**Louisiana State Board of Medical Examiners**
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*** ***STATEMENT OF POSITION*** ***

**Employment of Physician**
**By Corporation Other Than**
**A Professional Medical Corporation**

**September 24, 1992**
**Reviewed March 21, 2001**

**Summary**. It is the position of the Louisiana State Board of Medical Examiners that a physician's employment by a corporation other than a professional medical corporation is not *per se* unlawful under the Louisiana Medical Practice Act.

**Statement of Position**. As the administrative agency constituted under and charged with implementation and enforcement of the Louisiana Medical Practice Act[1] , governing the practice of medicine in this state, the Louisiana State Board of Medical Examiners (the "Board") is accorded the responsibility and primary jurisdiction to construe the meaning of the Act. We continually interpret and apply its provisions in the performance of our principal functions - licensing of physicians; investigation, prosecution and adjudication of violations of the Act; and promulgation of procedural rules and substantive regulations. To aid compliance by physicians and other persons subject to or affected by the Medical Practice Act, we also exercise our interpretive role through the issuance of advisory opinions and rulings, responding to inquiries on the applicability, intent or effect of the Act in various contexts. In doing so, we generally adhere to a conservative principle, preferring to develop our interpretation of the law incrementally, through rulings on the specific issues presented and resisting requests for broad pronouncements, the full implications of which may be difficult to anticipate. This approach, we believe, best serves the rational and intelligent exposition of the Medical Practice Act.

On occasion, however, the Board considers it appropriate to issue a general statement of its position as to an issue of broad interest and applicability. We may do so when, over time, our views on a specific question (or a number of closely related issues) have been consistent, and we are confident that our interpretation of the Act is unlikely to be altered in the future. And in other instances, even where our individual prior advices have not always been entirely consistent, we may deem it expedient to disseminate a formal Statement of Position when a particular question is raised so persistently or frequently as to warrant a pronouncement of general applicability[2]. Into the latter category falls the general subject of the Statement of Position which we are now announcing - whether the "corporate practice of medicine" rule is enforced in Louisiana under the Medical Practice Act.

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[1] LA. REV. STAT. ANN. §§37:1261-1292 (West 1988 & Supp. 1992)

[2] The Board considers that its advisory opinions and rulings are applicable to and may generally be relied upon only by the person or entity requesting the advice (though the Board may subsequently reiterate such an opinion in response to a subsequent inquiry) and is not binding on the Board except with respect to the recipient of the opinion until modified by the Board. A Statement of Position, in contrast, is applicable to all persons subject to the Medical Practice Act and is considered by the Board to be an expression on which all persons may rely, subject to future modification of the position pursuant to a subsequent Statement similarly promulgated.

The "corporate practice of medicine" is but a shorthand, often misleading, designation of a complex of issues relating to whether and to what extent entities other than traditional physician owned and organized entities can lawfully become affiliated with physicians or otherwise involved in the provision of medical services. The question is often posed simplistically in terms of whether a corporation can practice medicine. Thus formulated, the answer is an easy one as a matter of the provisions of the Louisiana Medical Practice Act: excepting only corporations organized under the Professional Medical Corporations Act[3], which must be owned and governed exclusively by physicians, and which are, in effect, authorized to practice medicine, a corporation may not engage in the practice of medicine. This is necessarily so because the Medical Practice Act restricts the practice of medicine to persons possessing a license issued by the Board[4], and a corporate entity is simply not eligible for such a license[5].

But the real focus of issues arising under the "corporate practice" rubric is not whether a business corporation may become legally authorized to practice medicine. The significant question, rather, is whether by a given relationship or arrangement between a corporation and a physician or physician group a corporation would be deemed to be engaged in the unauthorized practice of medicine. Such issues are significant because a corporation engaged in the practice of medicine would be subject to civil injunctive proceedings by the Board[6], and even criminal prosecution[7]. A physician who participates in such an arrangement, moreover, would be subject to administrative sanctions, including revocation of licensure[8].

Medicine has historically been practiced by physicians individually or in partnerships or professional corporations wholly-owned by physicians. In the recent past, however, and particularly in the last 25 years, alternatives to the traditional model have been created or proposed in response to a great number of socio-economic developments in our nation's health care delivery system. Various arrangements and affiliations between physicians and other components of the health care system-other health care providers (institutional and individual), payors, and other organizations-have been promoted by some as means of enhancing the quality and accessibility of care, re-allocating the economic and financial risks of providing services and decreasing the cost of health care services. As experimentation with new organizational forms has accelerated, so too have inquiries to the Board as to their conformity with the Medical Practice Act. Indeed, while we have periodically addressed "corporate practice" questions over many years, within the past two years we have been prevailed upon to render advisory opinions in this area more frequently than we had, in our institutional memory, in all prior years.

We have thus concluded that it is appropriate to address, and attempt to settle by a statement of our position, at least one fundamental, albeit particular and narrow, issue, which regularly arises in requests for the Board's advice on "corporate practice" issues-whether a physician may, consistently with the Medical Practice Act, be employed by a corporation other than a professional medical corporation. Differently stated, the

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[3]LA. REV. STAT. ANN. §§12:901-915 (West 1969 & Supp. 1992). Corporations organized under the Professional Medical Corporations Act are subject to the regulatory authority of the Board. La. Rev. Stat. §12:914.

[4]La. Rev. Stat. §37:1271 provides that " [n]o person shall practice medicine…as defined herein, until he possesses a duly recorded license issued under [the Act]."

[5]*See* La. Rev. Stat. §37:1272, prescribing the general qualifications for licensure which are self-evidently applicable only to natural persons. See also La. Rev. Stat. §37:1261, which, in articulating the purpose of the Medical Practice Act, characterizes the practice of medicine as a privilege granted by the legislature to "individuals."

[6]La. Rev. Stat. §37:1286.

[7]La. Rev. Stat. §37:1290.

[8]Among the causes for which the Board may suspend, revoke, or impose probationary conditions and restrictions on a medical license is a finding that a physician has been culpable of [k]nowingly performing any act which, in any way, assists an unlicensed person to practice medicine, or having professional connection with or lending one's name to a illegal practitioner.
La. Rev. Stat. §37:1285(A)(18).

question is whether a business corporation will be deemed by the Board to be engaged in the unauthorized practice of medicine, in violation of the Medical Practice Act, by virtue of its direct employment of a physician to practice medicine.

In addressing this issue, we note at the outset that precedent in other states is not a particularly helpful source for guidance. While a few states have enacted explicit prohibitions on corporate employment of physicians, the medical practice acts of most states are structured similar to our own and embody similar relevant provisions. In many states, however, the issue does not appear to have been explicitly considered. And in those few states whose courts or agencies have addressed the question, either as to medicine or as other health care professions, both the results and the rationales vary considerably. In a few states it seems clear that a physician's employment by a corporation does not, in and of itself, constitute a violation of law. In other states, where it has been held that a physician or other practitioner may not be legally employed by a non-professional corporation, the rulings have been rooted largely in considerations of public policy, some cogent and some questionable. Corporate employment of a professional has thus been historically prohibited on the grounds that such a relationship "tends to the commercialization and debasement of those professions.[9]" Perhaps what is implicated in such a statement is the more genuine concern that an employee's fiduciary duties and required loyalty to the corporate employer would impinge upon the physician-patient relationship and the physician's exercise of his independent medical judgment in the sole interest of the patient[10]. Similarly valid are concerns that proper accountability for the practice of medicine-to the patient and to the regulating board-may be attenuated by the intrusion of a unlicensed entity not itself subject to professional standards or regulatory control. And where corporate employment prohibitions prevail, a further distinction is occasionally drawn as to certain nonprofit corporations, which are exempted from application of the rule on the theory that the more deleterious aspects of "commercialization" will not intrude on physician independence.

Without discerning any real uniformity among the states in their positions respecting the corporate employment of physicians, we nonetheless share many of the concerns that have been expressed. There is a very real danger, growing from the very nature of the employer-employee relationship, that a corporate employer will control and direct the manner in which a physician provides medical services, circumscribing a physician's independent medical judgment and interposing itself in the physician-patient relationship. A corporation that does so would certainly be considered by this Board to be engaging in the unauthorized practice of medicine.

This does not, however, lead us to conclude that a corporation's employment of a physician to practice medicine constitutes a violation of the Medical Practice Act. We thus depart from the jurisdictions which have held otherwise in believing that, while a physician's employment by a corporate entity may entangle the entity itself in the practice of medicine, such a relationship does not *necessarily* require such an effect. We can conceive, that is, of an employment relationship which is structured to shield the physician's relationship with patients and his exercise of independent medical judgment from corporate intrusion, where employment termination and ownership of and access to records provisions are shaped to provide for continuity of patient care and to ensure

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[9]Barton v. Codington Counry, 2 N.W. 2d 337, 343 (S.D. 1942)

[10]This rationale has been employed in support of a number of judicial decisions holding that a corporation cannot legally employ a licensed professional (*e.g.*, physician, dentist, optometrist) to practice the profession. *See, e.g.*, Garcia v. Texas State Board of Medical Examiners, 348 F. Supp. 435, 437 (W.D. Tex. 1974); Pearle Optical v. Georgia State Board of Examiners in Optometry, 219 Ga. 364, 133 S.E.2d 374, 380 (1963); Sears, Roebuck & Co. v. State Board of Optometry, 57 So.2d 725, 732 (Miss. 1952); State v. Boren, 219 P.2d 466, 570 (Wash. 1950); Dr. Allison, Dentist v. Allison, 360 Ill. 638, 196 N.E. 799, 197 (1935); Parker v. Board of Dental Examiners of State of Cal., 14 P.2d 67, 72 (Cal. 1932). Corporate employment of a physician on a fixed salary, with the corporation collecting and retaining professional fees, has also been held to violate medical practice act prohibitions against fee-splitting, *see, e.g.*, State v. Abortion Information Agency, Inc., 323 N.Y.S.2d 597, 600-01 (N.Y. 1971), and unlawful solicitation of patients, *see* People v. Pacific Health Corp., 82 P.2d 429, 430 (Cal. 1938); Benjamin Franklin Life Assurance Co. v. Mitchell, 58 P.2d 984, 986 (Cal. 1936).

continuing patient freedom of choice, and where patient confidentiality and personal professional accountability are safeguarded. Such an arrangement would in many respects depart from traditional notions of the employer-employee relationship, but we are aware of no legal, professional or practical obstacle to the creation and maintenance of such a relationship.

It is our opinion, that is, that a corporation may not necessarily be said, by the mere fact of employing a physician to practice medicine, and by that fact alone, to be itself practicing medicine. As contemplated by the Medical Practice Act, and as frequently reiterated herein, the essence of the practice of medicine is the exercise of independent medical judgment in the diagnosing, treating, curing or relieving of any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being...[11] If a corporate employer seeks to impose or substitute its judgment for that of the physician in any of these functions, or the employment is otherwise structured so as to undermine the essential incidents of the physician patient relationship, the Medical Practice Act will have been violated. But if a physician employment relationship is so established and maintained as to avoid such intrusions, it will not run afoul of the Medical Practice Act.

In announcing these views, it must be emphasized that our statement is a limited one. We do not mean to suggest that all physician employment relationships are immune from scrutiny under the Medical Practice Act. And there is no attempt here to resolve all questions as to the propriety of various employment or contractual arrangements. As suggested, provisions for termination of employment, ownership of and access to medical records, and various compensation arrangements may well be considered by the Board to be legally problematical. We will continue to address such issues, as they may arise, on a case by case basis. For the present, we state only our position that a physician's employment by a business corporation does not *per se* violate the Medical Practice Act.

Louisiana State Board
of Medical Examiners

[11] La. Rev. Stat. §37:1262(1)