

# Issue brief: Corporate practice of medicine

## Background

The corporate practice of medicine doctrine prohibits corporations from practicing medicine or employing a physician to provide professional medical services. This doctrine arises from state medical practice acts and is based on a number of public policy concerns, such as (1) allowing corporations to practice medicine or employ physicians will result in the commercialization of the practice of medicine, (2) a corporation's obligation to its shareholders may not align with a physician's obligation to his patients, and (3) employment of a physician by a corporation may interfere with the physician's independent medical judgment. While most states prohibit the corporate practice of medicine, almost every state has broad exceptions, such as for professional corporations and employment of physicians by certain health care entities. Overview of state laws

## Overview of state laws

The corporate practice of medicine doctrine has been shaped over the years by state statutes, regulations, court decisions, attorney general opinions and actions by state medical licensing boards. Most states prohibit the corporate practice of medicine, however, every state provides an exception for professional corporations and many states provide an exception for employment of physicians by certain entities. The scope of these exceptions varies by state. For example, every state allows for the creation of professional corporations, which are corporations organized for the specific purpose of rendering a professional service. State statutes often specify how the professional corporations should be structured, who can participate as shareholders or owners and who must serve on the board of directors. Most states restrict the shareholders, owners, or board of directors of a professional corporation to persons licensed to render the same professional service as the professional corporation. For example, in Arkansas “[a]ll of the officers, directors, and shareholders of a corporation subject to this subchapter shall at all times be persons licensed pursuant to the Arkansas Medical Practice Act.”<sup>1</sup> Other states allow non-physician owners or shareholders, but often limit such ownership to a minority percent. 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.<sup>2</sup> In addition, some states allow for the creation of multi-service corporations which are corporations organized by physicians and other health care providers. For example, 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.<sup>3</sup>

Many states also provide for an exception to the corporate practice of medicine to allow for the employment of physicians by certain entities. This exception varies by state, with some states explicitly permitting hospitals to employ physicians, some states allowing nonprofit hospitals to employ physicians and other states recognizing an unwritten exception to the corporate practice of medicine for hospitals employing physicians.<sup>4</sup>

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<sup>1</sup> ARK. CODE ANN. §4-29-307(a)

<sup>2</sup> COLO. REV. STAT. §12-36-134(1)(d)

<sup>3</sup> R.I. GEN. LAWS §7-5.1-3(b)(1)

<sup>4</sup> Judith Parker, *Corporate Practice of Medicine: Last Stand or Final Downfall?*, 10 J. HEALTH LAW. 160 (1996).

Many states that allow hospitals to employ physicians specifically prohibit the hospital from interfering with the independent medical judgment of the physician, thereby protecting the autonomy of the physician's clinical decision making.<sup>5</sup> 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.”<sup>6</sup> Similarly, in California certain clinics and hospitals may employ physicians as long as the clinic or hospital does “not interfere with, control, or otherwise direct the professional judgment of a physician and surgeon[.]”<sup>7</sup> Indiana's statute provides that an employment or other contractual relationship between a physician and hospital or health system does not constitute the unlawful practice of medicine if the entity does not direct or control independent medical acts, decisions, or judgments of the licensed physician.<sup>8</sup> In Illinois a physician may be employed by a hospital or hospital affiliate, however, the employed physician and employing entity shall “sign a statement acknowledging that the employer shall not unreasonably exercise control, direct, or interfere with the employed physician's exercise and execution of his or her professional judgment in a manner that adversely affects the employed physician's ability to provide quality care to patients.” Professional judgment is further defined as “the exercise of a physician's independent clinical judgment in providing medically appropriate diagnosis, care, and treatment to a particular patient at a particular time.”<sup>9</sup>

As previously mentioned, corporate practice of medicine law has also been shaped by opinions filed by various boards of medical licensure. Several of these opinions have determined whether the employment of physicians constitutes the corporate practice of medicine and often focus on the physician maintaining independent medical judgment. For example, in a declaratory ruling, Alabama's Medical Licensure Commission and the Alabama Board of Medical Examiners found that employment of physicians by a clinic did not constitute the corporate practice of medicine because the employment agreement specifically required the physicians to make all decisions concerning the medical services provided to the patient.<sup>10</sup> Similarly, in a *Statement of Position*, the Louisiana Board of Medical Examiners (BME) has found that “a physician's employment by a business corporation does not per se violate the Medical Practice Act.” The Louisiana BME further concluded that

“[t]he essence of the practice of medicine is the exercise of independent medical judgment in the diagnosing, treating, curing or relieving of any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being...If a corporate employer seeks to impose or substitute its judgment for that of the physician in any of these functions, or the employment is otherwise structured so as to undermine the essential incidents of the physician patient relationship, the Medical Practice Act will have been violated.”<sup>11</sup>

It should also be noted that physician employment issues may raise other legal concerns, such as potential STARK violations, which are outside the scope of this issue brief.

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<sup>5</sup> Elizabeth Snelson, *Physician Employment and Alternative Practice Strategies: Avoiding “Company Doctor” Syndrome and other Hospital Medical Staff Issues*, 21 Health Law. 14 (2008).

<sup>6</sup> TEX. HEALTH AND SAFETY CODE ANN. § 311.083(g) (2011)

<sup>7</sup> CAL. BUS. & PROF. CODE § 2401(b) (2011)

<sup>8</sup> IND. CODE § 25-22.5-1-2(c) (2011)

<sup>9</sup> 210 ILL. COMP. STAT. 85/10.8 (3) (2011).

<sup>10</sup> Alabama Medical Licensure Commission and Board of Medical Examiners Declaratory Ruling (Oct. 21, 1992)

<sup>11</sup> La Board of Medical Examiners, “Statement of Position: Employment of Physician by Corporation other than a Professional Medical Corporation” (Sept. 24, 1992 reviewed March 21, 2001)

## AMA model bills and other resources

The AMA has a number of model bills related to the corporate practice of medicine, including:

- **An Act to Ensure the Autonomy of Hospital Medical Staffs**
- **Economic Credentialing Act**

In addition the AMA's Organized Medical Staff Section (OMSS) has a model physician-hospital employment agreement which can be found on the AMA's website at [www.ama-assn.org/go/omss](http://www.ama-assn.org/go/omss). For additional information, please contact Annalia Michelman, JD, Senior Legislative Attorney, at [annalia.michelman@ama-assn.org](mailto:annalia.michelman@ama-assn.org) or (312) 464-4788.