



Office of the Attorney General  
State of Texas

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ATTORNEY GENERAL

January 3, 1994

Honorable Ron Wilson  
Chair  
Committee on Licensing  
and Administrative Procedures  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Letter Opinion No. 94-001

Re: Whether a private psychiatric  
treatment facility may provide airfare to a  
patient (ID# 22815)

Dear Representative Wilson:

You ask whether a private psychiatric treatment facility may provide airfare to a patient. We understand that you are concerned about a Texas facility which pays the airfare of insured patients who live out of state and would not otherwise be able to afford to travel to the facility. Generally, it is beyond the purview of the opinion process to scrutinize particular contractual arrangements, especially those between private individuals or entities, and to determine whether they satisfy specific statutory requirements or are otherwise legally permissible. *See generally* Attorney General Opinions JM-697 (1987) at 6; DM-192 (1992) at 10. Although we are unable to provide a definitive response, we have identified at least two state statutes which may be relevant to your query.

Section 161.091 of the Health and Safety Code was recently amended to provide in pertinent part:

(a) A person<sup>1</sup> commits an offense if the person intentionally or knowingly offers to pay or agrees to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency. [Footnote added.]

Health & Safety Code § 161.091, *as amended* by Acts 1993, 73d Leg., ch. 573, § 5.01 (eff. Sept. 1, 1993) and Acts 1993, 73d Leg., ch. 706, § 1 (eff. Sept. 1, 1993). Subsection (d) of section 161.091 provides that:

[e]xcept as provided by this section, an offense under this section is a Class A misdemeanor. If it is shown on the trial of a person under

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<sup>1</sup>The Code Construction Act defines the term "person" to include a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." Gov't Code § 311.005(2); *see also* Attorney General Opinion DM-138 (1992) at 1.

this section that the person has previously been convicted of an offense under this section or that the person was employed by a federal, state, or local government at the time the offense occurred, the offense is a felony of the third degree. In addition to any other penalties or remedies provided, a violation of this section shall be grounds for disciplinary action by a regulatory agency that has issued a license, certification or registration to the person.

*Id.* Sections 161.093 and 161.094 of the Health and Safety Code authorize the attorney general or the appropriate district or county attorney to file an action for injunctive relief or to assess civil penalties against a person who violates this provision. Health & Safety Code §§ 161.093 - .094, *as enacted by Acts 1993, 73d Leg., ch. 573, § 5.01 and Acts 1993, 73d Leg., ch. 706, § 1.* Furthermore, section 3.07(c) of the Medical Practice Act, V.T.C.S. article 4495b, prohibits a physician from paying a person for securing patients or patronage. A violation of this provision is punishable as a misdemeanor. V.T.C.S. art. 4495b § 3.07(c).

In addition to our general reluctance to scrutinize and consider the legality of private contracts, we are unable to determine whether the sort of arrangement you describe runs afoul of these statutes given the very limited facts you have provided. We suggest that any private psychiatric facility which pays the transportation costs of patients should consider whether its practice violates these statutes, as well as any other applicable state or federal statute or regulation.

### S U M M A R Y

It is beyond the purview of the opinion process to scrutinize particular contracts between private individuals or entities and to determine whether they satisfy specific statutory requirements or are otherwise legally permissible. A private psychiatric facility which pays the transportation costs of patients should consider whether its practice violates section 3.07(c) of article 4495(b), V.T.C.S., and section 161.091 of the Health and Safety Code, as well as any other applicable state or federal statute or regulation.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee