

How to avoid legal pitfalls of physician (MD) collaboration with chiropractors (DC)

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How can integrative medicine physicians collaborate with chiropractors, without triggering unnecessary patient liability, medical board discipline, or other legal exposure for fee-splitting, anti-kickback violations and other legal pitfalls? Many medical doctors and chiropractors create collaborative clinical practices that work in terms of patient care, but run afoul of key laws and regulations in ways that jeopardize both the MD and the DC. These legal rules include:

- laws governing **professional corporations** (such as the Moscone-Knox Professional Corporations Act in California);
- statutory and regulatory prohibitions against **corporate practice of medicine**;
- federal **anti-kickback laws** and state laws prohibiting **kickbacks and fee-splitting** (such as, **California Business & Profession Code Section 650**);
- laws governing professional **scope of practice** (such as medical licensing laws, psychological licensing laws, and chiropractic licensing laws);
- laws governing medical, chiropractic, psychological, or other **professional discipline**;
- formal and informal professional **standards of care**, which become important when considering whether medical malpractice has occurred;
- other laws and regulations.

Corporate practice of medicine concerns in medical doctor / chiropractor collaboration

The place to begin is with the understanding that all licensed **healthcare professionals** are *not* created equal. In the Beginning (late 19th century, as explained in [Complementary & Alternative Medicine: Legal Boundaries & Regulatory Perspectives](#)), licensing statutes were created for medical doctors. MDs were granted so-called “unlimited licensure” to diagnose and treat disease.

Decades later, chiropractors got licensure—a more “limited” licensure with an assigned scope of practice.

Licensing laws prohibit unlicensed practice of medicine (or psychology, chiropractic, and other professions); and consequently, **corporate practice of medicine**—the practice of medicine by a corporation other than a professional medical corporation—is illegal. In many states (including New York and California), this means that if a chiropractor hires a physician, the employment arrangement is likely to be seen as corporate practice of medicine and therefore illegal.

Curiously, in California, the Moscone-Knox Professional Corporation Act does allow an MD to be employed by a chiropractic

corporation:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation. This section does not limit employment by a professional corporation designated in this section of only those licensed professionals listed under each subdivision. Any person duly licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed to render professional services by a professional corporation designated in this section....

(k) Chiropractic corporation.

(1) Licensed physicians and surgeons.

Note that employment must be by a chiropractic professional corporation, and not by a chiropractor or DBA for a chiropractor or general corporation.

Despite this seeming legal permissiveness, the corporate practice of medicine doctrine, as well as other areas of law, mean that the MD who becomes an employee to a chiropractic corporation is in legal peril.

Among other things, the California Medical Board's [web page on corporate practice of medicine](#) articulates medical board concerns about:

- Selection, **hiring/firing** (as it relates to clinical competency or proficiency) of physicians, allied health staff and medical assistants.
- **Approving of the selection of medical equipment and medical supplies** for the medical practice.
- Management service organizations arranging for, **advertising**, or providing medical services **rather than only providing administrative staff and services for a physician's medical practice**.

An employment arrangement grants the chiropractic professional corporation a lot of control over the physician as an employee. It is inconsistent with the medical board's view on corporate practice of medicine, quoted above.

Although one option is for the chiropractor to serve as manager for the medical practice (we discuss the MSO model in other blog posts), the California medical board also warns on its corporate practice of medicine page:

The following types of medical practice ownership and operating structures also are prohibited...:

- A physician acting as "medical director" when the physician does not own the practice. For example, a business offering spa treatments that include medical procedures such as Botox injections, laser hair removal, and medical microdermabrasion, that contracts with or hires a physician as its "medical director."

Standard of care and scope of practice concerns in the MD – DC clinical practice

A significant question when MDs and DCs collaborate is, are the patients the MD is seeing those of the medical practice, or those of the chiropractic practice?

There is less of a concern if the **professional medical corporation** is hiring the chiropractor. This is allowed by Moscone-Knox and often by other professional corporation statutes in other states.

However, the scenario where a chiropractic professional corporation hires the MD raises standard of care issues.

The MD must follow a medical standard of care, and not the chiropractic standard of care. If the chiropractor is the employer, then the chiropractor is calling the clinical shots.

Among other things, it is important to ask, whose patients are being seen by the physician?

If the MD is seeing the chiropractor's patients, this is problematic. Typically, this means that MD is likely serving as a remote (i.e., token) physician who signs off on procedures the chiropractor has recommended (such as **laser** therapy, vitamin B12 injections, or other functional medicine, **anti-aging** medicine, hormone therapies, weight loss, or other therapies at the borderland of chiropractic scope of practice). If these are not medically indicated by the patient's condition—as diagnosed by the physician—there can be an issue as to whether the medical doctor is practicing standard of care.

Scope of practice is also of concern if the chiropractor is treating outside his or her legislatively authorized scope of practice. This can happen by, for example, the chiropractor hiring a nurse practitioner and essentially trying to “rent” the medical doctor's license and force the illusion of supervision, to create a cover for practice outside chiropractic ken.

Any physician in this type of arrangement must take care to get legal counsel to assess whether the chiropractor's offer was an illegal one.

Fee-splitting concerns in the medical doctor – chiropractor practice

Most state laws, including **California Business & Professions Code section 650**, prohibit fee-splitting, and prohibit receiving or giving anything of value in exchange for a patient referral.

Federal laws prohibit the same whenever a claim for the patient's care is submitted to Medicare or Medicaid.

One of the danger zones here opens up when the chiropractor offers to pay the medical doctor a fixed amount **per patient** that the MD sees within the chiropractic office. Per-patient splits are always problematic. (See, for example, our post on [fee-splitting issues in the integrative care](#) setting). The chiropractor cannot take, for example, \$100 from the patient and split this on a percentage basis with the physician.

Models of Physician – Chiropractor Integrative Practice

Some of the ways a chiropractic practice can bring a medical doctor into clinical decision-making with a greater success of legal compliance include:

- **Lease at fair market value:** leasing space to the medical doctor; the lease must be at **fair market value**, to help withstand anti-kickback and fee-splitting scrutiny; also, the lease should comply with federal and state **safe harbor** provisions;
- **Employment by professional medical corporation:** the chiropractor can be an employee of the professional medical corporation, and, depending on state law (such as Moscone-Knox), potentially also a shareholder (up to 49% in California);
- **Management (MSO) model:** the chiropractic professional corporation can serve as a **manager** to the professional medical corporation under a **management services organization** agreement (or **management agreement**), with the fee at fair market value for services rendered;
- **Marketing services by chiropractor:** the chiropractic professional corporation can provide **marketing** services to the professional medical corporation, with a flat marketing fee at fair market value.

Billing & Coding

In any arrangement in which the chiropractor is an employee of the professional medical corporation, the physician must take

care that appropriate billing and coding rules are being followed when the chiropractor bills under the EIN of the professional medical corporation.

Physician Supervision

Further, the MD must properly supervise registered nurses (RNs), physician assistants (PAs), and medical assistants. In California, the MD must have a delegation of services agreement in place for physician assistants, and, a collaborative practice agreement with the registered nurses as well as standardized protocols. Dependent practitioners must be properly supervised. Additional rules, such as those governing physical therapists, chiropractic assistants, and others, must be respected.

The physician must supervise all medical procedures (for example, whenever the laser is being used for medical purposes).

Medical Director title is legally dangerous

Physicians, beware the chiropractor's offer to become "medical director."

Medical boards aggressively enforce their rules where they perceive a violation.

Many physicians enter into arrangements with chiropractors or other healthcare practitioners, hoping to 'get rich quick' while unwittingly jeopardizing their license. (See our post, [If someone asks you to be medical director, run](#)).

Conclusion: The Collaborative Practice

Healthcare laws and regulations are arcane and esoteric. When you are developing a telemedicine, online health, m-health, or electronic medical platform, or a multi-disciplinary clinic or clinical collaboration, [contact](#) our healthcare legal team for appropriate healthcare & FDA legal and regulatory advice.



[Contact](#) our [healthcare law](#) and [FDA attorneys](#) for legal advice relevant to your healthcare venture.