

PHYSICIAN PROFESSIONAL SERVICE CORPORATIONS

**House Bill 4944 as introduced
First Analysis (10-8-97)**

**Sponsor: Rep. Michael Griffin
Committee: Health Policy**

THE APPARENT PROBLEM:

The Professional Service Corporation Act permits professionals such as attorneys, physicians, and accountants to incorporate as professional service corporations (PCs). Under the act, one or more licensed persons may organize to become a shareholder or shareholders of a PC. A professional corporation may render one or more professional services, but each shareholder must be licensed in one or more of the professional services rendered by the PC. However, under the act, if a PC renders a professional service that is included within the Public Health Code, all of its shareholders must be licensed or legally authorized to render the same professional service.

Historically, the Corporation and Securities Bureau within the Department of Consumer and Industry Services interpreted the phrase "render the same professional service" as requiring that all the shareholders in a PC hold the same license. For instance, a dentist may form a PC with another dentist, but not with a chiropractor. This was also interpreted as meaning that a doctor of medicine (MD) could not form a PC with an osteopath (DO) or a podiatrist (DPM).

In response to requests, the bureau reviewed the statutory language and issued Release 94-1-C in February of 1994. In the directive, the bureau concluded that the act's definition of "professional service" did "not necessarily require that the shareholders possess the same license, but rather that the person be licensed to provide the same professional service." The act defines "professional service" in part as including, but not limited to, "services rendered by certified or other public accountants, chiropractors, dentists, optometrists, veterinarians, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, professional engineers, land surveyors, and attorneys at law." The directive went on to point out that though the definition specifically mentioned MDs, DOs, and DPMs, it also specified physicians and surgeons as a category. Since MDs, DOs, and DPMs may be denoted as physicians and surgeons under administrative rules and provisions of the Bureau of Occupations and

Professional Regulation, the director of the Corporation and Securities Bureau ruled that "surgeons and physicians possessing

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any of the specific licenses may be shareholders in a professional service corporation where the professional services are to be rendered by physicians and surgeons.”

Since the release of the directive, doctors of medicine, osteopaths, and podiatrists have been permitted to form professional service corporations with each other. However, some physicians and surgeons have expressed a concern that the statutory language remains ambiguous and have requested that the law be amended to more clearly reflect the bureau’s current practice.

THE CONTENT OF THE BILL:

House Bill 4944 would amend the Professional Service Corporation Act (MCL 450.224) to permit one or more physicians and surgeons licensed under the Public Health Code (MCL 333.1101 et al.) to organize a professional corporation under the act with one or more physicians and surgeons licensed under different provisions of the Public Health Code. The bill would therefore permit persons licensed to practice medicine (MDs), osteopathic medicine and surgery (DOs), and podiatric medicine and surgery (DPMs) to form professional corporations with each other.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state or local governments. (10-07-97)

ARGUMENTS:

For:

The bill would simply codify the current practice of the Michigan Corporation and Securities bureau of allowing doctors of medicine, osteopaths, and podiatrists to form a professional corporation. This practice, for example, allows an orthopaedic surgeon to form a PC with a podiatrist or for MDs and DOs to go into business with each other. Besides reflecting the bureau’s current

policy, the bill also reflects changes in the health care system.

Against:

Perhaps the bill should be amended to allow any health professional licensed under the Public Health Code to form a PC with any other licensed health care professional. In that way, a nurse practitioner could incorporate with a physician’s assistant, or either could join the PC established by the doctors in his or her office. Wouldn’t this allow for greater flexibility in designing medical practices to meet the needs of patients?

Response:

The bill as introduced would make no changes in departmental or bureau policy. It would merely clarify the statutory language to reflect current bureau policy, and as such has no opposition. The current bureau policy to allow MDs, DOs, and DPMs to form PCS was based on a review of the definition of “professional service” which concluded that the three professions -- though holding different licenses -- fit under the category of “physicians and surgeons” and therefore reflected the intent of the law. To amend the bill to allow any persons licensed under the Public Health Code to form corporations with each other would be a major policy shift with significant repercussions -- especially in regards to capitation systems such as managed care. Such a policy shift would require much study to identify the ramifications and impact on the delivery of health care services in the state. For now, the ambiguous language in the act should be clarified to reflect existing practices.

POSITIONS:

The Department of Consumer and Industry Services supports the bill. (10-7-97)

The Michigan Podiatric Medical Association supports the bill. (10-07-97)

The Michigan Osteopathic Association supports the bill. (10-07-97)

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