



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., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

January 22, 2004

Kristy D'Angelo
Rivkin, Radler, et al.
EAB Plaza, West Tower
Uniondale, New York 11556

Dear Ms. D'Angelo:

Pursuant to your recent phone inquiry, I am enclosing copies of several letters which address a wide variety of legal issues related to the corporate practice of medicine, fee-splitting, referral for a fee, and "management companies" and their arrangements with physicians. Specifically, I am enclosing copies of Department of Health letters dated October 25, 1988, March 27, 1989, May 7, 1992, September 3, 1992, January 22, 1993, February 3, 1993, May 20, 1993, January 5, 1994, March 22, 1994 (2 letters), June 13, 1994, July 11, 1994, October 25, 1994, March 7, 1995, April 7, 1995, May 2, 1995, August 14, 1995, March 21, 1996, April 19, 1996 and April 17, 1997. I have also enclosed copies of letters dated August 2, 1982, August 14, 1989 and December 8, 1993 concerning the State Education Department's position on potential fee-splitting arrangements.

I believe these letters will be of assistance to you in advising your client concerning the laws as they apply to "management companies," the corporate practice of medicine, physician fee-splitting, referral for a fee, and billing issues. Additionally, you may want to review the following statutes and cases which address issues related to the corporate practice of medicine and fee splitting: Education Law §§6512, 6513, 6522, 6530(17), (18) and (19), 6531 and 6509-a; Public Health Law §§238 et seq., 586, 587, 2800 et seq. and 4500 et seq.; People v. Woodbury, 192 N.Y. 454 (1908); Necula v. Glass, 647 N.Y.S. 2d 501 (First Dept. 1996) (dealing specifically with a management service organization); Empire Magnetic Imaging, Inc. v. Comprehensive Care of N.Y., P.C., 271 A.D. 2d 472 (Second Dept. 2000); Accident Claims Determination Corp. v. Durst, 224 A.D. 2d 343 (First Dept. 1996); Hartman v. Bell, 137 A.D. 2d 585 (Second Dept. 1988); Okereke v. State of New York, 129 A.D. 2d 373 (Third Dept. 1987); Albany Medical College v. McShane, 104 A.D. 2d 119 (Third Dept. 1984); United Calendar Manufacturing Corp. v. Huang, 94 A.D. 2d 176 (Second Dept. 1983); State of New York v. Abortion Information Agency, 37 A.D. 2d 142 (First Dept. 1971), aff'd 30 N.Y. 2d 779 (1972); Toffler v. Porkorny, 157 Misc. 2d 703 (Sup. Ct. Nassau

Co. 1993); Katz v. Zuckermann, 126 Misc. 2d 135 (Sup. Ct. Queens Co. 1984); Chicago Insurance Company v. Borsody, 165 F. Supp. 592 (Dist. Ct., S.D. 2001); Martone v. Healthsouth Holdings, Inc., N.Y.L.J. Vol. 222 (Sup. Ct. New York Co., December 23, 1999); and Odrich v. Trustees of Columbia University, 193 Misc. 2d 120 (Sup. Ct. New York Co. 2002), *aff'd* 308 A.D. 2d 405 (First Dept. 2003).

This is not intended to be an exhaustive list of all cases dealing with these issues, but is provided to assist you in understanding the legal issues involved in many of these arrangements.

Sincerely,



Judy L. Doeschate
Associate Attorney
Bureau of House Counsel

Enclosures