



Convenient Care Association

CONVENIENT CARE: STATE BY STATE LISTING OF RELEVANT STATUES, CASES, AND OPINIONS

*From American Academy of Emergency Medicine
(AAEM) website (accessed 12/28/2006). Source:
NHLA Health Law on CD-ROM*

ALABAMA

Statutes

§31-24-51 (prohibiting unlicensed practice of medicine; exemptions for fellows, resident, interns or medical students while under supervision of physician in facilities approved by the Board of Medical Examiners).

Agency Opinions

1992 declaratory rulings by the Alabama Medical Licensure Commission and the Alabama Board of Medical Examiners determined that the employment of physicians to provide medical services to patients at a clinic, where the employment agreements specifically required the physicians to make all decisions concerning the medical services provided to the patient, did not constitute violation of §34-24-51 Code of Alabama (unlicensed practice of medicine). This arrangement does not, according to the rulings, violate the prohibition against the unlicensed practice of medicine, because "the physicians treat patients in such manner as the physicians, in the independent exercise of the medical judgment, determine to be in the best interest of the patients subject only to the rules of the Executive Committee of the Brookwood Hospital Medical Staff which is comprised exclusively of licensed physicians."

The ruling noted that the prohibition against the unlicensed practice of medicine was designed to protect patients from the danger of receiving medical treatment from any individual not qualified to practice medicine. It found, however, that under the facts in this case the patients at the clinic received medical treatment only from licensed physicians and the clinic was prohibited from influencing the manner in which physicians provided medical services to patients. As a result, the employment by the clinic of physicians duly licensed to practice medicine did not expose the patients to the danger which the statutes were intended to prevent. The Board observed:

Physicians are free to enter into contracts of employment for their professional services with professional corporations, nonprofit corporations, business corporations, partnerships, joint ventures or other entities, provider however, that the physician must exercise independent judgment in manner related to the practice of medicine and that his or her actions with respect to the practice of medicine must not be subject to the control of an individual not licensed to practice medicine. (Emphasis in original) (See Declaratory Ruling of the Alabama

Board of Medical Examiner, October 21m 1992.)

ALASKA

Statutes

A.S. §08.64.170 (prohibiting unlicensed practice of medicine)

ARIZONA

Statutes

A.R.S. Title 32 §32-1454, 1455 (authorizing injunction against practice of medicine by one not licensed to practice or not exempt from licensing requirements)

A.R.S. Title 20 §823 (medical corporation not deemed to be engaged in the corporate practice of medicine)

A.R.S. Title 20 §823 (corporation organized for purpose of establishing maintaining, and operating nonprofit hospital service or medical or dental or optometric service plans permitted)

A.R.S. Title 20 §(a) (nothing in this article shall be deemed to alter the relationship of physician and patient, dentist and patient, or optometrist and patient)

A.R.S. Title 20 §833(b) (no such corporation shall in any way influence a subscriber in his free choice of hospital , physician, dentist or optometrist who rented space in store had not established an employer-employee relationship).

ARKANSAS

Statutes

Title 17 §93-202 (practice of medicine)

Title 17 §93-401 (license required to practice medicine)

Title 17 §66-4902 (nonprofit hospital service corporations and medical service) corporations may contract with insurers and health care providers)

Title 17 §64-17101 (professional corporations permitted)

Title 17 §66-5201 (5205(c)) (HMO Act)

Title 23 §23-75-101 (nonprofit hospital service corporations and medical service corporations are statutorily permitted to operate by contracting with insureds and health care providers)

Title 23 §23-75-105a (nothing in this chapter shall be deemed to alter the relationship of physician and patient)

Title 23 §23-75-105b (the corporation shall not in any away influence the subscriber in his free choice of hospital or physician other than to limit its benefits to participating hospitals and physicians)

Title 23 §23-75-105c (nothing in this chapter shall be deemed to abridge the right of any physician or hospital to decline patients in accordance with the standards of practice of the physician or hospital and no such corporation shall be deemed to be engaged in the corporate practice of medicine)

Cases

Melton v. Carter (1942) 204 Ark. 595, 164 S.W.2d 453 (statute declaring optometry a learned profession and prohibiting optometrists, physicians and surgeons from accepting employment from an unlicensed corporation is constitutional); Missionary Supporters, Inc.v. Arkansas Bd. Of Dental Examiners (1959) 231 Ark. 38, 328 S.W.2d 139 (injunction upheld against the unlicensed practice of dentistry by a corporation, even though the corporation's services were in an area of the state where there was a serious need for dental service, and such services were wholly incidental to its main purpose of training missionary dentist).

CALIFORNIA

[COMING SOON]

COLORADO

Statutes

CRS§12-36-129 (prohibiting unlicensed practice of medicine; specifically includes general prohibitions on corporations practicing medicine)

CRS §12-36-134 ("corporations shall not practice medicine" except professional service corporations and except as provided in 25-3-103.2)

CRS §25-3-103.2 (authorizing the employment of health care professionals by licensed certified hospitals located in a county with a population of less than one hundred thousand. The law contains certain limitations, including (1) no hospital employing a physician may limit or otherwise exercise control over the physician's independent professional judgment concerning the practice of medicine or diagnoses or treatment or require physicians to refer exclusively to the hospital; (2) no hospital employing a health care professional may offer that professional any percentage of fees charged to patients by the hospital or other financial incentive to artificially increase services provided to patients; (3) the bylaws of any hospital employing physicians cannot discriminate regarding credentials or staff privileges on the basis of whether a physician is an employee of, or a contracting physician with, the hospital. Any hospital which knowingly limits or controls a physician or attempts to do so shall deemed to have violated hospital standards of operation and shall be held liable for such violations.)

Cases

People Painless Parker Dentist (1929) 85 Colo. 304, 275 P.928; *cert denied* 280 U.S. 566 (1929) (corporation cannot practice dentistry directly or indirectly through licensed personnel); State Bd. of Dental Examiners v. Savelle (1932) 90 Colo. 177, 8 P.2d 693 (same); State Bd. of Dental Examiners v. Heitler (1932) 90 Colo. 191, 8 P.2d 699 (same); State Bd. of Dental Examiners v. Patch (1932) 90 Colo. 207, 8 P.2d 704 (same); State Bd. of Dental Examiners v. Walsh (1932) 90 Colo 208. 8 P.2d 704 (same)

CONNECTICUT

Statutes

§20-9 (prohibiting unlicensed practice of medicine)

§33-180, 33-181 (license pre-requisite to operating medical group clinic)

§33-168 (registration of medical service corporations)

§33-179a-c (health care centers may provide health care and employ others to provide health care)

§33-179g (only one-fourth of board of directors of health care center must be engaged in the healing arts at least two of whom must be a physician and a dentist)

Cases

Lieberman v. Connecticut Bd. of Examiners in Optometry (1943) 130 Conn. 344, 34 A.2d 213 (optometrist occupying space in department store and receiving commission in addition to salary were guilty of unprofessional conduct because profit motive adversely affected the interests of the patient, who would not receive the optometrist's undivided loyalty);

Obuchowski v. Dental Comm'n (1962) 149 Conn. 257, 178 A.2d 537 (dentist working with dental laboratory violated statute restricting ownership of dental facilities to licensed dentist)

Mack v. Saars (1963) 150 Conn. 290, 188 A.2d 863 (corporate employment of optometrist at a fixed salary did not violate statutes prohibiting unlawful practice of optometry); Dental Comm'n v. Tru-Fit Plastics, Inc. (1970) 159 Conn. 362, 269 A.2d 265 (a corporation which assembled, packaged, and sold materials from which an individual could make a denture was not engaged in the practice of dentistry).

AG Opinions

See 28 Op. Atty. Gen. 248 (1954) (stating that practice of medicine and surgery is restricted to individuals and does not include corporations; nonprofit charitable hospitals are excepted)

DELAWARE

Statutes

24 Del. C. §1701 (limiting practice of medicine to "individuals")

24 Del. C. §1731 (b)(5)(prohibiting the unlicensed practice of medicine)

24 Del. C. §1731 (b)(9)(prohibiting assisting the unlicensed practice of medicine)

8 Del. C. Ch. 6 (allowing corporate practice of medicine by professional service corporations if all shareholders are licensed in the same profession)

DISTRICT OF COLUMBIA

Statutes

§2-3301.2(7) (practice of medicine defined)

§2-3305.1 (license required to practice medicine)

§2-3305.14(12)(physician subject to disciplinary action for practicing with or aiding unlicensed person to practice)

Cases

See United State v. American Medical Ass'n., (D.C. Cir. 1940) 110 F.2d 703, *cert. denied*, 310 U.S. 644 (1940) (a corporation that operates a clinic or hospital, employs physicians and receives the fees is unlawfully practicing medicine, although a nonprofit corporation)

offering care by its salaried medical staff to dues paying member was not engaged in the corporate practice of medicine) Silver v. Lansburgh & Bro., (D.C. Cir. 1940) 111 F. 2d 518 (corporation may employ licensed optometrist).

FLORIDA

Statutes

§456.327 (prohibiting the unlicensed practice of medicine)

§641.01 et seq. (Health Care Service Plans)

§641.17 et seq.(HMO Act) (providing for arrangements between physicians and HMOs.)

Cases

Dr. Allison, Dentist, Inc. v. Allison (1935) 360 Ill. 638, 196 N.E. 799, 800 (stating that doctors who were hired by corporations would "owe their first allegiance to their corporate employer and cannot give the patient anything better than a secondary or divided loyalty."); State Bd. of Optometry v. Gilmore (1941) 147 Fla. 776 3 So. 2d 708 (physician employed as salaried optometrist by jewelry store violated statute prohibiting employment of optometrist by corporation); Rush v. City of St. Petersburg (Fla. Dist. Ct. App. 1967) 205 So. 2d 11 (where physician argued that a contract to provide radiological service to the city hospital was void on the ground that performance of the contract would result in the illegal corporate practice of medicine by the hospital, the court held that the hospital was not engaged in the illegal practice of medicine because the doctor-patient relationship was maintained); Cohen v. Department of Professional Regulation Bd. of Optometry, (Fla. Dist. Ct. App. 1981) 407 So. 2d 621 (affirming a finding of practicing optometry under a corporate name).

GEORGIA

Statutes

Title 43 §43-34-26 (prohibiting unlicensed of medicine)

Title 43 §43-34-37(g) (prohibiting assisting unlicensed practice of medicine)

Title 14 chapter 7 -- Professional service corporations (limited to practicing one profession i.e. medicine and surgery or registered professional nursing).

Title 33 §33-18-1 *et seq* (nonprofit medical service corporations)

Title 33 §33-18-17(a)-(c):

Medical service corporations shall have the right to sell contracts providing for the payment of specified charges made by physicians furnishing medical services to the holders of the contracts, the beneficiaries and covered dependents as provided for in this chapter.

The contract shall not in any manner restrict the right of the holder to obtain the services of any licensed doctor of medicine, licensed doctor of dental surgery or a licensed podiatrist nor shall the contract attempt to control the relation existing between any holder or beneficiary of such contract in his position. The medical service corporations shall impose no restriction on the doctors of medicine, doctors of dental surgery, or podiatrists who treat their subscribers as to the methods of diagnosis or treatment. The private physician-patient relationship shall be maintained and a subscriber shall at all times have free choice of any doctor of medicine, doctor of dental surgery or podiatrist, who a participating physician in the medical service corporation and who agrees to accept a particular beneficiary's patient.

It is the purpose of this co-section to make clear that the creation of the relationship of patient and physician depends upon the mutual assent of the parties. Contracts issued by the medical service corporation to the subscribers shall not constitute individually or jointly obligations of the participating physician servicing the plan.

No provision of this chapter should be construed as authorizing the corporate practice of medicine, dentistry, or podiatry; and medical service corporations shall not practice medicine, dentistry, or podiatry. No physician rendering service or called on to render service to a member beneficiary or a covered dependent shall be construed to be an agent or employee of a medical service corporation; and the medical service corporation shall not be liable for the negligence, misfeasance, malfeasance, nonfeasance or malpractice of any physician rendering medical or surgical, dental or podiatric services to any such member, beneficiary or dependent.

Cases

Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Examiners in Optometry (1963) 219 Ga. 364, 133 S.E.2d 374 (regulations which inhibited employment of optometrists by unlicensed persons or corporations were reasonable and in keeping with public policy); Lee Optical of Ga. Inc. v. State Bd. of Examiners in Optometry (1964) 220 Ga. 204, 138 S.E.2d 165 (although those who were examined were not charged for the service, corporation that employed licensed optometrist to examine eyes was engaged in the unlawful practice of optometry); Sherrer v. Hale (1982) 248 Ga. 793, 285 S.E.2d 714 (a business corporation cannot lawfully practice one of the learned professions, and it is against public policy for a business corporation to perform acts which constitute the practice of medicine.)

HAWAII

Statutes

H.R.S. §453-1 (defining practice of medicine)

H.R.S. §453-2 (prohibiting unlicensed practice of medicine)

AG Opinions

State Op. Atty. Gen. No. 80-5 (1980) (foreign professional (medical) corporation cannot be licensed in Hawaii)

IDAHO

Statutes

§54-1804 (prohibiting unlicensed practice of medicine)

§54-1814 (prohibiting aiding or abetting any person in unauthorized practice of medicine)

ILLINOIS

Statutes

ILCS ch. 225 60/49, 60/50 (penalty for practicing without a license)

ILCS ch. 225 60/22 (32) (grounds for disciplinary action -- aiding or abetting unauthorized

practice of medicine)

ILCS ch. 225 60/22 (11) (prohibition on allowing another person or organization to use their license to practice)

Cases

Dr. Allison, Dentists, Inc. v. Allison (1935) 360 Ill. 638, N.E. 799 (a covenant not to compete was unenforceable because the corporation was illegally practicing dentistry); Winberry v. Hallihan (1935) 361 Ill. 121, 197 N.E. 552 (the state may deny corporations the right to practice professions and has the right to insist on the person obligation of the individual practitioner); People by Kerner v. United Medical Serv. (1936) 362 Ill. 442, 200 N.E. 157 (corporation that established a fixed fee, low cost medical clinical in Chicago in which all services were rendered by licensed physicians, whom the corporation paid, may not practice learned professions and may not do so by employing licensed physicians.); See People ex rel. Watson v. House of Vision (1974) 59 Ill. 2d 508, 322 N.E.2d 15, *cert. denied*, 422 U.S. 1008 (1975) (corporation enjoined from violating the Optometric Practice Act by allowing employees who were not licensed as optometrists to fit contact lenses); People ex rel. Ill. Soc'y of Orthodontists v. United States Dental Inst., Inc. (1978) 57 Ill. App. 3d 1029, 373 N.E. 2d 635 (school teaching dentistry that advised students on specific problems of patients including diagnoses, was engaged in the unlawful practice of dentistry by a corporation in violation of the Dental Practice Act and was enjoined.)

INDIANA

Statutes

§25-22.5-8-1 (practice without a license unlawful)

§25-22.5-1-2(20), (21) (exception for licensed hospitals, private mental health institutions, health care organizations whose members are licensed professionals.)

§25-22.5-1-2(c) (above entities may employ physicians provided they do not "direct or control independent acts...or judgment of licensed physicians.")

§27-8-7-1 to -21 (HMO Act)

§23-1.5-1-1 to -5-2 (Professional Corporation Act)

Cases

State v. Williams (1937) 211 Ind. 186, 5 N.E.2d 961 (corporation may not practice medicine); Sloan v. Metropolitan Health Council of Indianapolis, Inc., (Ind. App. Dist. 1987) 516 N.E.2d 1104 (professional corporations may practice medicine).

IOWA

Statutes

Iowa Code §§147, 147.2 (prohibiting unlicensed practice of medicine)

Iowa Code §135B-26 (allowing pathology and radiology services in hospitals)

Iowa Code Chapter 514B (HMO's authorized)

Iowa Code Chapter 496C (professional corporations authorized)

Cases

State v. Bailey Dental Co., (1931) 211 Iowa 781, 234 N.W. 260 (corporation enjoined from practicing dentistry through employment of licensed dentist); State v. Kindy Optical Co., (1933) 216 Iowa 1157, 248 N.W. 332 (corporation enjoined from practicing optometry through licensed employees); Christensen v. Des Moines Still College of Osteopathy & Surgery, (1957) 248 Iowa 810, 82 N.W.2d 741 (a corporation cannot qualify for a medical license, and an unlicensed person cannot have direct or indirect authoritative control of licensees in performing professional tasks); State v. Plymouth Optical Co., (1973) 211 N.W.2d 278 (contractual arrangement under which corporation rented space to optometrists (who were obligated not to let their business decline) violated the optometry licensing statute and enjoined the corporation from practicing optometry).

AG Opinions

#91-7-1 (July 12, 1991) (Donner to Szymoniak, State Senator) When asked whether a non-profit hospital corporation may provide medical services through employed physicians, where the contract expressly prohibits lay control of the physician's medical judgment, the Attorney General indicated that the distinction between profit and non-profit status is not the relevant determination in deciding whether an arrangement violates the corporate practice of medicine bar. After surveying earlier Iowa cases, the AG noted that:

the common thread underlying the corporate practice prohibition is the vesting of improper dominion and control over the practice of a profession in a corporate entity. Where the corporation exerts undue dominion and control over the licensed professional, the corporation in essence becomes the "practitioner," which is not permitted under the statute. However, not all relationships between a corporation and a licensed professional are prohibited. [Where] the licensed professional retains control over the relationship with the patient, the Court has declined to intervene by injunction.(p. 8)

The opinion concludes that Iowa courts apply an in-depth evaluation of the particular facts in a given case:

Any finding of a violation of the corporate practice/employment prohibition would be based on a detailed factual review of the corporate-physician relationship at issue [with an analysis of the amount of dominion and control exercised by the corporation over the physicians].

KANSAS

Statutes

Kan. Stat. Ann. §65-2803 (prohibiting unlicensed practice of medicine); Kan. Stat. Ann. §65-2837(b)(15)(one who allows a person or organization to use license is guilty of unprofessional conduct).

Cases

Winslow v. Kansas State Bd. of Dental Examiners, (1924) 115 Kan. 450, 223 P. 308 (corporation may not practice dentistry through employees); State ex rel. Beck v. Goldman Jewelry Co., (1935) 142 Kan. 881, 51 P.2d 995(ousting corporation for employing

optometrists); State ex rel. Fatzer v. Zale Jewelry Co., (1956) 179 Kan. 628, 298 P. 2d 283 (ousting corporation from practicing optometry through its employee in violation of state statute); Marks v. Frantz, (1958) 183 Kan. 47, 325 P.2d 368 (upholding the revocation of optometrist's license for practicing optometry as a corporate employee); See Copeland v. Kansas State Bd. of Examiners in Optometry, (1974) 213 Kan. 741, 518 P.2d 377 (upholding the revocation of an optometrist's license for violating the statute by practicing optometry as an agent of an unlicensed firm); The Kansas Supreme Court upheld the ban on corporate practice in 1991 in the case of Early Detections Center v. Wilson (Kan. 1991) 248 Kan. 869, 811 P.2d 860. Last year, however, a state district court ruled in Weiss v. St. Francis Regional Medical Center that the ban on corporate practice did not apply to not-for-profit hospital corporations. The Weiss case is currently on appeal to the Kansas Supreme Court.)

KENTUCKY

Statutes

Chapter 311, §311.565 (prohibiting unlicensed practice of medicine)

Cases

See Kendall v. Beiling, (1943) 295 Ky. 782, 175 S.W.2d 489 (a corporation cannot lawfully engage in the practice of medicine, and the great weight of authority is that neither a corporation nor any other unlicensed entity may engage in the healing arts through licensed employees)

LOUISIANA

Statutes

§§37:1271 (prohibiting unlicensed practice of medicine)

Cases

See Hyde v. Jefferson Parish Hosp. Dist. No. 2, 513 F.Supp. 532, 546 (E.D. La. 1981), rev'd, 686 F.2d 286 (5th Cir. 1982), rev'd, 466 U.S. 2 (1984) (in an antitrust action involving a contract by a professional medical corporation to provide anesthesia services to a hospital, court held that the hospital was not engaging in the unauthorized practice of medicine).

Agency Opinions

A Statement of Position by the Louisiana Board of Medical Examiners dated August 20, 1992, concluded that a physician's employment by a corporation other than a professional medical corporation is not per se unlawful under the Louisiana Medical Practice Act. According to the board, the focus of such inquiries should be on the amount of control the corporation is allowed to exercise over the physician:

it is our opinion, that is, that a corporation may no necessarily be said, by the mere fact of employing a physician to practice medicine, and by the fact alone, to be itself practicing medicine. As contemplated by the Medical Practice Act, and as frequently reiterated herein,

the 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. But if a physician employment relationship is so established and maintained as to avoid such intrusion, it will not run afoul of the Medical Practice Act.

MAINE

Statutes

32 §3270 (prohibiting unlicensed practice of medicine)

32 §3282-A(2)(D) (aiding and abetting the practice of medicine by unlicensed person is grounds for discipline)

Cases

See Small v. Maine Bd. Of Registration & Examination in Optometry, (Me. 1972) 293 A.2d 786 (to prove a violation of a statute prohibiting optometrists from associating with a corporation, the state must show an association for profit, improper practice of optometry by the corporate entity, and that the effect of the association was to enable the entity to engage in improper practice).

MARYLAND

Statutes

Health Occupations §§14-301, 14-601 (license required; unlicensed practice of medicine prohibited)

Health Occupations §14-404(18) (physician subject to discipline if practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine)

Corporations and Associations §5-104 (professional corporation may not perform any professional service except through employees and agents who are licensed to perform the professional service in the state)

Cases

Dvorine v. Castleberg Jewelry Corp., (1936) 170 Md. 661, 185 A. 562 (holding that corporation selling eyeglasses was not engaged in the practice of optometry when it employed a registered optometrist who was compensated by salary and commission); Backus v. County Bd. of Appeals, (1960) 224 Md. 28, 166 A.2d 241 (interpreting statutory provision prohibiting issuance of dental license to any corporation or entity and noting that state laws generally forbid the practice of medicine or dentistry by a corporation through licensed employees).

MASSACHUSETTS

Statutes

Chapter 112 §2 (prohibiting unlicensed practice of medicine and requiring registration from physicians)

Chapter 156A §2 (professional corporation may only render professional services through its officer, employees and agents who are duly authorized to render such services)

Cases

McMurdo v. Getter, (1937) 298 Mass. 363, 10 N.E.2d 139 (enjoining corporation from practicing optometry by employing licensed practitioners); Kay Jewelry Co. v. Board of Registration in Optometry, (1940) 305 Mass. 581, 27 N.E.2d 1 (finding constitutional an amendment to statute which prohibited the sharing of fees by one not authorized to practice optometry); See Silverman v. Board of Registration in Optometry, (1962) 344 Mass. 129, 181 N.E.2d 540 (holding that a board regulation prohibiting optometrists from practicing on the premises of a commercial establishment was valid, as the board could conclude that the optometrist's presence in a commercial establishment could result in mercantile practices and lowering of professional standards).

MICHIGAN

Statutes

Michigan Comp. Laws §333.17011 (prohibiting the unlicensed practice of medicine)

Cases

People v. Carroll, (1936) 274 Mich. 451, 264 N.W. 861 (the knowledge to practice dentistry must be separate from the power of control); See Toole v. Michigan Bd. of Dentistry, (1943) 306 Mich. 527, 11 N.W.2d 229 (holding that a rule prohibiting fee splitting by dentists did not prohibit the practice of dentistry by partners, but noted that the practice of dentistry by corporations was prohibited).

Other

Physicians may practice in a professional corporation under the Professional Services corporation Act.

Recent legislation authorized limited liability companies in Michigan which have the attributes of both the corporation and the partnership. According to Michigan Corporation and Securities Bureau, however, professional corporations and limited liability companies may contract with hospitals to provide medical services through the hospital without directly employing physicians, which would run contrary to the corporate practice of medicine doctrine.

Apparently, the Attorney General has been asked to consider whether a nonprofit corporation may provide medical care services to the public through employed physicians, or whether the practice of medicine through a corporate structure is limited to corporations incorporated under the Professional Services Corporation Act.

MINNESOTA

Statutes

§147.081 (prohibiting the unlicensed practice of medicine)

§ 147.09(i) (aiding and abetting an unlicensed person in practicing medicine is grounds for disciplinary action)

Cases

Granger v. Adson, (1933) 190 Minn. 23, 250 N.W. 722 (holding that a layperson furnishing results of urinalysis and blood pressure tests and advising clients about diet and exercise is illegally practicing medicine and stating that it is improper and contrary to statute and public policy for a corporation to indirectly practice medicine by hiring a licensed physician); Williams v. Mack, (1938) 202 Minn. 402, 278 N.W. 585 (holding that a licensed optometrist may lawfully be employed by a corporation to supervise its business of selling eyeglasses).

AG Opinions

In an opinion written October 5, 1955 (92-B-11), the Attorney General found that a nonprofit corporation organized to contract on behalf of its members with doctors for rendering medical services, and specifically prohibited from intervening in the professional relationship between the physician and patient would be for "a lawful purpose" and permissible under the Minnesota Nonprofit Corporation Act:

The distinction made by the cases between business corporations and nonprofit corporations is based upon sound considerations of public policy and persuasive reasoning. The objectionable features of the "corporate practice of medicine," or of any other profession, as stated by the Minnesota Supreme Court and by the numerous other courts that have considered the problem, are that the exploitation of the profession leads to abuses and that the employment of the doctor by a business corporation interposes a middleman between the doctor and the patient and interferes with the professional responsibility of the doctor to the patient. The corporation considered here would be nonprofit and has a provision in its articles of incorporation prohibiting the corporation from intervening in the professional relationship between the doctors and the member-patients and confining the corporate activities to the economic aspects of medical and dental care. Therefore, a corporation so organized would not be subject to the objections urged against the business corporations that have been held prohibited from entering this field.

MISSISSIPPI

Statutes

§73-25-1 (prohibiting the unlicensed practice of medicine)

Cases

Hardy v. Brantley, (Miss. 1985 471 So.2d 358 (Although a hospital cannot legally practice medicine, it can held liable for the negligence of its physicians whether the physicians are independent contractors or employees. The court reasoned that, although professional corporations, like hospitals, cannot legally practice medicine, imposing liability on the professional corporation or hospitals does not have the effect of requiring it to engage in the practice of medicine.)

Agency Opinions

In Mississippi, the position of the Mississippi State Board of Medical Licensure is that the Board does not concern itself with the form or type of business arrangements entered into by a medical licensee provided that certain prerequisites are met:

The physician employed or associated with the entity is licensed by the Board.

The method and manner of patient treatment and the means by which patients are treated are left to the sole and absolute discretion of the licensed physician.

The manner of billing the amount of fees and expenses charged to a patient for medical services rendered must be left solely to the discretion of the licensed physician.

At no time shall a physician enter into any agreement or arrangement under which consideration or compensation is received as an inducement for the referral of patients, referral of medical services or supplies or for admissions to any hospital.

The business arrangement and the actions of the physician in relation to it cannot be contrary to or in violation of the federal anti-kickback statutes.

MISSOURI

Statutes

RSMO §334.010 (prohibiting unlicensed practice of medicine)

Cases

State v. Scopel, (Mo. 1958) 316 S.W.2d 515, 518 (prohibition on practice by any person other than a registered physician); Ordo v. Missouri Dental Bd., (Mo. Ct. App. 1985) 689 S.W.2d 825 (reversing the suspension of dentist for violation of assisting an unlicensed corporate entity to practice dentistry by contracting to provide dental services on the grounds that mere execution of the contract was not illegal and it could not be shown that the dentist had ever performed under the contract).

MONTANA

Statutes

Mont. Code Ann. §37-3-301 (prohibiting the unlicensed practice of medicine)

Mont. Code Ann. §37-3-322(23)(providing that practicing medicine as a partner, agent, or employee of or in joint venture with a person who does not hold license constitutes unprofessional conduct. However, §37-3-322(23) does not prohibit: (a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4; (b) a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country; or (c) practicing medicine as the partner, agent, or employee of or in joint venture with a hospital, medical assistance facility, or other licensed health care provider. However, (i) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship

created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine; (ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and (iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action the physician determines not to be in the patient's best interest.)

Cases

United States v. Kintner, 216 F. 2d 418 (9th Cir. 1954) ("it may be assumed that [Montana's] courts would infer...and intention to prohibit a corporation from practicing medicine").

NEBRASKA

Statutes

§71-102 (prohibiting unlicensed practice of medicine)

Cases

State Electro-Medical Institute v. Platner, (1905) 74 Neb. 23, 103 N.W. 1079 (refusing to construe the medical licensing statute to prevent licensing statute to prevent licensed practitioners from forming a corporation and making contracts in the corporate name and finding that such conduct did not violate public policy.) (Note: In both cases all the principals were licensed physicians so that the corporation in question was similar to a modern professional service corporation.); State Electro-Medical Institute v. State, (1905) 74 Neb. 40, 103 N.W. 1078 (holding that a statute prohibiting the unlicensed practice of medicine did not apply to a corporation as a corporation, is incapable of practicing medicine because a corporation cannot diagnose a disease or determine a remedy. Making contracts and collecting compensation is not practicing medicine and no professional qualifications are necessary to do these things)

NEVADA

Statutes

§630.160 (prohibiting the unlicensed practice of medicine)

§630.304(3) (prohibiting practicing medicine under another name)

§630.305(1) providing that grounds for disciplinary action includes receiving compensation from a corporation which is intended to influence the physician's objective evaluation or treatment of the patient) §695C.050(3) (a corporate health maintenance organization is a special, exempt entity under chapter 695C. Its activities are not deemed the practice of medicine.)

Chapter 89 (Professional Corporation Act) (permitting corporate practice of medicine)

Chapter 78 (General Corporation) (not authorizing corporate practice of medicine)

NEW HAMPSHIRE

Statutes

N.H. Rev. Stat. Ann. §§329-17, 329-24 (prohibiting the unlicensed practice of medicine).

NEW JERSEY

Statutes

§45:9-22 (prohibiting the unlicensed practice of medicine)

§13:35-6.16 (allowing physicians and other health care professionals to practice together as a single partnership or professional association) §13:35-6.16(f)(3)(i) ("A practitioner may be employed...within the scope of the practitioner's licensed practice and in circumstances where quality control of the employee's professional practice can be and is lawful supervised and evaluated by the employing practitioner. Thus, a practitioner with a plenary license shall not be employed by a practitioner with a limited license...") §13:35-6.16(h) (formally recognizing right of physicians to participate in organized managed care plans subject to certain requirements, including that the physician retain "authority at all times to exercise professional judgment within accepted standards of practice regarding care, skill and diligence in examination, diagnosis and treatment of each patients" and "authority at all times to inform the patient of appropriate referrals to any other health care providers.")

NEW MEXICO

Statutes

N.M. Stat. Ann. §61-6-15(10) (prohibition on permitting another to use medical license)

N.M. Stat. Ann. §61-6-15(16) (prohibition on fee splitting)

N.M. Stat. Ann. §61-6-20 (prohibition on practicing without a license)

N.M. Stat. Ann. §53-6-9 (professional corporation shall render professional services only through its officers, employees, and agents who are duly licensed)

AG Opinion

NMAG Opinion NO. 87-39 (July 30, 1987) concluded that a corporation organized and controlled by non-physicians may provide medical services to the general public through employed physicians unless it is prohibited by state [which the AG finds it is not] or it exercises lay control of medical judgment or engages in lay exploitation of the medical profession in a manner prohibited by public policy. The opinion suggests the corporate practice bar may be outdated:

Many of the earlier decisions in this area may not be germane to the health care environment today. A market demand for integrated health care delivery has emerged in recent years. ... These market forces may redound to the benefit of consumers of health care, and restraints on the commercial practice of physicians that inhibit their "affiliating with non-physicians or engaging in other novel arrangements which may provide more convenient or accessible health care service to the public" may invite the scrutiny of the F.T.C. See Remarks of Acting FTC Chairman, Terry Calvani, 5 Trade Reg.Rep. (CCH) P50,479 at 56,279 (2/20/86).

NEW YORK

Statutes

N.Y. Educ. Law §6522 (prohibiting the unlicensed practice of medicine);
N.Y. Educ. Law §6527(1) (nonprofit medical corporation or hospital service corporation may employ licensed physicians); N.Y. Bus. Corp. Law §1501 (Physicians may form professional service corporations.)

Cases

People v. Woodbury Dermatological Inst., (1919) 192 N.Y. 454, 85 N.E. 697 (corporation may not practice medicine without express legislative authority); Stern v. Flynn, (N.Y. Sup. Ct. 1935) 154 Misc. 609, 278 N.Y.S. 598 (corporation may not practice optometry); State v. Abortion Information Agency, Inc., (1972) 69 Misc. 2d 825, 323 N.Y.S.2d 579 (N.Y.App. Term), *aff'd*, 285 N.E.2d 317 (1972) (abortion referral agency which hired and paid doctors to perform abortions violated public policy forbidding a corporation from practicing medicine by hiring doctors to act for it); United Calendar Mfg. Corp. v. Huang, (N.Y. App. Div. 1983) 463 N.Y.S.2d 497 (In a dispute over patient lists, the court held that a corporation could not practice medicine, and therefore it could not have patients. The court also held that an arrangement whereby the corporation received a gross percentage of the physician's earnings constituted illegal fee splitting.); Albany Medical College v. McShane, (1985) 66 N.Y.2d 982, 489 N.E.2d 1278, 499 N.Y.S.3d 376b (the court characterized the claim that the medical college could not share in fees generated by physicians who are faculty members "farfetched at best." Because the college has a corporate charter empowering it to promote medical science and instruction, its treatment of patients did not constitute the illegal corporate practice of medicine or illegal fee splitting.)

NORTH CAROLINA

Statutes

§90-18 (prohibiting the unlicensed practice of medicine)
Chapter 55B (Professional corporation Act)
Chapter 57C (Limited Liability Act) (extending the benefits of limited liability to existing professional service corporations)

NORTH DAKOTA

Statutes

§43-17-16 and §43-17-34 (prohibiting unlicensed practice of medicine);
§43-17-31(10) (prohibiting or practicing under a false or assumed name)
§43-17-42 (added in 1991) (authorizing hospital employment of physicians provided that the employment contract contains specific language that the hospital's employment with the physician may not affect the exercise of the physician's independent judgment in the practice of medicine and that the physician's independent judgment in the practice of medicine is in fact unaffected by the physician's employment relationship with the hospital.)

AG Opinions

(October 23, 1990) (concluding that only physicians may practice medicine) (note that opinion predates §43-17-42)

OHIO

Statutes

§473 - Ohio Medical Practice Act

§4731.09 (license requirements can only be met by individuals).

§4731.22(B)(4)(prohibiting physicians from engaging in the division of fees for referral of patients or for receiving a thing of value in return for a specific referral of a patient to utilize a particular service or business)

§4731.41 (prohibiting the unlicensed practice of medicine)

§1785 et seq. - professional corporations authorized

§1785.02 (only licensed professionals can be shareholders in a professional association)

Chapter 339 (county hospital administrators are given express authority to hire physicians, nurses, and other personnel as necessary)

Chapter 1742 (HMOs authorized)

§1742.30 (HMOs meeting the requirements of R.C. 1742 shall not be construed to be practicing medicine)

Cases

State ex rel. Bricker v. Optical company, (1936) 131 Ohio St. 217, 2 N.E.2d

601 (corporation cannot practice a profession either directly or indirectly through employees), Cleveland Clinic v. Sombrio, (1966) 6 Ohio Misc. 48, 215 N.E. 2d 740 (In an action brought by a corporation to recover the balance due on an account, the Municipal Court of Akron overruled a motion to strike the claim on the ground that the service rendered constituted the corporate practice of medicine. The court stated that, although the practice of medicine by a corporation may have been repugnant to the common law, the legislature could authorize physicians to organize a corporation for a group practice of medicine.

AG Opinions

1990 Atty. Gen. Op. No. 90-072 (professional association may render professional services only through officers, employees, and agents who are themselves duly licensed or otherwise legally authorized to render professional service); 1952 Atty. Gen Op. No. 52-1751

(corporation, whether or not organized for profit, may not lawfully engage in the practice of medicine)

OKLAHOMA

Statutes

Title 59 §§491, 492 (prohibiting the unlicensed practice of medicine)

Title 59 §510 (allowing firms, associations, or corporations to engage in the practice of medicine as long as each and every member of such firms, associations, or corporations is duly licensed to practice medicine and surgery in the state of Oklahoma.)

Title §2601 et. seq. (Nonprofit hospital service in medical indemnity corporations)

Title 36 §2613 -Relationship of physician and patient. ("Nothing in this article shall be deemed to alter the relationship of physician and patient. No such corporation shall any way

influence the subscriber in his free choice of hospital or physician, other than to limit its benefit to participating hospitals and physicians. Nothing in this article shall be deemed to abridge the right of any physician or decline patients in accordance with the standards and practices of such physician or hospital and no such corporation shall be deemed to be engaged in the corporate practice of medicine.")

Medicine

See *Williamson v. Lee Optical, Inc.*, (1955) 348 U.S. 483 (The Supreme Court upheld an Oklahoma statute prohibiting a retail corporation from renting space to any person to perform eye examination in a retail store. The court stated that the regulation was on the same constitutional footing as denying corporation the right to practice dentistry, and was an attempt to free the profession from the taint of commercialism).

OREGON

Statutes

Or. Rev. Stat. §677.080 (prohibiting the unlicensed practice of medicine).

Cases

See *State ex rel. Sisemore v. Standard Optical Co.*, (1947) 182 Or. 452, 188 P.2d 309(enjoining a corporation from practicing optometry because employment of an optometrist by the corporation may affect an optometrist's loyalty to the patient.)

PENNSYLVANIA

Statutes

63 PA. Const. Stat. Ann. §422.10 (prohibiting the unlicensed practice of medicine).

Cases

See *Neill v. Gimbel Bros.*, (1938) 330 Pa. 213, 199 A. 178 (corporation may not practice optometry by hiring incensed employees.)

RHODE ISLAND

Statutes

R.I. Gen Laws §5-37-12 (prohibiting the unlicensed practice of medicine)

SOUTH CAROLINA

Statutes

§40-47-260 (prescribing penalty for unlicensed practice and providing that the penalty applies to any corporation aiding and abetting a violation);

§40-47-60 (prohibiting practice without a license)

Cases

Ezell v. Ritholz, (1938) 188 S.C. 39 S.E. 39, 198 S.E. 419 (one who practices a professional

cannot properly act as an agent of a corporation or business partnership whose interests are commercial in character); *Wadsworth v. McRae Drug Co.*, (1943) 203 S.C. 543, 28 S.E.2d 417 (stating that, although a corporation may not engage in the practice of medicine through licensed employees, it may not escape liability for the negligence of its employee by claiming the employee was improperly engaged in practicing medicine by dispensing drugs in the corporation's drug store).

SOUTH DAKOTA

Statutes

§36-4-8 (unlicensed practice of medicine is a misdemeanor)

§36-4-8.1 (specifically prohibiting a corporation from the practice of medicine or osteopathy, but allowing employment agreements with the physician provided that the agreement or relationship does not: (1) in any manner directly or indirectly supplant, diminish or regulate the physician's independent judgment concerning the practice of medicine or the diagnosis and treatment of any patient; (2) result in profit to corporation from the practice of medicine itself, such as by a corporation charging a greater fee for the physician's services than the physician would otherwise recently charge as an independent practitioner; and (3) remain effective for a period of more than three years, after which it may be renewed by both parties annually.

§47-11 et seq. (medical corporations authorized).

TENNESSEE

Statutes

TCA §63-6-201 (prohibiting unauthorized practice of medicine)

TCA §§48-3-401 et seq. (authorizing professional corporations)

Cases

See *State ex rel. Loser v. National Optical Stores Co.*, (1949) 189 Tenn. 433, 225 S.W.2d 263 (stating that the rule is uniform that a corporation cannot practice one of the learned profession and that a corporation cannot employ a licensed practitioner, the court held that a corporation which employed physicians to conduct eye examinations was unlawfully practicing optometry.)

AG Opinion

Opinion No. 88-152 (August 25, 1988) (concluding that, among other things, a general business corporation (as opposed to a professional corporation) engaging in the business of providing professional anesthesia services to medical facilities would appear to constitute a violation of §63-6-201 et seq. (practice without a license). The opinion relied heavily on Loser (corporation is not a "person" within the context of licensing statutes, and a corporation cannot practice medicine), and noted that there is a lack of more recent authority on this issue.)

TEXAS

Statutes

Tex. Rev. Civ. Stat. Ann. art. 4495 (b)

§§3.07, 3.08 (prohibiting the unlicensed practice of medicine)

§§3.06(f) (allowing a county or municipal corporation or hospital district to contract with a physician to provide services)

§3.06(g) & (h) (allowing a nonprofit clinic that is operated by a nonprofit hospital or organization and that primarily serves a financially indigent population from contracting with a physician, billing and collecting fees as the physician's agent, and paying the physician a minimum guarantee to assure the physician's availability)

§5.01 (generally disallowing the corporate practice of medicine)

Cases

Garcia v. Texas State Bd. of Medical Examiners, 384 F.Supp. 434 (W.D. Tex. 1974), *aff'd*, 421 U.S. 995 (1975) (upholding statute prohibiting laymen from forming corporations for the practice of medicine); See Flyann Bros. Inc. V. First Medical Assocs., (Tex. App. 1986) 715 S.W.2d 782 (contracts giving non-physician partner majority of profits and the right to trade and commercialize on partner's medical license violate statute prohibiting aiding the unlicensed practice of medicine by an person, partnership, or corporation).

AG Opinions

The Attorney General of the state of Texas affirmed in 1989 that "arrangements by which a corporation formed by non-physicians employs physicians to render medical services to the corporation's clients consistently have been held to constitute both the unlawful practice of medicine by the corporation and the violation by the employee -- physician of the prohibitions in §3.08(12) of the Medical Practice Act, V.G.C.S. Article 4495(b)."

See Attorney General letter, April 24, 1989.

UTAH

Statutes

Utah Code Ann. §58-1-501 (practicing medicine as a partner, agent, or employee of, or in joint venture with, any person not holding a license, may result in revocation of medical license).

Cases

See Golding v. Schuback Optical Co., (1937) 93 Utah 32, 70 P.2d 871 (corporation hiring licensed optometrists did not violate statute prohibiting unprofessional conduct because it is not practicing optometry and is not subject to injunction as contrary to public policy)

Other

Informal letter dated September 8, 1993 from the Director of the Utah Department of Commerce Division of Occupational & Professional Licensing concludes that medical clinics may be owned by non-physician investors provided the clinic is not engaged in the practice of medicine. If clinic subject physicians to lay interference and professional medical matters, the clinics are engaged in unlawful practice of medicine (e.g., a clinic may not usurp the physician's role in determining what tests or procedures should be ordered or performed, or

when a patient should be referred to a specialist).

VERMONT

Statutes

§1314 (prohibiting the unlicensed practice of medicine);

§1354(21) (license may be revoked for permitting physician's name or license to be used by a corporation when the physician is not in charge of treatment.)

VIRGINIA

Statutes

§54-1-2902 and 54.1-2929 (prohibiting the unlicensed practice of medicine).

§54-1-2941 (allowing schools of medicine, osteopathy, podiatry or chiropractic and state-run health care entities to employ and contract with licensed practitioners)

§13.1-542 through 13.1-556 (professional corporation statute)

Cases

Stuart Circle Hosp. v. Curry, (1939) 173 Va. 136, 3 S.E.2d 153 (hospital may engage in limited practice of medicine through its agents who are licensed to practice)

AG Opinion

According to a 1992 Virginia Attorney General opinion on December 7, 1992, the corporate practice of medicine doctrine has not been adopted in Virginia statute or court decisions.

The opinion points out that statutes prohibiting physicians practice in connection with commercial or mercantile establishments were repealed in 1986. The opinion concludes that a hospital may retain a physician as an employee as long as the physician exercises control over the diagnosis and treatment of the patient, the physician's professional judgment is not improperly influenced by commercial or lay concerns and the physician-patient relationship is not altered.

WASHINGTON

Statutes

RCW 18.71.021 (prohibiting the unlicensed practice of medicine)

RCW 18.100 (Professional Service Corporation Act)

Cases

Morelli v. Elsar, (Wash. (1988)) 110 W.2d 555, 756 P.2d 129 (partnership agreement between physician and non-physician to operate a medical clinic illegal because it placed control of the clinic with partners not licensed to practice medicine)

WEST VIRGINIA

Statutes

§30-3-15(b) (authorizing medical corporations) ("A medical corporation may practice

medicine and surgery only through individual physicians duly licensed to practice medicine and surgery in the state...but such physicians...may be employees rather than shareholders of such corporation.... Nothing contained in this article is meant or intended to change in any way the rights, duties, privileges, responsibilities, and liabilities incident to the physician-patient...relationship, nor is it meant or intended to change in any way the personal character of the physician-patient...relationship.")

Cases

See Eisensmith v. Buhl Optical Co., (1934) 115 W. Va. 776, 178 S.E. 695 (statute forbidding a licensed optometrist from practicing under a name other than his own prohibited the practice of optometry by a corporation through a licensed optometrist);

AG Opinion

46 Op. Atty. Gen. 202 (1955) (unlicensed person, association or corporations cannot employ a licensed physician to practice medicine on its behalf); 44 Op. Atty. Gen. 5 (195) (hospital employing a licensed physician on a salary is unlawfully practicing medicine)

WISCONSIN

Statutes

Wis. Stat. Ann. §448.03 (prohibiting the unlicensed practice of medicine).

Cases

See State ex rel. Harris v. Kindy Optical Co., (1940) 235 Wis. 498, N.W. 283 (optometry is not a profession; a corporation may employ licensed optometrists)

AG Opinions

WIAG OAG 39-86. According to this 1986 Attorney General opinion, corporations other than service corporations may not practice medicine and may not provide medical services through employed professionals. The opinion interprets §448-08(1) (Wisconsin fee-splitting statute) and §448.03(1) (prohibiting any person from practicing medicine without a license).

WYOMING

Statutes

WS Stat. §33-26-301 (prohibiting unlicensed practice of medicine)

WS Stat. §33-26-303 (requirements for qualification for license)

WS Stat. §33-26-410 (penalty for violation of license requirement or aiding and abetting violation of license requirement is a misdemeanor)