



Texas Senate
Committee on Nominations

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March 6, 1991

ID# 11892
RC-49 SG

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Dan Morales
Texas Attorney General
Attention: Opinion Committee,
Open Government Section
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

RECEIVED

MAR 13 91

Opinion Committee

RE: Opinion Request

Dear General Morales:

As Chairman of the Nominations Committee of the Texas Senate, I am hereby requesting a written opinion pursuant to §402.042(b) of the Government Code (Vernon 1990) on the following questions affecting the public interest:

1. Whether the Texas Medical Practice Act, Article 4495b, V.T.C.S., specifically subsections 3.08(12) and 3.08(15), are applicable to a municipal corporation in view of §5.904 of the Texas Local Government Code (Vernon Supp. 1991).
2. If the answer to question number 1 is no, would a home rule municipal corporation be prohibited from employing a physician on a salaried basis and collecting fees from patients for the physician's services? Would the physician be subject to disciplinary action by the Texas Board of Medical Examiners for agreeing to such an employment arrangement?
3. If the answer to question number 1 is no, would a home rule municipal corporation be prohibited from contracting with a physician on a fee for services rendered basis and collecting fees from patients for the physician's services? Would the physician be subject to disciplinary action by the Texas Board of Medical Examiners for agreeing to such a contract?
4. If the answer to question 2 or 3 is yes, would the following contractual relationship be permissible under the Texas Medical Practice Act?

ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY

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A hospital contracts with a physician to provide needed physician services in the Emergency Room at the hospital. The contract fee paid to the physician is a minimum guarantee to assure the physician's availability. The contract provides that the hospital will act as the billing agent for the physician for a reasonable fee. The contract further provides that the hospital will retain the collected billings up to the guaranteed minimum and forward to the physician the remainder of the professional fees less the hospital's reasonable billing and collecting fee.

For your reference, I have enclosed the relevant statutory and code provisions as well as recent correspondence between the Texas Medical Association and the Texas Board of Medical Examiners regarding a compensation arrangement similar to that described in question number 4.

As these are questions of great interest to hospitals and physicians, and as I have introduced a bill in the current session of the Legislature to exempt cities, counties, and other political subdivisions that own and operate hospitals from the application of subsections 3.08(12) and (15) of the Texas Medical Practice Act, I would very much appreciate an opinion on these questions at your earliest convenience.

Sincerely,

A handwritten signature in cursive script that reads "Gonzalo Barrientos". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Gonzalo Barrientos
State Senator