The Business of Medicine in Kansas

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Disclaimer

The information contained in these materials and presented today is for informational purposes only and should not be considered to be legal advice by the presenters or to be the opinions of the Kansas State Board of Healing Arts.

This information is in summary form and only highlights certain aspects of the legal issues involved. It should not be relied upon to make any decisions. For a definitive statement of the law, please refer to Kansas and Federal statutes, regulations, and case law.
The Corporate Practice of Medicine Prohibition in Kansas
Corporate Practice of Medicine Doctrine Overview

• The corporate practice of medicine (CPM) doctrine prohibits any business owned by a non-professional from directly or indirectly providing medical services.

• Intended to prohibit control of a physician’s practice of medicine by lay persons/businesses.

• Majority of states have some form of CPM restriction.
Corporate Practice of Medicine Doctrine Overview

• The primary purpose of the CPM doctrine is to avoid interference with and exploitation of the physician-patient relationship and preserve a physician’s independence in exercising their professional medical judgment.

• In Kansas, the doctrine was established through a combination of statute and case law. See *Early Detection Center, Inc. v. Wilson*, 248 Kan. 869, 811 P.2d 860 (1991).
Corporate Practice of Medicine Doctrine Overview

• In Kansas, only licensed physicians may lawfully practice medicine and maintain an office for the practice of medicine. See K.S.A. 65-2803, 65-2867, 65-2869 and 65-2870.

• Licensed physicians may form a professional business entity to practice medicine. See K.S.A. 17-2709(a) and 17-17668(d) and (e)(1).
Corporate Practice of Medicine Doctrine Overview

• In Kansas, licensed hospitals are an exception to the CPM doctrine. See *Saint Francis Regional Medical Center, Inc. v. Weiss*, 254 Kan. 728, 869 P.2d 606 (1994).

• Other licensed health care facilities employing physicians would presumably also fall under the same exception. (Ambulatory surgery centers, nursing homes, indigent care clinics, community mental health centers, etc.)

• Additionally, non-profit healing arts schools are statutorily exempted from the doctrine pursuant to K.S.A. 65-2877a.

• HMOs are also statutorily excepted from the corporate practice prohibition(See KSA 40-3214)
Corporate Practice of Medicine Doctrine

Overview

• A general corporation cannot practice medicine and may not employ or contract with physicians to do so. *Early Detection Center* at 868.

• The CPM doctrine does not necessarily prohibit an organization from employing or contracting with physicians to directly serve the organization (such as a professional athletic team employing a physician). However, offering and providing the professional services of a physician to others is prohibited.
Professional Business Entities
Professional Business Entities

• Professional business entity formation and structure is governed by the Professional Corporation Law of Kansas (K.S.A. 17-2701, et seq.) and K.S.A. 17-7668 of the Kansas Revised Limited Liability Company Act.

• Each profession’s practice act may impose further restrictions, requirements and disciplinary grounds related improper business structures and practice.
Professional Regulatory Board Involvement

• A regulatory board’s authority to regulate its licensees is not restricted by any statutory provision regarding corporations. K.S.A. 17-2716.

• Prior to incorporation, incorporators of a professional business entity must obtain certification of their licensure and approval of their corporate name. K.S.A. 17-2709(a). The KSBHA website link for requesting certification is at:

http://www.ksbha.org/requests/corporatecertificate.shtml
Professional Regulatory Board Involvement

• KSA 17-2711 requires that the corporate name not be contrary to the ethics of the profession.

• No shares may be issued or transferred to a person until a certificate of that person’s licensure from the appropriate regulatory board is filed with the corporation. See K.S.A. 17-2712(a).
Professions Authorized to Form a Professional Business Entity

• K.S.A. 17-2707 sets forth the professions which may form a professional business entity in Kansas.

• 3 KSBHA-regulated professions are not included:
  ➢ Radiologic Technologists
  ➢ Respiratory Therapists
  ➢ Athletic Trainers
Permissible Combinations of Professions in a Single Entity Pursuant to K.S.A. 17-2710

<table>
<thead>
<tr>
<th>Combination 1</th>
<th>Combination 2</th>
<th>Combination 3</th>
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<tbody>
<tr>
<td>Chiropractor (DC)</td>
<td>Osteopathic Physician (DO)</td>
<td>Physical Therapist (PT)</td>
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<tr>
<td>Dentist (DDS)</td>
<td>Doctor of Medicine (MD)</td>
<td>Occupational Therapist (OT)</td>
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<tr>
<td>Optometrist (OD)</td>
<td>Registered Prof. Nurse (RN, APRN)</td>
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</tr>
<tr>
<td>Osteopathic Physician (DO)</td>
<td>Physician Assistant (PA)</td>
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</tr>
<tr>
<td>Doctor of Medicine (MD)</td>
<td>Occupational Therapist (OT)</td>
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<tr>
<td>Podiatrist (DPM)</td>
<td>Audiologist</td>
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<tr>
<td>Pharmacist (RPh)</td>
<td>Speech Pathologist</td>
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<tr>
<td>Psychologist</td>
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<td>*Cannot combine with any other professions:</td>
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<tr>
<td>Specialist in Clinical Social Work</td>
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<td>Naturopathic Doctors (N.D.)</td>
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<tr>
<td>Physical Therapist (PT)</td>
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<tr>
<td>Registered Prof. Nurse (RN, APRN)</td>
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<td>Clinical Professional Counselor</td>
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<td>Clinical Psychotherapist</td>
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<td>Clinical Marriage &amp; Family Therapist</td>
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<td>Speech Pathologist</td>
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*Cannot combine with any other professions:
Other Ownership Limitations

• The practice acts for some professions further limit their ownership percentages in professional business entities organized to render medical services.

• A physician assistant is limited to 49% ownership. See K.S.A. 65-28a13 and K.A.R. 100-28a-18. This is logical because their scope of practice is entirely by delegation. It is worth noting that advanced practice registered nurses (APRNs), whose scope of practice includes collaborative medical practice with a physician, do not have any restriction on the percentage of ownership of a medical professional business entity.

• Occupational therapists are also limited to 49% ownership in professional business entities organized to render medical services. See K.S.A. 65-5421 and K.A.R. 100-54-11. However, physical therapists have no ownership restriction.
The Healing Arts Act authorizes qualified individuals to practice medicine, osteopathic medicine and chiropractic. The Act also places restrictions on such practice with corresponding penalties for both unauthorized practitioners and KSBHA licensees.

Under the Healing Arts Act, unauthorized (unlicensed) practice is a crime.

- It is a Level 10 nonperson felony to engage in any practice of the healing arts without Kansas licensure. Civil penalties of up to $1,000 per day may be assessed. See K.S.A. 2015 Supp. 65-2803.

- It is a Level 10 nonperson felony for an unlicensed person to open or maintain an office for the practice of the healing arts or hold out to the public “the intention, authority or skill to practice the healing arts . . .” See K.S.A. 2015 Supp. 65-2867.
Kansas Healing Arts Act

- Involvement in unlawful practice by an unlicensed person or business may be grounds for discipline against a healing arts (MD, DO, DC) professional’s license:
  - K.S.A. 65-2836(h): “The licensee has engaged in the practice of the healing arts under a false or assumed name, or the impersonation of another practitioner. The provisions of this subsection relating to an assumed name shall not apply to licensees practicing under a professional corporation or other legal entity duly authorized to provide such professional services in the state of Kansas.”
  - K.S.A. 65-2837(b)(14): “Aiding or abetting the practice of the healing arts by an unlicensed, incompetent or impaired person.” (e.g. buying Botox)
  - K.S.A. 65-2837(b)(15): “Allowing another person or organization to use the licensee's license to practice the healing arts.”
  - K.S.A. 65-2837(b)(19): “Directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered, other than through the legal functioning of lawful professional partnerships, corporations limited liability companies or associations.”
Kansas Healing Arts Act

• Frequently, other disciplinary grounds may exist for CPM-associated deficiencies or violations of practice act provisions on informed consent, patient confidentiality, medical record documentation and maintenance, delegation and supervision, meeting office requirements, and advertising.

• The KSBHA is authorized to obtain injunctive relief against persons and businesses for unlicensed practice. K.S.A. 65-2857. Depending on the circumstances, the agency usually attempts to first obtain a voluntary cessation or, when appropriate, formation of a proper professional business entity.
Other Consequences for Violating the CPM Doctrine

- Illegality of business structure can be used as a defense to contract enforcement.
- Potential loss of 3rd party and government-sponsored program reimbursement for services.
- Potential liability exposure.
- Potential federal enforcement actions.
Frequent Areas of Inquiry/Complaints to KSBHA

• Medical Spas:

- Many physicians are naïve about corporate structure requirements or do not view cosmetic treatments as the actual practice of medicine. Estheticians trained in administering cosmetic medical treatments often seek to employ or contract with a physician to serve as their “medical director,” often at arm’s length.

- Improperly structured business relationships may involve corporate practice, fee-splitting, aiding and abetting unlicensed practice, improper delegation and supervision, and a plethora of other disciplinary violations.

- Additionally, if the medical spa is a professional business entity, that entity may not provide other types of goods or services. Offering cosmetology services (ex. manicures) would be beyond the scope of the professional purpose. It is also a violation of the Healing Arts Act for a physician to offer “nonhealth-related products or services to a patient from a location at which the licensee regularly practices.” See K.A.R. 100-22-3.
Frequent Areas of Inquiry/Complaints to KSBHA

• Medical Spas continued:

- Often these practices have booths at public events and may offer services for a private “party” in a person’s home. This may raise issues of patient confidentiality, proper record-keeping, safety and cleanliness, and continuity of care.
Frequent Areas of Inquiry/Complaints to KSBHA

• Telemedicine vendors:

- The most common violation by non-physician owned telemedicine companies and their contracting physician providers is fee-splitting. Less frequently, there are corporate practice issues due to the extent the company controls the physician-patient encounter.

- Complaints to the KSBHA about blatant internet prescribing websites involving U.S. physicians have basically ceased.
Frequent Areas of Inquiry/Complaints to KSBHA

• “Franchise” Medicine:

- Multi-state “franchise” practices offering urgent care, hormone replacement, plastic surgery, weight loss, chiropractic care and other lifestyle medical services the subject of an increasing number of complaints to and investigations by the KSBHA. They typically have a uniform model for the practice’s care, operations and advertising to which physicians are required to adhere.

- Many are owned by lay business entities that either employ or contract with local physicians to run their clinics nationwide. Some are structured as practice management organizations, but they often overstep in areas requiring physician control and engage in fee-splitting.
Frequent Areas of Inquiry/Complaints to KSBHA

• Internet coupon websites:

- Frequently seen for chiropractic, LASIK, liposuction, weight loss, and other cosmetic medical services.
- Websites offering “deals of the day” for health care services may engage in fee-splitting with the health care provider.
- Other potential problems if the service purchased is found to be unnecessary or even contraindicated.
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