

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION 81-6A  
3(1), 3(4), 3(5), 412

JAN 5 1981

Mr. Thomas W. Stram  
Kerr, Russell and Weber  
2100 Detroit Bank & Trust Building  
Detroit, Michigan 48226

Dear Mr. Stram:

This is in reply to your letter of December 7, 1978, requesting a determination regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Your letter was forwarded to this Office by Mr. James DeHaan, Area Administrator of Detroit-LMSA. Specifically, your inquiry concerns whether group insurance plans offered by the Michigan Dental Association (MDA) constitute employee welfare benefit plans within the meaning of ERISA section 3(1) and, if covered, the extent to which ERISA requirements concerning bonding and reporting are applicable to MDA or its Board of Trustees.

The brochures you enclosed with your letter indicate that MDA makes the following group insurance programs available principally to its members: accidental sickness, accidental death and dismemberment, hospitalization, major medical (both catastrophic and basic), life insurance, a business expense disability plan, and a malpractice and other professional liability program. MDA insurance programs are also available to employees of MDA members upon request. You state that participation of employees of MDA members amounts to a minor percentage of total participation and that the costs of the insurance programs for certain participating employees may be paid by MDA members. All premiums are paid directly to the administrator of insurance contracts, Heines-Goebel Company, Grand Rapids, Michigan. In a letter dated March 8, 1978, from Alister MacKenzie, D.D.S., Chairman of MDA's Insurance Committee, to Louis H. Woiwoode of the Department's Detroit Area Office, and which appears as Exhibit A to your letter, it is indicated that MDA's Board of Trustees has the power, among other things, to change insurance companies, add or decrease benefits, and to make "final disposition" of any dividends that are payable under the programs.

The object of MDA, as stated in Article II of its bylaws, is "... to encourage the improvement of the health of the public and to promote the continuing development of the art and science of dentistry..." MDA bylaws provide for seven categories of members in Article IV, section 1. Article IV, section 2, defines the categories of MDA membership as follows:

1. Active Member: A dentist in the State of Michigan, who is a member in good standing of one of the component societies of this Association, or licensed in Michigan, or a member of a federal dental service or agency on duty outside of the State, shall be classified as an active member of this Association.
2. Life Member: An active member who has been in good standing as an active member for 35 years and has attained the age of 65 years, or an active member who is otherwise eligible for life membership in the American Dental Association, may be classified as a life member upon approval by the Board of Trustees.
3. Associate Member: Members of the profession who are legally qualified to practice in other states or countries and who do not practice in Michigan, members of other professions of equal standing to that of dentistry in this State, and the surviving spouse of an active or life member who died while in good standing, may be elected to associate membership by the Board of Trustees.
4. Non-resident Member: A dentist who is a former active member of this Association, but who no longer is a legal resident of the State of Michigan may be classified as a non-resident member of the Association by the Board of Trustees. Application shall be to the Executive Director of the Association.
5. Honorary Member: An individual who has made outstanding contributions to the advancement of the art and science of dentistry shall be classified as an honorary member of the Association upon nomination by the Board of Trustees and election by the House of Representatives.
6. Retired Member: An active member in good standing who has been an active member for 25 years or more, and no longer earning income from the performance of service as a member of the faculty of a dental school, as a dental administrator or consultant, or as a practitioner of any activity for which a license to practice dentistry or dental hygiene is required, may be classified as a retired member upon application to and approval by the Board of Trustees.
7. Student Member: An undergraduate dental student in an accredited school, and any dentist eligible for membership who is engaged full time in (1) an active training course of not less than one academic year in an accredited school or (2) an internship or residency program approved by the Commission on Accreditation of Dental and Dental Auxiliary Education Programs, may be classified as a student member of this Association.

Section 3(1) of ERISA defines an employee welfare benefit plan as:

... 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....

Although MDA group insurance programs provide certain of the benefits enumerated in ERISA section 3(1)(A), such programs are not employee welfare benefit plans unless they are established or maintained by an employer, an employee organization, or both, within the meaning of ERISA title I.

Sections 3(4) and 3(5) of ERISA define the terms "employee organization" and "employer" respectively.

Section 3(4) of ERISA defines the term "employee organization" to mean 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.

Section 3(5) of ERISA defines the term "employer" to mean any person acting directly as an employer or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

MDA would not constitute an employer organization within the first part of the definition (before the semi-colon) contained in section 3(4) since it apparently does not exist for the purpose of dealing with employers on behalf of employees concerning an employee benefit plan or other matters incidental to employment relationships.

Moreover, MDA would not constitute an "employees' beneficiary association" because it appears that membership in the association is not conditioned upon the employment status of the members. MDA, therefore, is not an "employee organization" within the meaning of section 3(4) of ERISA.

It is the position of the Department of Labor that MDA is not, in relation to its group insurance programs, an employer within the meaning of ERISA section 3(5). MDA is not the employer of all the participants in the group insurance programs nor is MDA a group or association of employers acting for an employer in such capacity as defined in section 3(5) of ERISA since the bylaws of MDA indicate that membership in MDA is available to qualified individuals based upon professional status with respect to the practice of dentistry rather than any employment relationship.

Therefore, it is the position of the Department of Labor that MDA in making available group insurance programs has not established or maintained an employee welfare benefit plan within the meaning of ERISA section 3(1).

However, if an employer within the meaning of ERISA section 3(5) provides for its employees any of the benefits enumerated in ERISA section 3(1) through MDA group insurance programs, the employer will have established an employee welfare benefit plan within the meaning of ERISA section 3(1) with respect to such employees and must comply with all applicable ERISA title I requirements (including those relating to bonding and reporting), unless excluded from ERISA title I coverage by regulation or otherwise.

You ask whether the bonding requirements of ERISA are applicable to MDA or its Board of Trustees. Section 412 of ERISA and the regulations issued pursuant to that section (29 C.F.R. §2550.412-1), provide that every fiduciary and every person who handles funds or other property of the plan must be bonded. Specifically, "handling" occurs whenever the duties or activities of a plan official are such that there is a risk that such funds or other property could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others. As noted above, MDA's Board of Trustees has the power to make "final disposition" of any dividends that are payable on the programs. It appears to the Department that, in the event any employer member of MDA has established an employee benefit plan subject to title I of ERISA by adopting one or more of the group insurance programs discussed above, any dividends payable on those programs would be assets of those plans, and that, accordingly, MDA's trustees would be subject to the bonding requirements to the extent they handle such assets.

As to the reporting and disclosure requirements pertaining to any such plan, it is generally the responsibility of the plan administrator, as defined in section 3(6) of ERISA, to comply with those requirements.

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

cc: Mr. James DeHaan  
Area Administrator  
Detroit-LMSA