Dynamic Chiropractic

YOUR PRACTICE / BUSINESS

The Multidisciplinary Practice

Editor's note: Ms. Green has been a practicing attorney since 1977. She is admitted to the practice of law in the states of New York and Florida and is a member of the American Health Lawyers Association, the New York State Bar Association Health Care System Design Committee, the New York State Bar Association Health Care Providers Committee, the American Bar Association Health Law Section and the Florida Bar Health Law Section. She has lectured to numerous chiropractic groups and is a regular columnist for a magazine devoted to the business interests of chiropractors. Her practice is limited to health care transactions, and she has formed numerous integrated practices throughout the country.

The patient you are treating requires medical treatment, and so you refer the patient to a medical doctor. In some instances, the patient will return to you for treatment; in other instances, the patient will not return to your care. The patient has been inconvenienced with an additional appointment at another location. You and the medical doctor lost valuable time and energy playing telephone tag; the patient's treatment and recovery time have been delayed.

To avoid this scenario, many doctors are forming multidisciplinary practices. A multidisciplinary practice is simply a health care practice which offers the health care consumer one stop shopping. In all instances, there is a medical director, a licensed medical physician who makes all medical decisions. The medical director is employed by a medical professional corporation in those states where the "corporate practice of medicine" doctrine (the "doctrine") is in effect or, in some states where the doctrine is not in effect, by a general business corporation. The practice may employ chiropractors, physical therapists, acupuncturists, phlebotomists, nurse practitioners, physician assistants and various other types of health care providers.

The doctrine is simply a law which prohibits those persons who are not medical physicians from owning a medical practice. Over the years, this doctrine has been eroded in many states and in some states done away with altogether.

In those states where the doctrine has been eliminated, anyone may own a corporation which renders medical care, however, the corporation must employ a medical physician who is responsible for making all health care-related decisions. The owner of the corporation, unless a medical doctor or an osteopathic physician, can have no input with respect to any medical decision concerning any patient.

Establishing a multidisciplinary practice owned by a chiropractor in those states is quite simple. A single corporation owned by the chiropractor is established. The corporation enters into employment agreements with its employees: MD, nurse practitioner, physician assistant, etc. Care must be taken that each of these health care practitioners renders services in accordance with the state's scope of practice.

The following states currently do not have a corporate practice of medicine doctrine and would permit you to be the sole owner of a health care company providing medical services:

Alabama
Alaska
Florida
Louisiana
Maine
Mississippi
Missouri
Montana
Nebraska
New Hampshire
New Mexico
Rhode Island
South Dakota
Utah
Vermont
Virginia
Washington, D.C.
Wyoming

There is confusion with respect to the status of the corporate practice of medicine doctrine in the following states, so I would err on the side of caution and consider them a state that upholds the doctrine:

Arkansas has typical licensing and professional corporation acts, but no court has held there to be a prohibition against the corporate practice of medicine. On the other hand, no court has given the corporate practice of medicine its blessing, either.

Connecticut has never articulated a statute which specifically addresses the question. Two assistant attorneys general have privately stated that they have no intention of enforcing the concept, but in the 1960s, the then-attorney general stated that "a corporation cannot practice law." However, Connecticut is an extremely conservative state, so I would be leery of starting a health care corporation which is not a professional corporation there.

Georgia's corporate practice of medicine doctrine is also unclear. The statute which prohibited a physician from being employed by a corporation other than a professional corporation or a hospital was repealed in 1982; however, during that same year, in *Shearer v. Hale, 248 Ga. 793, 285 SE 2d 714, 717 (1982),* the Georgia Supreme Court created a common law prohibition against the practice of any "learned profession" by a "business corporation." This case has not as yet been overturned.

Kentucky's long-standing statutory and common law prohibition against the corporate practice of medicine is under review by the Kentucky Supreme Court.

North Dakota has no case law or statute specifically addressing the corporate practice of medicine; however, provisions of its century code specifically authorizing employment of physicians by hospitals and HMOs raise the possibility that the doctrine may exist in some form.

Ohio's corporate purpose statute was recently amended to specifically permit "carrying on the practice of any profession"; however, its physician licensure and fee splitting acts, which both had previously been interpreted by its attorney general as prohibiting the corporate practice employment of physicians, were not thereafter amended.

There are additional subcategories in those states which do recognize the doctrine. Some states permit a chiropractor to hold shares in a medical professional corporation so long as there is an MD who is also a shareholder; some states require that in such a case, the MD hold the majority of shares because the MD holds a plenary license, whereas a chiropractor holds a limited license. Other states require that the name of the corporation does not contain the word "medical" or "medicine" when a non-MD owns shares in the corporation whereas some states consider the use of the word "medicine" or "medical" mandatory. Still other states require that only an MD may own shares in a corporation which renders medical services.

It's important to ascertain the status of the law in your state with respect to the doctrine. Failure to comply with the doctrine could result in contracts being declared void; loss of professional licensing; injunction against the practice's business operation; and a myriad of other sanctions. To comply with the law of those states which uphold the doctrine, certain contracts must be entered into by various corporations.

I recommend that three corporations be formed: a management company, a professional corporation, and a funding company. The following is an explanation in a nutshell of the interaction among the medical corporation which is owned either solely by an MD or by both an MD and the chiropractor (the "professional corporation"), a management company which is owned solely by the chiropractor (the "management company") and a funding company which is also owned solely by the chiropractor (the "funding company").

The Funding Company

The funding company is funded by you personally. The funding company then funds the professional corporation for any and all working capital requirements that the professional corporation may have, e.g., purchasing equipment, salaries, lease payments, management fees and taxes.

The funding company is repaid by the professional corporation (interest only). The interest is paid to the funding company monthly. The principal amount is due on demand.

To secure its loan, the funding company receives a note and a lien on all accounts receivables and other assets from the professional corporation. Additionally, the funding company enters into a loan and security agreement with the professional corporation which gives the funding company many valuable rights.

The Management Company

The management company charges a fee for every act and/or service that it performs on the professional corporation's behalf (e.g., all clerical duties, equipment rental, lease rental, etc.), pursuant to the terms of the management agreement in which it enters with the professional corporation. The charges must be at a fair market value rate (value added if applicable) which is a set fee (under no circumstances should it be a percentage as many states consider the payment of a percentage to the management company by the professional corporation to be fee splitting) and payable regardless of whether the professional corporation is actually paid for its services. Your accountant can help determine the fair market value applicable to your area.

The Medical Professional Corporation

The shares of the medical professional corporation (or professional association as is required by some states -- "professional corporation") are owned by an MD (and where permitted, also by the chiropractor). In those states which do not permit the chiropractor to own shares in the

professional corporation, the chiropractor is named as secretary of the professional corporation for purposes of administrative convenience only. Being named secretary of the professional corporation does not, however, make the chiropractor an officer of the professional corporation, nor may he or she be a member of the board of directors of the professional corporation. Under no circumstances may the chiropractor exercise control over any medical issues which are left strictly in the purview of the MD who is hired to be the medical director of the professional corporation.

The professional corporation may employ various licensed health care professionals such as physicians, physical therapists, chiropractors, etc., to render services to the professional corporation's patients. Each health care professional enters into a written employment agreement for a term of no less than one year with the professional corporation. Payment to each health care professional is at a fair market value rate. Fair market value is determined by the going rate for such health care professionals in your community. Employees of the professional corporation may receive productivity bonuses, but under no circumstances should such bonuses be tied to patient referrals.

The corporations need to have a series of agreements which describe the duties and obligations of each corporation to the other. The basis documents that I prepare for an integrated multidisciplinary practice are the following:

A. physician-shareholder employment agreement;
B. tri-party transfer agreement;
C. resignation;
D. transfer of capital stock agreement;

E. corporate document book (management corporation); F. corporate document book (professional medical corporation); G. corporate document book (funding corporation); H. corporate resolution; I. revolving loan and security agreement; J. promissory note; K. UCC-1 and rider; L. management agreement; M. equipment lease; N. medical office lease; O. other situation specific documents as may be required.

After the corporations have been formed and the legal documentation signed, you are required to maintain the corporate existence of all three companies. Limited personal liability and the tax benefits of doing business in the corporate form are available only when you comply with the numerous requirements of corporate law.

The benefits of corporate operation flow from the legal recognition of the corporation as an entity separate from its individual shareholders, directors and officers. To enjoy these benefits, you must operate the corporation as a separate entity and in accordance with certain formal requirements.

It is essential that corporate and personal affairs be kept separate. Never mix corporate and personal funds, assets or accounts. Do not use corporate funds or assets for personal or other corporate purposes. Business should be done in the corporate name. Avoid any indication that you are dealing in a personal capacity. The corporate name should be used on the telephone, advertisements, letterheads, cards, signs, etc. When signing documents, it should always be made clear that you are acting on behalf of the corporation.

In keeping with the recognition of the corporation as a separate legal entity, the formalities of corporate operation provide the mechanism by which the corporation governs itself, makes decisions and takes action. Properly held meetings of shareholders and directors are the key to formal operation. The courts consider observance of the formalities as important evidence in deciding whether or not the corporation has been operated as a separate entity. The formalities are

often the source of authority for those who act on behalf of the corporation. Officers, directors and employees who act without authority (that is, without proper approval of the shareholders or the directors, properly made and recorded in the corporate minutes) may be personally liable for their acts.

If you have any questions with regard to the formation of a multidisciplinary practice or with respect to any other legal health care issues, please feel free to fax me your questions to: Law Office of Deborah A. Green, 16 Caren Court, Mt. Kisco, NY 10549, tel: 914-666-9264; fax: 914-666-9266; e-mail: dgreen@counsel.com .

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