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ITEM FOR DISCUSSION

TO: The Honorable the Members of the Board of Regents
Committee on Professional Practice

SUBJECT: Corporate Practice of the Professions

Through the years, the Office of the Professions has received numerous inquiries related to whether business corporations may offer the services of licensed professionals. The Board of Regents has considered these issues in discussions about professional misconduct cases and practice questions involving various professions. These include questions about: who can legally provide services to the public; whether a non-licensee may own all or part of a professional practice, provide purely management services, or provide referrals to licensees; and whether a general business corporation may employ a professional licensee to provide professional services to the public. This report provides background on how these issues are resolved and shares with members of this Committee several current topics that touch upon corporate practice.

Professional services can only be offered by licensed professionals or authorized professional organizations.

Professional services can be offered only by a licensed person or an organization otherwise authorized by law. The professional practice acts for each profession provide restrictions against unlicensed practice and the unauthorized use of a professional title. For example, §6731 of the Education Law defines the scope of practice of physical therapy and §6732 limits the practice of physical therapy and the use of that professional title to those persons who are licensed by the Department.

Sometimes the law authorizes licensees in different professions to provide overlapping services. Some examples of this include the following. Section 8505(2) permits duly licensed health care providers to perform respiratory therapy modalities, if those modalities are within the other profession's scope of practice. Section 7805(1) authorizes physicians, nurses, physical therapists, chiropractors, and podiatrists to practice massage therapy. Section 7906(2) clarifies that the occupational therapy

practice act does not prevent qualified members of other licensed professions from performing work incidental to the practice of those professions.

An individual practitioner, professional partnership, professional corporation, professional limited liability partnership, and a professional limited liability company are all authorized to offer professional services. The general authority of the New York Partnership Law permits the formation of professional partnerships. Thus, two or more licensees in the same profession may form a professional partnership to engage in business and share in the profits. In accordance with Article 8B of the Partnership Law, licensees may form a professional limited liability partnership by registering with the State Education Department and the Department of State. This organization is similar to a professional partnership, but may be formed by members of certain different professions to offer multi-disciplinary services.

Article 15 of the Business Corporation Law authorizes the formation of a professional service corporation, in which all shareholders must be licensees of one profession and whose members practice only that profession. The one exception is that the design professions of engineering, land surveying, architecture, and landscape architecture may incorporate to offer those design services in one professional service corporation. Similar to a professional corporation, licensees may form a professional service limited liability company to offer single or multi-disciplinary services. The attached chart describes these entities. Additionally, Article 137 stipulates that all pharmacy stores, wholesalers, and manufacturers must be registered by the Education Department and operated under strict provisions of law and regulations before selling drugs and prescriptions.

Professional licensees may not split fees.

Another important aspect of professional regulation deals with fee splitting and profit sharing. Licensed professionals or professional firms cannot share with other than members of their own professional firm the fees earned for providing professional services. Based upon §6509(9) of the Education Law, Regents Rule 29.1(b)(4) prohibits professionals or professional firms from sharing the fees earned for providing professional services. Additionally, §6509-a specifically prohibits fee splitting by licensees in the health professions of chiropractic, dentistry, dental hygiene, physical therapy, physical therapy assisting, pharmacy, nursing, podiatry, optometry, ophthalmic dispensing, occupational therapy, occupational therapy assisting, speech-language pathology, audiology, respiratory therapy, and respiratory therapy technology.

These provisions guarantee that licensed professionals provide professional services to the public without undue influence from other professionals or from unlicensed persons who are not subject to the professional responsibility requirements prescribed in Education Law. Licensed professionals may be guilty of professional misconduct if they engage in sharing the profits of their practices with other entities outside their own firm. The penalties for professional misconduct range from administrative warning to revocation of license and include suspension of license and fine.

Exemptions are explicitly stated in the law.

There are several noteworthy exceptions to the general rule stated above. Health maintenance organizations and hospitals regulated under the Public Health Law have such exemptions and, thus, may hire licensees to offer professional services to the public (§4405 of the Public Health Law). Insurance companies and managed care companies have authority to employ licensed professionals for utilization review (Article 48 of the Insurance Law).

Unlicensed individuals or firms, including business corporations, cannot offer professional services.

Section 6512 of the Education Law stipulates that it is a felony for an unlicensed person to practice a licensed profession. Further, §6513 of the Education Law provides that the unauthorized use of a professional title is a crime. Given these provisions, it is clear that business corporations cannot hire a licensee to provide professional services because the law neither authorizes such action nor provides an exemption. This serves to protect the public from a business relationship that could place constraints upon professional judgment, unduly limit professional practice, invade the professional integrity of the professional, or permit the business corporation to make professional decisions.

Again using physical therapy as an example, there is no exemption for a general business corporation to either use the title of physical therapist or practice physical therapy, even if all principals or shareholders are licensed physical therapists. Since a general business corporation acts through its employees, no employee of a general business corporation may offer physical therapy services to the public or represent him or herself as practicing physical therapy. Such unauthorized practice by the corporation would be a crime, which could be prosecuted by the Attorney General's office. Further, licensed physical therapists participating in such corporate practice could be guilty of professional misconduct for sharing the profits of their physical therapy practice with shareholders of a general business corporation.

Current issues.

Many business corporations are endeavoring to offer professional services because of the profitable advantages inherent in the licensed professions' client base. There are many current examples of the Department dealing with these issues, such as:

- A business corporation seeks to unlawfully provide veterinary medicine services.
- Services of a managed care company blur the distinction between professional judgment and utilization review.

- A contractor delegates to a third party the redesign of a portion of an architectural or engineering project.
- A general business corporation seeks to purchase the non-professional assets of a New York State CPA firm.

The Department is committed to upholding the provisions of Education Law and Regents Rules, which guarantee that professional services are provided by licensed professionals without undue influence from unlicensed third parties who are not subject to the same professional responsibility requirements of such law and rules. As the nature of professional practice and business relations evolves, we will expect an increasing number of requests for interpretation and clarification. This discussion item briefly outlines the pertinent legal and regulatory framework for corporate practice along with current issues that highlight the complexities involved in the topic of corporate practice of the professions.

Respectfully submitted,

Johanna Duncan-Poitier

Approved for submission to the
Board of Regents

Approved:

Counsel and Deputy Commissioner
For Legal Affairs

Date

Date

Attachment