

The Multi-Discipline Practice

The most efficient way to practice podiatry today.

By Deborah A. Green, J.D.

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There have been many occasions when the patient you were treating required other medical treatment. So, you referred that patient to another doctor. In some instances the patient returned to you, in other instances the patient was lost for good. In all instances the patient was put to the inconvenience of having to make an additional appointment at another location for treatment. You and the other doctor lost valuable time and energy playing telephone tag and the patient lost days waiting for the new appointment when he or she could have been recovering. In order to avoid the delays which are necessarily incurred when a patient needs to go to various locations to see various doctors, many doctors are forming multi-discipline practices. A multi-discipline practice is simply a health care practice which offers the health care consumer "one stop shopping."

In all instances there is a medical director who is a licensed medical or osteopathic physician who makes all medical decisions. The exact arrangement depends on whether the state the practice is in follows the the "corporate practice of medicine" doctrine. This 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 corporate practice of medicine doctrine is in effect, the medical director is employed by a medical professional corporation. In some states where the doctrine is not in effect, the medical director is employed by a general business corporation. Additionally, the practice may employ podiatrists, physical therapists, chiropractors, acupuncturists, phlebotomists, nurse practitioners, physician assistants, and various other types of health care providers.

In those states where the corporate practice of medicine 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 owners of the corporation may not have any input with respect to medical treatment of any patients, unless they are themselves doctors.

It's simple to establish a multi-discipline practice owned by a podiatrist in those states that have eliminated the corporate practice of medicine doctrine. A single corporation is established which is owned by the podiatrist. The corporation enters into employment agreements with its employees such as an M.D., nurse practitioner, physician assistant, etc. Care must be taken that each of these health care practitioners renders services in accordance with the scope of his or her scope of practice in the particular state. The following currently do not have a corporate practice of medicine doctrine, and would permit you to own shares in a health care company providing medical services: Alabama, Alaska, District of Columbia, Florida, Louisiana, Maine, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, Rhode Island, South Dakota, Utah, Vermont, Virginia, and Wyoming. There is confusion with respect to the status of the corporate practice of medicine doctrine in some states. I would err on the side of caution and consider them a state that upholds the doctrine. This is a rundown on such states.

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 is uncertain. 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 1960's the then attorney general stated that "a corporation cannot practice law." However, Connecticut is an extremely conservative state. I would be very leery of starting a health care corporation which is not a professional corporation there.

In Georgia the corporate practice of medicine doctrine is presently 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,

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 currently 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 HMO's raise the possibility that the corporate practice of medicine 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 sub-categories in those states which do recognize the corporate practice of medicine doctrine. Some states permit a podiatrist to hold shares in a medical professional corporation so long as there is a M.D. who is also a shareholder; some states require that in such a case the M.D. hold the majority of shares because the M.D. holds a plenary license while a podiatrist holds a limited license; other states require that the name of the corporation does not contain the word "medical" or "medicine" when a non-M.D. owns shares in the corporation while some states consider the use of the word "medicine" or "medical" mandatory. Still other states require that only a M.D. may own shares in a corporation which renders medical services. It's very important to ascertain what the status of the law is in your state with respect to the corporate practice of medicine 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 number of other sanctions.

In order to comply with the law of those states which uphold the corporate practice of medicine 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 a M.D. or

by both a M.D. and the podiatrist (the "Professional Corporation"), a management company which is owned solely by the podiatrist (the "Management Company") and a funding company which is also owned solely by the podiatrist (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., the purchase of equipment, salaries, lease payments, management fees, taxes, etc.

In order to secure its loan, the Funding Company receives a note and a lien on all accounts receivable and other assets from the Professional Corporation.

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, marketing, 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. It should be payable regardless of whether the Professional Corporation is actually paid for its services. Your accountant can help you 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 M.D. (and where permitted, also by the podiatrist). The podiatrist is named as secretary of the Professional Corporation for purposes of administrative convenience only. Under no circumstances may the podiatrist exercise control over any medical issues which are left strictly in the purview of the M.D. The M.D. 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, podiatrists, etc., to render services to the Professional Corporation's patients. Each such 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 such 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.

The following are the initial steps that you should take before you begin to integrate your practice:

1. Review your lease with respect to prohibitions against subletting. Many leases contain clauses which prevent an existing tenant from subletting its space to another entity. In such a case an addendum to your existing lease will have to be negotiated with your landlord. Your landlord may require additional security, a personal guaranty or a lump sum payment to permit you to sublet the premises to the management company (which will then further sublet to the Professional Corporation). Make certain that you obtain the landlord's permission for successive sublets in writing. You will also need to get written permission from your landlord to make the appropriate structural changes if necessary.
2. In the event that you maintain a home office you need to determine whether you are permitted to sublet to a third party.
3. You may wish to sell your patient list to the P.C. and your equipment to the Management Company. In that event you will need to obtain a fair market value appraisal of both your patient list and equipment.
4. The various corporations need to have a series of agreements which describe the duties and obligations of each corporation to the other. This includes the basic corporate documentation for each (such as corporate minutes, and shareholders' and employment agreements) as well as agreements among the different corporations (such as a management agreement between the management company and the medical professional corporation). 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's essential that corporate and personal affairs be kept separate. Never mix corporate and personal funds, assets, or accounts. Don't 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, observe the formalities of corporate 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 the proper approval of the shareholders or the directors properly made and recorded in the corporate minutes) may be personally liable for their acts.

Your Thoughts?

If you have any questions about the formation of a multi-disciplinary practice or any other legal health care issues, please feel free to direct your questions to the Law Office of Deborah A. Green, 16 Caren Court, Mt. Kisco, NY 10549, fax no. 914-666-9266; tel. no. 914-666-9264; or e-mail dgreen3686@AOL.com.