

ALABAMA STATE BOARD OF MEDICAL EXAMINERS  
Office of the General Counsel

March 31, 1988

Dear :

Your letter of March 23, 1988 to Larry Dixon, Executive Director of the State Board of Medical Examiners, has been referred to the undersigned for response. You have requested an opinion on the application of state law to a contractual relationship between a medical partnership consisting of licensed ophthalmologists and a licensed pediatric ophthalmologist. It is my understanding from the information set forth in your letter and derived from our personal conversation, that this pediatric ophthalmologist will be an independent contractor and will provide medical services pursuant to a contract with the partnership. Under this contract the pediatric ophthalmologist would assign all billings to the partnership which would be responsible for furnishing facilities, patient billing and record keeping services. The independently contracting physician would then receive from the partnership a fixed percentage of the fees that he generated. Neither the independent contractor nor the partnership is obligated or expected to make referrals of patients to the other party, and few referrals between the parties are anticipated.

Section 34-24-360(10), Code of Alabama, 1975, provides that a physician's license may be disciplined for the "division of fees or agreement to split or divide the fees received for professional services with any person for bringing or referring a patient." Under the circumstances outlined above, and assuming that the percentage retained by the medical partnership is reasonably related to the cost of furnishing facilities and services to the independent contractor, it is my opinion that the contractual arrangement between the parties would not constitute a violation of this section. Although this section of the law has not been subject to an interpretation by an Appellant Court, it is my opinion that in order to establish a violation it must be shown that the compensation given or received was directly related to the referral of a patient.

This is an informal opinion rendered by counsel for the State Board of Medical Examiners and as such is not binding on the Board. This opinion is limited to the application of the state laws discussed above, and no opinion is expressed on the possible application of Federal law, including the medicare/medicaid fraud and abuse laws. These federal laws carry stiff criminal and administrative penalties and I recommend that you have your personal attorney advise you concerning the possible application of these statutes. I hope that the foregoing has been responsive to your request. If I can be of further service to you in this or any other matter, please feel free to call on me.

Yours sincerely,

/s/ Wendell R. Morgan

Wendell R. Morgan  
General Counsel

WRM:skf

cc: Larry D. Dixon, Executive Director