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CORPORATIONS - PHYSICIANS AND SURGEONS - INSURANCE - SALE OF PROFESSIONAL SERVICES BY A CORPORATION

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CORPORATIONS — PHYSICIANS AND SURGEONS — INSURANCE — SALE OF PROFESSIONAL SERVICES BY A CORPORATION — The Group Health Association, a corporation for the mutual benefit of its members,[1] employed licensed physicians to give medical care to its members. For a lump sum consideration of $40,000 the association agreed to extend similar medical and hospital services to such employees of the Home Owners' Loan Corporation office as paid the monthly fee. In fear of quo warranto proceedings by the district attorney for illegal practice of medicine and by the superintendent of insurance for selling insurance, the association sought a declaration of its right to provide medical services in this manner. *Held*, a non-profit corporation through its licensed physicians may lawfully provide medical services to those who stand substantially as its members; the insurance act does not apply to a corporation which provides services rather than money benefits to its contributing members. *Group Health Assn. v. Moor*, (D. C. D. C. 1938) 24 F. Supp. 445.

Whether or not a corporation may lawfully sell the technical or professional services of its licensed employees depends, in the absence of express statutory language,[2] on the policy which the court finds embodied in the license statute.[3] In the case of trade licenses, the sole purpose of the licensing act is to assure technical competence in those who do the work, and as early as 1756 it was held that no statutory policy was violated when an unlicensed entity sold the services of a licensed artisan.[4] A similar analysis of the policy of the license statute allows a corporation to sell the services of licensed architects.[5] But the

[1] The corporation was organized under the title of the code for the District of Columbia providing for the incorporation of societies for "benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts." D. C. Code (1929), tit. 5, § 121.

[2] In re Associated Lawyers, 134 App. Div. 350, 119 N. Y. S. 77 (1909); Lewis v. Woodbury Dental Parlors Co., 106 Misc. 78, 175 N. Y. S. 269 (1919); Winberry v. Hallihan, 361 Ill. 121, 147 N. E. 552 (1935). Charitable hospitals are generally considered to be specifically authorized to sell medical services. Coldwater v. Citizens Gas Co., (N. Y. Mun. Ct. 1938) 7 N. Y. S. (2d) 242.

[3] People by Kerner v. United Medical Service, 362 Ill. 442, 200 N. E. 157 (1936); Painless Parker v. Board of Dental Examiners, 216 Cal. 285, 14 P. (2d) 67 (1931); Wm. Messer Co. v. Rothstein, 129 App. Div. 215, 113 N. Y. S. 772 (1908), affd. 198 N. Y. 532, 92 N. E. 1107 (1910); People v. Allied Architects' Assn., 201 Cal. 428, 257 P. 511 (1927); 3 UNIV. CHI. L. REV. 143 (1935); 1 FLETCHER, CYCLOPEDIA CORPORATIONS, § 97 (1931).

[4] Raynard v. Chase, 1 Burr. 3, 97 Eng. Rep. 155 (1756). Cf. Wm. Messer Co. v. Rothstein, 129 App. Div. 215, 113 N. Y. S. 772 (1908).

[5] People ex rel. v. Rodgers Co., 277 Ill. 151, 115 N. E. 146 (1917); People v. Allied Architects' Assn., 201 Cal. 428, 257 P. 511 (1927). Cf. the validity of a statute requiring operators of drug stores to be licensed pharmacists. Liggett Co. v. Baldridge, 278 U. S. 105, 49 S. Ct. 57 (1928).

policy of the medical license statutes, as conceived by the courts, has been to accord to the physician the same professional status as the common law provides to the lawyer.[6] The analogy found in the practice of law has been applied by the courts to the physician [7] to establish the general rule that as a corporation lacks ethical standards and is incapable of personal relations, it not only is unable to receive a medical license, but it may not lawfully sell the services of licensed physicians.[8] The benefits of a completely individual and personal employment relationship,[9] and the danger of an impairment of professional ethics by a management interested in profit [10] are the two considerations which justify the rule and have made the courts unwilling to accept the analysis of the trade license cases to segregate the business function of the corporate entity from the professional function of its licensed employees. The instant case raises the question whether the general rule will apply when the corporate entity is a non-profit and mutual association.[11] The reasons for the rule largely fail if, when the court "looks through the corporate fiction," it finds that the patient-client relationship is untainted by a third party's interest in profits. With the elimination of this factor opposing the ethics of the physician and the financial interest of the patient, it is not surprising to find the judicial acceptance of an exception to the general rule, in the case of the non-profit corporation [12] though

[6] There is no dissent from the proposition that a corporation may not sell the services of a licensed attorney or otherwise engage in the law business. Statutes are primarily declarative of the common law. In re Cooperative Law Co., 198 N. Y. 479, 92 N. E. 15 (1910); 73 A. L. R. 1327 (1931).

[7] State Electro-Medical Inst. v. Platner, 74 Neb. 23, 103 N. W. 1079 (1905), stands practically alone in denying the analogy between the social policies governing the corporate practice of law and of medicine. Cf. State ex inf. v. Lewin, 128 Mo. App. 149, 106 S. W. 581 (1907).

[8] People v. Pacific Health Corp., (Cal. 1938) 82 P. (2d) 429; People by Kerner v. United Medical Service, 362 Ill. 442, 200 N. E. 157 (1936); Painless Parker v. Board of Dental Examiners, 216 Cal. 285, 14 P. (2d) 67 (1931); People v. Painless Parker, 85 Colo. 304, 275 P. 928 (1929); People v. John H. Woodbury Dermatological Inst., 192 N. Y. 454, 85 N. E. 697 (1908); 14a C. J. 296, § 2145 (1921); 103 A. L. R. 1240 (1936); 12 Ann. Cas. 674 (1909); 25 CAL. L. REV. 91 (1936); 30 ILL. L. REV. 533 (1935). Matter of Stern v. Flyn, 154 Misc. 609 at 612, 278 N. Y. S. 598 (1935), declares that "The rule laid down . . . is as applicable to the practice of optometry as to the practice of law."

[9] Stern v. Flyn, 154 Misc. 609, 278 N. Y. S. 598 (1935). And see 10 So. CAL. L. REV. 329 (1937).

[10] People v. Pacific Health Corp., (Cal. 1938) 82 P. (2d) 429.

[11] The California court stated, ibid., 82 P. (2d) 429 at 431, that there is no danger that the general rule will be extended to prevent the operation of hospitals and university health services, saying in part, "it may well be concluded that the objections of policy do not apply to nonprofit institutions."

[12] Principal case, 24 F. Supp. 445 at 446 (1938): "The question here is one of statutory construction. It is evident that the purpose of the statute was to protect the public from quacks. . . . The actions of the plaintiff in no way tend to commercialize the practice of medicine. . . . The cases cited bearing on the right to practice law are not closely analogous. . . ."

the choice by the patient of his physician is still restricted.[13] The danger in the operation of this modified rule lies in the ease with which the promoter can simulate the non-profit form, yet maintain a profit interest in the corporate control.[14] In view of recent interest in the problems of socialized medicine,[15] the instant case is significant in indicating a legally acceptable method of obtaining the business advantages of the corporate form in schemes for low cost health services. It is to be hoped that few jurisdictions will find the rule of the instant case repugnant to their views of the policy embodied in their licensing statutes.[16] Whether such a corporation is unlawful under the insurance act is a problem in statutory construction.[17] It is doubtful if many courts would agree to the rule that supplying services rather than money benefits excepts the corporation from the provisions of the insurance act.[18]

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[13] In the case of the corporate practice of law, this element may be fatal. In In re Maclub of America, (Mass. 1936) 3 N. E. (2d) 272, an auto club was held to be unlawfully practicing law although a practically unlimited choice of attorneys was given the member.

[14] The promotor may take proxies from the members by which to control the business management, and by operating on a commission basis in fact secure to himself a corporate medical business operated for his profit. It is not always easy to disclose such a vice in the management.

[15] 47 YALE L. J. 1193 (1938); Rorty, "Medicine's Horse and Buggy," 96 FORUM 3 (1936); Ross, "The Case of the Ross-Loos Clinic," 24 SURVEY GRAPHIC 300 (1935); 25 CAL. L. REV. 91 (1936).

[16] The result here reached is indicated in a number of cases and discussions on the subject. People v. Pacific Health Corp., (Cal. 1938) 82 P. (2d) 429; State Electro-Medical Inst. v. Platner, 74 Neb. 23, 103 N. W. 1079 (1905); 3 UNIV. CHI. L. REV. 143 (1935); 6 FORDHAM L. REV. 438 (1937). The facts of a truly non-profit corporation distinguish the instant case from all found in the reports.

[17] Principal case, 24 F. Supp. 445 at 447 (1938).

[18] 36 MICH. L. REV. 311 (1937); 37 MICH. L. REV. 138, 323 (1938); State v. Bean, 193 Minn. 113, 258 N. W. 18 (1934); Allin v. Motorists' Alliance of America, 234 Ky. 714, 29 S. W. (2d) 19 (1930); 63 A. L. R. 735 (1929).