

1 Board of Medical Examiners

2

3 Adopted Permanent Rules Relating to Fee Splitting

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5 Rules as Adopted

6 5620.0100 PURPOSE.

7 The purpose of Minnesota Statutes, section 147.091,
8 subdivision 1, paragraph (p), and parts 5620.0110 to 5620.0160
9 is to protect consumers against medical-economic arrangements,
10 practices, and relationships by physicians that unnecessarily
11 increase the cost of health care to consumers, restrict consumer
12 access to goods and services, and otherwise present harm to
13 consumer interests. The board shall comply with Minnesota
14 Statutes, section 147.091, subdivision 1, paragraph (p), and
15 parts 5620.0110 to 5620.0160 in evaluating complaints received
16 by the board relating to medical-economic arrangements,
17 practices, or relationships among health care providers.

18 5620.0110 DEFINITIONS.

19 Subpart 1. Scope. As used in Minnesota Statutes, section
20 147.091, subdivision 1, paragraph (p), the following terms have
21 the meanings given them.

22 Subp. 2. Device. "Device" means an instrument, apparatus,
23 implement, machine, contrivance, implant, in vitro reagent, or
24 other similar or related article including a component, part, or
25 accessory, that as a completely assembled article exceeds \$99 in
26 cost and is:

27 A. recognized in the official United States
28 Pharmacopoeia and National Formulary and its supplements;

29 B. intended for use in diagnosing disease or other
30 conditions, or in curing, mitigating, treating, or preventing
31 disease in a person;

32 C. intended to affect the structure or function of
33 the body of a person, and that does not achieve any of its
34 principal intended purposes through chemical action within or on
35 the body of a person and is not dependent upon being metabolized

1 for the achievement of any of its principal intended purposes;

2 or

3 D. restricted under federal law to sale by or on the
4 order of a licensed practitioner.

5 Nondurable medical equipment, meaning a supply or piece of
6 equipment that is used to treat a health condition and cannot be
7 reused, is excluded from this definition of device.

8 Subp. 3. Drugs. "Drugs" has the meaning in part
9 5600.0100, subpart 8.

10 Subp. 4. Financial interest. "Financial interest" means
11 an asset that is directly owned or controlled by an individual
12 or business and that has the potential to produce a monetary
13 return.

14 Financial interest does not include the ownership of a
15 building by a physician where space is leased to an individual
16 or organization at the prevailing rate in a straight lease
17 agreement or any interest held by a physician in a publicly
18 traded stock.

19 Subp. 5. Profit interest. "Profit interest" means a
20 financial amount received by the physician that exceeds the
21 acquisition cost of a drug or device plus the cost of having the
22 drug or device available.

23 Subp. 6. Significant financial interest. "Significant
24 financial interest" means any financial interest as defined in
25 subpart 4 that is equal to or greater than five percent of the
26 whole or \$5,000, whichever is the lesser amount.

27 5620.0120 INCORPORATION BY REFERENCE OF CRITERIA TO DEFINE
28 DEVICE.

29 The most recent edition of the United States Pharmacopoeia
30 and National Formulary and its supplements are incorporated by
31 reference. The publication is issued by the United States
32 Pharmacopoeial Convention, Inc., 12601 Twinbrook Parkway,
33 Rockville, Maryland, 20852. It is available for inspection and
34 copying through the Minitex interlibrary loan system. The
35 publication is subject to change.

1 5620.0130 DISCLOSURE REQUIREMENTS AND FORMATS.

2 Subpart 1. Written disclosure required. The disclosure
3 requirements in Minnesota Statutes, section 147.091, subdivision
4 1, paragraph (p), are met if the written disclosure is made
5 before a referral. The written disclosure must reasonably
6 apprise the patient or patient's guardian of the physician's
7 financial and profit interest in the individual or entity to
8 which the physician is making the referral, and contain a
9 statement that the patient is free to choose providers other
10 than the one recommended by the physician. The written
11 disclosure must consist of one of the formats in items A to D.

12 A. The posting of a conspicuous sign in an area that
13 is likely to be seen by the patients and patients' guardians who
14 use the physician's facility.

15 B. The incorporation of a conspicuous written notice
16 in existing office documents used by the physician. Office
17 documents may include, but are not limited to, prescription
18 sheets, office information or policy booklets, referral forms,
19 and any similar regularly distributed information handout.

20 C. The use of a written disclosure document that is
21 given to a patient or patient's guardian for review. A copy of
22 the document must be provided to the patient or patient's
23 guardian.

24 D. A combination of the written disclosure formats
25 described in items A to C.

26 Subp. 2. Unwritten disclosure; when allowed. A nonwritten
27 disclosure format may be used to satisfy the disclosure
28 requirements of Minnesota Statutes, section 147.091, subdivision
29 1, paragraph (p), when necessary to accommodate the physical
30 condition of a patient or the patient's guardian that makes use
31 of written disclosure alone unworkable.

32 Subp. 3. Information must be updated. The disclosure
33 information shall be updated to show any change in the
34 circumstances regarding the physician's financial or profit
35 interest.

1 5620.0140 EVIDENCE OF DISCLOSURE.

2 When the board investigates a violation of Minnesota
3 Statutes, section 147.091, subdivision 1, paragraph (p), the
4 burden of proof is on the physician investigated to show
5 evidence the physician complied with disclosure requirements in
6 part 5620.0130.

7 5620.0150 DISCLOSURE OF PROPRIETARY INFORMATION.

8 Specific contract terms or similar proprietary information
9 relating to a physician's financial and profit interest is not
10 required to be part of the information provided in a disclosure
11 under part 5620.0130.

12 5620.0160 DIVISION OF FEES.

13 In reviewing a division of fees as described in Minnesota
14 Statutes, section 147.091, subdivision 1, paragraph (p), clause
15 (2), the board may consider, but is not limited to, the
16 following factors regarding the reasonableness of a proportional
17 division of fees:

- 18 A. the value of professional services;
19 B. overhead costs;
20 C. time and distance traveled; and
21 D. the availability of the service or product
22 elsewhere in the local trade area.