

WHAT A DOCTOR  
SHOULD KNOW ABOUT  
LICENSING AND  
OTHER LEGAL ISSUES  
OR:  
WHEN IS A DOCTOR  
NOT A DOCTOR?

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FOR MEDICAL PRACTICES

The Court of Appeals of New York has issued a decision in a case called Mallela stating that doctors and other professionals are only entitled to collect no-fault benefits when they are duly licensed and substantially in compliance with all the rules and regulations relating to their profession. Insurance companies who are seeking to avoid payments for no-fault benefits and are being sued for those benefits by doctors have raised issues, not only in regard to whether or not doctors are duly licensed, but also as to whether they are actually engaged in the practice of medicine and whether they are substantially in compliance with all rules and regulations relating to their profession.

Those suits have resulted in a number of decisions relating to those questions. The simplest requirement is that if you form a professional corporation, the professional corporation must be engaged in the practice of that profession within 30 days from its formation. That is codified in the New York State Business Corporation Law. That, of course, raises the issue of what it means to be actually engaged in the practice of medicine and there are a number of scenarios. The easiest one is that if you, as a doctor, see patients you are clearly engaged in the practice of medicine. What if you, as a doctor, do not see patients but supervise other doctors who see patients? Are you engaged in the practice of medicine? What if you, as a doctor, perform insurance exams for an insurance company seeking to determine whether a patient is eligible for life insurance or qualified for or entitled to collect disability insurance? Are you engaged in the practice of medicine? What if you, as a doctor, review, for insurance companies, medical reports submitted by claimants for payment of benefits from the companies? You never

saw the patient; you're just reviewing another doctor's report. Are you engaged in the practice of medicine? What if you as a doctor review malpractice claims on behalf of an insurance company that issues malpractice insurance policies? Are you engaged in the practice of medicine? What if you testified as an expert witness for various plaintiffs or defendants in either personal injury or malpractice cases or in other types of cases where your medical knowledge is necessary? Are you engaged in the practice of medicine? What if you are a professor at a medical school and teaching? Are you engaged in the practice of medicine? The courts in New York State have failed to answer many of these questions.

Another question that has arisen is what happens if you are a general practitioner without board certifications and you run a radiology practice where you supervise board-certified radiologists? Are you engaged in the practice of medicine? In other words, do you have to be engaged in the practice of a specialty in which you are board-certified? Can a general practitioner perform heart surgery, or does he have to be a cardiac surgeon? We believe that, under New York law, a licensed doctor holding an MD or a DO degree can engage in any form of the practice of medicine and there are no requirements under New York law for specialties to perform certain services. Hospitals may have such requirements, the insurance companies may have such requirements, but we are unaware of any New York law that imposes such requirements.

In regard to the issue of whether or not you are substantially in compliance with all laws, rules and regulations relating to the practice of medicine, it has been our contention on behalf of our clients, although not uniformly

adopted by the Courts, that until there has been a hearing by the Department of Education either suspending or revoking your license, in which a hearing must be held by three persons, one layperson and two doctors, that finds otherwise, you are deemed to be in compliance with all rules and regulations relating to the practice of medicine. Only such a hearing can find non-compliance with the rules and regulations relating to the practice of medicine.

Obviously, this is a very complicated field. To protect yourself, and if you have questions about this area, you should inquire of a lawyer or law firm knowledgeable in medical licensing issues.

For more information about the legal requirements for the practice of medicine, please call Blodnick, Fazio & Associates, P.C. at 516-280-7105. We are here to assist you.