

Historical Background

The Maryland Patient Referral Law became a matter of public concern when the Attorney General ruled in 2004 that referrals of patients for MRI scans on machines in which the referring practitioner has a financial interest violates that law. In the following year, the Board sanctioned one practice by Consent Order for violating that law. Subsequently, a group of practices sued the Board in the Circuit Court for Baltimore City, claiming that the Attorney General's interpretation was incorrect and the law did not prohibit those referrals. That suit was dismissed, but many of those practices and some other practices joined in a Board process which resulted in a ruling, called Declaratory Ruling 2006-1, by the Board. In that ruling, the Board declared that these referrals were illegal but stated that it would not enforce that ruling with respect to any referrals made before that date, December 20, 2006. The medical practices appealed that case, but the Board's ruling was affirmed first by the Circuit Court for Montgomery County and, on January 24, 2011, by the state's highest court, the Court of Appeals.

The Ruling: Details

According to the Board's ruling, now affirmed by the Court of Appeals, the following scenario is a fact pattern that **violates the law**:

A patient is seen by an orthopedic physician who has a beneficial financial interest in the orthopedic practice. The patient may have been referred to the orthopedist by another physician, or the patient may have come directly to the orthopedic physician. The orthopedic physician makes a referral for an MRI scan. The patient receives the MRI a few days or weeks later on an MRI machine that is owned and operated by, or leased by, the orthopedic physician's practice. The MRI image may be read in-house or may be sent to an off-site radiologist to be read. An off-site radiologist may state his or her findings in a radiology report and forward the report back to the orthopedic physician. The referring orthopedic physician's practice submits a bill for the MRI as the provider of the MRI scan (though not necessarily as the provider of the interpretation of the scan).

In addition, according to that ruling, the modifications to the fact pattern set out below **do not change the conclusion that the referral is prohibited**:

The orthopedic physician obtains a signed Maryland Uniform Consultation Referral Form from the patient's primary care physician after the orthopedic physician determined that the MRI was necessary, but before the MRI was actually conducted.

The primary care physician does not, between the time that the orthopedic physician determines that the MRI is necessary and the time that the MRI was accomplished, see the patient for the purpose of determining if the MRI is necessary, nor does he or she exercise independent medical judgment as to whether the MRI is appropriate or necessary.

In addition, according to that ruling, the following circumstance **does not change the conclusion that the referral is prohibited:**

The orthopedic physician names the primary care physician as the "referring physician" on the Health Insurance Claim Form.

The primary care physician does not, between the time that the orthopedic physician determines that the MRI is necessary and the time that the MRI was accomplished, see the patient for the purpose of determining if the MRI is necessary, nor does he or she exercise independent medical judgment as to whether the MRI is appropriate or necessary.

Physician-Employees

According to the ruling, where a physician who is an employee of the medical practice (but who does not have any beneficial interest in the medical practice that provides the MRI scan) evaluates the patient and orders the MRI to be done by that practice, the referral does not violate the law, as long as all of the following are true:

The physician works under a valid employment contract;

The employment contract by its terms does not require referrals to the employer's health care entity;

The employment relation does not in practice require referrals to be made to the employer's health care entity;

No form of remuneration or compensation or favorable treatment is directly or indirectly tied to referrals to the employer's health care entity;

The employee is not directed to make a referral to the employer's health care entity;

There is no arrangement or scheme by which the prohibited referrals are made indirectly, which the employee physician knows or should know has as a principal purpose the making of otherwise prohibited referrals.