

MSOs For Oncology Practitioners

January 1, 2023

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There are many different types of oncology practices and many different healthcare workers who work in each type of practice. Some of these practices include medical oncologists, radiation oncologists, surgical oncologists, geriatric oncologists, gynecological oncologists, hematologist-oncologists, and other types of oncologists.

Ancillary oncology healthcare professionals include healthcare workers who provide acupuncture, aromatherapy, art therapy, guided meditation and mindfulness, massage therapy, reiki therapy, and yoga.

Any type of oncology practice needs to be aware of several key legal issues starting with their state's laws on the corporate practice of medicine. In California, for example, the corporate practice of medicine laws prohibits corporations from practicing medicine or hiring a physician to provide medical services. This rule was created to prevent the commercialization of the practice of medicine and prevent corporations from interfering with a physician's medical judgment.

In this article, we'll explain:

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

What is the corporate practice of medicine doctrine?

Most states have corporate practice of medicine laws. These laws aim to separate the medical side of a healthcare practice from the business side so that the health and welfare of the patient are prioritized over the financial concerns of the business.

California has its own corporate practice of medicine laws:

- 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."

Together, these laws:

“Are interpreted as a ban on corporations practicing medicine by employing physicians because corporations and other artificial entities are not granted licenses and therefore have no professional rights, privileges, and powers. Courts, California Attorneys General, and the legislature have since determined how this statute would apply to the practice of medicine. According to the Medical Board of California, limitations on the rights, privileges, and powers of corporate and other artificial entities are intended to prevent unlicensed persons from interfering with or influencing the physician’s professional judgment.”

The corporate practice of medicine laws were enacted because corporations:

- Cannot have the training, education, and personal characteristics that are needed to receive a medical license.
- Are unable to develop the relationship of trust and confidence that is necessary for the relationship between a professional and patient or client
- Must not employ physicians because the physician’s acts would then be attributable to the unlicensed employer.

An exception to the corporate practice of medicine laws, that applies to oncology practices as well as other practices, is the Moscone-Knox Act – which is the California law that grants physicians the right to incorporate and operate professional medical corporations (PMCs). These approved PMCs can charge patients for their services and hire or supervise what medical services are rendered – provided the PMC is at least 51% owned by a physician or physicians licensed in California. Up to 49% of the PC may be owned by registered nurses, physician assistants, and other healthcare licensees. A non-physician cannot own any shares of a PC.

In California, *“the prohibition against corporate practice of medicine imposes strict rules on contractual arrangements between physicians and non-physicians.” “Neither non-physicians nor lay corporations (corporations that are not medical professional corporations) nor limited liability companies (LLC) may contract to provide medical services. Nor may they contract with a physician to have the physician provide medical services, either as an employee or an independent contractor. (Business & Professions Code §§2052 and 2400.)”*

“Because of the CPM doctrine, 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: 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)?

MSOs are a way to separate the medical/clinical side of the practice from the administrative side. An MSO helps clarify that the business side of the practice is not engaged in the practice of medicine. The MSO is also useful to avoid complaints about fee-splitting and referrals which may violate Stark Law and the Anti-Kickback statute. With an MSO the oncology doctor and his/her team of medical care providers can focus on the cancer patient while the MSO pays the bills and performs other administrative tasks.

Our experienced healthcare lawyers understand when to consider an MSO, how to implement an MSO, and what an MSO can and cannot do. The initial step in developing an MSO is preparing the contract between the PMC and the MSO.

MSOs can benefit an oncology practice in the following ways:

- Help with numerous administrative tasks including:
 - Patient scheduling
 - Leasing space and equipment to the Professional Medical Corporation (PMC)
 - Paying the bills and bookkeeping
 - Submitting bills for physician and medical provider services
 - Staffing – providing the MSO's involvement is administrative and not medical. For example, an MSO cannot hire and terminate healthcare providers but the MSO can set up the payment arrangements
- An MSO can make it easier to establish offices in various locations within a state
- Help a non-MD establish a health and wellness practice
- Help navigate the use of digital healthcare including telemedicine

MSOs cannot generally provide any medical services. There are restrictions on the type of marketing of the practice the MSO can promote.

The PMC must compensate the MSO at fair market value. The MSO cannot be compensated based on the amount of business the MSO brings into the PMC. An MSO cannot guide what services are available. Any referrals by the MSO to the PMC may violate Stark Law, the AKS, or the California Health & Safety Code, Section 445 (Medical Referral Services). Our experienced healthcare lawyers will explain how an MSO helps address these restrictions.

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

Our skilled healthcare compliance lawyers will review the various legal compliance issues an oncology practitioner needs to review – such as the Corporate Practice of Medicine, Stark Law, AKS, HIPAA, and other federal and state compliance laws. We'll explain whether an MSO is right for the oncology practice and any related services.

For example, generally, an MSO can help Tom, who owns an oncology practice, in the following ways:

- **Education and training.** The MSO can explain the compliance issues to everyone involved in the practice, so the medical workers keep electronic patient records secure. The MSO can explain what steps the doctors, licensed healthcare providers, and non-licensed healthcare providers need to meet the requirements of various federal and state laws including:
 - HIPAA (Health Insurance Portability and Accountability Act).
 - Occupational Safety and Health Administration regulations
 - The federal and state Family and Medical Leave Acts
 - Clinical Laboratory Improvement Amendments of 1988
- **Billing, coding, and collection.** The MSO can work with Medicare, Medicaid, other federal and state insurance agencies, and private insurers. Today's MSO should have software that is readily compliant with all relevant federal and state privacy laws, referral laws (such as Stark Law, the AKS, and California's referral laws), billing laws, and other related laws.
- **Obtaining office space and equipment for the oncology practice.** The MSO can help Tom select the best location for his practice and negotiate office rentals or purchases. The MSO can also help Tom obtain the medical equipment he needs for all the services he wants to provide.

- **Credentials.** The MSO can help review the licensing and certification requirements of each employee and contractor in the practice. Tom or another MD in the oncology practice must be the person who chooses which healthcare professionals to hire.
- **Technology.** The MSO can help choose the best technology (hardware, software, and other computer services) for Tom's oncology practice and provide technical support – provided the HIPAA and any other regulations are met. The MSO cannot make any medical decisions about which technology to use.
- **Many other services.** The MSO can help with quality assurance, disaster management, and other services provided the MSO doesn't engage in the practice of medicine.

In addition, if Tom, an oncologist wants to help cancer patients with more than just diagnosis and the available treatments, an MSO can help Tom with those goals too. For example, Tom may want to help his patients feel better and hopeful while the patients are going through their treatments. He may want to bring in dietitians, nutritionists, people who make people look better when the patients lose their hair, and other healthcare providers.

An MSO for these new healthcare services can provide many of the same services an MSO can provide for the oncology practice. We'll also explain when and how the main oncology practice and the ancillary practice can work together – including addressing the relevant federal and state anti-referral laws. We'll explain what the MSO can and cannot do and when separate MSOs may be required.

Can an MSO help an oncology practice with the obligations of Stark Law and Anti-Kickback Statutes?

As discussed, Tom wants to have working relationships other medical service providers. He wants to know what steps he can take to address the anti-referral provisions of Stark Law, the Anti-Kickback Statute, and California's anti-referral laws. He knows that referrals are a common way of getting business and helping other boundaries – but he wants to make sure he's in compliance with the anti-referral laws.

Generally, Stark is a federal law that prohibits physicians from receiving from and referring to “designated health services” (DHS) that submit Medicare and Medicaid bills – where the doctor (or an immediate family member) has a “financial relationship” in the DHS. Our healthcare compliance lawyers will review whether the referral arrangements are legal or illegal. If they might be considered illegal, we'll discuss how an MSO might be used to meet an exception to the Stark Law that may make the referral arrangements legal. Stark Law exceptions may be legal if an MSO performs the following tasks:

- 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.

We'll explain whether an exception applies and the very precise requirements for meeting each type of exception.

Our healthcare lawyers will also explain if there are any “safe harbor” arrangements that can be used by the MSO to address

concerns the business relationships may violate the Anti-Kickback Statute. The AKS generally makes referrals that provide payments or compensation in return for referring business to Tom's practice

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 helps oncology practices and other medical practices comply with federal and state healthcare compliance practices. We review corporate medical compliance, anti-referral law compliance, HIPAA compliance, and many other privacy and consumer protection laws. We'll explain if an MSO is a good option for your practice. If an MSO is a wise choice, we'll help negotiate the terms of the MSO for your practice including setting forth the terms, obligations, and available remedies. We'll also help with any ancillary oncology practices.

Oncology practices and healthcare practices that work with oncology practices should contact Cohen Healthcare Law Group, PC to discuss their federal and state legal compliance requirements. Our experienced healthcare attorneys advise physicians, nurses, acupuncture providers, and other healthcare providers about healthcare compliance laws and regulations.

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