

FORMAL OPINION

for "certain administrative and remunerative purposes" but "agents of the State" for purposes of tort liability in executing search warrant); *Godfrey v. McGann*, 37 N.J. 28 (1962) (probation officers). In the words of the Supreme Court in the *Dunne* case, county mosquito commissions "possess a hybrid status." 69 N.J. at 248.

\*\* Section 14.1 refers to "the members *appointed* pursuant to [§ 14]" as well as "one additional member *appointed* for a term of 3 years." Although § 14.1 does not explicitly refer to the Commissioner of Health and the Director of the State Agricultural Experiment Station, who are made *ex officio* members of county mosquito commissions by § 14, there is no reason to suppose that the Legislature did not intend to continue these officials as *ex officio* members.

September 8, 1976

DR. STANLEY S. BERGEN, JR.  
*President, College of Medicine  
and Dentistry of New Jersey*  
100 Bergen Street  
Newark, New Jersey

FORMAL OPINION NO. 23 — 1976

Dear Mr. Bergen:

You have requested advice regarding the status of the Faculty Practice Service conducted by the College of Medicine and Dentistry of New Jersey at each professional school comprising the College. More specifically, you have inquired whether the Faculty Practice Services are operational units of the College and, therefore, subject to State statutes and regulations generally applicable to the College. In order to address this question, however, it is necessary to determine whether the College of Medicine and Dentistry is authorized to organize and establish a faculty practice program.

At the outset, some attention should be directed to the declared purpose of a faculty practice service. At the inception of the College, the Board of Trustees of the College of Medicine and Dentistry of New Jersey determined that it would be in the best interest of the College and the State of New Jersey for the College to rely principally on full-time faculty, i.e., instructional personnel who devote their total efforts and derive their principal compensation from the College. At the same time, the Board was cognizant of the professional, educational, and financial benefits which could accrue to the College, faculty, and State by virtue of a system which would allow supplemental faculty professional practice. The principal reasons highlighted by the Board in favor of a faculty practice program are the following:

1. The treatment of patients is an integral part of the training of medical and dental students and house staff. The College must take necessary steps to attract patients who will be treated by the faculty and observed by the students.
2. The salaries the College can pay under the State approved salary schedule from State appropriations for academic salaries are not competitive enough

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to attract to the medical and dental schools many of the necessary qualified individuals, particularly in a number of the specialities. The College views the income from the patients of faculty as a source of funds which can be used to supplement the academic component of faculty salaries.

3. A faculty practice service will establish College faculties as a patient referral source for the entire State, thus providing an in-State location for specialized tertiary care for many New Jersey citizens. Currently, many such patients go to New York, Philadelphia, or elsewhere for diagnosis and treatment.
4. This type of practice allows the clinical teacher the opportunity to retain and continue to perfect his clinical skills. Such skills make him/her a better teacher and may contribute new techniques or approaches to health care.

For many of the same reasons, most medical and dental schools have either adopted a similar plan or allow their clinical faculty to see private patients and retain the earnings.

Pursuant to the Medical and Dental Education Act of 1970, N.J.S.A. 18A:64G-1 *et seq.*, the Board of Trustees has been granted broad authority to conduct the affairs of the College. N.J.S.A. 18A:64G-6 provides that the Board of Trustees shall have the "general supervision over and be vested with the conduct of the college." The section further provides:

"It shall have the power and duty to:

...

(c) Determine policies for the organization, administration, and development of the college;

...

(h) *In accordance with the provisions of the State budget and appropriations acts of the Legislature*, appoint, upon nomination of the president, such deans and other members of the academic, administrative and teaching staffs as shall be required and fix their compensation and terms of employment; (emphasis added)

...

(q) Adopt bylaws and make and promulgate such rules, regulations and orders, not inconsistent with the provisions of this chapter as are necessary and to implement the provisions of this act.

And N.J.S.A. 18A:64G-7 provides:

The board of trustees, in addition to the other powers and duties provided herein, shall have and exercise the powers, rights and privileges that are incident to the proper government, conduct and management of the college, and the control of its properties and fund and such powers granted to the college or the board or reasonably implied, may be exercised without recourse or reference to any department or agency of the State, *except as otherwise provided by this act.* (emphasis added)

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A review of the enumerated powers of the Board of Trustees reveals that it is clearly authorized to develop and establish a program calculated to enhance the clinical skills of the faculty, to provide a means to supplement the patient population thereby increasing clinical education opportunities, and to supplement faculty income. However, the program as established must be examined to assure that all features of the program comport with applicable statutes and regulations. Despite the far-reaching authority and discretion bestowed upon the board, that authority is clearly not absolute.

One component of each faculty practice plan is a salary supplementation feature. The salary of a clinical faculty member at the New Jersey Medical School may contain three components: academic base salary according to State compensation plan, patient service component, and Faculty Practice earnings which may be composed of a minimum guaranteed amount<sup>1</sup> and faculty practice earnings in excess of the minimum guarantee. The minimum guaranteed faculty practice income represents a conservative estimate of the amount the individual faculty member can be expected to earn from Faculty Practice activities. These figures must be approved by the Faculty Practice Professional Board and the Dean. If during the year it becomes clear that the faculty member's minimum guarantee was set too high, the amount can be reduced by the Board. Apart from the minimum guaranteed faculty practice earnings, a participant may earn additional money from Faculty Practice activities. In no event, however, may the maximum allowable total salary exceed twice the maximum base academic salary for a given rank. Fringe benefits are paid from two sources. Benefits related to the portion of clinical salary derived from Faculty Practice activities are borne by the Faculty Practice Service; benefits related to the portion of salary derived from academic base salary or the patient service component are paid by the State Treasurer in the case of employees funded by the State and the College's salary account in the case of employees funded by grants.

The compensation feature of the plan, i.e., receipt of earnings from faculty practice earnings, is compatible with the pertinent State statutes. As noted previously, the Board of Trustees may develop compensation policies for faculty as long as the Board action conforms to the budget and appropriations acts. The Appropriations Act of 1975, L. 1975, c. 128, provides in pertinent part:

*"The salary appropriations shall be subject to rules and regulations to be established by the President of the Civil Service Commission, the State Treasurer and the Director of the Division of Budget and Accounting; provided that the salary rate which may be paid to any employee, including cash salary and the value of maintenance received shall not be increased to a salary rate as high as the cash salary rate provided by law for the respective department head, including employees of the College of Medicine and Dentistry of New Jersey...; except that the rates of pay of medical faculty at the College of Medicine and Dentistry of New Jersey... may be increased above the department head's salary rate with the approval of the President of the Civil Service Commission, the State Treasurer, and the Director of the Division of Budget and Accounting;...."* (emphasis added)

This provision provides the basic authority to adopt a compensation plan which allows individual physicians to earn in excess of the salary of the Chancellor or President of the College. Furthermore, pursuant to statutory directive, the compensation

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plans incorporated in the faculty practice programs have been submitted to and approved by the Board of Trustees of the College, the Board of Higher Education, and the Salary Adjustment Committee.

Of more immediate concern, however, is the current operational structure of the program. Despite some organizational differences at the various schools, the faculty practice programs currently follow the general pattern established at the New Jersey Medical School. At the New Jersey Medical School, the Board of Trustees of the College of Medicine and Dentistry of New Jersey, through the College president, is responsible for the supervision of the Faculty Practice Service. Daily conduct of the service is delegated to a Professional Board composed of elected members of the clinical faculty who are Faculty Practice participants. An executive committee of the Professional Board is composed of one representative of each clinical department, the Dean of the Medical School, Chairman of the Executive Committee of Martland Hospital, Chairman and Vice Chairman of the Faculty Organization and the Business Manager of the Faculty Practice Service. The Business Manager is responsible for all billings and collections.<sup>2</sup>

Participation in a faculty practice program is required of all full-time faculty in clinical departments who elect to render patient services in excess of teaching requirements. Part-time faculty are required to join the program, but only that portion of a part-time faculty participant's income derived *directly* from patient care in or referral from Faculty Practice is to be paid into the plan. The degree, manner and number of hours of participation in the plan are matters of negotiation between the individual and his department chairperson. The chairperson must be able to certify to the Dean that the participant's activity will not compromise academic or other College responsibilities. As adequate faculty practice facilities are provided within the confines of the College, utilization of these facilities will be required of all full-time, full-salaried participants. In certain cases, a physician participant may petition the Board of Trustees for permission to conduct faculty practice activities at off premises facilities.<sup>3</sup>

The participating physician, other than physicians granted off-premise waivers, does not bill any patient in connection with services rendered. Rather, all fees are billed and collected by the College through the Business Office. All income derived from patient services at the College, affiliate or other health care facilities are deposited in the plan account for distribution according to the pre-arranged disbursement formula. The formulas require that operational expenses of the plan shall be deducted from total income. From the balance remaining after deduction of overhead, a contribution to the Dean's Fund is made on an annual basis according to the following formula: 5% of the first \$150,000, 10% of the next \$150,000 and 15% of any excess.<sup>4</sup> From the balance, guaranteed minimum faculty practice service salary compensation and cost of employee benefits are deducted. Any "overage" remaining from the above described disbursements shall be allocated in the following manner: 60% to departmental fund, 10% to a reserve fund and 30% to the Dean's Fund.

As presently organized, the faculty practice organizations of each unit of the College are creatures of the College. The concept was conceived, developed and instituted with the cooperation of and under the authority of the Board of Trustees. N.J.S.A. 18A:64G-6(c); N.J.S.A. 18A:64G-7. The plans are directly supervised by the President and the Board of Trustees; and amendments to an organization's operating document require the approval of the Board. The College, through the Board of Trustees, has reserved the right to dissolve the plans.

Moreover, the faculty practice plans have as their basic guiding principle en-

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hancement of College development. In return for providing a program whereby participating physicians may garner the benefits of broadened professional experience and supplementary compensation, the College receives direct benefits through financial contributions to research and administrative funds, assistance in development of a solid core of full-time faculty, and augmentation of the patient pool. To facilitate these aims, the College makes available to the organizations College space, facilities and personnel. The College, through department chairpersons and deans, monitors the amount of participation in the plan by clinical faculty. The location of practice is in facilities under the direct maintenance, supervision and control of the College or in facilities which are duly designated affiliated institutions of the College. Indeed, professional activities undertaken by participating faculty physicians are considered within the scope of employment for purposes of ordinary liability and malpractice coverage. In short, as presently organized, the faculty practice organizations at each unit of the College enjoy a symbiotic relationship with the parent institution. The individual plans have no life apart from the College; indeed, as presently organized, the plans are designed solely to complement the policies and development of the College. See *New Jersey Turnpike Authority v. Parsons*, 3 N.J. 235, 243-244 (1949).

The practical consequences which flow from this determination are several. As a general proposition, the faculty practice programs are subject to all appropriate College regulations and are subject to all applicable State statutes and regulations in the same manner and degree as the College. In those instances where present practices or procedures deviate from applicable College or State regulations, the plans shall be amended to conform to the appropriate authorities. For example, administrative, professional and clerical personnel working directly for the faculty practice plans are employees of the College rather than the individual plan. This includes professional and clerical personnel employed by full-time faculty who maintain an office in facilities other than College facilities pursuant to an off-premises waiver. Each person working for the faculty practice plan is entitled to all benefits normally accorded College employees including vacation and sick time allowances, leave of absence policies and pension benefits. See N.J.S.A. 18A:64G-12. Salaries, employment duties, and employment qualifications shall conform to the rates and standards promulgated by the College. N.J.S.A. 18A:64G-6(i). All faculty practice program employees shall be members of the appropriate bargaining units.

Furthermore, the faculty practice programs should maintain financial records in the same manner as the College. All accounts shall be subject to audit by the State at any time. N.J.S.A. 18A:64G-6(f). Investment of funds earned by faculty practice programs shall be performed by the Director of the Division of Investment of the Department of the Treasury. The Board of Trustees of the College, however, shall have the right to accept or reject any proposed investment. In addition, the Board of Trustees shall determine the amount available for investment. N.J.S.A. 18A:64G-8. The State Treasurer shall be the custodian of the investment funds and shall select all depositories and custodians of such funds. N.J.S.A. 18A:64G-10. Non-investment funds of the plans shall be deposited in accounts in depositories designated by the Board of Trustees. N.J.S.A. 18A:64G-8; N.J.S.A. 52:18A-8.

Moreover, all purchases, contracts, and agreements, including lease of facilities required by the plans, should be concluded pursuant to State purchase procedures stipulated in N.J.S.A. 52:34-6 to 52:34-20. N.J.S.A. 18A:64G-13. Disposal of any materials or equipment procured by the faculty practice programs shall be in the manner and upon the terms and conditions established by the State House Commission. N.J.S.A. 18A:64G-6(o).

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In summation, you are advised that the Board of Trustees of the College of Medicine and Dentistry of New Jersey is vested with the authority to establish a faculty practice plan for each professional school of the College. You are further advised that as presently organized the faculty practice plans at each educational unit of the College are creatures of and under the direct supervision and control of the governing body of the College. As a consequence of this relationship, each faculty practice program is subject to all appropriate rules and regulations promulgated by the College and all State statutes and regulations generally applicable to the College, including but not limited to, the requirements enumerated in the preceding paragraphs.

Very truly yours,

WILLIAM F. HYLAND  
*Attorney General*

By: MARY CATHERINE CUFF  
*Deputy Attorney General*

1. The New Jersey Dental School plan does not provide for a minimum guaranteed salary supplement.
2. The New Jersey Dental School utilizes the Office of Business Affairs for billing, collection and distribution services. Rutgers Medical School is serviced by a part-time business manager in the office of the Director of Business Affairs of the Rutgers Medical School.
3. Presently, all faculty practice activities at the New Jersey Dental School must occur within the confines of the dental school or an affiliated institution. There is no provision for an off-premises waiver.
4. At the New Jersey Dental School, 30% of plan income is deducted for overhead; 10% for an emergency reserve fund; 15% for distribution to the Dean's Discretionary Fund, Departmental Discretionary Fund and Research Fund; 45% for faculty salary supplementation.

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September 17, 1976

RAYMOND J. COLANDUONI  
*Director of Administration*  
Department of Transportation  
1035 Parkway Avenue  
Trenton, New Jersey 08625

FORMAL OPINION NO. 24 — 1976

Dear Director Colanduoni:

You have asked for an opinion as to whether Department of Transportation Form PR-102 entitled "Certification by Employee Regarding Outside Employment" is a public record subject to disclosure under the Right to Know Law. It appears that certain information with regard to the outside employment of employees in the