



Significant Decision

No. 21-02

October 20, 2021

SANJOY BANERJEE V. SUPERIOR COURT

COURT OF APPEAL DECISION

[E076291]

FILED: OCTOBER 5, 2021

A physician may refer patients to facilities that the physician owns and controls without violating Labor Code section 139.3(a), under the “physician’s office exception” in section 139.31(e).

Significance: Doctors are permitted to render services to patients through separate legal entities in which they have financial interest without violating the Labor Code section 139.3(a) prohibition on self-referrals, as long as services are rendered within the same “physician’s office” or group practice office.

Facts: Dr. Sanjoy Banerjee was charged with two counts of insurance fraud and three counts of perjury related to treatment he provided in workers’ compensation cases. The fraud charges stemmed from allegations that he billed a workers’ compensation carrier for services provided through his professional corporation and through two other legal entities that he owned and operated. The perjury charges related to instances when he signed his reports under penalty of perjury, certifying that he had not violated Labor Code section 139.3. In his defense, Dr. Banerjee argued that a physician is permitted to refer patients to a person or entity in which the physician has a financial interest for services specified in section 139.3(a), so long as the physician discloses the financial interest to the patient in writing at the time of the referral. He further argued that the “physician’s office” exception to the referral prohibition (as set forth in section 139.31(e)) does not prohibit a physician from rendering services through separate legal entities.

Holding: Labor Code sections 139.3(a) and 139.3(e) are not in conflict, and a physician’s compliance with the disclosure requirement of section 139.3(e) does not excuse the physician’s noncompliance with the referral prohibition of section 139.3(a). However, under section 139.31(e), the prohibition on self-referrals does not apply to services that are supplied by a physician’s office or the office of a group practice.

Discussion: This decision may come as a surprise to many in the workers’ compensation arena, who believed that self-referrals were flatly outlawed under section 139.3(a). Those persons likely glossed over the conflicting opportunity under (e) that permits such referrals so long as there is written disclosure to the patient. This decision directly addresses that conflict, as a matter of first impression.

Labor Code section 139.3(a) prohibits a physician from making a financially interested referral of a patient for specified services. Labor Code section 139.3(e) requires a physician who makes a patient referral to an organization in which the physician has a financial interest to disclose this interest to the patient in writing at the time of the referral. Also under the court’s consideration was section 139.31(e), the so-called “physician’s office” exception which excludes from these rules services provided by the physician’s office or the office of a group practice.

Using ordinary rules of statutory construction aimed at upholding the constitutionality of any statute, the Court construed these sections in a way that allows all of them to be upheld:

[W]e construe the statute as allowing a physician to render services to patients through separate legal entities, including entities in which the physician has a financial interest, provided that the services are rendered within the same “physician’s office” or the office of a group practice.

The court ruled that the physician’s office exception applied to Dr. Banerjee’s financially interested self-referrals to his other facilities. This meant that he did not violate section 139.3(a) and thus the perjury charges had to be dismissed.

It is crucial to recognize that the Court of Appeal went out of its way to point out that Dr. Banerjee could still be prosecuted for insurance fraud because “the evidence supports a strong suspicion” that he specifically intended to present false and fraudulent claims for health care benefits in violation of Penal Code section 550(a)(6) by billing the workers’ compensation insurer substantially higher amounts through his two other legal entities than he customarily billed for same services formerly rendered through his professional corporation and his former group practice.

In other words, Dr. Banerjee is still facing a world of trouble – just not perjury.

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