

82

**SYLLABUS:**

1. The duly licensed physicians who are members of the medical staff of a hospital may incorporate as a professional association under Chapter 1785., Revised Code, to render professional medical services in the emergency room of the hospital.

2. Under Section 1785.03, Revised Code, such professional association may employ duly licensed physicians (who may or may not be members of the medical staff) to render professional services in the emergency room, each such physician to be compensated by the association at a stipulated rate per hour of service, the billing and collection for the professional service being made by the association; and the hospital independently charging emergency room patients a separate amount for the furnishing of facilities and non-professional services.

3. Such professional association may contract with one or more physicians (who are members of the medical staff of the hospital), at a stipulated rate per month, to serve on a part-time basis to schedule the physician employees, keep records, and cooperate with the hospital on emergency room needs.

Columbus, Ohio, March 8, 1963

Hon. John T. Corrigan  
Prosecuting Attorney  
Cuyahoga County  
Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I request your opinion as to the following question:

“May the medical staff of a hospital incorporate, pursuant to Ohio Revised Code Chapter 1785, and through the medium of such professional association provide (without violation of law by the medical staff or the professional association or any of the physicians employed thereby or contracting therewith) for the organization and control of the emergency room of a hospital on the following basis:

“(a) The professional association resulting from such incorporation would employ physicians (who may not necessarily be members of the medical staff) to render professional services in the emergency room. Each such physician would be compensated at a stipulated rate per hour of service, as mutually agreed upon from time to time. Building and collection for the professional services would normally be made by the professional association. The hospital would independently charge and collect from emergency room patients a separate fee for the furnishing of facilities and non-professional services.

“(b) The professional association would contract with one or more physicians (who are members of the medical staff) to serve on a part-time basis as supervisors of the emergency room operation. By such contract, such supervisor would agree to supervise the operation of the emergency room, scheduling the physician—employees so as (to the extent possible) to assure continuous 24-hour physician coverage, keeping records of the emergency room operation, and dealing with the hospital to assure availability of necessary equipment and personnel for the proper functioning of the emergency room. Such supervisor or supervisors would be compensated at a stipulated rate per month, as mutually agreed upon from time to time.

“(c) The articles of incorporation of the professional association would conform to and be filed in accor-

dance with the provisions of Chapter 1701 of the Ohio Revised Code.”

It has been well settled in Ohio that a corporation whether organized for profit or not for profit, may not engage in the practice of medicine. Opinion No. 1751, Opinions of the Attorney General for 1952, page 608; Opinion No. 3031, Opinions of the Attorney General for 1962, issued May 29, 1962; 41 American Jurisprudence 148, Physicians and Surgeons, Section 20.

Chapter 1785., Revised Code, enacted effective October 17, 1961 (129, Ohio Laws, 563), does, however, allow an individual or group of individuals, each of whom is licensed or otherwise legally authorized to render the same kind of professional service, to incorporate as a professional association to render such professional service. Section 1785.01, Revised Code, reads, in part, as follows:

“As used in sections 1785.01 to 1785.08, inclusive, of the Revised Code:

“\* \* \*

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“(B) ‘Professional association’ means an association organized under the provisions of section 1785.01 to 1785.08, inclusive, of the Revised Code for the sole purpose of rendering a professional service.”

Section 1785.02, Revised Code, reads as follows:

“An individual or group of individuals each of whom is licensed or otherwise legally authorized to render the same kind of professional service within this state may organize and become a shareholder, or shareholders, of a professional association. Any such group of individuals who may be rendering a specific professional service as an organization created otherwise than pursuant to sections 1785.01 to 1785.08, inclusive, of the Revised Code, may incorporate under and pursuant to the provisions of this act by amending the agreement establishing the organization in such manner that such agreement as amended shall constitute articles of incorporation prepared and filed in the manner prescribed in section 1785.08 of the Revised Code and by otherwise complying with the applicable requirements of sections 1785.01 to 1785.08, inclusive, of the Revised Code.”

Section 1785.08, Revised Code, referred to in the above quoted statute, reads as follows:

“Chapter 1701. of the Revised Code shall be applicable to professional associations, including their organization and the manner of filing articles of incorporation, except that the requirements of division (A) of section 1701.06 of the Revised Code shall not apply to professional associations. If any provision of sections 1785.01 to 1785.08, inclusive, of the Revised Code, conflicts with any provision of Chapter 1701. of the Revised Code, the provisions of sections 1785.01 to 1785.08, inclusive, of the Revised Code, shall take precedence.”

Section 1785.03, Revised Code, reads as follows :

*“A professional association may render professional service only through officers, employees, and agents who are themselves duly licensed or otherwise legally authorized to render professional service within this state. The term ‘employee’ as used in this section does not include clerks, bookkeepers, technicians, or other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional services for which a license or other legal authorization is required, nor does the term ‘employee’ include any other person who performs all of his employment under the direct supervision and control of an officer, agent, or employee who is himself rendering professional service to the public on behalf of the corporation.”* (Emphasis added)

Since the medical staff members of a hospital would undoubtedly be licensed to practice medicine in this state, such staff member may be permitted to form a professional association pursuant to Chapter 1785., *supra*, to render professional medical services.

Also, since a professional association may render professional services through employees, who are individually authorized to render such service, the proposal of paragraph “(a)” of your request to employ physicians to operate the emergency room appears to be a proper exercise of power by the professional association, such physicians being licensed to render professional medical service in the state.

Your second proposal, proposal “(b)”, seemingly calls for the use of independent contractors to serve as part-time supervisors of the operating room; charged specifically with scheduling physicians, keeping records and making available the necessary equipment and personnel for the functioning of the emergency room.

Section 1785.03, *supra*, provides that an "association may render professional services only through officers, employees, and agents" and there is considerable doubt in my mind that this provision is capable of being extended to include the rendering of professional services by independent contractors. This particular question need not concern us here, however, for it would appear that the contracts suggested under proposal "(b)" cover non-professional services. (As noted above, the professional services to be rendered by the association would be rendered through professionally licensed employees). Accordingly, I find no objection to the procedure contemplated by paragraph "(b)" of the request for opinion.

As to paragraph "(c)" of the request for opinion, Section 1785.08, *supra*, specifically states that Chapter 1701., Revised Code, shall be applicable to professional associations, including their organization and the manner of filing articles of incorporation. Since under said paragraph "(c)", Chapter 1701., Revised Code, is to be followed, the proposed procedure is in accordance with law.

In conclusion, therefore, it is my opinion and you are advised :

1. The duly licensed physicians who are members of the medical staff of a hospital may incorporate as a professional association under Chapter 1785., Revised Code, to render professional medical services in the emergency room of the hospital.
2. Under Section 1785.03, Revised Code, such professional association may employ duly licensed physicians (who may or may not be members of the medical staff) to render professional services in the emergency room, each such physician to be compensated by the association at a stipulated rate per hour of service, the billing and collection for the professional service being made by the association; and the hospital independently charging emergency room patients a separate amount for the furnishing of facilities and nonprofessional services.
3. Such professional association may contract with one or more physicians (who are members of the medical staff of the hospital), at a stipulated rate per month, to serve on a part-time basis

to schedule the physician employees, keep records, and cooperate with the hospital on emergency room needs.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General