

## OPINION NO. 496

The Commission received a request from a state practitioner who asked the Commission to determine whether he could establish a private practice. The practitioner stated that because by law he could not receive third-party payment from insurance companies, those who attended his private office would have to pay for his services.

In his state capacity, the practitioner counseled clients at two clinics in districts outside of the district in which he wished to establish a private practice. However, the practitioner also performed intake services at a clinic in the district in which he wished to establish his private practice. When performing intake services, the practitioner determined whether those who contacted the clinic were to be accepted by the clinic or referred to a private practitioner. Those who had insurance were referred to private practitioners, while those who did not have insurance were accepted for treatment at the clinic. The practitioner performed only intake services at the clinic and did not counsel people from the district who had been accepted for treatment.

Two provisions of the ethics code, HRS §84-14(b) and HRS §84-13, apply to state practitioners who wish to engage in private practices. HRS §84-14(b), a part of the conflicts-of-interests section of the code, provides that state employees shall not acquire financial interests in any business that they have reason to believe may be directly involved in official action to be taken by them. HRS §84-13, the fair treatment section of the code, prohibits state employees from using or attempting to use their official positions to secure unwarranted privileges or treatment for themselves or others.

With regard to the practitioner's case, the Commission's chief concern centered around the question of referrals by him or his fellow staff members to his private office. Since in his state capacity the practitioner might have had occasion to refer a client to his own private practice, the Commission normally would have prohibited him from establishing a private practice. However, the Commission had, in the past, dealt extensively with the question of how the ethics code applied to state practitioners who wished to engage in private practices and had determined that private practices were permissible so long as certain guidelines were adhered to. These guidelines had been set forth in Advisory Opinion No. 406. To the Commission's knowledge, guidelines consonant with the guidelines set forth in Advisory Opinion No. 406 had been adopted by the state practitioner's own division.

The first two of the eight guidelines in Advisory Opinion No. 406 prohibited a state practitioner from referring a client to his own private practice or to the private practice of another staff member within the same clinic or center. The third guideline provided, so long as guidelines one and two were followed, that a state practitioner could receive a state referral if referrals to all private practitioners were made in a fair manner, such as by rotation or by numerical order. This guideline also allowed for deviations from a fair referral system for cases in which the interests of the client were best served otherwise.

The Commission realized that the practitioner might not have been in a position to make or receive referrals from the clinic because clients who had no insurance were treated

at the clinic, while those who had insurance were referred to private practitioners who could accept third-party payment. In any case, the Commission believed that the practitioner could establish a private practice so long as he abided by the guidelines in Advisory Opinion No. 406, which, as stated above, had been adopted as the basis of guidelines drawn up by the practitioner's own division.

A copy of Advisory Opinion No. 406 was sent to the practitioner for his information along with this opinion. The Commission also informed the practitioner that he had an obligation to inform clients who contacted his private office of their eligibility for free state counseling should they so qualify.

Because the Commission had determined that the practitioner could establish a private practice notwithstanding the prohibition in HRS §84-14(b), the Commission informed the practitioner that HRS §84-14(a) would prohibit him from taking official action directly affecting his private practice should such an occasion arise in the future.

The Commission told the practitioner that it appreciated his cooperation and candor in resolving this matter. The Commission has found that this kind of attention to ethical matters furthers public confidence in state employees and contributes to an improved ethical climate in state government.

Dated: Honolulu, Hawaii, April 29, 1983.

STATE ETHICS COMMISSION  
Edith K. Kleinjans, Chairperson  
Mildred D. Kosaki, Commissioner  
Gary B.K.T. Lee, Commissioner  
Rabbi Arnold J. Magid, Commissioner

Note: Vice Chairperson Allen K. Hoe was not present during the discussion and consideration of this opinion.