

Can an MSO Get Paid More Than Fair Market Value?

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In this video, we're going to talk about the MSO and whether it is possible to transfer all the money from the professional medical corporation or practice actually to the MSO. It's like MSO fee.

Hi, I'm Michael H. Cohen. I'm founding attorney of Cohen Healthcare Law Group. We help healthcare industry clients like you navigate the complex terrain of healthcare and FDA law so you can grow, launch, scale your healthcare business.

So, the answer is no. You cannot simply transfer, like all of the funds from a medical practice to an MSO. California laws require that the percentage that's paid to the MSO represent fair market value for the MSO services. Now, there's no bright line rule for what is and is not fair market value, but there are appraisers in this industry, people who could give you a valuation opinion.

As a law firm, we don't provide opinions about valuation, but we do have kind of a general rule of thumb. So, if the MSO's fee is really high, people assign different percentages. Some say 50, 60, 75%. The point is, at some point, it tips the balance toward looking like there's so much control by the MSO that it's a corporate practice of medicine problem.

Please note that the fees, how they calculated, should be fixed in the agreement. And they shouldn't just wobble up and down, you know, based on circumstances, because that would be a kickback. Unless they represent the fair market value of the MSO services, they're at arm's length and there's some other, you know, conditions on that which we can go over when we talk.

Now, having said that, as we said, California law does allow a variable fee, but it doesn't just wobble up and down all over the place, depending on how many patients are treated, how many clients are served. It's fixed in the agreement that there's, for example, a percentage of revenue that represents the fair market value of MSO services and that's going to be the MSO fee. And that percentage, you know, might vary over time, but it's not going to wobble all over the place, because varying a fee by value and volume of patients, especially doing it willy nilly regularly, without any preset arrangement, that's going to be regarded with heavy scrutiny.

We can take you deeper in a legal strategy session.

We appreciate you watching, and we look forward to your call and we hope to work with you soon.

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