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## 'Temp' docs focus of tax spat State says the physicians are employees, not contractors

- Victoria Colliver, Chronicle Staff Writer

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When Dr. Harvey Small closed his psychiatry practice in 1998, he quickly discovered retirement wasn't for him. So he signed up with temporary staffing agencies that place physicians in short-term jobs.

"It's just very nice to be able to pick and choose when and where you want to work," said Small, 78, of Burlingame, who just finished a two-week assignment in a county facility in Monterey. "You work, you get it over with, and then you go back to playing bridge and tennis and getting your knees repaired."

But "temp" doctors like Small might soon have a tougher time getting jobs due to a catch-22-type battle between physician staffing firms and the state's largest tax collection agency.

The doctors and the staffing agencies consider that physicians on temporary assignments are independent contractors. But the state Employment Development Department more than a year and a half ago started looking into whether the agencies were acting as employers. Since then, it has carried out a series of audits, hitting the agencies up for millions of dollars in back payroll and other state taxes.

The staffing agencies respond that paying those taxes would significantly increase the cost of doing business in California and worsen a serious doctor shortage.

The issue is complicated by a long-standing state law that prohibits companies not owned by physicians from employing doctors. The agencies point out that paying the tax bills would be an admission that they're employers, which violates the law.

"If staffing companies are required to make physicians employees, it will require a wholesale change in the way we've conducted business for the last 25 years," said Katie Abby, president of the National Association of Locum Tenens Organizations, the trade group for temporary physician staffing agencies. "Many companies will elect not to do business in California."

When people think of "temp" workers, they usually don't think of a cardiologist or an anesthesiologist. But about 30,000 doctors nationwide work temporary jobs. These physicians take the place of doctors when a staff member goes on vacation or a vacancy must be filled for a limited period.

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Known in the industry as locum tenens, Latin for placeholder, they could be young doctors deciding where to live, retired physicians or practitioners who prefer flexible schedules.

Agencies serve as brokers

The staffing agencies serve as brokers placing temporary doctors with hospitals, clinics and medical groups. Agencies often cover malpractice expenses and handle the arduous paperwork involved in allowing doctors to practice.

The agencies argue that temporary doctors already file taxes as independent contractors. Paying the state would be paying twice, they insist.

"This is the first state that has really challenged physicians as independent contractors," Abby said.

Staff Care Inc., which is based in Texas but does more business in California than any other state, said it might stop conducting business in California after it got a bill in December for \$2.6 million in back taxes for April 1, 2001, through March 31, 2004.

"We would reluctantly bow out if we had to," said Staff Care spokesman Philip Miller. "It seems like California wants to do away with independent contractor status, I guess as a way to raise revenue."

For Dr. Sam Benson, head of Registry of Physician Services in Walnut Creek, not doing business within California would be devastating. His firm contracts exclusively with the state Department of Corrections for psychiatric services. The EDD says the company owes the state more than \$848,000 for a three-year period.

"We're following instructions from one branch of the state government. Then another branch of the government comes along and taxes us," Benson said.

State relies on criteria

EDD officials say they are basing their policy on long-standing criteria for determining what constitutes an employer/employee relationship. In addition, they cite a 1986 decision determining a medical clinic operated by Associated Indian Services Inc. employed its workers, although they were described as subcontractors.

"We have specific rules we have established as to who is an employer and who isn't," said EDD spokeswoman Suzanne Schroeder, adding that the temporary doctor staffing agencies meet all the requirements.

The key standards for determining when individuals are employees and when they are contractors involve such issues as whether individuals can negotiate with clients over working conditions and rates and whether they can be reassigned or fired.

"It's who has the right to control the work," Schroeder said.

Physician staffing agencies say they don't meet the criteria for employers. Staff Care, for example, writes checks for the doctors but does not have the right to reassign or fire a

physician from a job, said Dustin Kroger, the company's executive vice president.

#### Manpower pays taxes

That's one of the differences between locum tenens organizations and other temporary staffing agencies such as Manpower Inc., he said. Manpower, which places temporary financial, clerical and other workers, considers them employees and pays payroll taxes, a Manpower spokeswoman said.

Physician staffing firms contend they simply serve as the matchmaker between the doctor and the organization that needs a temporary practitioner. The doctor is paid a negotiated fee, typically ranging from about \$800 to \$1,500 a day, depending on the specialty and other circumstances.

California is one of several states that prohibit entities not owned by physicians from hiring doctors, an effort to inhibit corporations from influencing medical decisions.

Reducing use of temporary physicians would worsen a national shortage of doctors in many specialties and regions, especially in underserved and rural communities, some health experts say.

United Health Centers, a nonprofit group of seven clinics in Fresno County, has relied on temporary doctors to fill 10 percent and as much as 20 percent of physician time in recent years, due to vacations and unfilled vacancies.

#### Reliance on 'temp' docs

"Most of our health centers are staffed by two clinicians. When one of them goes on vacation, you basically cut access by 50 percent," said Dr. Ron Yee, medical director of the nonprofit group.

Meanwhile, the staffing agencies warn that challenging their status as brokers and reclassifying them as employers would have broad implications that could affect agencies that place contractors in other industries. For example, Silicon Valley makes wide use of independent contractors, and a number of agencies offer placement services.

"If they're successful in bringing this, virtually every profession in the state will probably be unable to have independent contract status," said David Wantland, director of administration at NMRhealthpros Inc. in San Clemente (Orange County).

Why the EDD started billing locum tenens agencies is unclear. Many in the industry believe it started investigating after a doctor filed for unemployment compensation a few years ago, and listed NMRhealthpros as a former employer.

#### Bill totals \$1.6 million

The agency received a bill from the EDD for about \$1.6 million a year and a half ago, Wantland said. The agency has been tracking down about 200 physicians in its pool, asking them to sign documents confirming that they have already paid their taxes.

The staffing agencies are not writing checks to the state. They are supporting legislation that would stipulate that locum tenens services do not employ physicians. SB279, authored by Sen. Gil Cedillo, D-Los Angeles, has been approved by the state Senate, and an Assembly committee is scheduled to hear it next week.

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