

What Physicians Need to Know about the Corporate Practice of Medicine

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The old days of getting a medical degree and hanging up a shingle by your office are long gone. Most doctors who have a private practice begin their medical career or advance their medical career by considering the best business formation. Formation possibilities include a solo practice, a partnership with other doctors, or working relationships with other hospitals and existing practices.

Experienced healthcare lawyers will review the various options. They'll also review what laws apply. Many states, such as California, prohibit the corporate practice of medicine. Some states allow for exceptions. Physicians also need to consider whether their business and medical relationship might violate Stark Law or the Anti-Kickback Statutes.

Decisions about business formation and medical practice issues become more complicated as physicians expand their medical service practices and expand who the physician works with. Developing a medical spa or acupuncture practice to complement a pain management practice, for example, may sound like a great idea, but if the employees at the medical spa aren't licensed physicians, complications can arise.

It's more than just physicians who must understand the corporate practice of medicine issues. Any health venture that wants to set up a clinic or a venture that provides health services needs to understand how corporate practice of medicine applies to them as well.

How Healthcare Ventures Can Craft a Corporate Practice of Medicine Legal Strategy

Is the corporate practice of medicine a historical anachronism that's going to be done away with over time or even in the very short term?

The corporate practice of medicine concept across the United States

The corporate practice medicine laws were designed for many reasons, according to the [American Medical Association \(AMA\)](#). These reasons include the following concerns:

- If corporations can hire physicians or practice medicine, then the practice of medicine will become commercialized.
- The obligation of a physician should be solely to his/her patient and not to company profits. Physicians should be able to make patient decisions based on independent medical judgment – what's best for the patient.
- Corporations owe a fiduciary duty to their shareholders which may not comport with the doctor's duties to his/her patients

An overview of state corporate practice of medicine laws

The AMA states that the corporate practice of medicine laws are generally based on a variety of issues:

- The individual state statutes
- Case decisions
- Opinions of the attorneys general of the various states
- The positions of the state medical licensing boards

While most states prohibit the corporate practice of medicine, states do provide for professional medical corporations. Many states also have exceptions for employment of doctors by specific entities. These exceptions do vary from state to state.

States that do permit professional medical corporations do regulate:

- How the corporation can be structured
- Who can be a shareholder
- Who can be on the board of directors

Most state laws require that the owners, board of directors, and shareholders must be licensed to render the “*same professional service as the professional corporation*.” There are some states that permit non-physicians owners and shareholders – provided that the combined ownership interest is in the minority.

- *“For example, Colorado’s statute provides that all shareholders of a medical corporation must be licensed to practice medicine in the state of Colorado except that one or more persons licensed by the board as a physician assistant may be a shareholder as long as the physician shareholders maintain majority ownership of the corporation.”*
- In another example of broader ownership interest, in *“Rhode Island; physicians, dentists, registered nurses, podiatrists, optometrists, physician assistants, chiropractic physicians, physical therapists, psychologists, and midwives or nurse-midwives can form a professional corporation in which they engage in a combination of their professions.”*

There are many states that have an exception for the employment of doctors by certain entities such as hospitals. Some states grant broad permission for hospitals to hire doctors. Some require that the hospital be a nonprofit. Others, like California, mostly prohibit hospitals from hiring doctors.

When states do give hospitals the right to hire doctors, there is normally a requirement that the hospital cannot interfere with the “autonomy of the physician’s clinical decision making.”

- *“For example, statutes in Texas allow critical access hospitals, sole community hospitals, and hospitals in counties with fewer than 50,000 people to employ physicians subject to certain protections, including a requirement that physicians must “retain independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital and may not be disciplined for reasonably advocating for patient care.”*
- According to the AMA, California, which has one of the nation’s strongest prohibitions against the corporate practice of medicine provides that some hospitals and clinics can hire doctors provided the hospital or clinic “*doesn’t interfere with, control, or otherwise direct the professional judgment of a physician and surgeon.*” In California, according to the DHHS Office of Inspector General, “*the prohibition does not apply to clinics operated by university medical schools or to public hospitals.*”
- Similarly, Indiana’s laws also permit hospitals and doctors from entering into employment contracts provided the hospitals don’t control or direct the doctor’s independent medical judgment.

- In Illinois, hospitals can employ doctors if the doctor signs a statement to the same effect – that the doctor’s judgment must be an independent medical judgment as to diagnosis, care, and treatment.
- Some states set forth the independent judgment in the state statutes and codes. In other states, such as Alabama, the state medical licensing commission and the state board of medical examiners authorized hospital hiring of physicians where the agreement specifically requires that the doctor makes all judgments concerning what medical services the patient should receive.

Both doctors and hospitals need to understand that there are dangers in any employment relationship, which should be reviewed by an experienced healthcare lawyer. Professional agreements may also violate Stark Law and the Anti-Kickback statute unless it’s clear that an exception or a safe harbor applies.

California’s law on the corporate practice of medicine

California’s law on prohibiting the corporate practice of medicine is one of the strictest in the nation. The law on the corporate practice of medicine in California is fairly complex. Even the [Medical Board of California](#) has this advisory on its website.

*“Note: This area of law can be complicated, therefore **physicians are encouraged to discuss their medical practices and business enterprises with appropriately knowledgeable legal experts**. The Medical Board of California continues to receive complaints and inquiries about the law, and some repeating issues are presented here.”*

The two governing statutes on the corporate practice of medicine are:

- **The Medical Practice Act, Business and Professions Code section 2052.** This statute, provides:

“Any person who practices or attempts to practice, or who holds himself or herself out as practicing...[medicine] without having at the time of so doing a valid, unrevoked, or unsuspended certificate...is guilty of a public offense.”

- **Business and Professions Code section 2400**, within the Medical Practice Act, provides in pertinent part:

“Corporations and other artificial entities shall have no professional rights, privileges, or powers.”

As with the other states, the core idea behind the prohibition is that if unlicensed doctors make any medical judgments that would constitute both the unauthorized practice of medicine and the corporate practice of medicine. **It’s the link that’s the concern. Corporations shouldn’t be the people deciding medical issues because that would constitute the unauthorized practice of medicine.**

Decisions that are medical and not business or management decisions

Examples of medical judgments that must be made by physicians include:

- Analyzing which diagnostic tests such as blood tests or MRIs are required for specific medical complaints and disorders
- Determining when a doctor needs to consult with a medical specialist or refer a patient to a medical specialist – or to another physician
- Deciding what treatment options are advisable and what overall medical care is required for the patient

While the number of patients a doctor must see in a set time (day, week, and month) might seem like a business decision, the Medical Board of California states that the quantity of patients treated by a physician is also a medical decision.

There are many decisions which physicians and medical practices make that may seem like they’re more business choices than medical choices. When the choices are clearly business choices, then an independent entity such as a [management service organization](#) (MSO) may be qualified to make them. The Medical Board of California requires that only a physician

licensed in California make the following decisions:

- *“Ownership is an indicator of control of a patient’s medical records, including determining the contents thereof, and should be retained by a California-licensed physician.*
- *Selection, hiring/firing (as it relates to clinical competency or proficiency) of physicians, allied health staff and medical assistants.*
- *Setting the parameters under which the physician will enter into contractual relationships with third-party payers.*
- *Decisions regarding coding and billing procedures for patient care services.*
- *Approving of the selection of medical equipment and medical supplies for the medical practice.”*

It “may” be permissible for a doctor to consult with an MSO or non-licensed physician about the above items but ultimately the licensed physician must make the final decision.

Additional decisions that may appear business-related that are indeed medical and must be made by a physician include:

- A business relationship in which someone who is not a licensed California doctor owns or runs a company that provides an evaluation, a diagnosis, care, or treatment to the patient.
- Physicians cannot operate a medical practice *“as a limited liability company, a limited liability partnership, or a general corporation.”*
- While management service organizations (MSOs) can generally provide administrative staff and services for a medical practice, MSOs cannot arrange for medical services, advertise for medical services, or provide medical services.
- Physicians cannot act as a *“medical director”* unless the physicians own the medical 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.”*

Will Corporate Practice of Medicine Kill Your Healthcare Venture?

Whether your healthcare venture involves digital health, mobile health, or a physical health and wellness center, strong vs. weak corporate practice of medicine prohibitions can be deadly.

According to the Medical Board of California, *“It is important to note that pursuant to Business and Professions Code section 2417.5, a business organization that offers to provide or provides outpatient elective cosmetic medical procedures or treatments that is not in compliance with the ban on the corporate practice of medicine is guilty of knowingly making or causing to be made a false or fraudulent claim for payment of a health care benefit pursuant to paragraph (6) of subdivision (a) of Section 550 of the Penal Code.”*

All states want to ensure that physicians are doing what is best for the patient. One of the ways states help to regulate a physician’s practice is to ensure that the doctor’s business relationships are managed so that the doctor or the medical practice only has one boss – the patient. The corporate practice of medicine laws generally require that doctors create professional medical corporations and that any working relationship with a hospital be based on helping the patient, not the financial well-being of the hospital. States like California take an aggressive approach that most health care ventures may cross the line into the corporate practice of medicine.

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