



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 86-13

Doctor Referring Patient to Doctor's Medical Facility

Some members of the Department of Orthopaedic Surgery, University of Connecticut School of Medicine, have been approached by a corporation to participate in the establishment in the Farmington Valley of a rehabilitation center for sports-related and back problems. The center would be oriented toward the University Health Center for patient referral. Roughly half the capital for the center would be provided by the corporation, a fitness testing equipment company, a quarter by the Research and Development Corporation of the University of Connecticut, and the remainder by physicians in the Department. The physicians are willing to confine their percentage of ownership to the level acceptable under the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. They understand the corporation will not join in the venture unless the physicians have some financial stake in it. The board of directors of the center would be composed primarily of Medical School faculty.

The physicians see a need for a rehabilitation center in the Farmington Valley which can provide high quality physical therapy. The University Health Center has a good department of physical therapy, staffed by extremely capable physical therapists. However, the physicians consider it understaffed and ill-equipped, with little hope for significant improvement in the foreseeable future. Physical therapy is also available in chiropractic or podiatric offices, or physical therapy centers dominated by physical therapists, with little input from physicians and orthopaedic surgeons skilled in rehabilitation, such as those who would establish and control the new center. The corporation would supply modern equipment permitting a great deal of sophisticated testing and exercise therapy not otherwise available. The corporation would also offer a prospective payment system--a single, fixed payment for rehabilitation of a specific problem--which should reduce costs to patients and insurers. Patients with sport injuries or back disabilities who utilized the new physical therapy center and who needed X rays, surgery, laboratory services, or in-patient physical therapy would have the University of Connecticut Medical Group (the clinics operated by physicians at the Health Center and on the Medical School faculty) and the Health Center readily available to them.

The orthopaedic surgeons who propose investing in and helping to operate the rehabilitation center participate in

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the Medical Group. As medically appropriate, patients they serve in their clinical practice would be referred to the rehabilitation center for physical therapy. They have asked whether the Code of Ethics allows establishment of the needed physical therapy facility under the circumstances given.

Faculty members of the University of Connecticut School of Medicine are State employees, subject to the Code of Ethics. Subsection 1-79(k), General Statutes. Those wishing to establish the rehabilitation center are willing to limit their financial and management participation below that which would make the center a business with which they are "associated", as defined in subsection 1-79(a), General Statutes. Since that would reduce conflicts under the Code of Ethics--problems under subsection 1-84(i), General Statutes, for example, if contracts between the rehabilitation center and the University of Connecticut Health Center or other State agency were needed--it will be assumed that the physicians will ensure that the center is not a business with which they are associated.

With an exception not pertinent, a State employee may not have any financial interest in, or engage in, any business or professional activity if he has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Subsection 1-84(a), 1-85, General Statutes. A State employee may not accept other employment which will impair his independence of judgment as to his official duties. Subsection 1-84(b), General Statutes. He may not use his State position to obtain financial gain for himself. Subsection 1-84(c), General Statutes. Finally, with regard to Code provisions which appear to be applicable, a State employee such as the physicians here who, in the discharge of his official duties, would be required to take an official action that would affect a financial interest of his, other than an interest of an inconsequential nature, is required to provide formal notification to his immediate superior, who will assign the matter to another. Section 1-86, General Statutes.

Members of the School of Medicine faculty have a triple assignment: education, research, and clinical practice. When a member of the Department of Orthopaedic Surgery treats a patient in the orthopaedic surgery clinic, he is doing so as a State employee. One aspect of treatment of the types of cases orthopaedic surgeons handle is physical therapy. It has been stated that there is not sufficient capacity, or all the necessary equipment, in the Health Center's Department of Physical Therapy to serve the area. A clinic physician

apparently will have to refer some patients to outside physical therapy centers.

If the physician prescribing the treatment were one who had an ownership interest in the proposed rehabilitation center and referred his patient there, he would be taking official action from which he could expect to derive a monetary gain or loss, in violation of subsection 1-84(a), as amplified in section 1-85, General Statutes. If it were argued that the gain or loss was not direct, the physician/investor would still have used his State position to obtain financial gain for himself, in violation of subsection 1-84(c), General Statutes.

Reportedly, physical therapy facilities to which patients could be sent already exist. If the proposed rehabilitation center were established, a physician/investor might refer his patients there because it was living up to the hope of offering the highest quality physical therapy. It might not satisfy medical ethics to do otherwise. On the other hand, there would be a question of whether his judgment as to quality had been impaired by his concern for his center to make a profit, or to minimize losses, in violation of subsection 1-84(b), General Statutes.

These conflicts of interests could be avoided if the physician/investor were to refer to his immediate superior the question of whether a patient needed physical therapy and, if so, where it should be obtained, as provided in section 1-86, General Statutes. The superior then could assign the matter to a superior or peer of the physician/investor. Such a procedure, however, does not appear to be realistic and workable, and may not conform to the standards of medical ethics.

The Ethics Commission does not challenge the assertion that more high quality physical therapy facilities are needed in the Farmington Valley. Medical ethics may allow a physician to refer a patient to a facility in which the physician has an ownership interest. However, State employees who are determining whether physical therapy is needed and are providing guidance regarding what facility is capable of providing it should not have an ownership interest in any of the available physical therapy facilities.

By order of the Commission,



Julie Peck
Chairperson

Dated Nov. 3, 1986

