



The Corporate Practice of Medicine

It's important to know your state's practice limitations.

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The corporate practice of medicine is a term that takes in a lot of territory. In its most general sense, it involves healthcare professionals working for a corporation that may or may not be owned by other healthcare professionals. There are 50 states, Washington, DC, the U.S. Virgin Islands, Puerto Rico, and Guam. Each has its own law concerning the corporate practice of medicine.

All states allow healthcare professionals with the same degree, say DPM, to work with each other. Not all states allow podiatrists to be owners of a corporation with a dentist or medical doctor. Some states do allow people with various licenses to be co-owners in a medical practice. Some states even allow unlicensed people to own a medical practice, in whole or in part. It is state-specific.

The theory against the corporate practice of medicine is that a dentist should not be able to profit from a podiatrist's treatment of a patient. If she does, she is in effect cashing in on another's different professional license. Of course, in all 50 states, a podiatrist would be able to rent space to a dentist at fair market value. That means that the rental amount would have to be for at least one year, and the amount of money would have to be somewhere in the bounds of what the market calls for. If the average

type of space for rent in your location would normally rent for \$1,000 per month, you, a podiatrist, cannot then rent it to dentist, a lab, or even an unrelated podiatrist, for an exorbitant amount of money; that might violate the federal anti-kickback act.

One licensed DPM can work for another, but as an employee, not an independent practitioner, if the

salary and bonuses based on RVUs. That is allowed.

Some states, like New York, do allow one type of ownership by licensed or unlicensed people. In New York, there is something called an Article 28 exception. These are facilities such as hospitals, clinics, and nursing homes that obtain a certificate of need as well as jumping

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employee is being paid a percentage of the money she generates by her work. In other words, a DPM can work for another DPM, with a legitimate employer contract, full or part time on a percentage basis. Try this with a podiatric independent practitioner and you have run afoul of the Federal Anti-Kickback Act--a dangerous and potentially costly action.

Can you utilize a podiatrist who is not an employee and "back into" a percentage arrangement by adjusting the salary monthly? The answer is no. If the math is done, and it translates to a percentage, you have a problem. The government's computers all know how to calculate a percentage. Do not confuse this with

through many other hoops, to become a licensed Article 28 facility. It can be owned by doctors, lawyers, gardeners, musicians, or any such combination. Other states have a variation of this entity.

Management Companies

An entity, often called a management company, is often used to get around the corporate practice of medicine. Often, a lay person or a healthcare professional of an ancillary nature will "manage" a group of physicians. The physicians may be all MDs, all DPMs, or all dentists. The manager can usually administer the non-medical parts of a practice,

Continued on page 42

Corporate Practice (from page 41)

such as ordering supplies and billing. However, the manager, in states that prohibit the corporate practice of medicine, may not do anything that involves medical decision-making or the actual treatment of patients. States like California, Colorado, Illinois, Iowa, New Jersey, New York, Ohio, Texas, and others follow this.

most appropriate. If the manager purchased it without the medical input from the podiatrist, that would likely be problematic.

One state, California, had actual guidelines drawn up to assist its healthcare providers in obeying the law. To quote from their guidelines:

The policy expressed in Business and Professions Code section 2400 against the corporate practice of medi-

and activities, resulting in control over the physician's practice of medicine, should be made by a licensed California physician and not by an unlicensed person or entity:

- 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.

The types of decisions and activities described above cannot be delegated to an unlicensed person, including (for example) management service organizations. While a physician may consult with unlicensed persons in making the "business" or

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It must be pointed out that what constitutes the management company stepping over the line may vary from state to state. Where does managing a practice end and practicing medicine begin? The answer is not as clear-cut as one might think.

When the management company is incentivized by the number of patients or physician productivity per patient, problems ensue. If the management company receives remuneration per patient it steers to the practice, that would be forbidden in most jurisdictions. Certainly, they cannot receive a percentage of collected fees for medical services. The practice's medical judgment might be clouded by the business judgment of the management company. This is precisely what prohibition of the corporate practice of medicine aims to prevent.

Is the management company simply an excuse for a "non-DPM" to make money as if he or she was a DPM? Some examples are not quite so clear. Let's say the management company negotiates a deal with a podiatric supply company for an excellent deal on the purchase of stationery. This should be fine. Let's change the facts a bit. The management company makes a deal concerning the purchase of an injectable. Was the injectable approved by the podiatrist? Did the manager make the deal on her own? The devil is in the details. The podiatrist must make the actual medical decisions. Perhaps the injectable was not the best or

is intended to prevent unlicensed persons from interfering with or influencing the physician's professional judgment. The decisions described below are examples of some of the types of behaviors and subtle controls that the corporate practice doctrine is intended to prevent. From the Medical Board's perspective, the following healthcare decisions should be made by a physician licensed in the State of California and would constitute the

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unlicensed practice of medicine if performed by an unlicensed person:

- Determining what diagnostic tests are appropriate for a particular condition.
- Determining the need for referrals to, or consultation with, another physician/specialist.
- Responsibility for the ultimate overall care of the patient, including treatment options available to the patient.
- Determining how many patients a physician must see in a given period of time or how many hours a physician must work.

In addition, the following "business" or "management" decisions

"management" decisions described above, the physician must retain the ultimate responsibility for, or approval of, those decisions.

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

- Non-physicians owning or operating a business that offers patient evaluation, diagnosis, care and/or treatment.
- Physician(s) operating a medical practice as a limited liability company, a limited liability partnership, or a general corporation.
- Management service organizations arranging for, advertising, or providing medical services rather

Continued on page 43

Corporate Practice (from page 42)

than only providing administrative staff and services for a physician's medical practice (non-physician exercising controls over a physician's

In the examples above, non-physicians would be engaged in the unlicensed practice of medicine, and the physician may be aiding and abetting the unlicensed practice of medicine.

you may not be one of the owners. As a podiatrist, you should have a competent healthcare attorney check your business structure as to its legality in your state. The stakes for not complying with the law are just too high. **PM**

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medical practice, even where physicians own and operate the business).

- 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.”

The take-away point of this article is that you must carefully check your state regulations to make sure that your current working arrangement is legal. Are you allowed to be an equity owner in a medical practice with an MD or DO? If not, you can be employed by such a group, with pension rights, bonus rights, health insurance, disability insurance, and malpractice insurance; but



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