

CEJA Report A – I-86 Conflicts of Interest

At its 1985 Interim Meeting, the House of Delegates adopted Substitute Resolution 19, which requested the Council on Ethical and Judicial Affairs “to continue to review its 1984 Conflict of Interest Guidelines and to amplify them as needed to address current and emerging situations relating to financial interests of physicians in organizations involved in the provision of medical services.” In addition, Board of Trustees Report GG (I-85) on Integration of the Health Care Sector: Definitions, Trends and Implications, informed the House that the Council on Ethical and Judicial Affairs would Continue to study and suggest means by which physicians may distinguish conflict of interest situations...and further refine its guidelines for their resolution.” The House of Delegates adopted the Council's Conflict of Interest Guidelines at its 1984 Interim Meeting (Judicial Council Report C, I-84). The Council’s position is:

CONFLICTS OF INTEREST

Physician ownership interest in a commercial venture with the potential for abuse is not in itself unethical. Physicians are free to enter lawful contractual relationships, including the acquisition of ownership interests in health facilities or equipment or pharmaceuticals. However, the potential conflict of interest must be addressed by the following:

1. The physician has an affirmative ethical obligation to disclose to the patient or referring colleagues his or her ownership interest in the facility or therapy prior to utilization;
2. The physician may not exploit the patient in any way, as by inappropriate or unnecessary utilization
3. The physician's activities must be in strict conformance with the law;
4. The patient should have free choice either to use the physician's proprietary facility or therapy or to seek the needed medical services elsewhere; and
5. When a physician's commercial interest conflicts so greatly with the patient's interest as to be incompatible, the physician should make alternative arrangements for the care of the patient. (Section 8.03, *Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association*, 1986)

The Council promulgated these guidelines to supplement its opinion on Health Facility Ownership by a Physician, which provides:

Health Facility Ownership by a Physician. A physician may own or have a financial interest in a for-profit hospital, nursing home or other health facility, such as a free-standing surgical center or emergency clinic. However, the physician has an affirmative ethical obligation to disclose his ownership of a health facility to his patient, prior to admission or utilization. Under no circumstances may the physician place his own financial interest above the welfare of his patients. The prime objective of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. For a physician to unnecessarily hospitalize a patient or prolong a patient's stay in the health facility for the physician's financial benefit would be unethical. If a conflict develops between the physician's financial interest and the physician's responsibilities to the patient, the conflict must be resolved to the patient's benefit. (Section 4.05, *Current Opinions of the Council on Ethical and Judicial Affairs*, 1986)

The principle of resolving conflicts to the patient's benefit is derived from the physician's role as fiduciary, i.e., a person who, by his undertaking, has a duty to act primarily for another's benefit in matters connected with that undertaking. The ethical issue for the physician is how to resolve conflicts of interest to the patient's benefit. Suggestions for resolving conflicts of interest are predicated on the fact that, at a minimum, they must be resolved in compliance with the law and public policy. Individual physicians may, of course, choose the strictest personal moral course, e.g., totally avoiding potential conflicts by avoiding financial interests in the health care facilities or products or devices used in the provision of medical and health care services. Nevertheless, a middle ground is ethically permissible as long as the patient's welfare remains the priority. As professionals, physicians are committed to something more than personal gain. It has been well stated that:

Historically, there are three ideas involved in a profession: organization, learning, i.e., pursuit of a learned art, and a spirit of public service. These are essential. A further idea, that of gaining a livelihood is involved in all callings. It is the main if not the only purpose in the...money-making callings. In a profession it is incidental. (R. Pound, *The Lawyer from Antiquity to Modern Times*, 1953)

In medicine, the tenet that financial interest should not interfere with the physician's medical judgments on behalf of the patient is ancient and is exemplified in Maimonides' prayer: "Do not allow thirst for profit, ambition for renown and admiration, to interfere with my profession for these are the enemies of truth and can lead me astray in the great task of attending to the welfare of Your creatures."

The public policy on entrepreneurialism has been suggested as a compelling impetus for each physician to examine any financial arrangement that may interfere or appear to interfere with the exercise of his best medical judgment on behalf of the patient. The Institute of Medicine has noted:

All compensation systems--from fee-for-service to captivation or salary--present some undesirable incentives for providing too many services, or too few. No system will work without some degree of integrity, decency, and ethical commitment on the part of professionals.

Inevitably, we must presume some underlying professionalism that will constrain the operation of unadulterated self-interest. The question is not to find a set of incentives that is beyond criticism, but to seek arrangements that encourage the physician to function as a professional, in the highest sense of that term. Certain changes that are occurring in our increasingly entrepreneurial health care system could undermine patients' trust in their physicians and society's trust in the medical profession. For those who believe that the professionalism of the physician is an essential element in ensuring the quality of health care and the responsiveness of institutions to the best interests of patients, an important question is whether that professionalism will be undermined by the increasingly entrepreneurial health care market in which physicians play a major part. (B. H. Gray, *For-Profit Enterprise in Health Care*, 1986) This report will identify situations that may give rise to conflicts of interest and provide suggestions for resolving them to the patient's benefit in conformity with the Council's guidelines, and in conformity with relevant public policies. Examples of conflicts of interest between the physician and the patient are provided (a) in the absence of third parties, and (b) in the presence of third parties.

SITUATIONS WITH THE POTENTIAL FOR CONFLICT AT INTEREST

Example 1: Physician dispenses drug or device to patient for profit.

Discussion: Unlike the situation where a physician prescribes a drug or device produced by a company in which he holds publicly traded stock whose profits and losses are determined by market forces, physician dispensing of drugs or devices and profiting directly thereby creates a conflict of interest if these are available through normal channels.

Public policies of several states prohibit physicians' dispensing where there is exploitation of the patient but permit it where there is disclosure and patient choice. Relevant opinions of the Council on Ethical and Judicial Affairs are:

Drugs and Devices: Prescribing. A physician should not be influenced in the prescribing of drugs, devices or appliances by a direct or indirect financial interest in a pharmaceutical firm or other supplier. Whether the firm is a manufacturer, distributor, wholesaler or repackager of the products involved is immaterial. Reputable firms rely on quality and efficacy to sell their products under competitive circumstances and do not appeal to physicians to have financial involvements with the firm in order to influence their prescribing.

Patients have an ethically and legally recognized right to prompt access to the information contained in their individual medical records. The prescription is an essential part of the patient's medical record. Physicians should not discourage patients from requesting a written prescription or urge them to fill prescriptions at an establishment which has a direct telephone line or which has entered into a business or other preferential arrangement with the physician with respect to the filling of the physician's prescription. (Section 8.06, *Current Opinions of the Council on Ethical and Judicial Affairs*, 1986)

Fee Splitting: Drug Prescription Rebates. A physician may not accept any kind of payment or compensation from a drug company for prescribing its products. The physician should keep the following considerations in mind: (1) A physician should only prescribe a drug based on his reasonable expectations of the effectiveness of the drug for the particular patient. (2) The quantity of the drug prescribed should be no greater than that which is reasonably required for the patient's condition. (Section 6.06, *Current Opinions of the Council on Ethical and Judicial Affairs*, 1986)

Recommendation 1

Although there are circumstances in which physicians may ethically engage in the dispensing of drugs, devices or other products, physicians are urged to avoid regular dispensing and retail sale of drugs, devices or other products when the needs of patients can be met adequately by local ethical pharmacies or suppliers.

Example 2: Physician refers patient to a facility or service owned by the physician in whole or in part.

Discussion: The Council's opinion on Health Facility Ownership by a Physician (supra) applies. For example, the Council has stated that "A physician may own or operate a pharmacy if there is no resulting exploitation of patients." Under the Council's Conflict of Interest Guidelines, the physician-pharmacy owner would have to (1) disclose his ownership interest in the pharmacy; (2) prescribe only that quantity of a drug which is reasonably required for the patient's condition;

(3) comply with all applicable laws, including those that restrict referrals to the physician's facility; (4) provide the patient with a written prescription so that the patient can have it filled wherever he wishes; and (5) make alternative arrangements for the care of the patient if the physician's commercial interest conflicts so greatly with the patient's interest as to be incompatible. Public policies, as reflected in various statutes, range from the extremes of prohibiting referral to the physician's entity to no restrictions through the middle course of requiring disclosure of the ownership interest and patient choice.

The ethical analysis requires an initial determination of what degree of financial interest creates a potential conflict with the patient's best interests. Where the physician's income is directly related to his ownership interest, there is a potential conflict. This conflict is most apparent where the physician is the sole owner of the entity to which he refers his patients. Failure to disclose an ownership interest which directly yields a financial benefit to the referring physician would be deceitful. Yet, it is in this situation that disclosure to the patient should be the easiest. A potential conflict of interest may also exist where the physician is a partial owner of the entity to which he refers his patients. In a situation where the physician is a partner or shareholder in the facility to which he refers his patient, the financial benefit to the referring physician may be so indirect and/or negligible as to create no conflict with his medical judgment. However, the appearance of impropriety for failing to disclose even a negligible financial benefit should be avoided by adherence to the Council's Conflict of Interest Guidelines. (See also Example 4 where physician's income is related to referrals to or from a third party.) The method of disclosing a physician's financial interest is that which makes it known to the particular patient. As a practical matter, a written roster of physician owners can be made available to the patient.

Recommendation 2:

In accordance with the Council's Conflict of Interest Guidelines, physicians may refer patients to facilities in which they have an ownership interest. However, physicians should seek to avoid even the appearance of impropriety in medical decisions that are even remotely related to their financial interests.

Example 3: Physician pays or is paid by third party for referral of patients.

Discussion: The classic example would be an instance where a physician refers a patient to another physician who remits a portion of the fee to the referring physician. Fee splitting has long been abhorred by the medical profession. Referral on the basis of the physician's financial interest rather than confidence in the competence and ability to perform the services needed by the patient violates the physician's duty to deal honestly with patients and may result in the provision of unnecessary services.

It appears that most states have statutes making fee splitting or referral fees crimes or grounds for disciplinary action. State statutes vary and their application to newly emerging business arrangements is problematic. For example, acceptance by a physician of an inducement to admit all of one's patients to the health facility of one offering the inducement might be construed as fee splitting.

The relevant opinions of the Council on Ethical and Judicial Affairs are: Fee Splitting, Payment by one physician to another solely for the referral of a patient is fee splitting and is improper both for the physician making the payment and the physician receiving the payment.

A physician may not accept payment of any kind, in any form, from any source, such as a pharmaceutical company or pharmacist, an optical company or the manufacturer of medical appliances and devices, for prescribing or referring a patient to said source for the purchase of drugs, glasses or appliances.

In each case, the payment violates the requirement to deal honestly with patients and colleagues. The patient relies upon the advice of the physician on matters of referral. All referrals and prescriptions must be based on the skill and quality of the physician to whom the patient has been referred or the quality and efficacy of the drug or product prescribed. (Section 6.04, *Current Opinions of the Council on Ethical and Judicial Affairs*, 1986)

Fee Splitting: Clinic or Laboratory Referrals. Clinics or laboratories that compensate physicians based solely on the amount of work referred by the physician to the clinic or laboratory are engaged in fee splitting which is unethical. (Section 6.05, *Current Opinions of the Council on Ethical and Judicial Affairs*, 1986)

Nevertheless, the legitimate division of income among members of a group is sanctioned in the following opinion of the Council: **Fees: Group Practice.** The division of income among members of a group, practicing jointly or in a partnership, may be determined by the members of the group and may be based on the value of the professional medical services performed by the member and his other services and contributions to the group. (Section 6.03, *Current Opinions of the Council on Ethical and Judicial Affairs*, 1986)

Recommendation 3:

Referrals should be based upon the referring physician's confidence in the competence and ability of the individual or health care facility's ability to perform the services needed by the patient. When services are provided by more than one physician, each physician should submit his own bill and be compensated separately, if possible. If this is not possible and a fee for services personally rendered by more than one physician is to be divided, the nature of the financial arrangement should be made known to the patient. Payments to or by a physician for the referral of patients are improper. Mere referral does not constitute a professional service for which a fee may ethically be charged.

Example 4. Physician's income is related to referral of patients to or from a third party.

Discussion: Potential conflicts between the physician's own financial interest and his interest in the welfare of the patient can arise in every type of medical practice arrangement. In some instances a physician's income may be enhanced by increasing the number of referrals he makes to a third party. For example, a physician might be a partial owner of a health facility to which he refers patients. If a physician's income from his partial ownership of the health facility is based on a percent of the profits rather than a return on investment based upon capital contributions, there is the appearance of impropriety on the part of the referring physician. Similarly, a physician might lease equipment or space to another physician to whom he refers patients and receive a percentage of the profits as rental. If the rental does not represent the fair market value of the use of equipment or space, there is an appearance of impropriety on the part of the referring physician as well as an issue of fee splitting with respect to the physician who pays an excessive rent. The Council on Ethical and Judicial Affairs has previously stated its belief that physicians are not entitled to derive a profit that results from services provided by the hospital under diagnosis related group (DRG) payments. Also, certain types of joint venture activities include Risk sharing

or “incentive” features under which attending physicians whose care of patients results in hospital costs that fall short of the applicable DRG amount under the Medicare prospective payment system share in the “profits.” In these arrangements, the hospital usually pays a percentage of its excess DRG payment to the attending physician directly or credits a like amount to a special account maintained on behalf of the physician group that is its partner in the joint venture. (Judicial Council Report D, I-84, Ethical Implications of Hospital-Physician Risk-Sharing Arrangements under Diagnosis Related Groups System)

In addition to possible violation of state fee splitting statutes, the Medicare and Medicaid antifraud and abuse statutes prohibit the knowing and willful solicitation, receipt, offer or payment of any remuneration in return for the party furnishing referrals. Remuneration includes kickbacks, bribes and rebates given or accepted in cash or in kind, directly or indirectly, overtly or covertly. The statutory language indicates Congress' intent to include practices that the federal government believed were causing unnecessary utilization and costing billions of dollars for unnecessary services and fraudulent claims.

A number of decisions indicate that the U.S. Department of Health and Human Services (HHS) and the courts interpret these statutes broadly. The most recent decision, *United States v. Greber*, 760 F.2d 68 (3d Cir. 1985), concerned a cardiologist whose company, Cardio-Med, Inc., provided physicians with diagnostic services. At issue in this case was the Holter-monitor service provided. Cardio-Med billed Medicare for the monitor service and forwarded a portion (40 percent but not to exceed \$65.00 per patient) of the payment received to the referring physician. The fees were described as payment for the referring physician to explain the results to the patients. There was evidence that the referring physicians received their payments even though the cardiologist actually evaluated the Holter-monitor results. The court found that, according to the language and purpose of the statute, if the payments to the referring physicians were intended to induce those physicians to use Cardio-Med's services, the statute was violated, even if the payments were also intended to compensate for professional services.

Recommendation 4:

Where a physician's income may be enhanced by referrals to an entity in which he has an ownership interest, income generation should be separate from volume of referrals or utilization. Alternatives might include corporate structures where: (1) return on equity is a fixed or independently determined ratio reflecting capitalization rather than individual professional referrals; (2) management and professional entities are separate; and/or (3) there is independent utilization review, concurrently or retrospectively. Such mechanisms might help to assure (1) that income is not related to the number of referrals or the revenue generated by the physician owner or investor but, instead, to ownership and equity considerations; (2) that referrals are made for medically necessary services; and (3) that charges are not excessive. On the other hand, a physician's income may be enhanced by decreasing the number of referrals he makes. For example, a physician might serve as a primary care case manager who is responsible for coordinating and controlling access to other health services needed by the patient. The primary care case manager is often placed at financial risk for the cost of care he orders. As noted by the Council on Medical Service in its Report I (A-86) on *The Concept of a Gatekeeper* that was adopted by the House of Delegates at its 1986 Annual Meeting, a...the physician providing 'gatekeeper' or primary care case management services is entitled to charge an appropriate fee for such services.”

The Council on Medical Service noted the following potential advantages unique to the Gatekeeper” approach: (1) stronger incentives toward prudent use of resources, and (2) the elimination of duplicative services. The Council also noted the following potential disadvantages unique to the Gatekeeper” approach: (1) an incentive to underserve patients, (2) possible delays in obtaining needed secondary or tertiary services, and (3) the provision of such services by less qualified practitioners, as well as restrictions on the patient's freedom of choice of the specialized provider.

The American Medical Association is committed to free market competition among various health care delivery systems, with the growth of each determined by the number of persons who prefer that mode of delivery.

The Council on Ethical and Judicial Affairs has stated:

Contractual Relationships The contractual relationships that physicians assume when they enter prepaid group practice plans are varied. Income arrangements may include hourly wages for physicians working part-time, annual salaries for those working full-time, and share of group income for physicians who are partners in groups that are somewhat autonomous and contract with plans to provide the required medical care. Arrangements also usually include a range of fringe benefits, such as paid vacations, insurance and pension plans.

Physicians may work directly for plans or may be employed by the medical group or the hospital that has contracted with the plan to provide services. The AMA recognizes that under proper legal authority such plans may be established and that a physician may be employed by, or otherwise serve, a medical care plan. In the operation of such plans, physicians should not be subjected to lay interference in professional medical matters and their primary responsibility should be to the patients they serve. (Section 8.05, *Current Opinions of the Council on Ethical and Judicial Affairs*, 1986)

Referral of Patients-Disclosure of Limitations. When a physician agrees to provide treatment, he thereby enters into a contractual relationship and assumes an ethical obligation to treat the patient to the best of his ability. PPO and HMO contracts generally restrict the participating physician's scope of referral to medical specialists, diagnostic laboratories, and hospitals that have contractual arrangements with the PPO and HMO. Some plans also restrict the circumstances under which referrals may be made to contracting medical specialists. If the PPO or HMO does not permit referral to a noncontracting medical specialist or to a diagnostic or treatment facility when the physician believes that the patient's condition requires such services, the physician should so inform the patient so that the patient may decide whether to accept the outside referral at his own expense or confine himself to services available within the PPO or HMO. In determining whether treatment or diagnosis requires referral to outside specialty services, the physician should be guided by standards of good medical practice. (Section 8.12, *Current Opinions of the Council on Ethical and Judicial Affairs*, 1986)

Recommendation 5:

It is unethical to intentionally limit utilization of needed medical services to the detriment of a patient for the physician's own profit. If a third party limits a patient's access to necessary medical services contrary to standard medical practice, the physician should so inform the patient and protest the limitation.

CONCLUSION

Financial rewards to physicians for the referral of patients or for failing to refer patients for necessary medical services can have, at least, the appearance of impropriety and can undermine the public's confidence in the medical profession. Medical decisions made solely on the basis of financially benefiting the physician are improper. The overriding principle is that conflicts between the physician's financial interest and the patient's medical interest must always be resolved to the benefit of the patient. Where the conflict is so great that the patient's interest is not served, the physician must cede the care of the patient to another qualified physician.

The trust and dependence reposed in the physician by the patient invokes an ethical obligation on the part of the physician far greater than that of the commercial purveyor of services. The obligation of the physician is to be an advocate for the patient. A physician must exercise medical judgment independently of his own or a third party's financial interests. No motive should be allowed to prevail against the physician's fundamental role of alleviating the suffering of his patients. If a third party attempts to corrupt the physician's exercise of medical judgment on behalf of his patients, the physician must be the advocate of the patient and vigorously oppose those who are adverse to the medical interests of the patient. If the physician's own interests are adverse to the patient's interests, alternative arrangements must be made for the care of the patient. The physician must never assume a position adverse to the interests of the patient.

APPENDIX

The following references to selected state statutes and opinions of state attorneys general are provided as illustrations of various public policy approaches. This is not intended as a comprehensive review of the law on these subjects. It is recommended that the current law of the jurisdiction be consulted. Florida statutes provide that the following are grounds for disciplinary action:

Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the [physician] or of a third party which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs and the promoting or advertising on any prescription form of a community pharmacy unless the form shall also state 'this prescription may be filled at any pharmacy of your choice'. (Fla.Stat. Ann. §458.331(1)(o) (West 1981).

An Illinois statute provides that the “Promotion of the sale of drugs, devices, appliances or goods provided for a patient in such manner as to exploit the patient for financial gain for the physician” is a basis for disciplinary action. Ill. Stat. Ann., Ch. 111, §4433 (18) (Smith-Hurd 1986). A Missouri attorney general's opinion indicates that “A physician who requires that his patient accept drugs dispensed by the physician and refuses to provide the patient a prescription for such drugs which can be filled at a pharmacy of the patient's choice may be in violation of the Missouri Antitrust Law and [the section stating grounds for denial, revocation or suspension of physicians' licenses].” Op. Atty. Gen. No.6, (July 8, 1982).

Rhode Island defines “unprofessional conduct” to include “promotion by a physician...of the sale of drugs, devices, appliances, or goods or services provided for a patient in such manner as to exploit the patient for the financial gain of the physician.” R.I. Gen. Laws §5-37.1-5(6) (1985). A Texas statute provides that a licensed physician His authorized to supply the needs of his patients with any drugs or remedies as are necessary to meet the patient's immediate needs” but a physician is not permitted “to operate a retail pharmacy without first complying with the Texas Pharmacy Act.” An exception is permitted for “A licensed physician who practices medicine in a rural area in which there is no pharmacy” to “maintain a supply of dangerous drugs...” Tex. Stat. Ann., art. 4495 (b) §509 (Vernon 1986).

A Virginia statute provides that the following constitutes unprofessional conduct: Being a practitioner of the healing arts who may lawfully dispense, administer, or prescribe, medicines or drugs, and not being the holder of a certificate of registration to practice pharmacy, engages in selling medicine, drugs, eyeglasses, or medical appliances or devices to persons who are not his own patients, or sells such articles to his own patients either for his own convenience, or for the purpose of supplementing his income, provided, however, that the dispensing of contact lenses by a practitioner to his patients shall not be deemed to be for the practitioner's own convenience or for the purpose of supplementing his income. Va. Code §54-317(12) (1985).

In addition, the Virginia State Board-of-Medicine “shall have authority to promulgate rules and regulations regulating the sale of vitamins or food supplements by any practitioner of the healing arts from the office in which he practices.” Va. Code §54-278.2 (1985).

California provides a detailed statutory scheme of regulation. Section 650 of the California Business and Professions Code provides that:

Except as provided [in the sections of the Health and Safety Code relating to referral agencies] 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 or health care facility solely because such licensee has a proprietary interest or co-ownership in such laboratory, pharmacy, clinic or health care facility; but such referral shall be unlawful if the prosecutor proves that there was no valid medical need for such referral.

It is the California attorney general's opinion that physicians may refer patients to clinical laboratories in which they have limited partnership interests without violating the prohibition on rebates and kickbacks if the physician informs patients (in writing) of that interest and they are free to choose another laboratory to have the work performed. There is a valid medical need for the referral, and the physician's return on his or her investment is not measured by the number or value of his or her referrals. Op. Atty. Gen. No. 84-806 (February 8, 1985). Another California attorney general's opinion states that the provision of "professional courtesy services" by clinical laboratories to a physician or his family or to his physician-patients or their families violates this section only where such services are provided as compensation or inducement for referring patients to the clinical laboratory. Ops. Atty. Gen. No. 79-920 (February 8, 1980). Section 654.2 of the California Business and Professions Code make it unlawful for a physician:

(a) 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 that...the patient may choose any organization for the purpose of obtaining the services ordered or requested by the [physician].

(b) The disclosure requirements of subdivision (a) may be met by posting a conspicuous sign in an area which is likely to be seen by all patients who use the facility or by providing those patients with a written disclosure statement. Where referrals, billings or other solicitations are between licensees who contract with multispecialty clinics pursuant to subdivision (1) of Section 1206 of the Health and Safety Code or 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, the requirements of subdivision (a) may be met by posting a conspicuous disclosure statement at a single location which is a common area or registration area or by providing those patients with a written disclosure statement...

(c) For the purposes of this section, the following terms have the following meanings: (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) Five thousand dollars (\$5,000).

(d) This section shall not apply to a "Significant beneficial interest" which is limited to ownership of a building where the space is leased to the organization at the prevailing rate under a straight lease agreement or to any interest held in publicly traded stocks.

(e) (1) This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or assignment from one clinical laboratory to another clinical laboratory, either licensed or exempt under this chapter, if the report indicates clearly the name of the laboratory performing the test.

The statute does not apply if the physician, organization or entity is providing or arranging for health care services pursuant to a prepaid capitated contract with the California State Department of Health Services.

However, Section 650.1 provides that:

any amount payable to...any person [licensed under the medical practice act] or corporation prohibited from pharmacy permit ownership...under any rental lease or service arrangement with respect to the furnishing or supply of pharmaceutical services and products, which is determined as a percentage, fraction, or portion of (1) the charges to patients or of (2) any measure of...pharmacy revenue or cost, for pharmaceuticals and pharmaceutical services is prohibited..Section 654 provides that licensed physicians “may not have any membership, proprietary interest or ownership in any form in or with any person licensed [as an optician] to whom patients, clients or customers are referred or any profit-sharing interests.”

Section 654.1 provides that licensed physicians “may not refer patients, clients, or customers to any clinical laboratory in...which the licensee has any membership, proprietary interest, or co-ownership 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.” This section does not apply (1) to persons who are members of a medical group which contracts to provide medical care to members of a group practice prepayment plan registered under the Knox-Keene Health Care Service Act of 1975; (2) to any referral to a clinical laboratory which is owned and operated by a licensed health facility; and (3) to the acceptance of evaluation specimens for proficiency testing or referral of specimens or such assignment from one clinical laboratory to another if the report indicates clearly the laboratory performing the test. Also, proprietary interest” does not include ownership of a building where space is leased to a clinical laboratory at the prevailing rate under a straight lease arrangement.

Florida provides that the following is a ground for disciplinary action and a misdemeanor punishable by a year in prison and/or a \$ 1,000 fine for osteopathic physicians: Referring any patient, for health care goods or services, to any partnership, firm, corporation, or other business entity in which the physician or the physician's employer has an equity interest of 10 percent or more, unless prior to such referral, the physician notifies the patient of his financial interest and of the patient's right to obtain such goods or services at the location of the patient's choice. This section shall not apply to the following types of equity interests:

1. The ownership of registered securities issued by a publicly held corporation or the ownership of securities issued by a publicly held corporation, the shares of which are traded on a national exchange or the over the counter market;
2. A physician's own practice, whether the physician is a sole practitioner or part of a group, when the health care good or service is prescribed or Provided solely for the physician's own patients and is provided or performed by the physician or under the physician's supervision; or
3. An interest in real property resulting in a landlord-tenant relationship between the physician and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant, or is otherwise unrelated to fair market value. 1986 Fl. Sess. Law Serv. 86-290 (West). (to be codified at Fl. Stat. §459.013 (3)(b).

Also, it shall be a misdemeanor of the first degree...for any health care practitioner...[to] provide medicinal drugs from any source other than on a complimentary basis when the practitioner has a financial interest or for which the practitioner will receive some financial remuneration, unless in advance of any such referral, the practitioner notifies the patient, in writing, of such financial interest.” 1986 Fl. Sess. Law Serv. 8631 (West) (to be codified at Fl. State. §455.25).

A Michigan statute defines as unprofessional conduct: Promotion for personal - gain of an unnecessary drug, device, treatment, procedure, or service, or directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility or business in which the licensee has a financial interest.” Mich. Stat. Ann. €14.15 (1622)(e)(ill).

A Michigan attorney general's opinion provides that violation of the prohibition against a licensed health professional having a financial interest in a clinical laboratory is not avoided by disclosure of the interest to the individual being directed or required to obtain a drug, device, treatment, procedure or service. Op. Atty. Gen. No. 5498 (June 8, 1979) Further, the opinion provides that: A licensed health professional is prohibited from directing or requiring an individual to purchase or secure a drug, device, treatment, procedure or service, even if necessary, from a person, place, facility or business in which the licensed health professional has a financial interest. A licensed health professional has a “financial interest” in a clinical laboratory if he or she is the proprietor, a partner, a limited partner, a shareholder, or has a similar business interest in the clinical laboratory.

A Missouri attorney general's opinion states that:

A physician who instructs or requires a patient to use a pharmacy in which the physician has a financial interest to fill a drug prescription may be in violation of the Missouri Antitrust Law and this section listing grounds for denial, revocation or suspension of physician's licenses. Op. Atty. Gen. No.6 (1982).

Section 650 of the California Business and Professions Code provides:

Except as provided...[with respect to licensed referral agencies], 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 co-ownership in or with any person to whom such patients, clients or customers are referred is unlawful...

An Illinois statute provides the following as grounds for disciplinary action: Directly or indirectly giving to or receiving from any physician, person, firm or corporation any fee, commission, rebate or other form of compensation for any professional services not actually and personally rendered.” However, this does not prohibit licensed physicians from practicing medicine in partnership under a partnership agreement or in an authorized corporation, professional association, or professional corporation, For from pooling, sharing, dividing or apportioning the fees and monies received by them or by the partnership, corporation or association in accordance with the partnership agreement or the policies of the Board of Directors of the corporation or association.” Nor does the statute prohibit two or more authorized corporations from forming a partnership or joint venture of such corporations and providing medical, surgical and scientific research and knowledge by employees of these corporations if such employees are licensed under this Act, or from pooling, sharing, dividing, or apportioning the fees and monies received by the

partnership or joint venture in accordance with the partnership or joint venture agreement.”

Nor does the statute “abrogate the right of two or more persons holding valid and current licenses under this Act to receive adequate compensation for concurrently rendering professional services to a patient and divide a fee; provided, the patient has full knowledge of the division, and provided, the division is made in proportion to the services performed and responsibility assumed by each. ILL. Ann. Stat. Ch. 111, §4433 (14) (Smith-Hurd 1986).

And again the Illinois statute defines as unprofessional conduct: “Solicitation of professional patronage by any corporation, agents or persons, or profiting from those representing themselves to be agents of the licensee.” ILL. Ann. Stat. Ch. 111, §4433 (23) (Smith-Hurd 1986). Rhode Island defines the following as Unprofessional conduct”: 1956 R.I. Gen. Laws €5-37.1-5(11) and (12) (1985).

Solicitation of professional patronage by agents or persons or profiting from acts of those representing themselves to be agents of the licensed physician or limited registrants. Division of fees or agreeing to split or divide the fees received for professional services for any person for bringing to or referring a patient.

A Texas statute provides:

A physician or surgeon may not employ or agree to employ, pay or promise to pay, or reward or promise to reward any person, firm, association of persons, partnership, or corporation for securing, soliciting, or drumming patients or patronage. A physician or surgeon may not accept or agree to accept any payment, fee, reward, or anything of value for securing, soliciting, or drumming for patients or patronage for any physician or surgeon...The preceding shall not be construed to prohibit advertising except that which is false, misleading, or deceptive or that which advertises professional superiority or the performance of professional service in a superior manner and that is not readily subject to verification. Tex. Stat. Ann., art 4495b, Sec.3.07(c) (Vernon 1986).