

Can an MSO Operate a Medical Practice?

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In today's video, we talk about whether and how an MSO can operate a medical practice.

I'm Michael H. Cohen, founding attorney of the Cohen Healthcare Law Group. We help healthcare industry clients just like you navigate healthcare and FDA legal issues and launch, or continue to scale, your health and wellness service, products, software, or app.

The key here is, what do we mean by the term, "operate?" Are we talking about the business side, the clinical side, something in-between?

If you have a medical spa, a multidisciplinary clinic, a medical group, a telemedicine venture, psychology group, software or an app that involves MDs, psychologists, or you're in a situation where the non-medical entrepreneur wants to control the venture, but can't entirely hand it over, due to corporate practice of medicine and fee-splitting concerns, that is where you'll want legal advice on what your MSO can and can't do.

When we say MSO or Medical Services Organization, we mean the business that provides management and marketing services to the medical aspect of your overall architecture. For example, the non-MD runs the medical spa, but doesn't participate in clinical decision-making and clinical staffing.

Some states are tougher on MSOs than others. When we say "tough", we mean that they have a "strong" prohibition against the corporate practice of medicine, as opposed to the "weak" form of CPM, in which the only real prohibition is against the MSO having actual control of medical decision-making.

In the weak form of CPM or CPoM, non-medical corporations CAN hire and fire medical doctors. In the stronger form of CPM, MSOs can make many administrative and marketing decisions, but the professional medical corporation has authority over hiring and firing of clinical staff, final authority over advertising, and other such control.

We cover this in much more depth in some of our other videos and our healthcare law blog.

Here are some questions posed and quick answers we've given about this relationship between the MSO and the Professional Medical, or psychological Corporation in a "strong" anti-corporate practice of medicine state.

1. Can a Physician be an officer of or own an MSO?

Many of our clients do, in fact, give the medical doctor an equity stake in the MSO. It's quite common. Technically having said

that, it could be considered a conflict of interest: because every time the physician provides services, the MSO also makes money, as the MSO typically charges the physician or the physician's professional medical corporation at fair market value for MSO services. This conflict of interest is an ethical violation, possibly a legal violation in principle, and at a minimum should be disclosed to the patient. Having said that, some risks are more or less intense as others, so part of it is evaluating the risk and it depends on the client's risk tolerance.

2. Can the business model be such that all the customer payments go through the MSO – the software, the app, and from there a portion gets retained by the MSO and a part goes to the doctor?

In the old days—I'd say about ten to fifteen years ago—this flow of payments would pose a problem. Technically, it's fee-splitting, in the sense that it makes it seem as though the MSO is getting paid the professional fee and then splitting it up between the MSO and the doctor. Or the MSO or platform, software platform, telemedicine platform could be seen as giving the physician a kickback for the referral. But today, these arrangements are common, they are facilitated by software and it's just seen as a way to split up what the MSO gets for its MSO services, and the doctor for their professional services.

One thing that what would be a no-no is for the MSO to pay the physician a salary. At least in California, MSOs cannot hire physicians. MSOs cannot hire them as W2 employees or as 1099 independent contractors. So, we typically use an MSO Agreement to govern the relationship between the MSO and the physician of the professional medical corporation, otherwise there's the CPM risk.

3. Can you bonus the MSO staff?

You can, but bonuses must be tied to KPI, not tied in any way tied to the value or volume of patient referrals the staff generates.

4. The physician sells the medical practice, the professional corporation. Can they be generous and give money to the MSO or their staff?

Not a great idea, that's apples and bananas. The physician owns at least 51% of the professional medical corporation, and the MSO owner is not a healthcare licensee and can't own the 49% because they're not a nurse, not a chiropractor, acupuncturist and so on.

Alright, i hope that clears some of the dust here. If you have any questions, just send us a message or book an appointment at cohenhealthcarelaw.com. Here's to the success of your healthcare venture, and we look forward to working with you soon.

Testimonials