

Can Physicians Legally Do Health Coaching?

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By Michael H. Cohen

In today's video, we talk about how physicians can tackle the legal and regulatory issues that often arise with health coaching.

I'm Michael H. Cohen, founding attorney of the Cohen Healthcare Law Group. We help healthcare entrepreneurs just like you navigate the very complex healthcare and FDA legal issues so you can launch, or continue to scale, your health and wellness service or product. And we've helped over a thousand clients in recent years.

Health coaching as we know is a popular way to deploy all the gifts and skills that many people can bring to help clients in need of better health, be it physical, mental, or spiritual, environmental. And today, there are some large professional organizations devoted to health coaching and they are expanding the legal boundaries around what health coaches can do.

The challenge is this. Back in the 1880's, the States decided that they would license practices involving healthcare or health and wellness, and that anyone who said they were practicing "medicine" had to have a license from the State to do so.

One practitioner and his name was "*Dent*" challenged these laws, the case went all the way up to the Supreme Court and he did not make a dent. The Court actually affirmed the State's right to license medicine, and to decide who can and cannot get a license. That decision still holds today.

The problem is that the definition of practicing "*medicine*" is very broad, and includes anything that could be considered diagnosis, diagnostic, treatment of any health conditions. So it's very broadly written and interpreted that way.

Many of the legal definitions in different states of "*practicing medicine*" do not depend on whether or not the practitioner charged a fee for their service. If you find some newfangled technique to help people get over this or that, and you think it's miraculous when you limit yourself to family and friends, it's still possible you might have crossed the line into the practice of "*medicine*."

These broad statutory definitions create a legal peril for the charge of "*practicing medicine without a license*." This is where all my healthcare legal research started. This peril can affect at least two different audiences.

One, if you're a health coach and you're not licensed, you could be at risk of unlicensed medical practice or practice of psychology or even possibly nutritionist and dietetics. But, if you're licensed in your state but not others, and your client is in that other state, then you could be at risk of unlicensed practice of medicine in that State.

Some of our clients are licensed providers, such as medical doctors, psychologists, and chiropractors.

They present a strategic question: is it better to continue their coaching under their licensed practice—and try to get a license (typically for MDs) in the remote states where they want to offer telehealth services? I would say by in large, yes, because there are many vendors that will help you get a license in those states.

But another idea is to have a hybrid model where they see the patients as a licensed provider in their home state, and then style themselves as a health coach in States where they are not licensed. This has some pros and cons.

Using a hybrid model requires a bit of skill and savvy, and, an understanding of the legal and regulatory risks and how to mitigate them. I had someone say minimize, but we don't minimize – we mitigate.

Here are three of some risk mitigation strategies we might use.

One: if you are functioning in a health coaching mode only, avoid diagnostic categories and language—such as, depression and obesity—so speak in coaching language, like talking about habits, motivation, and goals.

Two, even if licensed, for example as an MD or a chiropractor or psychologist, prominently disclaim your role, often times with an asterisk or box on the Consent or Disclosure form or website bio or all of the above so that you qualify your use of a professional title such as “doctor.”

Three, limit the kinds of services you offer, so that they do not cross the line into diagnosis and treatment of disease. For example, reviewing and commenting on lab tests. Health coaches want to do that all the time but I would consider that a clinical function in the eyes of a regulator. Whereas telling someone to keep a food diary, is just telling them to keep a diary.

Thanks for watching. Here's to the success of your healthcare venture, we look forward to speaking with you soon.

[Contact us](#) today to learn how the [Cohen Healthcare Law Group](#) can help with your legal needs. Our team is here to provide experienced guidance and practical solutions.

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