

The strange world of the California medical board Fictitious Name Permit

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By Michael H. Cohen

The strange world of the California medical board Fictitious Name Permit inhabits one of those arcane places in healthcare law that many physician clients wonder about. Here's everything you wanted to know about the California medical board Fictitious Name Permit, and weren't afraid to ask.

The significance of the fictitious name permit

One reason this byzantine byway matters is because medical boards sometimes get up in arms about too much *perceived* intrusion by the medical management company (MSO) into the practice of "medicine."

And the name of the MSO, as well as the name of the **physician practice, medical spa, telemedicine company, mobile medical app, or device manufacturer** can raise legal challenges on the ground of public confusion between the non-physician venture on one hand, and the medical doctor on the other.

Somehow, this asserted public confusion and decision-making around name equates to "too much control" which then means medical board investigation and possible allegations of non-compliant or illegal practice.

So buckle your belts for a quick regulatory ride.

Corporate Practice of Medicine

The corporate practice of medicine doctrine imposes strict rules on contractual arrangements between physicians and non-physicians. One of the purposes of the corporate practice of medicine doctrine is to separate medical from business decision-making.

Under this doctrine, neither non-physicians nor lay corporations (corporations that are not medical professional corporations) 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. In addition, California law places limits on the activities of non-medical corporations managing health care practices. Other states may have similar limits.

New York, for example, has a **strong corporate practice of medicine doctrine** and requires clear separation of professional from non-clinical, management or medical services activities.

For this reason, laypersons often form a management company (or medical services organization) that contracts with a professional medical corporation to provide administrative and management services. As discussed elsewhere on this blog,

such a structure can help alleviate concerns regarding:

- anti-kickback
- fee-splitting
- Stark and
- self-referral laws

so long as properly structured and with relevant exceptions and safe harbors to the relevant laws and regulations in mind. MSOs can often serve as billing and collecting agents for a medical practice.

However, medical boards are closely watching the MSO structure, as they are increasingly concerned that physicians will abuse such contractual arrangements and create disguised kickbacks, where laypersons are in fact exercising too much control over clinical practice by virtue of the decision-making inherent in the model. For this reason, it is critical to have any business model reviewed by an attorney experienced in Stark, self-referral, anti-kickback, fee-splitting, and corporate practice of medicine laws.

As well, healthcare legal counsel should be able to provide guidance on the differences between a corporation, an LLC (limited liability), and a professional corporation, as well as on rules regarding naming conventions and licensing of names and other intellectual property.

This might be a recap for some of you, but it's relevant to the fictitious name permit when the underlying venture (non-medical) and the physician clinical component share a name. Although it's a common industry practice – more and more these days – some enforcement authorities can interpret this as too much intrusion by the non-physician venture into medical train. Perception is reality, and it sometimes depends on who is in charge of the investigation and enforcement decision.

One strategy suggestion we offer management companies is that they include the name “management” in their corporate name. At the very least, this clarifies that the company is an MSO, hopefully warding off inquiries based entirely on misperception.

Of course there's more to legal strategy than this but we want to at least start by making a dent in the regulator's mental world.

The strange world of the Professional Medical Corporation

Closely related to the fictitious name permit (FNP) process is the arcane world of the professional medical corporation (PMC).

Every state has laws governing formation of professional corporations.

There can be subtle differences among states which an experienced attorney can point out, as statutes and regulations can be highly detailed and nuanced.

In California, the Moscone-Knox Professional Corporation Act regulates professional corporations, including the professional medical corporation (“professional medical corporation”). For those who want legal citations, see Calif. Corp. Code §§13400-13410.

- Section 13404 requires the Articles to specify that the corporation is a professional corporation within the meaning of the statute.
- See also 16 CCR §1343 (Requirements for Professional Corporations), which is a citation to the California Code of Regulations.

- Under Section 13401.5(a) of the Moscone-Knox Professional Corporation Act, certain enumerated, licensed health care professionals *other than* physicians may be “shareholders, officers, directors, or professional employees” of the professional medical corporation, so long as the sum of shares these non-physician, licensed professionals own does not exceed 49% of the total.
- In addition, Section 13406(a) provides that only a licensed person in the jurisdiction may be issued shares in the professional corporation.

For a professional medical corporation, the list includes:

- licensed doctors of podiatric medicine
- licensed psychologists, registered nurses
- licensed optometrists, licensed marriage and family therapists
- licensed social workers
- licensed physician assistants
- licensed chiropractors
- licensed acupuncturists
- naturopathic doctors.

In each case, the physician or physicians must own 51% or more of the total shares.

- California Labor Code section 3209.3 defines “physician” to include “physicians and surgeons holding an M.D. or D.O. degree.”
- “‘Professional services’ means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.” Calif. Corp. Code §13401(a).
- “‘Licensed person’ means any natural person who is duly licensed under the provisions of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee.” *Id.* §13401(d).

With regard to employees, although Section 13401.5(a) refers to “professional employees,” which implies licensed health care professionals, Section 13405 provides that the professional corporation may render professional services through employees who are licensed persons, *and* may employ “persons not so licensed;” the latter “shall “not render any professional services rendered or to be rendered by that corporation in this state.” In other words, in the case of a professional medical corporation, such employees would have to be limited to non-clinical tasks, so as to respect the corporate practice of medicine doctrine.

- Section 13405 further states that a professional corporation may render services outside California, “but only through employees who are licensed to render the same professional services in the jurisdiction in which the person practices.” There are additional laws governing a telemedicine presence.
- Section 13408.5 provides that no professional corporation may be formed to cause any violation of law, including rules and regulations relating to “fee splitting, kickbacks, or other similar practices by physicians and surgeons or psychologists, including, but not limited to, Section 650 or subdivision (e) of Section 2960 of the Business and Professions Code.

The California medical board Fictitious Name Permit

The California medical board Fictitious Name Permit is really a regulated version of the good old-fashioned dba that the physician acquires after forming the **professional medical corporation**.

California currently has a number of rules apply to naming a professional medical corporation and applying for a fictitious name, including these:

- “A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which such corporation is engaged or by a rule or regulation of the governmental agency regulating such profession.”
- “The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct.”
- “Any physician and surgeon or any doctor of podiatric medicine, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing, or, in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine, under the provisions of this section.”
- “Unless a fictitious name permit is obtained, the name of a professional medical corporation shall be restricted to the name or surname of one or more of the present prospective or former shareholders who are physicians or podiatrists, as the case may be, for a medical or podiatry corporation.”
- “When the applicant uses any fictitious, false or assumed name or any name other than the name or surname of one or more of the present, prospective or former shareholders, or any other words or names in addition to those of the shareholders, it shall obtain a permit pursuant to Section 2415 of the code.”
- “No licensed person shall render professional services using a fictitious, false or assumed name or any name other than his or her own unless and until a fictitious name permit has been issued by the division.”
- “A group or clinic containing both a corporate and noncorporate entity or a partnership of corporations shall not use wording or abbreviations denoting corporate existence.”
- “The division shall not issue a fictitious name permit for a name-style which (1) May be a violation of Section 17500 of the [Business & Professions Code]; (2) Is so similar to a name currently authorized as to be deceptive, misleading or subject to confusion.”
- “(a) The purpose of a fictitious name is to allow an individual, a partnership, a group, or a professional corporation to use a name in advertising and in practice other than his or her own personal family name. (b) No licensed person shall render professional services using a fictitious, false, or assumed name or any name other than his or her own unless and until a fictitious name permit has been issued by the Board. (c) A fictitious name permit may be suspended or revoked for failure to comply with the provisions of Code Section 2415 and this article or may be revoked after the individual license has been revoked.”
- In terms of naming style:

(a) Any fictitious name shall contain the designation “medical group,” “medical clinic,” “medical corporation,” “medical associates,” “medical center,” or “medical office.” Such designation shall be contiguous in the name style and not separated by intervening words. This requirement also applies to those applicants who are sole practitioners.

(b) A group or clinic containing both a corporate and non-corporate entity or a partnership of corporations shall not use

wording or abbreviations denoting corporate existence. When a professional corporation is an applicant, it shall use in its fictitious name style one of the word(s) or abbreviation(s) denoting corporate existence as required by these regulations.

(c) The Board shall not issue a fictitious name permit for a name style which is false or misleading or which is so similar to a name previously authorized in the same geographical area as to be deceptive, misleading, or subject an individual consumer to confusion with a previously permitted fictitious name.

(d) The use of word(s) or abbreviation(s) following a licensed person's name denoting affiliation with a professional medical society or association shall not create a fictitious name; however, the use of any word(s) or abbreviation(s) which denotes a particular specialty in medical practice which is advertised or disseminated in public in connection with that practice shall require a fictitious name permit.

The California Medical Board describes some of the above legal rules on its [webpage for FNPs](#).

The Board states that a fictitious name permit is not needed if only the name or surname (last name) of the physician or podiatrist is used, followed by Medical Doctor, M.D., Podiatrist, Doctor of Podiatric Medicine, D.P.M., Medical Corporation, Medical Corp., Podiatry Corporation, Podiatry Corp., Professional Corporation, Prof. Corp., Corporation, Corp., Incorporated or Inc. Examples: "John Doe Medical Corporation" or "John Doe, M.D. Inc." would not require a fictitious name permit as long as John Doe matches the legal name on the physician's medical license.

The Board also notes that as long as the names are different from each other, and separate applications are filed there is no limit as to how many fictitious name permits a physician or professional medical corporation may be issued.

It is not clear that in actual practice and enforcement, boards are entirely congruent with the naming conventions and other rules that are promulgated. [Contact us](#) today to learn how the [Cohen Healthcare Law Group](#) can help with your legal needs. Our team is here to provide experienced guidance and practical solutions.

It is important to get legal advice from an attorney familiar with legal rules applicable to multi-disciplinary practices, and who advise on business models that involve both physicians and non-physicians, and analyze corporate practice of medicine, Stark and self-referral, anti-kickback and fee-splitting, and laws applicable to professional corporations.



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