



CORPORATE PRACTICE OF MEDICINE PROHIBITION

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GOALS OF PRESENTATION

Help you to:



- ▶ Understand what the corporate practice of medicine is;
- ▶ Understand why the corporate practice of medicine is banned in California;
- ▶ Recognize some red flags physicians should look for that may indicate the corporate practice of medicine is involved; and

GOALS OF PRESENTATION

Help you to:

- ▶ Understand some of the consequences for physicians aiding and abetting the corporate practice of medicine.



Corporate Practice Prohibition



California law prohibits any person from practicing medicine in this state without a valid certificate of licensure.

BPC section 2052



Corporate Practice Prohibition



Corporations and other artificial legal entities shall have no professional rights, privileges, or powers under the Medical Practice Act.

BPC section 2400



Acts that require a medical license:

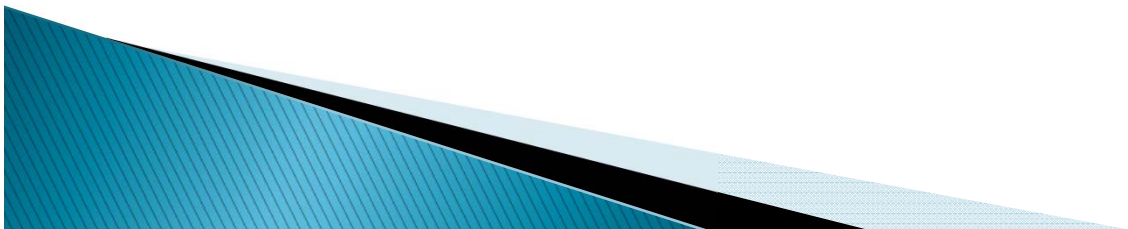


Under BPC section 2052, any person who practices or attempts to practice any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person must have a valid, unrevoked, or unsuspended certificate.

What Is the Corporate Practice of Medicine?



- ▶ A corporation or other entity practices medicine when it engages in any of the acts noted in BPC section 2052.



Why Ban The Corporate Practice of Medicine?



- ▶ Protect California patients from unqualified persons or heads of entities making or influencing medical decisions.
- ▶ Reduce the chances of divided loyalties between physician and employer and physician and patient.



Why Ban The Corporate Practice of Medicine?



- ▶ Minimize undue influence or interference with physician's judgment and physician-patient relationship.
- Physicians should not be forced to choose between the dictates of the employer and the best interest of the patient.

Why Ban The Corporate Practice of Medicine?



...[T]he presence of a corporate entity is incongruous in the workings of a professional regulatory licensing scheme which is based on personal qualification, responsibility and sanction...

65 Ops.Cal.Atty.Gen. 223, 225 (1982)



Why Ban The Corporate Practice of Medicine?



In other words, the ban protects consumers so that those who make decisions which affect the provision of medical services:

- 1) understand the medical implications of those decisions;
- 2) have an ethical obligation to place the patient's interests ahead of their own; and
- 3) are subject to the enforcement powers of the Medical Board.



For Example

A physician, NOT an entity, must :

- ▶ Determine what diagnostic tests are appropriate for a particular condition;
- ▶ Determine the need for referrals to, or consultation with another physician or specialist;
- ▶ Be responsible for the ultimate overall care of the patient, including treatment options available to patient; and
- ▶ Determine how many patients he or she sees in a given time period, and how many hours to work.

Red Flags Indicating Corporate Practice of Medicine



- ▶ Entity owns and/or controls patient records;
- ▶ Entity determines what is or is not recorded in the records;
- ▶ Entity determines the selection, hiring and/or firing of physicians, allied health staff, and medical assistants;

Red Flags Indicating Corporate Practice of Medicine



- ▶ Entity sets parameters under which physician will enter into contractual relationships with third-party payers;
- ▶ Entity makes decisions on coding and billing procedures for patient care services;
- ▶ Entity decides what medical equipment and supplies to purchase for the medical practice.

What do these Red Flags look like on paper?



P.C.'s written request, remove from the Center any Administrative Staff member who does not perform to the reasonable satisfaction of P.C.

(b) perform as the leased employee.

3.4 **Pat** preserve the confidentiality to the extent permitted by

3.5 **Per** shall be subject to commensurate time to time.

4. **Responsibilities**

4.1 **Pro** be solely responsible for services delivered by the direction, supervision and below). The Company may after receiving written notice the Company determines obligations hereunder.

4.2 **Tim** to the Center, sufficient technicians and medical receptionists to meet the needs of the Center. The P.C. shall provide such services with and subject to approval schedules meet the needs of

4.3 **Qual** assure the appropriateness of its Providers who are participate in and coordinate management, patient care similar program or study P.C., governmental agencies or other third

4.4 **Bill**

(a) The Company shall bill and collect for all services rendered by the P.C. and its Providers hereunder as agent for the P.C. All of the payments with respect to such

4. Responsibilities of the P.C.

4.1 Professional Services. During the term of this Agreement, the P.C. shall be solely responsible for all aspects of the diagnostic, therapeutic and related professional services delivered by the Providers at the Center, and for the selection, training, professional direction, supervision and employment or engagement of all Providers (as defined in Section 4.2 below). The Company may terminate this Agreement if the P.C. fails, within thirty (30) days after receiving written notice from the Company, to remove from the Center any Provider who the Company determines has materially disrupted or interfered with the performance of its obligations hereunder.

4.2 Time Commitment. The P.C. shall employ or engage and make available to the Center, sufficient physicians and other clinical professionals, such as nurses, x-ray technicians and medical receptionists, authorized to engage to the extent permitted by law in the urgent care and medical services provided by the Center (collectively referred to as "Providers") in adequate numbers to meet the urgent care and medical needs of the patients of the Center. The P.C. shall provide such services during normal business hours, as established in consultation with and subject to approval of the Company. The P.C. shall ensure that all work and coverage schedules meet the needs of patients of the P.C. in a competent, timely and responsive manner.

What do these Red Flags look like on paper?



12. Proprietary Rights.

affiliates, including, but not limited to, the P.C. hereunder, without the prior written consent of the P.C.

(b) Any such Provider's employment agreement with the P.C., such Provider shall not, without the express written consent of the P.C., solicit verbally or in writing, any patient or former patient of the P.C., or otherwise interfere with such patient or former patient's relationship with the P.C. in connection with the provision of urgent care and medical services. Upon termination of any Provider's employment, the P.C. shall determine how and where to continue such patient's care.

provision of this Section shall be the property of the P.C. and the P.C. shall retain all rights therein.

11. Intellectual Property.

12. Proprietary Rights.

reports, protocols, procedures, and other materials and other information, whether or not reduced to writing, shall remain the property of the P.C. and the P.C. shall retain all rights therein. The P.C. shall not, at any time, disclose any such information to any other entity for any purpose, except as may be required by law or its respective affiliate.

copyrightable, relating to the Company's present, past or prospective activities, services and products ("Inventions") which are at any time conceived or reduced to practice by P.C. and/or any Provider, acting alone or in conjunction with others, in connection with the Company's management of the P.C. or, during the course of the P.C.'s employment or engagement of Providers (or, if based on or related to any Confidential Information, made by P.C. and/or any Provider during or after such management by the Company or employment or engagement by the P.C.) and all concepts and ideas known to P.C. or any Provider at any time during the Company's management of the P.C. which relate to the Company's present, past or prospective activities, services and products ("Concepts and Ideas") or any modifications thereof held by or known to P.C. and/or any Provider on the date of this Agreement or acquired by P.C. and/or any Provider during the term of this Agreement shall be the property of the Company, free of any reserved or other rights of any kind on P.C. and/or any Provider's part in respect thereof, and P.C. and/or any such Provider hereby assign all rights therein to the Company.

(b) All works, discoveries and developments, whether or not copyrightable, relating to the Company's present, past or prospective activities, services and products ("Inventions") which are at any time conceived or reduced to practice by P.C. and/or any of its Providers, acting alone or in conjunction with others, in connection with the Company's management of the P.C. or, during the course of the P.C.'s employment or engagement of Providers (or, if based on or related to any Confidential Information, made by P.C. and/or any Provider during or after such management by the Company or employment or engagement by the P.C.) and all concepts and ideas known to P.C. or any Provider at any time during the Company's management of the P.C. which relate to the Company's present, past or prospective activities, services and products ("Concepts and Ideas") or any modifications thereof held by or known to P.C. and/or any Provider on the date of this Agreement or acquired by P.C. and/or any Provider during the term of this Agreement shall be the property of the Company, free of any reserved or other rights of any kind on P.C. and/or any Provider's part in respect thereof, and P.C. and/or any such Provider hereby assign all rights therein to the Company.

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What do these Red Flags look like on paper?



- (d) payroll processing;
- (e) public relations;
- (f) facilities management;
- (g) c
- (h) c
- (i) c
- (j) c
- (k) c
- (l) c
- (m) ir
- (n) c
- (o) a

- (j) client scheduling protocol design;
- (k) client service and complaint handling;
- (l) clinic management analysis;

Practice:

- (i) the assignment of Providers to treat patients, including determining how many patients a physician must see in a given period or how many hours a physician must work;
- (ii) assumption of responsibility for the care of patients, including treatment options available;
- (iii) serving as the party to whom bills and charges are made payable;
- (iv) determining what diagnostic tests are appropriate for a particular condition;
- (v) determining the need for referrals to or consultation with another healthcare provider; or
- (vi) any activity that involves the practice of medicine and the provision of medical services or that would cause the Clinic to be subject to licensure under applicable laws and regulations in _____ (State).

5.3 Administrative Staff. Subject to the requirements of applicable Laws, the Company shall, on the terms and conditions specified in this Agreement, employ or engage and make available to the Clinic, on a non-exclusive basis, sufficient non-clinical personnel and administrative staff (herein referred to collectively as "Administrative Staff"). The hiring, firing, disciplining and determination of compensation and benefits of the Administrative Staff shall be within the sole discretion of the Company; provided, however, that the Company may, at the Practice's written request, remove from the Clinic any Administrative Staff member who does not perform to the reasonable satisfaction of Practice

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Warning!



- ▶ Even if a franchise arrangement has been approved by the Department of Business Oversight, that does not mean that a physician's involvement is legal!
- ▶ Even if a corporation is registered with the Secretary of State, that does not mean that a physician's involvement is legal!

Warning!



- ▶ Be alert that some management services agreements may say most of the right things on paper, but still leave clues as to who is in charge.

Who is really in charge here?



consent of the Practice, solicit verbally or in writing, any patient or former patient of the Practice, or otherwise interfere with such patient or former patient's relationship with the Practice in connection with the provisions of medical services. Upon termination of any Provider's employment with the Practice, the Practice shall promptly notify the Provider's patients of how and where to contact the Provider.

13. Proprietary Rights. The Practice recognizes and acknowledges that all records, files, reports, protocols, policies, manuals, data bases, processes, procedures, computer systems, materials and other documents used by the Company (or its affiliates) in rendering services hereunder, or relating to the operations of the company (or its affiliates), belong to and shall remain the property of the Company, and constitute proprietary information and trade secrets that are valuable, special, and unique assets of the Company's business ("Confidential Information"). The Practice shall not, and shall assure that each of its Providers shall not, during or after the term of this Agreement, disclose any Confidential Information of the Company (or its affiliates), or the terms and conditions of this Agreement to any other firm, person, corporation, association, or other entity for any reason or purpose whatsoever, without the written consent of the Company or its respective affiliates.

unreasonable in nature, duration or geographic scope, then the Practice agrees that such court or arbitrator shall reform such restrictive covenant so that such restrictive covenant is enforceable to the maximum extent permitted by law for a restrictive covenant of that nature, and such court or arbitrator shall enforce the covenant to that extent. If any court or arbitrator finds the Practice and/or any Provider has breached the restrictive covenant set forth in Section 10 or 11 above, then such restrictive covenants shall be extended for an additional period equal to the period of such breach.

15. Employment Agreements. The Practice agrees that it shall impose by contract on each of its Providers the obligation to abide by the applicable terms and conditions of this Agreement, including the restrictive covenants specified above. The Company and its affiliates are intended to be third-party beneficiaries of such contracts and the Company may, in its sole discretion, be a signatory to such contracts for purposes of enforcing against Providers the terms and conditions of this Agreement. Any liquidated damages paid to the Practice by Providers pursuant to contracts between the Practice and such Providers shall be assigned by the Practice and paid over to the Company.

16. Term and Termination.

(a) The term of this Agreement shall be for [coterminous with franchise agreement] years commencing on the date first written above, unless sooner terminated as set forth herein, and shall automatically renew for successive one (1) year terms unless either party gives the other

Paper vs. Practice



- ▶ The papers may say all of the right things, but if a complaint is received regarding the corporate practice of medicine, the investigation will focus on how the practice is conducted.



Other Prohibited Operating Structures



- ▶ Non-physicians owning or operating a business that offers patient evaluations, diagnosis, care and/or treatment;
- ▶ Physicians operating a medical practice as a LLC, LLP, or a general corporation;
- ▶ Management service organization arranging for, advertising, or providing medical services rather than only providing administrative staff and services for a physician's medical practice (non-physician control despite physician ownership and operation); and
- ▶ Physician acting as medical director when the physician does not own the practice (e.g. Medi-spa owned by non-physician, offering medical services).

How will the Board ever find out?



- ▶ Injured and/or dissatisfied patients;
- ▶ Advertisements that give clues that something is amiss;
- ▶ Other state agencies; and
- ▶ Competitors!

Tips to avoid this pitfall



► Know the traps!

- If the entity is going to “take care of everything,” that could be a sign of a problem!

► Know the resources!

- MBC Website
- Attorney General Opinions
- Statutes
- Case Law
- Disciplinary Decisions

Tips to avoid this pitfall



- ▶ DO NOT rely on the entity's attorney to determine whether the arrangement is legal!

How Can Physicians Operate as a Corporate Structure?



- ▶ Comply with Moscone–Knox Professional Corporation Act (Cal. Corp. Code section 13400 et seq.), and BPC 2408
- ▶ The make-up of a medical corporation is at least 51% physician owned and no more than 49% of other professionals listed in Corp Code section 13401.5, may be shareholders, officers, directors, or professional employees.
- ▶ Use of Fictitious Name in accordance with BPC sections 2285 and 2415.

Consequences For The Corporate Practice of Medicine



- ▶ Aiding and abetting the unlicensed practice of medicine can lead to civil and criminal penalties, and result in an administrative action for unprofessional conduct.





QUESTIONS???

