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THE CHALLENGE OF "FEE SPLITTING" WHEN INTEGRATING

In these days of integrated healthcare services, many Wisconsin chiropractors are considering the possibility of affiliating with healthcare facilities owned by third-parties. In connection with these affiliations, the third-parties often seek a portion or percentage of the chiropractor's income as a charge or fee for the chiropractor's ability to conduct business at the health facility. A chiropractor considering this type of affiliation must be aware of their professional obligations under Wisconsin's unique "fee splitting" statute. This statute has been in effect since the 1970s and has a significant impact upon the manner of compensation which the chiropractor can legally pay to a third-party with this type of a business arrangement.

The fee splitting statute relating to chiropractic is described in Wis. Stat. §446.04(4). The statute provides that a chiropractor is engaging in "unprofessional conduct" when the chiropractor's fees for services are split or divided "with any person except an associate licensed chiropractor." This section of the statutes relating to the chiropractic examining board is elaborated upon in Wis. Stat. §448.08 which states that a licensed professional cannot give or receive, directly or indirectly, to or from any person, firm, or corporation any fee, commission, rebate, or other form of compensation or anything of value for sending, referring, or otherwise inducing a person to communicate with the licensee in a professional capacity or for any professional services not actually rendered personally at his or her direction. There have been several notable attorney general opinions and legal cases involving fee splitting arrangements by healthcare professionals.

There are several legal methods available to properly address the requirements of the fee splitting statute. The three (3) methods are described below:

1. Establish an Ownership Interest with Another Licensed Chiropractor – Chapter 446 of the statute expressly permits a chiropractor to split fees, a commission or other form or basis of compensation with another licensed chiropractor. As such, chiropractors can integrate their practice with another licensed chiropractor who actually owns the healthcare facility. The fee splitting statute would arguably not be violated should the treating chiropractor's fee then be divided or split with another chiropractor who actually owns the business. It is important to note that the third-party/owner with whom fees may be split or divided must be exclusively limited to another licensed chiropractor.

2. Establish an Employee-Employer Relationship with the Third-Party – A second approach involves the nature of the business relationship between the treating chiropractor and the third-party owner of the health facility. In most situations, the third-party wants the chiropractor working at the facility to serve as an independent contractor. Among the various benefits of this type of business relationship is that the third-party can avoid liability for any management or supervisory authority over the contractor.

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As a legal alternative, the chiropractor rendering services may wish to consider entering into a direct, employer-employee relationship with the third-party instead of the independent contractor arrangement. In such an employee-employer arrangement, the third-party/employer can base the chiropractor's compensation on an actual percentage of the work performed by the chiropractor and retain the remaining portion as their income. In these types of situations, an employment agreement is usually recommended so that the chiropractor's level of compensation is well defined and understood between the parties.

3. Establish Reasonable and Predetermined Amounts of Compensation Based upon Actual Overhead Costs - In those situations where the third-party does not wish to enter into an employer-employee relationship, the treating chiropractor can negotiate terms for payment to the third-party which are based upon actual overhead expenses; rather than a direct splitting of the chiropractor's billable services. This approach requires the chiropractor and third-party to actually analyze the true and definable cost of overhead items which would be utilized by the chiropractor at the health facility. In most situations, the parties can mutually agree that overhead costs will usually escalate as the chiropractor treats more patients at the health facility. These overhead expenses include items such as utility costs, receptionist services, billing services, file storage services, and rental space charges. In establishing payment for these overhead items, any written agreement between the parties should clearly indicate that the compensation to the third-party is based upon the actual cost for overhead expenses and services utilized by the chiropractor; rather than a percentage of the chiropractor's billable, patient services. All parties to the arrangement should clearly define those overhead expenses so that there is no ambiguity that the actual payment from the chiropractor to the third-party is based exclusively upon clearly defined and predetermined overhead expenses.

Utilization of any of these three (3) methods should prevent any assertion that the compensation arrangement violates the fee splitting statute. The resulting arrangement between the chiropractor and third-party should be properly analyzed by a competent legal advisor to ensure that these approaches are properly followed.