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OPTOMETRY: Medical Care Corporations.

MEDICAL CARE CORPORATIONS: Doctors of Optometry.

Doctors of Optometry may not form a non-profit medical care corporation.

Opinion No. 4863 June 25, 1975.

The Honorable Matthew McNeely
House of Representatives
State Capitol
Lansing, Michigan

You have asked for my opinion as to whether a doctor of optometry can be included under the provisions of the non-profit medical care corporations act, 1939 PA 108; MCLA 550.301 *et seq;* MSA 24.591 *et seq.*

1939 PA 108, § 2; MCLA 550.302; MSA 24.592, reads in pertinent part:

> "Any number of persons not less than 7, all of whom shall be residents of the state, may form a corporation, under and in conformity with the provisions of this act, for the purpose of establishing, maintaining, and operating a voluntary nonprofit medical care plan, whereby medical care is provided at the expense of the corporation to persons or groups of persons as shall become subscribers to the plan, under contracts *which will entitle each subscriber to definite medical and surgical care, appliances and supplies, by licensed and registered doctors of medicine, doctors of osteopathic medicine, doctors of surgical chiropody or podiatry, or doctors of chiropractic, or such other person or groups of persons as may lawfully provide said medical and surgical care, appliances and supplies, in their offices, in hospitals, and in the home.* Such other benefits may be added from time to time as the corporation may determine, with the approval of the commissioner of insurance. . . ." (emphasis added)

1939 PA 108, § 12; MCLA 550.312; MSA 24.602, states:

> "All medical care rendered on behalf of a nonprofit medical care corporation shall be in accordance with the accepted medical practice in the community at all times.
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> "A nonprofit medical care corporation shall not furnish medical care otherwise than through doctors of medicine, doctors of osteopathic medicine, or doctors of surgical chiropody or podiatry, or doctors of chiropractic licensed and registered under Act No. 237 of the Public Acts of 1899, as amended, or Act No. 162 of the Public Acts of 1903, as amended, or Act No. 115 of the Public Acts of 1915, as amended, or Act No. 145 of the Public Acts of 1933, as amended."

An inconsistency exists in these two sections. 1939 PA 108, § 2, *supra,* states that the subscriber is entitled to definite medical and surgical care, appliances and supplies by doctors of medicine, doctors of osteopathic medicine, etc., or such other person or group of persons as may lawfully provide said medical and surgical care, appliances and supplies. However,

1939 PA 108, § 12, *supra,* states specifically who can furnish the medical care services.

The resolution of this inconsistency lies in the rules of statutory construction developed in this state. The Michigan Supreme Court in *Lee* v *Employment Security Commission,* 346 Mich 171, 178; 78 NW2d 309, 312 (1956), stated:

> ". . . The rule adopted by our Court in the construction of statutes is well stated in City of Grand Rapids v Crocker, 219 Mich 178, 182, 183, where we said:
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> " 'There seems to be no lack of harmony in the rules governing the interpretation of statutes. All are agreed that the primary one is to ascertain and give effect to the intention of the legislature. All others serve but as guides to assist the courts in determining such intent with a greater degree of certainty. If the language employed in a statute is plain, certain and unambiguous, a bare reading suffices and no interpretation is necessary. The rule is no less elementary that effect must be given, if possible, to every word, sentence and section. To that end, the entire act must be read, and the interpretation to be given to a particular word in one section arrived at after due consideration of every other section so as to produce, if possible, a harmonious and consistent enactment as a whole.' "

It is obvious from a reading of the two sections in question that they cannot be made harmonious. One section seems to greatly expand who may provide medical care and another section seems to limit specifically who can provide that care. It is even more difficult to harmonize these sections when it is noted that both sections of the statute were amended at the same time by the legislature.

One of the general rules of statutory construction is that the more specific section takes precedent over the more general section. The court spoke specifically of this rule in the case of *Evanston YMCA Camp* v *State Tax Commission,* 369 Mich 1, 8; 118 NW2d 818, 821 (1962) *app dis,* 375 US 19; 84 S Ct 69; 11 L Ed 39, when the court stated:

> "When we construe statutory language containing both specific and general provisions, we adopt the rule set forth in 50 Am Jur, Statutes, § 367, p 371:
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> " 'Where there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision.' "

Following the reasoning of the Supreme Court, the Michigan Court of Appeals in *Minor Child* v *State Health Commissioner,* 16 Mich App 128, 131; 167 NW2d 880, 882 (1969), states:

> "It is a principle too common to require citation that statutes will be construed whenever possible so as to avoid contradiction. Similarly,

it is a principle of construction that where there is expressed a general intention and also a particular intention which is inconsistent with the general one, the particular intention shall be considered an exception to the general one. . . ."

Thus, it can be concluded that the general rule is that the more specific section controls over a more general section of a statute. 1939 PA 108, § 2, *supra,* attempts to define who can incorporate under the statute and what care can be provided by that corporation:

". . . whereby medical care is provided at the expense of the corporation to persons or groups of persons as shall become subscribers to the plan, under contracts which will entitle each subscriber to definite medical and surgical care, appliances and supplies, by licensed and registered doctors of medicine, doctors of osteopathic medicine, doctors of surgical chiropody or podiatry, or doctors of chiropractic, *or such other person or groups of persons as may lawfully provide said medical and surgical care, appliances and supplies,* in their offices, in hospitals, and in the home. . . ." (emphasis added)

However, the language of 1939 PA 108, § 12, *supra,* specifically states that a nonprofit medical care corporation shall not furnish medical care otherwise than through doctors of medicine, doctors of osteopathic medicine or doctors of surgical chiropody or podiatry or doctors of chiropractic. Therefore, my opinion is that the specificity of 1939 PA 108, § 12, *supra,* precludes a doctor of optometry from being included in 1939 PA 108, *supra.*

You have also asked if a doctor of optometry, insofar as his lawful performance of a function which coincides with that of a doctor of medicine specializing in ophthalmology, can be included within the benefits of 1939 PA 108, *supra.* 1939 PA 108, § 12 *supra,* lists exactly who can furnish the services. The list of persons does not include a doctor of optometry. Even if an optometrist were to provide some services that a doctor of medicine specializing in ophthalmology may perform, he still would not come within the definition of the term doctor of medicine. "Doctor of medicine" is defined in the Medical Practice Act, 1973 PA 185, § 2; MCLA 338.1802; MSA 14.542(2), as follows:

"As used in this act:

"* * *

"(c) 'Doctor of medicine' means a graduate of a medical school with a medical doctor's degree."

Further, the same section defines "medical school" as:

"(e) 'Medical school' means an institution approved by the board, offering an organized curriculum leading to the degree of doctor of medicine."

The above stated statutory provision precludes a doctor of optometry from coming within the definition of a doctor of medicine. Therefore, my opinion is that a doctor of optometry is precluded from 1939 PA 108, *supra,* even when he does perform medical care that coincides with the work done by a doctor of medicine specializing in ophthalmology.

In summary, 1939 PA 108, § 12, *supra,* is the controlling section of 1939 PA 108, *supra,* as to who can provide medical care in a non-profit medical care corporation. Medical care in a non-profit medical care corporation must be provided by persons enumerated in 1939 PA 108, § 12, *supra.* Since 1939 PA 108, § 12, *supra,* does not include doctors of optometry, it is clear that the legislators did not intend to include members of this profession as persons who may form a non-profit medical care corporation.

However, the legislature can, if it so desires, include optometrists within 1939 PA 108, § 12, *supra,* by passing appropriate legislation.

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COMPENSATION AND SALARIES: Cost of Living Allowance.

CONSTITUTION OF MICHIGAN: Civil Service Commission.

CIVIL SERVICE COMMISSION: Increases in Employee Compensation.

GOVERNOR: Budget Message.

BUDGET: Increase in Employee Compensation.

LEGISLATURE: Budget.

The Governor is not constitutionally mandated to transmit in his budget message to the legislature the estimated cost to the state of a cost-of-living allowance made by the Civil Service Commission as the constitution only requires that he transmit the increase as part of his budget message.

The legislature appropriates to each agency the sum of money it deems sufficient for the operation of that agency during the fiscal year but civil service employees are entitled to receive as compensation the amount fixed by the Civil Service Commission.

Opinion No. 4881 July 2, 1975.

Honorable Jerome T. Hart
State Senator
The Capitol
Lansing, Michigan 48901

In a September 20, 1974 opinion to Mr. C. J. Hess, the then Acting State Personnel Director, this office stated that the Michigan Civil Service Commission has the authority under Const 1963, art 11, § 5 to institute a cost-of-living allowance for classified state employees if that plan is based upon a fixed formula, with a maximum increase. On December 13, 1974 the Civil Service Commission adopted such a cost-of-living plan for fiscal year 1975-76. The plan adopted by the Commission and transmitted to the Governor to be included as part of the executive budget submitted to the Legislature, as required by Const 1963, art 11, § 5, provides: