

Concierge Medicine – Membership Model & Consent

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In this video, we talk about some of the foundational legal documents you will need when you decide to implement a membership model for your medical practice or other healthcare clinical operation.

I'm Michael H. Cohen, founding attorney of the Cohen Healthcare Law Group. We've advised over a thousand healthcare industry clients on healthcare and FDA legal issues. Among our clients are many medical doctors, chiropractors, dentists, psychologists, and other licensed healthcare professionals.

Many of our physician clients are overwhelmed by the demands of their patient population and simply want a more streamlined, fulfilling medical practice. To that end, they work to implement more of a concierge model.

When it comes to concierge medical practice, we've been around the block, so to speak—we've done quite a few rodeos ever since the earliest days of concierge medicine.

Some folks still call it concierge medicine; some say VIP medical care; we've even seen some journals in the literature refer to "retail" medicine, "boutique medicine" and other mysterious sounding names. In terms of the legal work, we've worked on the agreement foundationally between the medical doctor or medical practice on one hand, and the patient or the member on the other—the contract for, let's call it, concierge medical services.

Again, this agreement can go by many names, but it's essentially a rose by other names, the same document. Some call it a concierge medical services agreement; some call it a Subscription Agreement; we like keep it simple these days, we call it a Membership Agreement – just like what you get from your gym.

The reason is, fundamentally this is like the agreement you have with your gym in some respects. For example, typically, you go month to month; you pay a certain fee; and for that monthly fee, you (the patient) get some things and use the doctor to deliver some things and not other things. For example, you might get an initial doctor's visit and some follow-up visits included, but you won't get medications and supplements covered by your membership fee, and all of that is spelled out in your contract.

Also, there are important things we need to say in that agreement—for example, we will want to say that this is an agreement for medical services, and not it's healthcare insurance. We're just going to spell that out.

There are some other nuances to the membership agreement for a concierge medical practice. For example, if you're going to do recurring charges, which are also known as auto-payments or a subscription, then in most states, there are laws that require you to make special disclosures, which let the patient know that you'll be auto-debiting their card at regular pre-

schedule intervals, unless, prior to that within a certain interval, the customer ends the contract.

Note, we have two options here for you – we can customize the concierge membership agreement for you, which we like to do as your legal counsel– or you can buy our form agreement online on a separate website, www.healthcarelegaladventures.com.

The other key form we like to work on for a specialized medical practice—whether it's functional medicine, integrative medicine, conventional care, or something else in a subscription, medical membership, concierge model—is the Consent to Medical Treatment.

Here's what you, as the doctor, should have at the very top of your consent form, as one example of some language:

“TO THE PATIENT: You have the right, as a patient, to be informed about your condition and the recommended surgical, medical, or diagnostic procedure to be used so that you may make the decision whether or not to undergo the procedure after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed, so you may give or withhold your consent to the procedure.”

See the way I talked about it, I just made it very, very friendly. That pretty much announces, in plain English, what the Consent form, which is a legal and ethical requirement, is all about.

Now, the Consent should also have a couple of other provisions, and let's talk about what they are.

First, a description of your practice. If your practice, for example, involves integrative medicine or functional medicine, you can describe what this means and how it's different than a regular healthcare practice, and thereby you are putting in marketing emphasis on legal language as well.

Second, a disclaimer of the physician's role by limiting the role to specialized care, and, for the most part (but not all) of our medical clients, they want to disclaim primary care and put themselves in that specialist role.

Third, and this is most important, you want to describe the anticipated benefits of the designated diagnostic and therapeutic approaches; a discussion of the clinical risks involved; and your disclosure in very clear clinical terms of reasonable and feasible alternatives.

For our specialized medical practices, such as those working in integrative and functional medicine, we recommend at least mentioning the conventional alternatives. We've seen very little case law in which a patient claimed that a complementary and alternative medical approach was available but not disclosed, or that a functional medicine approach should have been recommended. We do believe that case law, in that case will show up in the courts, someday soon, but it has not yet shown up, as of today's taping.

Next, we might have some additional consent language, such as, for example, consent to follow-up care by telemedicine. Here, we will want to first check compliance with existing telemedicine laws and regulations, and then, we will want to embody appropriate language into the Consent form.

Last, we will incorporate some important protective language for the clinician, such as a provision for dispute resolution by arbitration.

Thank you so much for watching. Here's to the success of your medical practice or healthcare venture, we look forward to speaking with you soon.

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