.e., in what types of entities must a practitioner disclose his or her significant beneficial interests before referring patients thereto?

2. Does the term "significant beneficial interest" as used in section 654.2 cover indirect interests such as ownership of stock in a parent corporation that fully owns an "affected organization"?

3. How is the written disclosure and advisement requirement of section 654.2 to be fulfilled?

CONCLUSIONS

1. As used in section 654.2 of the Business and Professions Code, the term "organization" refers to any entity that provides services or supplies for a practitioner-patient relationship.

2. The term "substantial beneficial interest" used in section 654.2 of the Business and Professions Code includes indirect interests such as stock ownership and interests in parent companies which wholly own an "affected organization."

3. The written disclosure and advisement required by section 654.2 may take any form that is reasonably calculated to timely apprise a patient of a practitioner's substantial beneficial interest in an "affected organization" when a referral is made.

ANALYSIS

This opinion discusses three aspects of newly enacted section 654.2 of the Business and Professions Code (Stats. 1984, ch. 639, § 1, p.), which reads as follows:

> "(a) It is unlawful for any person licensed under this division [i.e., div. 2 of the Bus. & Prof. Code] or under any initiative act referred to in this division to charge, bill, or otherwise solicit payment from a patient on behalf of, or refer a patient to, *an organization in which the licensee*, or the licensee's immediate family, *has a significant beneficial interest*, unless the licensee first *discloses in writing to the patient* that there is such an interest *and advises the patient* regarding other alternative services, if available.
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> "(b) Where referrals, billings, or other solicitations are between licensees who conduct their practice as members of the same professional corporation or partnership, and the services are rendered on the same physical premises, or under the same professional corporation or partnership name, a single disclosure statement disclosing that interest and advising the patient of alternative services shall be deemed compliance with subdivision (a).
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> "(c) For the purpose of this section, the following terms have the following meanings:
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> "(1) 'Immediate family' includes the spouse and children of the licensee, the parents of the licensee and licensee's spouse, and the spouses of the children of the licensee.

"(2) 'Significant beneficial interest' means any financial interest that is equal to or greater than the lesser of the following:

"(A) Five percent of the whole.

"(B) Twenty-five thousand dollars ($25,000).

"This section shall not apply to relationships governed by other provisions of this article nor is this section to be construed as permitting relationships or interests that are prohibited by existing law on the effective date of this section." (Emphases added.)

We are asked three questions with regard to the above-supplied emphases:

1. What is meant by the term organization, i.e., in what types of entities are interests required to be disclosed? We will conclude that the term "organization" as used in section 654.2 includes a disclosable interest in any professional entity that provides services or supplies that are logically connected to the professional-patient relationship.

2. Does the term "significant beneficial interest" include indirect interests such as stock ownership in an "affected organization" or an interest in a parent company a subsidiary of which is an affected organization? We will conclude that by using the term "significant beneficial interest" in section 654.2 instead of other terminology it has used before in related statutes (such as "proprietary interest" or "co-ownership interest"), the Legislature wished to eschew the niceties of particular ownership interests here and now cover *any* interest by which a practitioner might share in the profits of an entity. Indirect interests would therefore be within the purview of the section.

3. How is the disclosure to and advisement of patients to be effected? We will conclude that the statutory purpose of disclosure and advisement may be effected by fairly general disclosure statements (examples of which are given herein) as long as they are sufficiently imparted in written form and at an appropriate time (as when the need for the referral is discussed), so the patient can understand the practitioner's interest in the organization to which referral is made and avail him or herself of the alternatives to it.

Before embarking on our analysis of those questions, we would orient the reader by placing section 654.2 in its proper setting. The section is the latest in a series of related attempts by the Legislature to protect the healing arts patient from untoward professional referrals. In 1949 the Legislature prohibited a healing arts practitioner from receiving any unearned compensation for patient referrals, but, with certain exception, still permitted a practitioner to have profit interests in health provider enterprises. (§ 650, fn.

2, *post*; 68 Ops.Cal.Atty.Gen. 28, 31 (1985); 16 Ops.Cal.Atty.Gen. 18 (1950).) Thereafter, in 1975 the Legislature essentially made it unlawful for certain practitioners (doctors, osteopaths, and dentists) to refer patients to enterprises in which they had certain interests unless they were disclosed to the patient beforehand. (§ 654.*1*, fn. 3, *post*.) Last year section 654.*2* followed suit and now prohibits *any* division 2 licensee, i.e., any healing arts professional (cf. 66 Ops.Cal.Atty.Gen., 302, 305 & 305, fn. 7 (1983))[1], from referring a patient (1) *to any organization* in which he or she has (2) *a significant beneficial interest*, unless the licensee (3) *first discloses to the patient in writing* the existence of such an interest *and advises* regarding other available alternatives. With this in mind, we proceed to examine these three components about which enquiry is made.

1. "Organization"

Section 654.2 makes it unlawful for any healing arts practitioner "to charge, bill or otherwise solicit payment from a patient on behalf of, or refer a patient to, *an organization* in which the licensee [or his/her immediate family] has a significant beneficial interest," (emphasis added) unless the patient is advised of that interest and of the availability of alternative services. We are asked the meaning of the term "organization" or in other words, in what types of entities are interests to be disclosed under the statute. We conclude that the term "organization" refers to any professional entity that provides services or supplies that are logically connected to the professional patient relationship.

The term "organization" -- thought of as "an administrative and functional entity," a group of people that has more or less constant membership, a body of officers, [and] purpose" (Webster's Third New Internat. Dict. (1971 ed.) at 1590) -- is innocuous enough. The real problem for resolution is exactly what type of entity was meant to be brought in that embrace?

At first blush it might appear from a quick reading of section 654.2 that the section was meant to demand disclosure of every possible entity in which a healing arts practitioner might have a significant beneficial interest to which a patient would be referred or on behalf of which a bill would be collected. But we do not believe that to have been the case.

[1] Division 2 of the Business and Professional Code entitled "Healing Arts," currently governs the licensure of *22* classes of practitioners by its chaptered provisions. (See their listing in 66 Ops.Cal.Atty.Gen., *supra*, at 305, fn. 7.) For the purpose of this opinion we will use the terms "healing arts practitioner/professional" or "division 2 licensee" as a variant of section 654.2's phrase "any person licensed under this division."

To begin with, when faced with a similarly broad statutory prohibition -- that found in action 655 of the Business and Professions Code on optometrists and dispensing opticians having "any membership, proprietary interest, . . . or any profit-sharing arrangement in any form, directly or indirectly" -- we perceived serious constitutional problems to arise if the statute were read in an open-ended literal manner and prohibit, for example, common membership in *any* organization such as a church or a lodge. (64 Ops.Cal.Atty.Gen. 192, 198 (1981).) Thus, although the statute did not *specifically* require it, we noted that in order to avoid those problems the section had to be read *as applying to relationships that are business related* and which "have some connection with an activity for which the professional license was issued . . . ." (*Id.*, at 198-199.) We would be similarly constrained vis-a-vis section 654.2. In its respect, however, our task is somewhat easier and the constitutional spectre need not appear.

If we read section 654.2 as an integrated whole, with the word "organization" in its proper context (cf. *Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230), we see that it speaks to the referrals of, billings of, disclosures to, and advisements of, *patients*. We believe that in itself reveals a legislative intent to govern only the formal relationship between practitioner and patient and to have the disclosure requirement only apply to entities which service and are related to that relationship. In other words, we do not believe the statute was ever intended to apply to *every* potential entity for which a professional might bill a patient or to which a patient might be referred. Excluded for example, would be a physician's referral of a patient to a "sideline" business (for instance, a bookstore) in which the physician or his/her spouse had a significant beneficial interest but which had nothing to do with the professional relationship. Such referrals would not be logically connected with the practitioner-patient relationship, and would not be covered by the section.

This perception of the section's import is confirmed when we consider the word "organization" in light of the purposes, goals and design of the section in which it appears. (Cf. *Pacific Coast etc. Bank* v. *Roberts* (1940) 16 Cal.2d 800, 806.) Indeed, "in applying any such generic term or general pronouncement to the almost limitless variety of particular human experiences, we are called upon to implement . . . [the will] of the . . . body whose province [it] is to ordain them" (63 Ops.Cal.Atty.Gen. 304, 312 (1980) (meaning of "change of ownership").) To understand the Legislature's purpose and design for the enactment of section 654.2 we may look to the historical circumstances surrounding it and the state of contemporary and prior legislation in the area. (*Calif. Mfrs. Assn.* v. *Public Utilities Com.* (1979) 24 Cal.3d 836, 844; *Grannis* v. *Superior Court* (1905) 146 Cal. 245, 247-248; *County of San Diego* v. *Milotz* (1953) 119 Cal.App.2d Supp. 871, 880.)

As mentioned prefatorily, section 654.2 is but the latest in a series of related attempts by the Legislature to protect the healing arts patient from untoward and

unnecessary professional referrals and billings. With the adoption of *section 650* of the Business and Professions Code in 1949 (Stats. 1949, ch. 899, p. 1670, § 1, as amended by Stats. 1971, ch. 1568, p. 3148, § 1; cf. fn. *2*, *post*) California law prohibited healing arts practitioners (i.e., div. 2 licensees) from receiving any [unearned] monetary or other consideration for referring a patient, client, or customer, to any person, irrespective of any proprietary or ownership interest the professional might have therein. (See generally 68 Ops.Cal.Atty.Gen. 28, *supra*; 65 Ops.Cal.Atty.Gen. 252 (1982); 64 Ops.Cal.Atty.Gen. 192, *supra*; 16 Ops.Cal.Atty.Gen. 18 (1950).) The purpose for that prohibition was to ensure (a) that professional referrals would be made in the interest of the patient and not the practitioner's gain and (b) that patients would not be charged higher costs by an entity to which they were referred to cover hidden rebates or kick-backs to practitioners for referring them. (65 Ops.Cal.Atty.Gen. 252, 253, *supra*; 63 Ops.Cal.Atty.Gen. 89, 91-92 (1980); 16 Ops.Cal.Atty.Gen. 18, 23-24, *supra*.) Generally speaking though, it was never the intent of the law either to prohibit practitioners from making legitimate investments in professionally related establishments and profiting therefrom, or to prohibit practitioners from referring patients to such establishments, so long as the practitioner's profit was not predicated upon the number or value of his or her referrals but was separate and apart from them. (68 Ops.Cal.Atty.Gen., *supra*, at 31; 16 Ops.Cal.Atty.Gen., *supra*, at 22, 23, 24. But see, 16 Ops.Cal.Atty.Gen., *supra*, at 26 interpreting original § 650 (now § 654) (physicians may not invest in a dispensing optician business to which they refer patients); former § 654 (cf. now §§ 650.1 & 4080.5), *Magan Medical Clinic* v. *Cal. State Bd. of Medical Examiners* (1967) 249 Cal.App.2d 124, and 63 Ops.Cal.Atty.Gen., *supra*, at 92, fn. 3 (physicians could not have financial interests in pharmacies)); § 655 and 64 Ops.Cal.Atty.Gen. 192, *supra* (optometrists may not invest with dispensing opticians).) In fact, section 650 was subsequently amended in 1971 to specifically provide that it would *not* be *unlawful* for healing arts professionals to refer persons to laboratories, pharmacies, clinics, or health care facilities *solely* because they had a proprietary interest or coownership therein. (§ 650, as amended by Stats. 1971, ch. 1568, p. 3148, § 1, essentially codifying 16 Ops.Cal.Atty.Gen. 18 (1950); see 68 Ops.Cal.Atty.Gen., *supra*, at 31.)[2]

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[2] Section 650 currently provides as follows:

"Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code the offer, delivery, receipt or acceptance, by any person licensed under this division of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in or with any person to whom such patients, clients or customers are referred is unlawful.

"Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Section 654.1 it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic,

In 1975, however, the Legislature added *section 654.1* to the Business and Professions Code and made it unlawful for certain healing arts professionals, to wit, physicians, osteopaths and dentists, to refer patients, clients or customers to clinical laboratories in which they did have a "membership, proprietary interest or coownership in any form or any profit sharing arrangement," *unless* at the time of making the referral they disclosed their interest to the patient in writing and advised the patient that he or she might choose any other clinical laboratory to have the work performed. (§ 654.1 added by Stats. 1975, ch. 303, p. 751, § 2 and amended by Stats. 1978, ch. 1161, p. 3592, § 17 and Stats. 1981, ch. 610, p. 2348, § 2.)[3] (650 was also amended at the time to reflect the disclosure and advisement requirement of § 654.1. (Stats. 1975, ch. 303, p. 750, § 1).) The legislative history of the 1975 legislation indicates that it was designed with the hope that unnecessary and untoward referrals of patients to clinical laboratories in which referring physicians had an interest, or at least the prospect of higher fees ensuing from such referrals, would be stemmed by the required disclosure and knowledge by the patients of those interests. (See, e.g., Enrolled Bill Report on SB 340, Department of Consumer Affairs, (Aug. 13, 1975)[4];

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or health care facility solely because such licensee has a proprietary interest or coownership in such laboratory, pharmacy, clinic, or health care facility; but such referral shall be unlawful if the prosecutor proves that there was not valid medical need for such referral.

"'Health care facility' means a hospital, nursing home, medical care facility, or private mental institution licensed by the State Department of Health Services.

"A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison."

[3] As pertinent to this discussion, section 654.1 provides:

"Persons licensed under Chapter 4 (commencing with Section 1600) of this division [dentists] or licensed under Chapter 5 (commencing with Section 2000) of this division [physicians] or licensed under any initiative act referred to in this division relating to osteopaths may not refer patients, clients, or customers to any clinical laboratory licensed under Section 1265 in which the licensee has any membership, proprietary interest, or coownership in any form, or has any profit-sharing arrangement, unless the licensee at the time of making such referral discloses in writing such interest to the patient, client, or customer. The written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed."

[4] "The hope is that the bill's disclosure requirement will have a tendency to reduce such fees. At the least, it will apprise patients of the financial interests involved so that if they wish, they can inquire about fees and be in a better position to make informed judgments about the laboratory involved."

Enrolled Bill Report on SB 340, Department of Health (Aug. 15, 1975)[5]; on the value of such documents see, 67 Ops.Cal.Atty.Gen. 241, 246 (1984).)

Thus before *section 654.2* was enacted last year, existing law generally prohibited health care professionals from receiving kick-backs or rebates for referring patients, but in the main did not prohibit their having interests in establishments to which referrals might be made (§ 650); however, various interests physicians, dentists and osteopaths had in clinical laboratories to which they referred patients had to be disclosed and the patients had to be advised of their freedom to choose any other laboratory for the work (§ 654.1). Section 654.2 now prohibits *any* healing arts professional from referring *patients* to *any organization* in which he or she might have a significant beneficial interest (or from collecting a bill from *the patient* on behalf of such an organization) without a similar disclosure and an advisement of available alternatives.

The pertinent documents comprising the legislative history leading to the enactment of section 654.2 -- again, a valuable indication of the Legislature's intention in its regard -- indicates that the section was designed and meant to build upon the existing statutory base of protecting the *patient* referral. For example we read in the Assembly Health Committee's *Staff Comments* on AB 3706:

> "SUBJECT [¶] Requires health professionals to disclose interests in any organizations *to which they refer patients* or arrange for collection of charges. Makes violation a misdemeanor.
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> "*DIGEST* [¶] Existing law prohibits various types of rebates or financial arrangements between health professionals and *organizations to whom patients are referred*. [¶] Existing law permits financial interests by health professionals in clinical laboratories or billing on behalf of such labs provided the interest is disclosed to patients who are referred to the laboratories and the patients are informed of alternatives. [¶] *This bill would extend the requirement to disclose and advise of available alternatives for all organizations to whom a patient is referred when the referring professional or the family has a significant beneficial interest as defined*.
>
> ". . . . . .

[5] "*SPECIFIC FINDINGS*: [¶] The objective of this bill is to enhance the public's right to knowledge about health care. [¶] *RECOMMENDATION*: [¶] Sign this bill so that unnecessary referrals with the resulting inconvenience and cost to the public might be reduced when patients must be made aware of possible financial gain to the physician or dentist from the referral."

> "*STAFF COMMENTS* [¶] This bill in its amended form is carried by the author for a constituent who believes that there should be a general requirement to disclose interests by health professionals in organizations to which their patients are referred or for whom the professionals collects fees. [¶] Under present law health professionals may not, in general, bill or refer patients to other clinical labs owned by the professional unless the ownership interest is disclosed. [¶] Under *the State Medical Assistance Program (Medi-Cal) reimbursement will not be made for the services of organizations in which the professional has a significant beneficial interest unless that interest has been disclosed to the Department of Health Services*. [¶] These *provisions are designed to promote arms length dealings between professionals and organizations which receive referrals or for whom charges are collected*."

(*Staff Analysis*, Assem. Health Comm., AB 3706 (May 3, 1984); (emphases added); accord, *Staff Analysis*, Sen. Comm. on Bus. & Profs., AB 3703 (June 21, 1984); Sen. Dem. Caucus, Consent, AB 3706 (July 2, 1984); Sen. Rep. Caucus, Consent, AB 3706 (July 2, 1984); cf. Leg. Counsel Digest to AB 3706.)

From the foregoing examination, we have no doubt that the purpose for the enactment of section 654.2 was to address *only the formal disciplinary relationship between a healing arts practitioner and his or her patient* and protect referrals and billings that might be made *therein*. Certainly, it is *there* that a professional, through a patient's trust and dependence (cf. *Shea* v. *Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578-579), has the power to make a self-interested referral or collect a self-interest billing.

It is true that section 654.2 was designed to extend the disclosure requirements of existing law (which were limited to physicians, osteopaths and dentists referring their patients to *clinical laboratories* in which they had *certain* described interests) so as to cover *all healing arts professionals* (see fn. 1, *ante*) who might refer their patients to (or bill them for) *any organization* in which they had a "significant beneficial interest." Still we do not believe the Legislature ever meant to go beyond the confines of professional relationship in targeting the entities to be affected by the section's command. As mentioned before, it is one thing to observe that the term "organization" is broad enough to cover a variety of entities but it is quite another to say exactly which type of entities were meant to be brought in the section's embrace.

With the current spate of licensure under division 2 (cf. 66 Ops.Cal.Atty.Gen. 302, 307 & 307, fn. 7, *supra*), there is of consequence a very great variety in the possible types of entities to which the different healing arts practitioners might refer their patients in the course of their respective practices. We believe the Legislature used the all-

embraceable term "organization" as a "catchall" to cover that wide variety of possibilities. But we also believe the common denominator nonetheless remains of the entity being related to or connected with the professional relationship in which referral would be made. Accordingly, we conclude that the term "organization" as used in section 654.2 was meant to describe those entities to which a professional might refer a patient or solicit a billing from a patient, for services or supplies that are logically connected to or needed in the professional-patient relationship.

2. The Significant Beneficial Interest

Section 654.2 requires that healing arts practitioners disclose to their patients the fact that they (or their immediate family) have a "significant beneficial interest" in an organization to which they refer a patient (or on behalf of which they solicit a payment from the patient). The section defines "significant beneficial interest" in terms of threshold amounts *of investment* (not return), to wit -- "*any* financial interest that is equal to or greater than the lesser of . . . (A) Five percent of the whole [or] (B) Twenty-five Thousand Dollars ($25,000)." It does not however specify in what form those amounts may be placed. Accordingly, we are asked whether the requirement applies to indirect interests meeting the threshold amounts such as, for example, where a licensee might have either a twenty-five thousand dollars investment in, or a five percent ownership of a parent corporation that fully owns an "affected organization" -- i.e., an organization to which a licensee refers patients for professionally-related services or supplies. We conclude that it does.

It is immediately apparent when one compares section 654.2 with the progenitor section 650 and sister section 654.1 that the other two sections use different terminology to describe the interests of a practitioner which they target. Section 650 prohibits rebates for referrals, "irrespective of any *membership*, *proprietary interest or coownership* in or with any person to whom . . . patients . . . are referred" and section 654.1 requires disclosure of "*any membership*, *proprietary interest*, or *coownership* in *any form*, or . . . any *profit-sharing arrangement*." (See fns. 2 & 3, *ante*.) We can safely assume that by using different terminology to describe the interest targeted by section 654.2, to wit, a "substantial beneficial interest," "the legislature did so advertently and intended a difference in meaning." (*Anthony* v. *Superior Court* (1980) 109 Cal.App.3d 346, 355.)

The vagaries of the terms found in the other sections of law have occupied the courts and ourselves for at least 35 years. (See, e.g., *Magan Medical Clinic* v. *Cal State Bd. of Medical Examiners*, *supra*, 249 Cal.App.2d at 136-137 (§ 650's "proprietary interest" and "ownership in any form" does *not* cover stockholders of a corporation, as they have no estate in its property); 68 Cal.Ops.Atty.Gen. 28, 30, *supra* (an interest in a limited partnership is a "proprietary interest" under § 650; accord, *Magan Medical Clinic*, *supra*, at 134-136); 64 Ops.Cal.Atty.Gen. 192, 204 (1981) (leasee's right of first refusal is an

ownership and proprietary interest under § 655); 16 Ops.Cal.Atty.Gen. 18, 19, *supra* (type of ownership under § 650 is irrelevant; its gravamen is the kick-back for the referral).) We believe that the Legislature deliberately rejected using them in section 654.2 to avoid having their legal technicalities affect whether an interest under the section has to be disclosed.

Section 654.2 calls for disclosure of a "significant beneficial interest" -- i.e., an interest which may be thought of as one from which a person derives a financial profit or gain. (Webster's *Third New Internat. Dict.* (1971 ed.) at 2280 ("substantial" means real), 203 ("beneficial" means conferring benefits to one's advantage; profitable).) Without legal nicety, the section defines the phrase as including "*any* financial interest" meeting the threshold amounts (§ 654.2, subd. (c).) By using the indefinite adjective "any" to describe the interest it embraces, a wide variety of financial interests are covered without regard to distinction of form. (Cf. 68 Ops.Cal.Atty.Gen. 28, 31, *supra*: 64 Ops.Cal.Atty.Gen. 192, 203, *supra*.) Accordingly, unlike the kindred sections of law where the legal technicalities of a practitioner's interests may be important, under section 654.2 they deliberately are not: Once a practitioner has *any* financial interest in an organization to which he or she refers patients it matters not in what particular trapping of legal form the interest is held or whether the profit derived it is direct or indirect. (Compare § 655.) If the threshold amounts of investment are met, the interest secured by them must be disclosed. The legislative history of section 654.2 confirms this view.

The notion of "substantial beneficial interest," without doubt, was taken from the Med-Cal Conflict of Interest Law, i.e., section 14022 of the Welfare and Institutions Code which deals with a similar subject, the disclosure of practitioner's interests in organizations to which he or she refers patients.

Section 14022 provides:

> "(a) This section shall be known as the 'Medi-Cal Conflict of Interest Law.'
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> "It is the intent of the Legislature that provisions be made for disclosure of the interests of providers of service in the services, facilities and organizations to which they refer Medi-Cal recipients so that it is possible to determine the extent to which conflicts of interests may exist because of such referrals.
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> "(b) As used in this section, the term 'referral' means (1) the referral of a recipient by a provider of services to any other provider of service; (2) the placement of a recipient by a provider of service in any facility; or (3) the obtaining, requesting, ordering or prescribing of services or supplies by a

provider of service on behalf of a recipient from any other provider of service.

"*As used in this section*, *the term* '*immediate family*' *includes the spouse and children of the provider of service*, *the parents of the provider of service and his spouse*, *and the spouses of the children of the provider of service*.

"(c) *No payment under this chapter shall be made to a provider of service or to any facility or organization in which he or his immediate family has a significant beneficial interest*, for services rendered in connection with any referral of a recipient, unless there is on file with the director and the Advisory Health Council a statement of the nature and extent of such interest." (Added by Stats. 1980, c. 1129, p. 3636, § 2, urgency, eff. Sept. 26, 1980.)" (Emphasis added.)

The Department of Health Services, the agency responsible for administering California's Medical Assistance Program or Medi-Cal (Welf. & Inst. Code, §§ 50001, 50002), has implemented the requirement for disclosures of "significant beneficial interests" under the Medi-Cal Conflict of Interest Law in the following manner:

"(a) A provider shall not bill or submit a claim for service involving the referral of a beneficiary to or from another provider unless each provider has disclosed any significant beneficial interest existing between the providers. Disclosure shall be accomplished by completing and submitting a Medi-Cal Personal Disclosure Statement of Significant Beneficial Interest form as provided by the Department.

"(b) A provider that fails to comply with (a) or that submits a false or incorrect disclosure shall be subject to suspension from participation or payment under the Medi-Cal program.

"(c) *For the purpose of this section*:

"(1) '*Significant beneficial interest*' *means any financial interest held by a provider*, *or a member of the provider's immediate family*, *in another provider that is equal to or greater than the lesser of the following*:

"(A) *Five per cent of the whole*.

"(B) *$25,000.00*.

"(2) 'Immediate family' means spouse, son, daughter, father, mother, father-in-law, mother-in- law, son-in-law or daughter-in-law.

"(d) Interests held by a provider and members of that provider's immediate family shall be combined and valued as a single interest.

"(1) The extent of financial interest shall be determined as follows:

"(A) Full ownership shall be considered as 100 percent financial interest and control regardless of mortgages or other incumbrances.

"(B) *Interest in a partnership* shall be determined on the basis of the percentage of ownership specified in either a written or verbal partnership agreement.

"(C) *Interest in a corporation* shall be determined by computing the percentage of stock or bonds owned of the total outstanding shares or bonds of the corporation as of the last working day of the month preceding compliance with (a).

"(D) All other financial arrangements shall require establishment of a fair and reasonable dollar value for both the interest and the whole. The percentage interest shall be computed as the percentage the dollar value of the interest represents of the whole.

"(2) The dollar value of the following types of interests shall be determined as follows:

"(A) Bonds, over-the-counter stocks and stocks listed on the major stock exchanges shall be valued at the closing selling price on the last working day of the month preceding compliance with (a).

"(B) Stocks in a closely held corporation shall be valued at the original purchase price, par value, or current market value, whichever is greater.

"(C) Partnership interests shall be valued at the total dollar amount invested in organizing the partnership. A fair and reasonable dollar equivalent shall be determined if investment is not in form of monies.

"(D) All other financial arrangements shall be valued at the actual dollar investment or a fair and reasonable dollar equivalent for investments

not in the form of monies." (Tit. 22, Cal. Admin. Code, § 51466; emphases added.)

It is readily apparent on comparison that the Legislature was aware of section 14022 and this implementing regulation when it adopted section 654.1 since it incorporated part of them verbatim in that section. (Compare § 654.2(c)(1) & (2) with § 14022 (b, ¶ 2) & (c) and § 51466(c)(1) & (2); see also Assem. Health Comm., *Staff Comments On AB 3706*, quoted *supra*.) From that we may presume that the Legislature *approved* of the Department's regulation implementing section 14022 and interpreting its phrase "substantial beneficial interest," and that *it intended to carry the same construction* over to section 652.4. (Cf. *Cal. M. Express, Ltd.* v. *S. Bd. of Equalization* (1955) 133 Cal.App.2d 237, 239-240; *Universal Eng. Co.* v. *Bd. of Equalization* (1953) 118 Cal.App.2d 36, 43; *Coca-Cola Co.* v. *State Bd. of Equalization* (1945) 25 Cal.2d 918, 922-923; *Horn* v. *Swoap* (1974) 41 Cal.App.3d 375, 382; 64 Ops.Cal.Atty.Gen. 74, 81 (1981).) The approved interpretation of the phrase "substantial beneficial interest" for the purpose of section 14022 includes indirect interests such as stock ownership. (22 Cal. Admin. Code, § 51466(d)(1).) Given its provenance and legislative history the same must have been intended for its meaning when it came to be used in section 654.2. (*Hunstock* v. *Estate Development Corp.* (1943) 22 Cal.2d 205, 210-211: *Estate of Hoertkorn* (1979) 88 Cal.App.3d 461, 465-466; 64 Ops.Cal.Atty.Gen. 240, 242, fn. 5 (1981).) We therefore conclude that indirect interests, such as stock ownership and interests in parent companies of fully owned subsidiaries, are within the ambit of the disclosure requirements of section 652.4.

3. The Disclosure and Advisement

Section 654.2 prohibits a healing arts professional (cf. fn. 1, *ante*) from referring a patient to, or billing a patient on behalf of, an organization in which he or she has a significant beneficial interest "unless the licensee *first discloses in writing* to the patient that there is such an interest *and advises the patient* regarding other alternative services, if available." The statute is silent, though, as to the form or content of the disclosure or the advisement and we address those aspects of it now.

As we have seen, the clear purpose for the enactment of section 654.2 was to stem abuses whereby practitioners of the healing arts might make patient referrals based on economic self-interest rather than the dictates of good patient care. The section seeks to prevent this by insuring that patients become aware (1) of any significant financial interest their referring practitioner might have in an entity to which referral is made and (2) of the possibility of available alternatives to it. It does this by making it unlawful for a healing arts practitioner to refer a patient to such an entity *unless* he or she "first discloses in writing to the patient that there is such an interest and advises . . . regarding other alternative services."

The first thing to be noted with respect to the statute's disclosure requirement is that it is general: it does not expressly require that any information other than the *existence* of an economic interest be revealed, nor does it require that the alternatives to the affected organization be specifically identified. By contrast, we know that when the Legislature *has* wished for specific information to be imparted consumers in particular ways, it has taken pains to spell out in the commanding statute exactly what is to be written and how it is to appear. (See, e.g., Civ. Code, §§ 1689.7 (home solicitation contracts, cancellation rights), 1799.91 (consumer credit contracts, potential liability of co-signee), 1812.205 (seller assisted marketing plans, disclosure of state non-involvement), 1812.302 (campgrounds, cautionary notice).) Similar prescription is wanting here and we may presume that *this* statutory purpose may be served and its requirements met by fairly general disclosure statements imparted in a variety of ways. (Cf. *Safer* v. *Superior Court* (1975) 15 Cal.3d 230, 238; *Kaiser Steel Corp.* v. *County of Solano* (1979) 90 Cal.App.3d 662, 668; *Board of Trustees* v. *Judge* (1975) 50 Cal.App.3d 920, 927.)

The components of the written disclosure seem fairly simple; we list and annotate them here:

1. The organization, entity or facility to which the patient is being referred should be identified.

2. A patient should be advised that the practitioner has a beneficial interest in an organization, entity or facility to which the patient is being referred. The particular interest need not be revealed.[6]

3. The patient should be advised that he or she may have the services performed at another facility which offers the same or similar services,[7] and

[6] Section 654.2 is less specific with respect to the disclosure of the type of interest that is involved than is section 654.1 (fn. 3, *ante*). The latter requires "disclosure [of] such interest" while the former only disclosure "that there is such an interest."

[7] We reject the suggestion that the statute refers to advising a patient about alternatives to the proposed course of action for which referral is made (e.g., to treatment or testing). The concern of the statute is to avoid practitioner self-interest dictating the choice of referral services, not the basic wisdom of the course of action (e.g., treatment). In other words it is concerned with *who* will perform the required services, and *not* with whether they ought be performed at all. Presumably, that consideration would have already been fully discussed with the patient, and a course of action already decided upon well before the implementing referral is made.

4. The patient should either be given the names of the specific alternative facilities that are available or information as to where a listing of them might be obtained.[8]

Regarding the *content* of the disclosure notice then, we offer the following as an example:

> "Under California law, I am required to inform you that I have (or a member of my family has) a financial interest in *(name of organization)*, to which I am referring you for services. There may be other organizations from which you can obtain these services. I will discuss alternatives with you."

Or, for referrals to other practitioners within the same professional corporation or partnership:

> "Under California law, I am required to inform you that *(name of practitioner)*, to whom I am referring you for services, is a member of the same professional partnership or corporation in which I practice and hold a financial interest. There may be other practitioners from whom you can obtain these services. I will discuss alternatives with you."

Regarding the *form* of the notice, we believe that any device or combination of devices that would reasonably be expected to call the patient's attention to the professional's "significant beneficial interest" would suffice. This could either be accomplished by a separate handout or by incorporation in a standard referral form, if the disclosure is sufficiently prominent and distinct to be recognized on them and if the patient receives them in a timely manner. No doubt other possibilities exist. What is absolutely essential to their fulfilling the statute's requirement, however, is that they alert the patient to the practitioner's interest in a comprehensible way and at a time *before* the actual referral

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[8] Section 654.*1* requires that "the written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed." To comply, the disclosure *need only show that an option exists*. The physician is clearly not obligated to give specific information about other available clinical laboratories. Section 654.2, however, requires that the licensee "advise the patient *regarding* other alternative services, if available." (Emphasis added.) We think the requirement is met if the practitioner either identifies specific alternative facilities or instructs the patient as to how he or she may identify specific alternative facilities which can provide the same service. For instance, referring a patient to a professional society referral service or directory, or the yellow pages where such identification of alternative facilities may be obtained should suffice.

takes place.[9] An appropriate early time would be of course when the need for the services for which referral is made is discussed.

Accordingly, we conclude in answer to the third question that the statutory disclosure and advisement requirements of section 654.2 may be met by a fairly general written disclosure statement along the lines of those offered herein by way of example, and that it may be imparted in any manner that would reasonably be expected to draw a patient's attention to its content and alert him or her in a timely fashion to the existence of the practitioner's substantial beneficial interest in the organization to which he or she is being referred and the opportunity of availing him or herself to alternatives to it.

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[9] It is for this reason that we must reject the suggestion that the disclosure might be contained on a prominently posted sign. Although that device has been recognized as a reasonable means of complying with other written notice requirements and as being particularly efficient and effective where, as here, the intended recipients of the communication may all be found at one particular location (cf. Lab. Code, § 4600 & tit. 8 Cal. Admin. Code, § 9782), we do not believe such device would fill the office of section 654.2. By requiring (1) that disclosure of a practitioner's interest be made *before* referral and (2) that a patient *be advised* of the available alternatives, the section essentially requires a personal notification to the patient of the interest at such a time that he or she might understand the situation and act accordingly *before* the actual referral is made. Surely that is the only time in which the disclosure would be meaningful and alternatives availed of; it would make little sense to have an interest in an organization disclosed *after* a patient has been referred to it. A sign cannot insure a patient's receiving the required information in the section's contemplated time frame.