

Can an MSO Switch Medical Directors?

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By Michael H. Cohen

In today's video, we'll talk about the role of the medical director in a med spa, or an IV hydration clinic, or integrative medicine center wellness clinic. What happens when a healthcare venture tries to swap out one medical director and swap in another?

So, in our hypothetical today, Mary sue, managing member of an LLC that operates an MSO for medical spa, presents us with an oddball situation. And these oddball situations come up all the time with twists and turns.

So, Mary sue had created a so called friendly professional medical corporation. Friendly, meaning that the MSO controls the hiring and firing of a medical doctor in charge of the professional medical corporation. Now, some state enforce a strong Corporate Practice of Medicine prohibition. This is a no. The medical board is not friendly.

And they say that the MSO can't control the hiring and firing of medical doctors. No way, no how. But Mary sue was in a presumably weak corporate practice medicine state or no corporate practice of medicine state. So, she simply hired a new medical director and transferred to this new MD the shares of the old medical director.

And having made this move, Mary sue came to us after the fact for legal advice. Well, this took a bit of unwinding. So, as mentioned, the very first question is whether the so-called friendly PC model or the MSO calls the shots of who controls the professional medical corporation will even pass muster in a state where corporate practice medicine is supposedly weakly enforced, or not enforced at all.

Now, you can get a chart off the Internet and it's going to tell you, no CPM, no CPOM. I don't know why they call it CPOM. It's a funny name, but whatever. It's what the regulators say when they read and interpret the law. And, you know, also, there are different roles. Like the physician can be a director of the professional medical corporation, they can be an officer, they can be a shareholder or an employee anywhere, any combination.

And Mary sue would have to be sure that each role is addressed. So simply swapping out shares is not enough.

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

Now, in addition to ensuring that all the relevant roles are being handled: director, officer, shareholder, employee, or contractor, they're all different. Mary sue would need a meeting by the board of directors authorizing the transfer of shares. Now, often the corporation. In the shareholders agreement, the corporation has the right of first refusal, which means that they get first dibs on buying back the shares. Now, they may not want to, but the shares have to be appraised, typically, and sold at

fair market value. There are these different mechanisms. And, for example, the new physician has to enter into the shareholders agreement. The old one has to exit that agreement. There might also be some corporate filing, for example, filing a statement of information with the state Department of corporations or some kind of filing with, say, medical board.

And the incoming physician then has to be appointed the officer as an officer, the president as president, el presidente of the professional medical corporation. So, there are lots of loose ends. Got a lot of loose ends and it shouldn't be done with a single document, like a one page supposed shareholder transfer form that they got off the Internet, as I used to say years ago, like, don't roll the dice. Get legal advice.

So, thanks for watching. Please contact us with any questions. We've helped lots of healthcare agency clients and your situation navigate these byzantine waters. We look forward to talking with you, and we wish you well on your journey to success.

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