

Does Healthcare Law Favor or Smash Integrated Healthcare Practices Between Medical Doctors and Chiropractors?

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By Michael H. Cohen

Many aspects of healthcare are now becoming integrated. Medical practices that used to specialize are now trying to broaden their services by contracting with other medical providers who provide related services. So are chiropractors.

Medical practices can be integrated by combining medical specialties such as orthopedic care with psychological care or pain management care with rheumatology care. Practices can also integrate by combining medical specialties with complementary or alternative care. For example, combining pain management with acupuncture care.

The medical practice / chiropractic care combination is a particularly good model for examining which laws regulate how this combination can and cannot work. Many chiropractors use pain management doctors because chiropractors can't give steroid injections while pain management doctors can. Many pain management doctors work with chiropractors because patients often see a chiropractor first. The chiropractors thus become a good source of referrals for the pain management doctors. Integrated arrangements may split the administrative duties or may allow one practice to assume the administrative duties for both practices – for the patients who use both medical services.

Before starting any practice with a chiropractor; a pain management doctor orthopedist, or any other doctor, or buying any practice, you should review the legal dangers with an experienced medical business regulation attorney. Violations of the applicable federal and state laws can result in substantial fines, criminal charges, civil damages, and loss or suspension of a medical license.

Improper combined practices can result in disciplinary actions from state medical boards and licensing authorities. For example, medical doctors have a broader authority to conduct a diagnosis than does a chiropractor.

LEGAL RISKS ARISE IN INTERDISCIPLINARY MD-DC PRACTICE, CHALLENGING INTEGRATIVE MEDICINE MODEL

When medical doctors collaborate with other licensed healthcare providers (such as chiropractors) in a multidisciplinary, clinical care or integrative medicine setting, legal risks can arise that [...]

Federal legal restriction

Integrated chiropractic offices must follow the Stark Law, the Anti-Kickback Statute (AKS), the False Claims Act, the Health Insurance Portability and Accountability Act (HIPAA) and other relevant federal laws. Some laws only apply if Medicare or Medicaid are involved. Others apply to a broad range of government services.

States also have their own laws and regulations that need to be reviewed with experienced medical regulation attorneys in the respective states.

The key concern in the review of every financial or medical transaction between a medical clinic and a chiropractor is NOT what is in the best interest of the medical practice or the chiropractor. Their key concern is what is in the best interest of the patient.

Anti-Kickback Statute

The federal Anti-Kickback Statute (AKS) is a federal criminal law that forbids exchanging or offering to exchange anything of monetary value to obtain getting referrals of any federal government health care business. Conviction of even one charge can result in five years in jail and \$25,000 in fines and exclusion from the right to participate in any federal healthcare program (not just Medicare or Medicaid which is all the Stark statutes cover). Civil damages may also be assessed including treble damages for each violation.

ANTI-KICKBACK, FEE-SPLITTING & STARK

Fraud and abuse issues permeate healthcare regulatory concerns. Our health care law attorneys regularly counsel clients on compliance with Federal and State anti-kickback statutes. Our lawyers [...]

The Safe Harbor Regulations.

Safe Harbor is a way that some transactions can be protected. This means that the U.S. Department of Health and Human Services (US DHHS) and the Office of Inspector General (OIG) won't enforce the Anti-Kickback Statute if medical providers and chiropractors engage in activity these federal agencies have said is OK to do. Medical practices, chiropractors, and medical practice/chiropractor combinations can seek an advisory opinion about whether their operation/transactions qualify for safe harbor protection.

For example, one transaction that can possibly qualify for safe harbor is the agreement by the doctor to refer a case to the chiropractor in return for an agreement by the chiropractor to refer the patient back to the original doctor. Provided that fees aren't split and there's no other financial arrangement, this type of transaction could be legal.

There are many other transactions that can qualify for the safe harbor which change periodically. The safe harbor regulations, by year, are posted on the OIG website.

An experienced chiropractor medical practice lawyer can explain when you should seek an advisory opinion and what the exact request should include.

The Stark Law

Stark Law, named after its enactor, California Congressman Peter Stark, is the federal law(s) that prohibit a referral of patient who is on Medicare or Medicaid by a doctor to an entity that provides designated health services (DHS) – if the doctor has a financial interest in the DHS. This type of arrangement (also known as self-referral) creates a conflict of interest. Doctors with a stake in another health service will be likely to refer their patient to that health service even though other health providers may offer better care.

On the surface, an arrangement by a physician to refer patients to a chiropractor likely violate the Stark Law if the physician has a financial interest in the chiropractor's practice – or vice versa.

Group Practice Exception. As with the Anti-Kickback statute, there are many exceptions that can apply. For example, a chiropractor could lease office space to a pain management doctor if the lease agreement is in writing and is commercially

reasonable – or if the chiropractor is an employee of the doctor.

The most common exception is called the “Group Practice” exception. This exception applies if there are:

- More than one doctor. Multiple doctors (such as a chiropractor and an orthopedist) who have formed a professional corporation, foundation, nonprofit corporation, partnership, or similar legal entity
- A shared enterprise. The doctors who are members of the group share their offices and equipment and provide their normal range of medical services to the DHS
- A unified practice. The doctors share decisions about the billing, budgets, and finances and makes decisions for the chiropractor/medical clinic integrated combination – as a whole. Chiropractic and medical services should be provided under a group billing number and a single taxpayer ID number.
- Other conditions your lawyer who understand medical laws and restrictions can explain.

The group practice rules generally don’t apply to independent contractors.

The chiropractor and other doctor(s) might even share profits if there are five or more doctors; the combined practice is formed logically by seniority, specialty, or location; and the profits are divided equally and compose just a fraction of their overall income. Productivity arrangements may also be legal.

Consult an experienced medical clinic/chiropractic lawyer to see how to qualify for the group practice exception. Note, however, that the arrangement also must meet state-law requirements such as, for example, prohibitions against corporate practice of medicine; and also, for example, in California – the Moscone-Knox Professional Corporation Act and the way it specifies how clinicians from different disciplines (i.e., MD, DC) can be co-shareholders in a professional corporation.

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The False Claims Act

This law prohibits doctors from presenting false claims to the government for payment of medical bills. False claims include overbilling and billing for services that were never performed. The chiropractor/medical clinic combination can create the risk of false claims since the health providers often bill at different rates and provide different services.

Additional legal concerns for the medical practice/chiropractic care relationship

Some of the underlying issues that must also be resolved in chiropractic/medical provider relationships are:

- Responsibility. Determining which doctor is ultimately responsible for the patient’s care and treatment
- Outside referrals. Reviewing when referrals to outside specialists must be made
- Diagnostic tests. Analyzing what tests are required
- Control. Deciding who has the authority to hire and fire staff
- Who can perform treatment. Determining which tasks can be done by nurse practitioners

Doctors who work with chiropractors may be allowed to be compensated for giving consultations provided the compensation is fair and reasonable and is not based on referrals or the number of patients treated.

The providers also need to make sure they comply with HIPAA which governs the privacy of electronic medical records.

CAN YOU MAKE HIPAA PRIVACY & SECURITY EASY FOR A SMALL DOCTOR'S OFFICE OR OTHER PRACTICE?

Making HIPAA compliance easy is like trying to catch a firefly in your hand.

How the practice is legally structured?

Most states try to balance the priority that medical businesses should provide services to the community (the common good) versus making a profit. There are restrictions on when medical practices can incorporate and whether they can provide professional medical services. Corporations that provide medical services must be professional medical corporations. States laws need to be reviewed to determine if a chiropractic corporation can hire a medical doctor. The reverse, a professional medical corporation hiring a chiropractor, is more likely to be approved.

There are many different types of corporations. Medical practices need to know which types of corporations they can form and which ones they can't. For example, California does not allow LLCs (Limited Liability Corporations) for professional services that require a license, certification, or registration. Business formation alternatives to a corporation include a partnership arrangement which requires a written document, a nonprofit, a foundation, and a sole-proprietorship.

BUSINESS FORMATION (PARTNERSHIP, CORPORATION, LLC)

Choice of Entity: Corporation vs. Partnership vs. LLC We advise entrepreneurs and start-up businesses on the best legal structure to form their enterprise. We will advise on the choice of [...]

Practical solutions to creating a chiropractic/medical clinic integrated practice

Some of the ways chiropractors and doctors can work together without violating federal or state law may include (depending on review by respected medical business lawyers) are:

- Leasing. If a chiropractor leases space to a pain management doctor or a medical practice for commercially reasonable rates
- Hiring. If the medical practice employs the chiropractor
- Administrative work. If the chiropractor does administrative work for the medical clinic or marketing services for a flat rate marketing amount
- Using the management services organization (MSO) model. Here, the chiropractor acts a manger for the professional medical corporation. The chiropractor earns a fair market fee. The management agreement is written down in an MSO agreement.

Chiropractors and Physicians Should Review Their Working Relationship with an Experienced Integrative Medical Practice Lawyer

Doctors and chiropractors should review their contracts, referral arrangements, and business arrangements before they start working together. There are many laws, regulations, and policies that need to be reviewed to avoid criminal, civil, and disciplinary penalties.