

N.D.A.G. Letter to Wentz (Dec. 16, 1987)

December 16, 1987

Dr. Robert M. Wentz
State Health Officer
Department of Health and
Consolidated Laboratories
State Capitol
Bismarck, ND 58505

Dear Dr. Wentz:

Thank you for your letter of October 6, 1987, regarding the required license fee for certain health care facilities. I apologize for the delay in responding to you.

Your letter refers to two separate licensing issues. These issues are:

- (1) Who, or what type of entity, must obtain a license prior to operating a health care facility, and
- (2) Who, or what type of entity, must submit a license fee along with the license application.

With respect to the first issue, N.D.C.C. § 23-16-01 requires certain entities to obtain a license prior to operating a health care facility. This section provides in part:

no person, partnership, association, corporation, county or municipal corporation, or agency thereof, which maintains and operates organized facilities for the diagnosis, treatment or care of two or more non-related persons suffering from illness, injury, or deformity, or where obstetrical or other care is rendered over a period exceeding twenty-four hours shall be established, conducted, or maintained in the state of North Dakota without obtaining annually a license therefor in the manner hereinafter provided in section 23-16-02 and 23-16-03.

(Emphasis supplied.)

You noted in your letter that the "Department historically has licensed the 'person in control of the institutions' regardless of the ownership of the real estate." By licensing the operator of the health care facility, the Department is correctly applying N.D.C.C. § 23-16-01.

The second issue raised in your letter concerns the payment of the license fee as required by N.D.C.C. § 26-16-03. This section provides in part:

An application for a license for facilities not owned by the state or its political subdivisions must be accompanied by the following fees:

1. For each licensed acute care bed, ten dollars.
2. For each licensed skill care bed, seven dollars.
3. For each licensed intermediate care bed, five dollars.

You asked whether persons in control of a health care facility are responsible for paying the license fee regardless of the ownership of the real estate. It is my opinion that the word "facilities" as used in N.D.C.C. § 26-16-03 refers to the enterprise providing the services. Therefore, the department must determine the ownership of the enterprise operating the services to determine whether a license fee is required. A license fee is required so long as the owner of the enterprise operating the services is not the state or political subdivision.

As noted above, N.D.C.C. § 23-16-01 requires a license to maintain or operate a health care facility. Therefore, the licensed entity is the operator and not the owner of the real estate. In establishing the license fee requirement contained in N.D.C.C. § 23-16-03, the legislature intended to impose a fee on the entity benefiting from the license (the enterprise operating the service) and not the owner of the real estate.

In summary, it is my opinion that an application for a license to operate those health care facilities defined in N.D.C.C. § 23-16-01 must be accompanied by a fee when the enterprise providing the services is not the state or its political subdivision. This conclusion applies regardless of who holds title to the real estate. Further, it is my opinion that when the enterprise providing the service is the state or its political subdivision, no license fee is required.

Sincerely,

Nicholas J. Spaeth

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