Kansas State Board of Healing Arts

Safeguarding the Public ~ Strengthening the Healing Arts

The Business of Medicine

OBGYN Residents Wichita Campus

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The Business of Medicine
...and Your Medical License
IT’S NOT JUST MEDICINE ANYMORE

Medicine – it’s more than:

• Anatomy
• Aliments
• Diagnosis
• Treatment

Medicine means business

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Enterprise Medicine For Business

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IT’S NOT JUST MEDICINE ANYMORE

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WHAT DO YOU KNOW?

- Corporate practice of medicine
- Fee-splitting
- Groupon
- Medical Spa
- Concierge Medicine
- Franchise Medicine

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DO YOU AGREE?

1. A beauty salon can bring a physician in a \( \frac{1}{2} \) day each week to do Botox injections for a percentage of the revenues from this service.

2. Your non-licensed spouse can own part of your medical practice.

3. You can co-own a medical practice with a PA or an APRN?

The Business of Medicine...and Your Medical License
4. Walgreens can legally own a medical practice located in their stores.

5. You can contract with a management company to run the operations and do marketing for your medical practice for a percentage of the revenues.
DO YOU WANT TO:

• Open a combined practice with a chiropractor?
• Be a medical director for a Med Spa?
• Have a concierge practice?
• Work for a vein clinic franchise?

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CORPORATE PRACTICE OF MEDICINE DOCTRINE

• Lay corporations have no professional rights, privileges or powers.

• Lay corporations may not engage in the practice of medicine directly or indirectly by employing licensed professionals.
CORPORATE PRACTICE OF MEDICINE DOCTRINE

- Why? Potential conflict of interest between corporate financial goals and needs of patients.
- General corporations aren’t subject to professional standards or regulatory oversight.
- Exception for hospitals and medical schools.
CORPORATE PRACTICE - WHAT’S LEGAL?

• A physician or group of physicians can form a “professional” business entity (LLC, PA) to practice medicine.

• Certain licensed professionals can form a professional business entity to practice more than one profession (ex. MD and DC). There are some limitations.
CORPORATE PRACTICE - WHAT’S LEGAL?

- A physician can contract with a management company to run their clinic.
  - May contract for management company to do office billing, or marketing.
  - Important to have legal counsel experienced in health care business structures.
CORPORATE PRACTICE - WHAT’S NOT LEGAL?

• Management company cannot control medical decision-making.
• Medical practice cannot have unlicensed owners/investors.
• A “general” corporation cannot hire a physician.
• An out-of-state professional business entity cannot provide medical services in Kansas.

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FEE SPLITTING

Federal anti-kickback law:

It is a felony to solicit, receive, offer or pay anything of value, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring patients or services for which payment is made by a federal health care program, such as Medicare or Medicaid.
FEE SPLITTING

Kansas law:

A physician may not directly or indirectly give or receive 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 or associations.

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FEE SPLITTING

Federal Stark law:

A physician may not refer Medicare or Medicaid patients for designated health services to an entity in which the referring physician (or his/her immediate family) has a financial relationship, with a few exceptions.
FEE SPLITTING

Kansas self-referral law:

A physician may not refer a patient to a health care entity for services if the physician has a significant investment interest in the health care entity, unless the physician informs the patient in writing of such significant investment interest and that the patient may obtain such services elsewhere.
GROUPON

How it works:

A business (or medical practice) agrees to sell its service at a discount and Groupon offers the discounted service through online media. Individuals pay Groupon directly, and Groupon reimburses the business half of the amount it collects.
GROUPON

What is wrong:

Groupon requires that you pay them a percentage of the fees collected for a professional medical service, and therefore it is fee splitting.
MEDICAL SPAS

• Med spas offer aesthetic medical procedures such as laser hair removal, vein treatments, Botox injections, laser fat reduction and tattoo removal.

• Med spas may employ allied health professionals or aestheticians to perform treatments delegated and supervised by a physician.
MEDICAL SPAS

Key issues:

• Who owns the medical spa
• How are fees paid
• How are medical services delegated and supervised
• Standard of care
• Other regulatory requirements
OTHER MED SPA CONCERNS

Practicing at malls, fairs and doing Botox parties:

• Patient confidentiality issues
• Patient record-keeping issues
• Safety and cleanliness issues
• Continuity of care issues
CONCIERGE MEDICINE

• Concierge medicine is a relationship between a patient and a primary care physician in which the patient pays an annual fee or retainer. In exchange, the physician provides enhanced care and/or access.
• May also be called boutique, retainer or VIP medicine.
• Typically cash-only, which lowers overhead.
CONCIERGE MEDICINE

Pros:

• May be able to provide personalized patient care.
• May be able to provide care at a lower cost.
CONCIERGE MEDICINE

Cons:

- May be engaged in unauthorized business of insurance.
- May violate Kansas prohibition on excessive fees.
- May violate Federal laws.
FRANCHISE MEDICINE – “McMEDICINE”

• Typically offers medical services in many different states through a common model that is provided by local physicians.
• May be owned by a physician or be a general corporation.
• Same name, marketing and structure in all locations.
• Different buy-in models.

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FRANCHISE MEDICINE – “MCMEDICINE”

- Medical weight loss clinics
- Med spas
- Vein treatments
- Hormone replacement
- Pain management

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FRANCHISE MEDICINE – “MCMEDICINE”

• In general, “McMedicine” is not legal in Kansas.
• Can be the corporate practice of medicine.
• Can involve illegal fee-splitting arrangements.
• May be susceptible to HIPAA or other privacy violations.
IT’S NOT JUST MEDICINE ANYMORE

Business of Medicine Take Aways:

• Know corporate practice prohibitions
• Know your business associates
• Know acceptable business practices
• Know an experienced attorney

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Scenario #1:

Skin Online is a telemedicine company that wants to contract with dermatologists across the country to evaluate photos of skin conditions which customers upload to its website for a flat $89 fee. After the evaluation, the physician may write a prescription for the patient or recommend further in-person evaluation. The physician is paid a portion of the fee for each online evaluation.
Scenario #2:

A prestigious beauty spa would like to expand into offering aesthetic medical procedures. The owner asks if you would consider entering a contract to be the spa’s medical director. Your responsibilities would be to order Botox, obtain medical laser equipment, train the spa’s cosmetologists and come by once a week to provide some supervision to them. You would be paid 50% of the fees.
Scenario #3:

A national medical weight loss chain contacts you with a great opportunity to start your own bariatric practice. They will set you up with a clinic and handle all of your operations, billing and marketing. You must form your own business entity for the practice itself. The practice would then pay the chain a hefty flat monthly fee for your rent and the services you use.

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Scenario #4:

A physician you were friends with in medical school phones to tell you he is starting a new primary care practice called All Access Physicians. It will be a concierge practice offering unlimited visits, phone calls and diagnostic testing for the very wealthy patients who can afford to pay the hefty annual contract fee up front and with no refunds. He wants you to join him as a partner.
DO YOU AGREE...THE ANSWER:

1. A beauty salon can bring a physician in a ½ day each week to do Botox injections for a percentage of the revenues from this service.

- No, never, don’t do it.
2. Your non-licensed spouse can own part of your medical practice.

• No, sorry honey.
3. You can co-own a medical practice with a PA or an APRN?

- Yes, integrated practice is okay if structured appropriately.
DO YOU AGREE...THE ANSWER:

4. Walgreens can legally own a medical practice located in their stores.

• No, it just looks that way.
DO YOU AGREE...THE ANSWER:

5. You can contract with a management company to run the operations and do marketing for your medical practice for a percentage of the revenues.

- No, the compensation can’t be revenue-based
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Questions?
What can we do to serve you and improve health care for Kansans?