

MSOs For Nursing Businesses

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More and more, nurses are starting their own businesses. Some of these ventures include IV hydration, Ketamine infusion, holistic care, health coaching, medical spas, chronic care, concierge nurses, research, and other nursing professions. These ventures are exciting opportunities for nurses to own their own businesses while providing care to those in need.

There are many laws that regulate medical businesses in California and other states. For starters, California has a corporate practice of medicine law that regulates who can own and run a medical practice in California. The law is designed to ensure that the health and safety of the patient is prioritized over the financial profits of those who own the medical practice. There are anti-referral laws, including Stark Law and the Anti-Kickback Statute, that regulate when and how referrals between the medical practice and other medical entities can be handled. Many referral arrangements are illegal. There are also privacy laws such as the Health Insurance Portability Accountability Act of 1996 (HIPAA) that govern the handling of electronic patient information.

Our healthcare compliance lawyers understand the laws that apply to nursing practices. We'll review your compliance requirements and the ways you can help show that you are in compliance with these various laws. One common way to address compliance issues is to use a Managed Service Organization (MSO). An MSO is an entity that handles the administrative side of your nursing business while the owners and staff handle the clinical/medical side of the business.

In this article, we'll discuss how an MSO can help your practice meet its compliance requirements. We'll discuss:

- What are some of the different types of nursing businesses?
- What is the corporate practice of medicine doctrine?
- What is a Managed Service Organization (MSO)?
- How can an MSO allow your Nurse practice to coexist with your business needs?
- Can an MSO help a Nurse practice with the obligations of Stark Law and Anti-Kickback Statutes?

What are some of the different types of nursing businesses?

According to [Nursepreneurs](#), new nursing businesses include:

- **IV hydration clinics.** This business provides medical care by licensed, professional concierge nurses. The treatments involve the intravenous injection of vitamin additives to help the client get the nutrients he/she needs. IV hydration may be used for arthritis, depression, dehydration-related illnesses, migraines, skin rejuvenation, and for other conditions.

- **Concierge nurses.** These nurses provide in-home care and custom nursing care for clients who generally pay for the nurse's services out of their own pockets.
- **Medical spas.** There are specific California laws for the operation of medical spas. Some of the procedures include chemical peels, dermal fillers, botulinum toxins, and the use of laser, light, and radiofrequency devices.

According to [Selfemployed.com](https://www.selfemployed.com), some nursing businesses include:

- **Nurse health coaches.** These nurses teach clients how to care for themselves – such as through a holistic approach that reviews the client's medical, work, environmental, nutrition, and mental health. Registered nurses may find this profession attractive.
- **Fitness nurses.** This nurse can work for corporations, spas, heart care rehabilitation, patients recovering from surgery, professional athletes, and others. A fitness nurse helps the client develop a program that includes exercise, wellness, and the prevention of diseases.
- **Specialized care nurses.** These nurses provide telehealth nursing, childbirth training, hospice care for end-of-life patients, in-home senior care, and other services.
- Nurses who teach continuing education classes

What is the corporate practice of medicine doctrine?

Most states have corporate practice of medicine (CPOM) laws. The purpose of these laws is to ensure that the medical side of a healthcare practice is distinct from the business side of the healthcare practice. California's [corporate practice of medicine laws](#) include the following:

- [Business and Professions Code, Section 2052](#) states that practicing medicine without a valid license is unlawful.
- [Business and Professions Code Section 2400](#) states that: *"Corporations and other artificial entities shall have no professional rights, privileges, or powers."*

Generally, corporations cannot hire physicians because corporations don't have a license to practice medicine. Corporations don't have the education, training, and skills needed to obtain a medical license. Corporations are not able to develop a professional relationship of trust with patients. In short, California does not want business to run medical practices.

California does permit licensed medical practitioners to incorporate and operate professional medical corporations (PMCs). The law that permits PMCs is the [Moscone-Knox Professional Corporation Act](#). A PMC must generally be formed for a specific type of medical service, not a range of services.

Registered nurses can be employed by a PMC. Registered nurses can also own up to 49% of the PMC (by themselves or with others) but at least 51% of the PMC must be owned by a physician or physicians licensed in California.

In addition to the corporate practice of medicine laws, California has laws that regulate the supervision of healthcare providers by physicians – including recent laws regarding when supervision of nurses is not required.

In California, *"Because of the CPM doctrine, a non-physician in California cannot own a medical clinic or hire physicians. However, they can own a management entity which can serve as an administrative and non-medical, management services organization ("MSO") for the clinic or medical practice, which is frequently organized as a professional medical corporation."*

EXCEPTIONS AND ALTERNATIVES TO THE CORPORATE PRACTICE OF MEDICINE

California has a strict corporate practice of medicine law. Physicians should consider a professional medical corporation. Doctors need to be aware of Stark Law and the AKS. An MSO may be advisable.

CORPORATE PRACTICE OF MEDICINE, PSYCHOLOGY, PHYSICAL THERAPY RISKS TO INVESTORS

In today's video, we discuss how investors can profit from businesses that deliver clinical services—and where they get themselves in trouble.

CORPORATE PRACTICE OF MEDICINE: MEDICAL MANAGEMENT ORGANIZATIONS AND PROFESSIONAL MEDICAL CORPORATION—WHO CONTROLS WHAT?

The Corporate Practice of Medicine (CPM) doctrine continues to befuddle, beleaguer, and bewilder healthcare companies seeking to venture with physicians and non-physician entrepreneurs.

What is a Managed Service Organization (MSO)?

A Managed Service Organization is a business that nursing businesses can hire to do the administrative work of the nursing business while the nurses (and doctors) focus on treating the patients. An MSO can also be used to help address the issues raised by Stark Law and the Anti-Kickback Statute (AKS). These laws may apply when a nursing business works with drug companies, lab companies, hospitals, or other medical businesses. The laws address the concern that the nursing practice should refer patients to these other businesses – based on the best needs of the patient and not the profits of the nursing business.

Stark Law prohibits referrals if the nursing practitioners have a financial interest in the other medical company (the one that is accepting referrals from the nursing business). The AKS prohibits medical companies from providing compensation or remuneration to the nursing practice in order to receive referrals from the nursing practice. Stark Law and the AKS generally apply when the physician or the related entities submit bills to federal healthcare programs such as Medicare and Medicaid.

Our skilled healthcare lawyers will explain when and how an MSO can be used to address corporate practice of medicine concerns, Stark Law, and the AKS. We'll help negotiate and draft the agreements between the nursing practice and the MSO.

How can an MSO allow your Nurse practice to coexist with your business needs?

In order to meet any Stark Law exceptions or AKS safe harbors, the financial relationship between the nursing practice and the MSO must comply with very specific requirements. For example, most relationships must be in writing, must be based on fair market value, cannot be based on the value or quantity of the referrals, and the relationship must last for at least one year. MSOs may also be useful to address other healthcare compliance laws such as the Health Insurance Portability and Accountability Act (HIPAA).

Some of the Stark Law exceptions and AKS safe harbors and MSO may be able to satisfy include:

- Personal service arrangements
- Fair market value exceptions
- Office space and equipment leases
- Physician payments for items and services
- Compliance training
- Group practice arrangements with a hospital
- Incidental payments for medical staff
- Non-monetary compensation

- Risk-sharing arrangements
- The isolated transaction exception which can help raise capital for these new services.

Some of the tasks that an MSO can do for a nursing practice include:

- **Education and training.** For example. An MSO can educate the owners and staff of the nursing practice about how to implement HIPAA, Occupational Safety and Health Administration regulations, the federal and state Family and Medical Leave Acts, and the Clinical Laboratory Improvement Amendments of 1988.
- **Billing, coding, and collection.** An MSO can do the bookkeeping and billing for the nursing practice.
- **Rental leases for office space and equipment for the nursing practice.** An MSO can help a nursing practice lease (or purchase) the office space and the equipment the nursing practice needs to run their practice.
- **The credentials.** The doctors need to decide what credentials their employees must have. An MSO can review whether the applicants have those credentials.

The MSO can also help with the purchase of technology for the nursing practice, the administrative staff, quality assurance, disaster management, and other tasks.

STARK LAW EXCEPTIONS THAT MIGHT APPLY TO YOU

In today's video, we discuss some exceptions to Stark Law, which deals with improper referrals by physicians and healthcare practitioners.

Our law firm advises nurse practices about their federal and state compliance issues. These issues include the corporate practice of medicine, Stark Law, the Anti-Kickback Statute, HIPAA, and other laws. Our team will explain if an MSO is a good option for your nursing practice. We'll negotiate and write the contracts necessary to implement the MSO.

Nurses and nursing practices that own or run their own enterprises should contact Cohen Healthcare Law Group, PC to discuss their federal and state legal compliance requirements. Our experienced healthcare attorneys advise medical providers about healthcare compliance laws and regulations.

Contact our healthcare law and FDA attorneys for legal advice relevant to your healthcare venture.