

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION 81-40A
3(1), 3(4)

APR 6 1981

Ms. Joan Comparet
Corporations Counsel
Department of Corporations
State of California
600 S. Commonwealth Avenue
Los Angeles, California 90005

RE: File No. ALPHA

Dear Ms. Comparet:

This is in reply to your letter of November 7, 1980, concerning the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion stating that neither Peoples Dental Plan (PDP) nor Peoples Dental (PD) are employee welfare benefit plans within the meaning of section 3(1) of ERISA.

You represent that PD is an unincorporated association formed by Mr. William A. Majors to provide medical dental benefits to its members through PD. Any employed person 19 years of age or older is eligible for membership in PDP/PD. You state that the membership also consists of self-proprietors. PDP/PD provides profit-making opportunities for PD, as a marketing agency and its administrative services provider, Associated Practitioners of Dentistry. Mr. Majors is president of Associated Practitioners of Dentistry as well as a trustee of PDP and a trustee/officer of PD. PDP is currently operating as a specialized health care service plan in California offering dental services to its members. PD attorney, Mr. C. Robert Simpson, indicates that PDP is not the name of an entity but rather it is the descriptive name given to an employee welfare benefit plan which contains the schedule of benefits to which the members of PD and their covered dependents are entitled.¹

The Articles of Association of PD provide in section IV that the powers of the association and its affairs are to be conducted by the association trustees. The membership of PD according to the

¹ Letter dated September 30, 1980, from Mr. Simpson to you, enclosed in your representations submitted in advisory opinion request.

association bylaws provides that "two trustees shall constitute a quorum for the transaction of business."

According to the PD Summary Plan Description, PD reserves the right to discontinue the plan without any provision for the reimbursement of the unused portion of fees rendered to date by the members. The Summary Plan Description indicates that the money remitted by enrollees is to be deposited into a trust account (PDT). PDT, which was established by Mr. Majors and his wife as trustees, allows the trustees to fix their own compensation. Further, PDT exempts trustees from liability for another trustee's breach of trust. You indicate that on the date of this request for an advisory opinion, the money remitted by the PD membership has been placed in a checking account rather than trust account.

Section 3(1) of ERISA provides:

SEC. 3 For purposes of this title:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

The dental benefits being provided through PDP/PD are of the type of benefit described in section 3(1) of ERISA. However, in order to constitute an ERISA-covered employee benefit plan, PDP/PD must be established or maintained by an employer, an employee organization, or both. The fact that the benefits provided are of the type described in the statute is not sufficient to render the provider of those benefits an employee welfare benefit plan. There is no claim, or any indication that either PDP or PD was established or is maintained by an employer. Therefore, we focused our analysis on whether the program is established or maintained by an "employee organization."

Section 3(4) of ERISA defines an "employee organization" as:

... any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

PD fails to satisfy the first part of the definition (preceding the semi-colon) because PD does not exist for the purpose of dealing with employers on behalf of employees concerning the employee benefit plan. Instead, PD offers dental benefits to any individual who meets the general qualifications for membership described above.

We also conclude that PD is not an employees' beneficiary association within the meaning of ERISA section 3(4). Not every group of persons who each happens to be employed constitutes an employees' beneficiary association. Rather, an organization is an employees' beneficiary association for purposes of the ERISA definition relating to plans only where the members of the organization share some commonality of interest with respect to their employment relationships. The concept of commonality of interest with respect to employment relationships means, in general, that membership in an association is conditioned not only on the fact of employment, but also on some additional nexus e.g, that membership is restricted to employees of a single employer or members of one labor union. Article II, section 2 of the bylaws of PD states "... any individual ... who is an employee of an employer may become a regular member of this Association"

Therefore, it is the position of the Department of Labor that, based on the information you have provided, PD is neither an employee organization within the meaning of ERISA section 3(4) nor an employer within the meaning of ERISA section 3(5). Accordingly, the program of dental benefits provided through PDP and administered by the Associated Practitioners of Dentistry does not constitute an employee benefit plan covered by title I of ERISA since it was not "established or maintained by an employer or by an employee organization, or by both."

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs