



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2014-118

March 10, 2015

The Honorable Cecile Bledsoe
State Senator
Post Office Box 2457
Rogers, Arkansas 72757-2457

Dear Senator Bledsoe:

This is in response to your request for my opinion on the following questions:

In the State of Arkansas, can a for-profit corporation that has not been registered with the Arkansas State Medical Board as a medical corporation:

Question 1: Employ a physician so that the corporation may bill as the provider of services to third party payers and patients?

Question 2: Contract with a physician and use the physician's license to obtain Health Department approval to operate and subsequently bill third party payers and patients as the provider of medical services pursuant to that physician's license?

Question 3: Hire a physician as an employee to perform professional services as a principal investigator in human research so that the corporation may contract with others as the entity being paid to perform human research?

Question 4: Hire a physician as an independent contractor and the corporation bills third party payers and patients as the provider of professional services rendered by the physician contractor?

Question 5: Hire advanced practice nurses, who are supervised by physicians, and bill third party payers and patients as the provider of professional services rendered by the advanced practice nurses?

Question 6: Would the answers to questions 1-5 above change if the for-profit corporation is a foreign corporation that is qualified to conduct business in Arkansas?

RESPONSE

For the reasons explained below, it is my opinion that the corporate arrangements set out above would not be permitted in the State of Arkansas without the corporations being registered as Arkansas medical corporations. Accordingly, the answer to each of these questions is “no,” in my opinion.

DISCUSSION

As a threshold matter, I note that the crux of the inquiry in this instance seems to be not whether any of the above transactions or corporate arrangements can occur in the State of Arkansas, but rather whether any can occur in the State *without* the for-profit business being registered as a medical corporation by the Arkansas State Medical Board. It is with this understanding that I address the above questions.

The applicable law governing these questions is the Medical Corporation Act.¹ That act states in part that “[n]o corporation shall open, operate, or maintain an establishment for any of the purposes set forth in § 4-29-305² without a certification of registration from the Arkansas State Medical Board.”³ Thus, the

¹ 1961 Ark. Acts 179 (codified as amended at A.C.A. § 4-29-301 *et seq.* (Repl. 2001 and Supp. 2013)).

² Section 4-29-305 provides as follows (emphasis supplied):

- (a) One (1) or more persons licensed pursuant to the Arkansas Medical Practices Act, § 17-95-201 *et seq.*, may associate to form a corporation pursuant to the Arkansas Business Corporation Act of 1987, § 4-27-101 *et seq.*, to *own, operate, and maintain an establishment for the study, diagnosis, and treatment of human ailments and injuries, whether physical or mental, and to promote medical, surgical, and scientific research and knowledge.*
- (b) However, medical or surgical treatment, consultation, or advice may be given by employees of the corporation only if they are licensed pursuant to the Arkansas Medical Practices Act, § 17-95-201 *et seq.*

³ A.C.A. § 4-29-309(a) (Repl. 2001).

issue to be resolved is whether the corporation in each of the posited scenarios is opening, operating, or maintaining an establishment for any of the purposes in § 4-29-305.

Each scenario contemplates that the corporation itself would bill and seek to be paid as *the provider* of the medical services. In my opinion, the act of being paid or seeking to be paid as the provider of the medical services will trigger the application of the provisions of the Medical Corporation Act.

My immediate predecessor observed in an official opinion that a corporation “seeking to engage in ‘the study, diagnosis, and treatment of human ailments and injuries...’ within the State of Arkansas must be organized pursuant to the Arkansas Business Corporation Act of 1987, must engage in such activities through licensed Arkansas physicians and must be registered with the Board.”⁴ A court would most likely conclude that a corporation wishing to be paid as the provider of medical services would be seeking to “open, operate, and maintain an establishment” for the purposes set out in § 4-29-305. It necessarily follows that the corporation in that instance would have to be registered as a medical corporation with the Arkansas State Medical Board pursuant to § 4-29-309.

Mere ancillary services, such as the handling of billings and collections for a registered Arkansas medical corporation, do not fall under the Medical Corporation Act or the Medical Practices Act.⁵ However, the questions set out above presuppose that the corporations will not simply be handling billing or collections for Arkansas licensed physicians but will be billing patients or third-party payors as the provider of the services.

Prior to 2013, out-of-state medical corporations could not be registered with the Arkansas State Medical Board at all for the purpose of practicing medicine in the

⁴ Op. Att’y Gen. 2012-118 (quoting A.C.A. § 4-29-305). It is clear under another provision of the Medical Corporation Act that only those persons licensed pursuant to the Arkansas Medical Practices Act may be owners, officers, and directors of such corporations. See A.C.A. § 4-29-307 (Repl. 2001). *But see also* A.C.A. § 4-29-313 (Supp. 2013) (addressing foreign medical corporations, discussed *infra*).

⁵ See Op. Att’y Gen. 2012-118 *supra* note 4. My predecessor’s opinion referred to an opinion letter from the Arkansas State Medical Board’s attorney wherein it is stated that “[t]he Arkansas State Medical Board does not regulate businesses that perform billing and collection services for licensed Arkansas physicians. Physicians and medical practices are free to contract with whomever they chose [sic] to perform these services, and indeed a number of domestic and foreign companies specialize in performing these services for Arkansas physicians.”

State of Arkansas.⁶ The General Assembly enacted a measure that would allow medical corporations organized in another state to be registered with the Arkansas State Medical Board, so long as all of the owners, officers, and directors of such foreign medical corporations are licensed to practice medicine in the state where they are incorporated, and so long as the foreign medical corporations comply with all other aspects of the Medical Corporation Act.⁷

Question 6 refers to a for-profit foreign corporation that is “qualified to conduct business in Arkansas.” I interpret this as referring to a foreign medical corporation that would otherwise be eligible under the Medical Corporation Act to apply for and obtain a certificate of registration from the Arkansas State Medical Board but has not done so. In my opinion, the law applies to foreign corporations in the same way as it does to domestic ones. If the foreign medical corporation does not have a certificate of registration from the Arkansas State Medical Board, a reviewing court would most likely conclude that the foreign corporation may not “own, operate, and maintain an establishment for the study, diagnosis, and treatment of human ailments and injuries, whether physical or mental, and to promote medical, surgical, and scientific research and knowledge” in the State of Arkansas pursuant to the Medical Corporation Act.

Assistant Attorney General Ray Pierce prepared this opinion, which I hereby approve.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Leslie Rutledge', is written over a horizontal line. The signature is stylized and somewhat abstract.

LESLIE RUTLEDGE
Attorney General

LR/RP:cyh

⁶ See Op. Att’y Gen 2012-118 *supra* note 4.

⁷ See 2013 Ark. Acts 135 (codified at A.C.A. §§ 4-29-302 and -313).