

THE MEDICAL ASSOCIATION OF THE STATE OF ALABAMA
Office of General Counsel

April 30, 1986

Dear _____ :

This letter is in response to your recent request for an opinion concerning the ethical and legal problems that may be encountered in the payment of a "handling fee" to a surgical clinic. As I understand the facts your pathology group is considering contracting with an out-patient surgical clinic for its pathology services. In connection with that contract the clinic has proposed the payment of a fee of five dollars (\$5.00) per patient from the pathology Group to the clinic for each patient for whom your Group renders pathology services. This fee would be designated as a "handling charge". I further understand that the payment of such a fee by a pathology laboratory to a clinic or hospital referring pathology services is not a usual and customary practice.

In my opinion payments made in the manner which you have outlined would be contrary to the principles of medical ethics and in addition would entail substantial risk of violating of the Medicare/Medicaid Anti-fraud and Abuse Act.

The Current Opinions Of The Judicial Council Of The American Medical Association, interpreting the principles of medical ethics contain the following provisions relating to fee splitting:

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 described.

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.