

# **THE CORPORATE PRACTICE OF MEDICINE AND FLORIDA'S PROHIBITIONS ON THE CORPORATE PRACTICE OF DENTISTRY AND OPTOMETRY<sup>1</sup>**

by

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## **SCOPE OF ARTICLE**

This article discusses the prohibition on the corporate practice of medicine, a legal doctrine prohibiting the employment or control of physicians by corporations or other non-physicians that exists in many states. Although Florida does not recognize the prohibition as it applies to medical doctors, Florida's prohibitions on the corporate practice of dentistry and optometry are discussed. Additionally, laws and cases, which may impact a corporation's control over physician employees, are also discussed.

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## TEXT OF ARTICLE

### §1 Introduction<sup>1</sup>

The practice of medicine has historically concerned itself with humanistic goals such as alleviating human pain and suffering. The profession has, historically, tended to downplay economic factors and the business impact of the practice of medicine. By its very nature, the historic relationship between a physician and a patient is not that of a traditional business relationship. Thus, until this century, the health care profession was not primarily motivated by the same ideals that are the foundation of big business.

In response to the perception of the medical profession that the business of medicine should be controlled only by physicians, those having similar values and willing to uphold similar principles, many states enacted laws prohibiting physicians from being employed or controlled by any corporation or business that was not completely owned by other physicians. This became known as the "corporate practice of medicine prohibition," sometimes called the "corporate practice of medicine doctrine." Florida has never prohibited the corporate practice of medicine, although there are many states that do.

### §2 History of the Corporate Practice of Medicine Prohibition

Since at least the time of Hippocrates, the physician has held a special, fiduciary-like relationship with his or her patient. This relationship encouraged complete candor by the patient in disclosing information to the healer. It required the confidentiality of the physician and a prohibition directed to the physician against taking advantage of this unique relationship for personal gain.

In contrast, a corporate entity, together with its officers and directors, owes a duty to its shareholders to ensure that business remains profitable. The corporation is a separate legal entity, apart from those persons who carry out its functions. The business corporation is created with limited liability as its main characteristic and with the goal of success contemplated in the form of profit.

A metamorphosis in the practice of medicine has occurred from the new physician's moving back to his or her hometown and developing his or her own practice to that of physicians' becoming independent contractors or employees of ambulatory surgical centers, walk-in clinics, managed care organizations, hospitals and other corporate health care entities. Although physicians have always been seen as functioning within the hospital setting, the business relationship is changing as managed care changes the sea of health care practice and hospitals feel the need to create managed care tentacles. The advent of physicians as corporate employees, through managed care or otherwise, makes it possible to visualize having your surgery conducted by a faceless physician on an assembly line, perhaps using bar coding to distinguish among patients and surgical

procedures, with a computerized bill being generated at the end. Physicians have now, or so it seems, become pawns in the chess game of business, whether they like it or not.

The practice of medicine is usually defined as diagnosing, treating, operating or prescribing for any human disease, pain, illness, deformity or other physical or mental condition. State laws that define acts that constitute the practice of medicine usually provide criminal sanctions for violations. These statutes also set forth requirements one must meet to qualify to receive a medical license.

The change in the health care landscape described above has brought conflict with respect to what is defined as the unauthorized practice of medicine in those states which have statutes that only permit individuals to be licensed to practice medicine, when strictly interpreted. The prohibition against legal entities practicing medicine seeks to assure that all decisions of a medical nature are made by licensed medical professionals, motivated by the principles traditionally espoused by physicians, and that there is no interference by lay persons, especially those only motivated by the fiscal bottom line.

This restraint became known as the "prohibition on the corporate practice of medicine" or the "unauthorized corporate practice of medicine doctrine." As a general rule, unlike a number of other states, Florida does not prohibit the corporate practice of medicine and other health care professions. Florida does prohibit the corporate practice of dentistry and optometry. However, in response to perceived abuses by some nonphysician-owned clinics, specifically in the area of fraud and abuse, the Florida legislature recently enacted a law to require any clinic owned or partially owned by a nonphysician to meet certain requirements (including having a medical director) and to register with the state. See Section III for this statute.

### **§3 The Evolving Business of Medicine in the Twentieth Century and the Corporate Practice of Medicine Prohibition**

The corporate practice of medicine doctrine has been viewed by some as a constraint on organizational innovation and a barrier to the efficient delivery of health care. Many view it as an artificial means by which the medical profession can keep control of the fees which are charged, perhaps in an effort to maintain them at higher levels than the market would ordinarily justify. The doctrine itself declares that the employment of physicians by a corporation that is not formed and owned by physicians (usually physicians within the same general health care profession) is illegal. It can have devastating effects, from rendering contracts that violate this doctrine unenforceable to allowing the imposition of criminal sanctions against those involved in certain transactions and business arrangements.

As many states also have laws prohibiting physicians from splitting their professional fees with those outside of the profession, the two legal prohibitions may be used in conjunction to further limit or restrict how physicians may be employed. Corporations employing physicians may be accused of causing them to violate restrictions on fee splitting. This may occur when the

physician is employed for a salary, which includes a percentage of the professional fee as his or her income or bonus. As the physician in an employment situation typically accepts compensation from the corporation in return for allowing the corporation to keep the proceeds of all billings for professional services, such an interpretation may prohibit this arrangement.

#### **§4 Corporate Practice of Medicine Prohibitions: Legal Sources**

The unauthorized corporate practice of medicine doctrine is a mix of common law, statutory law and ethical rules established by the medical profession.<sup>2</sup> In a 1942 South Dakota case, Bartron v. Codington County, the South Dakota Supreme Court expressed the opinion that physician employment by a business controlled by non-physicians could lead to a "debasement" of the medical profession. Many other courts have opined that physicians who are employed by a corporation would focus their attentions on earning a profit, rather than concentrating on the treatment of the patient's ailment and that their allegiance to patients would be undermined by a conflicting obligation to the corporation. Additionally, concern has been expressed that a physician's medical judgment would be influenced or overruled by non-physician owners, managers or directors who are motivated by profit concerns.

Each state has a statutory provision with respect to the licensing of physicians. These statutes, or "medical practice acts" as they are sometimes called, usually make it a criminal offense for anyone not possessing a valid license to practice medicine. The corporate practice of medicine doctrine therefore deduces that corporations, which employ physicians, are engaging in the practice of medicine without themselves having a medical license,<sup>3</sup> The assumption is made in such cases through the law of agency in which the acts of employees are attributable to the employer. Some legal authorities have noted that this deduction is weak and have argued that the doctrine makes as much sense as a statement that an airline company which employs pilots is flying airplanes without a pilot's license.

The New Mexico Attorney General noted in one opinion that, if the actions of physicians are to be attributed to the corporation in such a fashion, then the corporation should also be able to take advantage of the fact that the physician is licensed. This should be attributed to the corporation as well. This simple logic may have escaped jurists in those states where there are rulings to the contrary. However, due to the fact that corporations are separate legal entities and are not natural persons, they are ineligible to apply for a license to practice medicine. They cannot meet the requirements of state medical practice acts which generally provide that an applicant for a medical license must have a medical degree, be of good moral character, be of a certain age, graduate from an accredited medical school, pass a licensure examination, and other requirements that a corporation would not usually be able to meet.

#### **[1] The Law in States which Prohibit the Corporate Practice of Medicine**

The corporate practice of medicine prohibition appears to be alive and well in many states. Various cases have been decided which continue to hold that the splitting of medical

fees between physicians and non-professional investors is impermissible. In the New York case, ParkMed Associates v. New York State Tax Commissions<sup>4</sup> the New York Appellate Court held that a limited partnership was prohibited from operating a diagnostic and treatment facility.

A California case on the issue of the employee status of physicians, Conrad v. Medical Board of Cal., held that local hospital districts could not employ physicians unless the physicians were employed by a licensed non-profit institution not charging patients for the professional services delivered. The California court in Conrad held that there was only one legally permissible method under which a physician could render services on behalf of a medical institution whereby each could profit. This could only be authorized in a situation in which the physician was an independent contractor.

The corporate practice of medicine prohibition evolved in many other states as a state law restriction to preserve the independence of the physician-patient relationship based on concerns that corporation would jeopardize the quality of health care. Two other cases on this are the Wisconsin case St. Francis Regional Medical Center v. Wiess<sup>5</sup> and the California case California Association of Dispensing Opticians v. Pearl Vision Centers.<sup>6</sup> Colorado and Texas also have laws prohibiting the corporate practice of medicine.

While the corporate practice of medicine prohibition varies from state to state, the essence of it can be seen in various cases, state Attorney General opinions, and legal writings. A recent case illustrating this point is the Illinois case of Berlin v. Sarah Bush Lincoln Health Center.<sup>7</sup> In Berlin, the Court enforced the Illinois Statute prohibiting the corporate practice of medicine for the first time in over sixty years, interpreting it to prohibit the enforcement of a contract with a physician.

## **[2] Exceptions in States that Prohibit the Corporate Practice of Medicine**

Fortunately, in most states, which prohibit the corporate practice of medicine, there are still exceptions to the doctrine. Hence, certain types of corporations may legally employ physicians or share in its physician-employees' income.

Almost every state permits professional service corporations (usually abbreviated "P.C.," "P.S.C.," or "P.A." (the latter standing for "professional association")), which are owned exclusively by physicians in the same health care profession, to employ others in that profession and share fees for professional services and profits. This exception provides that a physician will not violate state prohibitions on the corporate practice of medicine in those states, which allow this. Usually, the sharing of fees among the shareholders and employees in such a situation is also allowed.

Additionally, some states allow faculty practice plans. In these states, approved

medical schools are allowed to hire physicians to treat patients for the purpose of promoting medical science and instruction and this is not considered to be a violation of the corporate practice of medicine prohibition. Further, teaching hospitals may be permitted to enter into a fee sharing arrangement under the guise of a faculty practice plan.

Another exception to the doctrine prohibiting the corporate practice of medicine is the employment of a physician by a health maintenance organization ("H.M.O.") or other managed care entity. However, it should be noted that in some states managed care entities are limited to entering into independent contractor agreements with professional corporations or groups of physicians. The operation of a managed care entity raises many issues with respect to the corporate practice of medicine prohibition. In operation, managed care entities typically initiate procedures such as a requirement for the pre-approval of many types of medical care, utilization review, a requirement for second opinions prior to certain surgical procedures, and other controls which appear to interfere with or limit an individual physician's medical judgment.

There are other exceptions to the corporate practice of medicine prohibition recognized in certain states. These usually allow the employment of physicians by employer sponsored health plans and school health programs, regardless of the existence of a corporate practice of medicine prohibition. Such programs may provide for a salaried doctor at the corporation or school's offices to perform physical examinations in employees or students and to provide medical treatment for employees or students. These programs are not held out to the general public as health clinics and do not usually charge the patient a fee for the medical services provided. Thus, the program does not follow the pattern of a public clinic because of its limited services and specific arrangements regarding treatment of patients. Of course, corporations are also able to hire physicians directly in a consulting capacity. In this situation, the physician may have no direct patient care responsibilities and is, therefore, removed from the direct practice of medicine. This eliminates the concern that the corporation is engaging in the practice of medicine under this type of arrangement.

### **TIPS FOR AVOIDING ALLEGATIONS OF UNAUTHORIZED CORPORATE PRACTICE OF MEDICINE**

Whether you are in a state that prohibits the corporate practice of medicine or not, these tips may help you to avoid any such allegations:

- All contracts, job descriptions and other documents used in the employment of physicians should consistently stress the requirement of the physician to exercise his or her own independent professional judgment at all times.
- A corporation entering into a transaction for a physician's services should fully explain that any existing quality assurance, utilization review, capitation/bonus arrangement, or similar plan should not be interpreted to impede or interfere with

the independent medical judgment of the physician in treating patients. Documents concerning the transaction should clearly state this.

- To avoid allegations of violating the corporate practice of medicine prohibition in a state having one, the advice of experienced health care counsel should always be sought, especially in reviewing contracts and transactions involving the practice of health care, the employment of physicians or the management of medical groups in different states.
- In any event, it is always advisable to obtain an opinion letter from qualified health care counsel after a detailed review of the corporation's proposed arrangement at the outset of any new venture.

### **§5 Advantages to Allowing the Corporate Practice of Medicine**

There are, of course, many benefits to operating a business in a corporate form. These may include favorable income tax treatment and immunity from certain types of liability. A physician who practices under the structure of a sole proprietorship or a partnership may not be able to enjoy similar advantages.

The practice of medicine appears to be heading toward a total corporate business environment for the delivery of medical services. In some circumstances, it would appear that state prohibitions on corporate practice of medicine are outdated. Nevertheless, both businesses and physicians must be aware of the state's law on the issue prior to entering into business arrangements and transactions, which might violate the corporate practice of medicine doctrine. To avoid allegations of violating the corporate practice of medicine prohibition in a state having one, the advice of experienced health care counsel should always be sought.

Often, even in states where the corporate practice of medicine prohibition is strictly interpreted and enforced, an organizational form may be structured and hiring arrangements organized so as to avoid violating the doctrine. All contracts, job descriptions and other documents used in the employment of physicians should consistently stress the requirement of the physician to exercise his or her own independent professional judgment at all times. Additionally, a corporation entering into a transaction for a physician's services should fully explain that any existing quality assurance, utilization review, capitation bonus arrangement, or similar plan should not be interpreted to impede or interfere with the independent medical judgment of the physician. Furthermore, a physician's salary should not be calculated on the basis of a percentage of revenues generated by the physician; awarding a bonus based on fees generated from ancillary medical services ordered by the physician or for equipment or drugs ordered by the physician may violate federal and state laws on patient referrals in addition to those against fee splitting, as well. In any event, it is always advisable to obtain an opinion letter from qualified health care counsel after a detailed review of the corporation's proposed arrangement at the outset of any new venture.

As the general public is increasingly aware of advances in medical technology and treatment, the medical profession is faced with an increasingly more sophisticated and demanding consumer group. Not only is the public in general expecting a higher quality of care from its physicians, but it is also expecting greater efficiency and lower costs. A situation where a doctor must attempt to compete with competitive managed care organizations while attempting to maintain patient rapport and satisfaction may not be accomplished as easily as in a corporation structured for the delivery of medical services. A corporation operated by non-physicians, appropriately delegating responsibilities, may be more efficient and be able to provide better services than otherwise the case in a traditional medical practice. The physician/employee may be able to devote more time to counseling and seeing patients and less time with reports, billings, personnel matters, and other tasks associated with the business end of the practice.

Regardless of the relationship with respect to a physician's employment status, a layperson's dictating how a physician should treat his or her patient would constitute a direct violation of much state medical practice acts. This was the case in Iterman v. Baker, a 1938 Indiana Supreme Court case.<sup>8</sup> In Iterman, a physician accepted directions and diagnoses from persons who were not licensed medical practitioners. Similar issues could probably be raised in many existing managed care arrangements requiring pre-approval of certain procedures.

### **§6 Florida Law Allowing the Corporate Practice of Medicine**

Florida has no laws or court decisions that prohibit the corporate practice of medicine. As a general rule, physicians and other health care providers may be employed by or contracted by corporations and other business owned and controlled by non-physicians. This can be seen in a number of different cases.

In Rush v. City of St. Petersburg, 205 So.2d 11 (Fla. 2d DCA 1967),<sup>9</sup> the Florida Court of Appeal held that the City of St. Petersburg had not practiced medicine because it had not interfered with the physician-patient relationship, thus acknowledging that a physician could be legally employed by a nonphysician business.

The decision of a Florida federal bankruptcy court in the case of In re Urban<sup>10</sup> also indicates that a corporation may lawfully employ a physician to engage in a medical practice. In the Urban case, creditors attempted to void a physician's transfer of shares in two corporations arguing that the purpose of the corporations was to conduct medical practices in violation of state law prohibitions. The corporations argued that they were not conducting a medical practice, but were employing physicians to engage in the practice of medicine. The bankruptcy court agreed that there was no legal basis to void the transfer of shares. The court seemed to accept the difference between a corporation's practicing medicine and the employment of a physician to practice medicine. This distinction appears to allow the utilization of the corporate form to employ the physician as long as the physician makes all significant medical decisions involving patient care.



The Florida Board of Medicine has published several declaratory statements also indicating that there is no prohibition in Florida on the practice of medicine by physicians as corporate employees.<sup>11</sup>

Florida laws do allow for licensed health care professionals to operate as professional service corporations (designated by the initials "P.A." in Florida) and as professional limited liability companies ("PLC").<sup>12</sup> If the physician (or any other professional, for that matter) chooses to operate as a professional service corporation or professional limited liability company, he must remember that only persons in that same profession may serve as shareholders (or "members" in the case of a limited liability corporation), officers or directors of the corporation.<sup>13</sup> However, there is no prohibition on a health care provider's forming and operating his or her medical practice as a regular business corporation (usually designated by the abbreviation "Inc.") or as a regular limited liability company ("LLC").

#### **UNAUTHORIZED CORPORATE PRACTICE OF MEDICINE DOCTRINE:**

- Prohibits business organizations that are not formed and owned by physicians from engaging in "the practice of medicine."
- Statutes which prohibit "fee-splitting" by physicians (or other professionals) may be implicated or interpreted by courts to prohibit the corporate practice of medicine.

#### **PURPOSES OF THE PROHIBITION INCLUDE:**

- Only physicians may be licensed to and actually practice medicine.
- A physician's judgment in the treatment of patients should not be influenced or affected by his/her employer (especially where this is a for-profit corporation).
- A physician's first and greatest loyalty must be to his/her patient.
- Commercial exploitation of a physician's services and his/her relationship with a patient must not occur.

## **FLORIDA LAW:**

- Florida law does not prohibit the corporate practice of medicine, but does prohibit "fee-splitting" by health care professional.
- Florida does prohibit the corporate practice of dentistry and optometry.

### **§7 Florida's Prohibition on the Corporate Practice of Dentistry**

Florida law prohibits the corporate practice of dentistry.<sup>14</sup> This law states that its purpose is to: ". . . [P]revent a non-dentist from influencing or otherwise interfering with the exercise of a dentist's independent professional judgment."

This Florida statute<sup>15</sup> prohibits any person (or entity) other than a dentist licensed pursuant to Florida law from:

1. Employing a dentist or dental hygienist;
2. Controlling the use of dental equipment or material in the provision of dental services; or
3. Directing, controlling or interfering with a dentist's clinical judgment<sup>16</sup>;
4. Having any relationship with a dentist which would allow the unlicensed to exercises control over:
  - (a) The selection of a course of treatment for a patient, the procedures or materials to be used as part of such course of treatment, and the manner in which such course of treatment is carried out by the licensee;
  - (b) The patient records of a dentist;
  - (c) Policies and decisions relating to pricing, credit, refunds, warranties, and advertising; and
  - (d) Decisions relating to office personnel and hours of practice.<sup>17</sup>

The statute specifies that "Directing, controlling or interfering with a dentist's clinical judgment" is defined as not including dental services contractually excluded, the application of alternative benefits that may be appropriate given the dentist's prescribed course of treatment, or

the application of contractual provisions and scope of coverage determinations in comparison with a dentist's prescribed treatment on behalf of a covered person by an insurer, health maintenance organization, or a prepaid limited health service organization.<sup>18</sup>

The statutes does indicate that dentists may contract, lease or rent dental equipment or materials without violating the law. But, any lease agreement, rental agreement, or other arrangement between a non-dentist and a dentist whereby the non-dentist provides the dentist with dental equipment or dental materials shall contain a provision whereby the dentist expressly maintains complete care, custody, and control of the equipment or practice."<sup>19</sup>

This Florida law provides several different remedies. First, violation by anyone is a crime, which may be prosecuted by the State's Attorney as a felony of the third degree.<sup>20</sup> Additionally, the statute itself states that any contract or arrangement that violates this act is void as a matter of public policy.<sup>21</sup>

Florida's Dental Practice Act, in Section 456.028(1)(h), specifically allows disciplinary action to be taken against a licensed dentist for: "Being employed by any corporation, organization, group, or person other than a dentist or a professional corporation or limited liability company composed of dentists to practice dentistry."<sup>22</sup>

The Florida Board of Dentistry has implemented administrative rules, which add additional restrictions and clarifications to enforce this statute.<sup>23</sup> The Florida Board of Dentistry is very active in policing and prosecuting violations of it.

### **§8 Florida's Prohibition on the Corporate Practice of Optometry**

Florida law also restricts the corporate practice of optometry,<sup>24</sup> The Chapter of Florida Statutes regulating the practice of optometry prohibits any corporation, layperson, or physician, or other individual other than a licensed optometrist, from engaging in the practice of optometry by engaging the services, paying a salary, commission, or any other means of inducement, of any person licensed to practice optometry in Florida. As with dentists, or any other health care professional, Florida law does allow licensed optometrists to form professional service corporations (P.A.s) with other licensed optometrists.<sup>25</sup>

Florida law has been interpreted to provide that optometrists may employ opticians but opticians were not allowed to employ optometrists.<sup>26</sup> The same section of Florida Statutes also provides that: "No rule of the Board [of Optometry] shall forbid the practice of optometry in or on the premises of a commercial or mercantile establishment."

However, the Florida Board of Optometry, through its rule-making authority, has enacted rather stringent requirements to separate professional optometry from control by others. For example, the Board of Optometry has implemented a rule to require that Optometrists' contractual agreements may not limit their independent professional judgment.<sup>27</sup> Another rule requires that any

advertising by an optometrist must clearly distinguish between professional and lay practice. Optometrist may not advertise such that they convey the appearance that they are "associated or affiliated with an entity which itself is not a licensed practitioner."<sup>28</sup> One should review both the statutory law and the latest rules of the Board of Optometry before entering into any business arrangement for the provision of optometry services that includes any unlicensed person or entity.

## **§9 Is There a Trend in Florida Towards a Corporate Practice of Medicine Prohibition?**

The question has recently arisen in Florida as to whether or not there may be a trend towards the courts enacting a corporate practice of medicine prohibition. This comes from cases, which have interpreted Florida's prohibition on fee splitting among physicians,<sup>29</sup> Florida's Patient Brokering Act,<sup>30</sup> and a recent case in which the Florida Board of Medicine was requested to issue a declaratory statement on a business arrangement involving a medical practice, the "Bakarania case."<sup>31</sup>

Florida law does prohibit fee splitting among medical doctor and other persons or entities.<sup>32</sup> Florida allows for disciplinary action against any medical doctor for "paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split arrangement with a physician, organization or other agency . . ." Florida's Patient Brokering Act also provides for criminal penalties for "fee splitting" relating to the referral of patients. However, neither section of Florida Statutes clearly defines what conduct constitutes "fee splitting."<sup>33</sup>

In its declaratory statement in Bakarania, the Florida Board of Medicine stated that a Management Services Organization (MSO) contract, which paid the MSO, a percentage of the medical group's income was illegal because it amounted to fee splitting.<sup>34</sup> It should be noted, however, that the Board of Medicine did not appear to object to the payment of flat fees. Additionally, it was clear that the Board of Medicine thought that the MSO contract created an incentive for the physicians to order tests or other ancillary procedures, perhaps including ones that were not medically necessary. The Florida Fifth District Court of Appeal later upheld the Board's decision.

Although Bakarania initially sent out shock waves that caused concern to many business organizations that contract with or employ physicians in Florida, there has actually been little change in the way in which the business of medicine has been conducted in Florida. There does not appear to have been any major change in Florida's tolerance for the employment by corporations or other business entities of medical doctors and other health care providers.

However, given what happened in Illinois in the Berlin case, discussed above, one cannot completely rule out a future court or Board of Medicine decision that goes even further than Bakarania did.

The decision of the Illinois court in the Berlin case has had a significant impact on how the corporate practice of medicine prohibition is interpreted and applied throughout the United States.

Where states have had a prohibition on the books for decades, but have not seen courts enforce it, there has been a rethinking of many of the business relationships that had been entered. The fear is that courts in other states may follow the Berlin case's rationale. It must be remembered that this doctrine of law was initially utilized at target entities such as retail stores and not medical facilities. Even if no state enforced a corporate practice of medicine prohibition any longer, it is doubtful that we would see that great of a change in the way the practice of medicine is conducted today.

## **§10 Conclusion**

Other than the statutes and rules that prohibit the corporate practice of dentistry and optometry in Florida, there still exists no similar prohibition for other health care practitioners.

One would be well advised to closely review the Bakarania case, as well as the current Florida Statutes and Florida Administrative Code provisions governing the practice of health care in Florida before entering into any contract or business arrangement involving non-healthcare providers or business entities controlled by them.

## **§11 References**

1. This article is based in part on the article previously published as George F. Indest III and Barbara Egolf, Is Medicine Headed for an Assembly Line? Exploring the Doctrine of the Unauthorized Corporate Practice of Medicine, in 6 BUSINESS LAW TODAY 32-36 (ABA Jul/Aug. 1997). This article has been completely revised and updated, including specific references to Florida law.
2. Bartron v. Codington County, 2 N.W.2d 337 (S.D. 1942)
3. Florida law makes the practice of medicine without a license a third degree felony. §458.327, Fla. Stat. (2002). However, this has never been interpreted as prohibiting the corporate practice of medicine in Florida.
4. ParkMed Assoc. v. N.Y. State Tax Comm'n, 94 A.D. 2d 341 (N.Y. App. Div. 1983), reversed on other grounds, 459 N.E. 2d 153 (1983).
5. St. Francis Regional Medical Center v. Wiess, 869 P.2d. 606 (Kan. 1994).
6. California Ass'n of Dispensing Opticians v. Pearl Vision Center, 1991 Cal Rptr. 762 (Cal.App.1983).
7. Berlin v. Sarah Bush Lincoln Health Center, 664 N.E.2d 336 (Ill. App.Ct. 1996), reversed, 688 N.C.2d 106 (Ill. 1997).

8. Iterman v. Baker, 15 N.E. 2d 365 (Ind. 1938).
9. Rush v. City of St. Petersburg, 205 So.2d 11 (Fla. 2d DCA 1967).
10. In re: Urban, 138 B.R. 632 (Fla. M.D. 1992).
11. See In re John W Lister, M.D., 9 EA.L.R. 6299(1987) and In re Conrad Goulet, M.D., Florida Board of Medicine Case No. 89-BOM-01 (1989).
12. See Chapter 621, Fla. Stat. (2002).
13. Florida law defines "members of the same profession" very narrowly in this regard. Thus, a professional service corporation composed of doctors of medicine (M.D.'s) cannot legally allow any other profession, including doctors of osteopathic medicine (D.O.'s) or doctors of chiropractic medicine (D.C.'s) to be owners, officers or directors of the same P.A. Likewise, a professional service corporation composed of doctors of chiropractic medicine (D.C.'s) cannot legally allow any other profession, including doctors of osteopathic medicine (D.O.'s) or doctors of medicine (M.D.'s) to be owners, officers or directors of the same P.A. It goes without saying that layperson, including family members can never legally be owners, officers or directors in the same P.A.
14. §466.0285, Fla. Stat. (2002), entitled "Proprietorship by Nondentists."
15. §466.0285, Fla. Stat. (2002).
16. §466.0285(1), Fla. Stat. (2002).
17. §466.0285(2), Fla. Stat. (2002).
18. §466.0285(1) (c), Fla. Stat. (2002).
19. §466.0285(1)(c), Fla. Stat. (2002).
20. §466.0285(3), Fla. Stat. (2002).
21. §466.0285(4), Fla. Stat. (2002).
22. §466.028(l) (h), Fla. Stat. (2002).
23. These are located at F.A.C. 64B5-17.013.
24. §463.014, Fla. Stat. (2002).
25. §463.014(l)(b), Fla. Stat. (2002).

26. See Cole Vision Corporation and Vision Works, Inc. v. Department of Business and Professional Regulation, Board of Optometry, 688 So.2d 404, 408 (Fla. 1st DCA 1997) (holding that §§463.014(1)(a) and (b) and §484.006(2) Fla. Stat., when read together, mean that, while optometrists cannot form partnerships or professional associations with or be employed by opticians, opticians can be employed by an optometrist).

27. F.A.C. 64B13-3.008(5) (prohibiting any control which includes type, extent, availability or quality of optometric services, types of material available, access to or control of records, prescriptions, scheduling and availability of services, time limitations on patient exams, volume of patients, fee schedules and information disseminated to the public).

28. F.A.C.64B13-3.008(15)(f).

29. §458.331(i), Fla. Stat. (2002).

30. §817.505, Fla. Stat. (2002). Section 456.054, Fla. Stat., applicable to all licensed Florida health care Professionals states:

i. 456.054 Kickbacks prohibited.

(2) As used in this section, the term "kickback" means a remuneration or payment back pursuant to an investment interest, compensation arrangement, or otherwise, by a provider of health care services or items, of a portion of the charges for services rendered to a referring health care provider as an incentive or inducement to refer patients for future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

(3) It is unlawful for any health care provider or any provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

(4) Violations of this section shall be considered patient brokering and shall be punishable as provided in s. 817.505.

31. In Re: Petition for Declaratory Statement of Magan L. Bakarania, M.D. (Opinion dated Nov. 10, 1997), 20 FALR 395 (1998).

32. §458.331 (i), Fla. Stat. (2002).

33. §§458.331(i) and 817.505, Fla. Stat. Also, see n. 30 above.

34. The MSO contract paid the MSO a "performance fee" equal to thirty percent (30%) of the medical group's gross annual revenues, net of other fees in the group's profits prior to entering

into the MSO contract.

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