

DENIAL ORDER

REQUEST FOR DECLARATORY RULING

The applicant, Richard Chesbrough, M.D., has requested a Declaratory Ruling from the Michigan Department of Licensing and Regulatory Affairs pursuant to section 63, MCL 24.263, of the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, and Michigan Administrative Code, R 338.81.

On behalf of the Bureau, I deny Dr. Chesbrough's request for a Declaratory Ruling for the reasons set forth below.

1. Questions Presented

Dr. Chesbrough asks the following questions:

- In order for a for-profit company to offer services in the learned profession of medicine, or to hold itself out to the public as offering professional medical services, must it be organized under the Michigan Professional Services Corporation Act, 1962 PA 192, as amended, 2012 PA 569, MCL 450.1281 *et seq.* and have all its owners, officers and shareholders licensed to practice the medical services(s) offered?
- Can a qualifying non-profit entity, organized under the Non-profit Corporations Act, 1982 PA 162, MCL 450.2101 *et seq.* legally offer medical services to the public by hiring or contracting with licensed physicians, and /or other licensed medical personnel, to provide the service(s), even though all of its owners, officers and shareholders are not licensed to practice the medical service(s) offered?

2. Applicable Statute and Rules

The Public Health Code Act, PA 368 of 1978, MCL 333.17001(1)(f) provides the following definition of the practice of medicine:

"Practice of medicine" means the diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition, by attendance, advice, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as able to do, any of these acts.

The Business Corporation Act, PA 284 of 1972, Chapter 2A Professional Corporations provides the governing statutes to answer the questions presented.

The Administrative Procedures Act, PA 306 of 1969, MCL 24.263 provides that "On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency."

Administrative Rule R 338.81(1)(a) provides, in part, that “A request shall not relate to a hypothetical fact situation.”

3. Statement of Facts

The following is a summary of the facts and history provided by the applicant.

Dr. Chesbrough is a licensed medical doctor in the state of Michigan. He plans to open a diagnostic imaging center with a number of partners, some of whom are not licensed to practice medicine. The facility will offer medical imaging services which can diagnose a patient’s illness. Results are referred to physicians and/or other healthcare providers. Imaging services may also include injection of radioactive substances and/or contrast media (with potential for anaphylactic reactions), performance of image-guided biopsies, arthrograms, and/or other invasive procedures, and/or exposure to potentially dangerous ionizing radiation. The center will be a for profit business.

4. Analysis

The applicant provides a history of the corporate practice of medicine starting at the development of the American Medical Association through current Michigan law. The application of the term “learned profession” to the practice of medicine was outlined and supported in several Attorney General Opinions.

Traditionally, the learned professions were not allowed to practice as corporate entities. Citing case law, OAG No. 6592 (July 10, 1989) concluded that the “learned professions have been generally recognized as law, medicine and divinity.” OAG No. 5676, (April 8, 1980) referencing II OAG, 1955-1956, No 2451, p.124 (March 7, 1956) held that “it was not a lawful purpose of a corporation to contract with other persons to provide medical care through the officers, agents or employees of the corporation.”

Since these opinions, the legislature has enacted the Professional Service Corporations Act, 1962 PA 192, which authorized the creation of professional corporations of the learned professions. In 2012, this act was repealed and its provisions were incorporated into the Business Corporation Act, PA 284 of 1972, Chapter 2A Professional Corporations. MCL 450.1281 – 450.1289.

MCL 450.1281(1) states that “A corporation must incorporate as a professional corporation under this chapter if it is incorporated to provide 1 or more services in a learned profession, whether or not it is providing other professional services.”

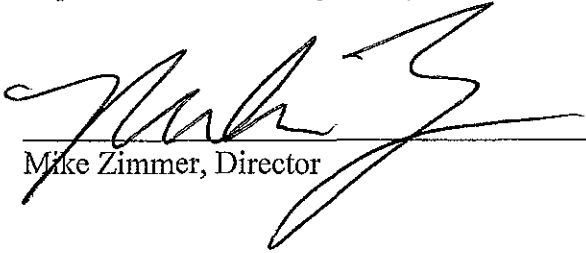
Each shareholder of a professional corporation must be a licensed person in 1 or more of the professional services provided by the professional corporation. MCL 450.1283(2). Services provided by a physician are considered a “professional service” as defined under this act.

With a few exceptions, each shareholder of the professional corporation must be licensed or legally authorized in this state to provide the same professional service. MCL 450.1284(1). The exceptions allow a physician to form a professional corporation with other physicians, osteopaths, podiatrists or physician assistants.

5. Conclusion

The applicant's request for a declaratory ruling is denied. The statute that applies to the creation of a corporation for the practice of medicine is unambiguous and requires no further clarification. The plain meaning of the statutory language is clear as written and intended by the legislature.

Further, the applicant indicates he plans to create a for-profit corporation. The question regarding the creation of a non-profit entity is hypothetical and is therefore, an inappropriate request for a declaratory ruling.



Mike Zimmer, Director

9-27-15

Date