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Non-Physicians Owning or Investing in Medical Practices in Idaho

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The Idaho Board of Medicine's recent disavowal of the corporate practice of medicine doctrine has made it easier for corporations and non-physician individuals to invest in or own medical practices in Idaho.

The Corporate Practice of Medicine. For decades, the Idaho Board of Medicine took the position that, with limited exceptions, the Idaho Medical Practice Act "prohibits unlicensed corporations and entities from hiring physicians as employees to provide medical services to patients." (Memo from J. Uranga to Idaho State Bd. of Medicine dated 2/26/07). This "corporate practice of medicine" doctrine ("CPOM") had its foundation in a 1952 Idaho Supreme Court case which held that:

[n]o unlicensed person or entity may engage in the practice of the medical profession though licensed employees; nor may a licensed physician practice as an employee of an unlicensed person or entity. Such practices are contrary to public policy.

(*Worlton v. Davis*, 73 Idaho 217, 221 (1952)). The Board of Medicine warned that violations of the doctrine may result in disciplinary action against physicians and, more recently, physician assistants. Entities that improperly employed physicians or physician assistants risked the possibility of criminal action for the unauthorized practice of medicine.

Over the years, the CPOM doctrine has been criticized as anachronistic and inconsistent with more recent legislative action. In March 2016, the Board of Medicine formally disavowed and rejected the doctrine, announcing that "[t]he Idaho State Board of Medicine will not discipline physicians or physician assistants solely because they practice medicine in association with or for unlicensed entities or persons." (Notes of Idaho State Board of Medicine Telephone Conference dated 3/28/16, available here). For more information on the Board's change, see our article at <https://www.hollandhart.com/idaho-board-of-medicine-disavows-the-corporate-practice-of-medicine-doctrine>.

New Opportunities. The Board's change in position creates opportunities for corporations and non-physician individuals to invest in, purchase, or open medical practices, thereby broadening the options for physicians and physician assistants seeking to sustain or grow their practices, or practice in a non-traditional setting. It also opens the door to allow advanced practice professionals (e.g., physician assistants and/or nurse practitioners) to employ physicians in their practice. There are limits,

however.

1. Medical Practices Act. Idaho's Medical Practices Act still requires that only licensed individuals may actually engage in the practice of medicine (I.C. § 54-1804); thus, medical decisions must be made and care and treatment performed or appropriately supervised by physicians, physician assistants or other licensed individuals acting within the scope of their licensure. The Board of Medicine has cautioned that physicians and physician assistants may still be sanctioned under Idaho statutes and regulations that prohibit, *e.g.*,

Knowingly aiding or abetting any person to practice medicine who is not authorized to practice medicine...

Division of fees or gifts or agreement to split or divide fees or gifts received for professional services with any person, institution or corporation in exchange for referral....

Failure to supervise the activities of externs, interns, residents, nurse practitioners, certified nurse-midwives, clinical nurse specialists, or physician assistants...

Allowing another person or organization to use his or her license to practice medicine.

(I.C. § 54-1814; IDAPA 22.01.01.101.03(c)). The Board may challenge situations or structures in which non-licensed persons control medical decisions or cross the line into practicing medicine without a license.

2. Professional Business Entities. If the medical practice is structured as a professional corporation ("PC"), professional limited liability company ("PLLC"), or professional limited liability partnership ("PLLP"), Idaho's corporate code still requires that the shareholders, members or partners be persons who are licensed to provide medical services:

No professional entity may offer an interest to or accept as an interest holder anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the entity was formed or professional entities, all of whose interest holders are duly licensed or otherwise legally authorized to render the same specific professional services as those for which the professional entity was formed. No member of a professional entity shall enter into a voting trust agreement or any other type of agreement vesting another person with the authority to exercise the voting power of his interest.

(I.C. § 30-21-901(g)). The Idaho statutes place additional restrictions on employment and transfer of interests in professional entities, *e.g.*,

(h) If any governor, interest holder, agent, or employee of a professional entity who has been rendering professional services within this state accepts employment that, pursuant

to existing law, places restrictions or limitations upon his continued rendering of such professional services, he shall be dissociated, and the remaining governors and interest holders of the professional entity shall take such action as is required to terminate such interest.

(i) No member of a professional entity may sell or transfer his interest in such professional entity except to another individual or professional entity eligible to be a member of such professional entity.

(*Id.* at § 30-21-901(h)-(i)).

With the demise of the CPOM, there does not appear to be a good reason for operating a medical practice as a PC, PLLC, or PLLP and subjecting the practice to these additional restrictions; instead, a medical practice may be formed—or reformed—as a regular corporation, limited liability company ("LLC"), or limited liability partnership ("LLP"), thereby avoiding the membership restrictions on professional entities. Of course, all medical services rendered through the practice would still need to be performed by or under the appropriate supervision of licensed professionals. (See I.C. § 54-1804 and 54-1814; see *also id.* at § 30-21-901(d)).

3. Physician Assistant Practice Restrictions. Idaho statutes limit physician assistants' independent practice of medicine. Physician assistants must still practice under the supervision of a supervising physician or alternate, who may or may not be a member of the physician assistant's practice. (I.C. § 54-1807A).

A physician assistant or a group of physician assistants may independently own a medical practice in this state provided that the supervising physician, alternate supervising physician and each physician assistant comply with all requirements of this section and board rules. Each physician assistant must be licensed, registered or certified as a physician assistant in any state, territory or jurisdiction of the United States for at least two (2) years before the physician assistant may independently own a practice in this state.

(*Id.* at § 54-1807A(6)). The same limitations do not apply to advanced practice registered nurses, such as nurse practitioners or CRNAs.

4. Other Types of Providers. This new flexibility may not apply to other types of healthcare professionals. For example, Idaho's Dental Practices Act still prohibits non-dentists from owning a practice; specifically, it prohibits dentists from:

Engag[ing] in the practice of dentistry as a member, stockholder, employee, director, partner or proprietor in any business entity in which a person, not duly licensed to practice dentistry in this state, holds an ownership interest. The provisions of this subsection shall not apply to such engagement in a limited managed care plan pursuant to

chapter 39, title 41, Idaho Code, or to a dentist practicing dentistry for any health care center as defined and authorized in section 330 of the public health service act, codified as amended at 42 U.S.C. 254b.

(I.C. § 54-924(13); see IDAPA 19.01.01.04.04).

Conclusion. Idaho medical practitioners and their potential business partners now have greater flexibility in organizing their business relationships. To discuss these issues more fully, please see the contact information below.

For questions regarding this update, please contact:

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