

New Jersey Supreme Court Reminder - Don't Forget about the Corporate Practice of Medicine

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A New Jersey Supreme Court case earlier this summer has New Jersey lawyers re-examining their clients' business structures under the State's corporate practice of medicine doctrine.

Many states prohibit the corporate practice of medicine ("CPOM") in order to prevent or limit a lay person from interfering with a physician's independent medical judgment. In New Jersey, for example, the State Board of Medical Examiners' regulations prohibit a licensee with a more limited scope of practice (e.g., physical therapists, chiropractors, nurse practitioners, etc.) from employing physicians.

In *Allstate Ins. Co. v. Northfield Med. Ctr., P.C.*, 2017 BL 148804 (N.J. May 4, 2017), the New Jersey Supreme Court ruled that a chiropractor (and his attorney that advised on the structure) may have violated the Insurance Fraud Prevention Act because, under the structure, a chiropractor could terminate a physician's employment at any time and had more control over the practice's profits than the physician (who is required to own a majority interest of the practice in New Jersey). Thus, the court ruled that the medical practice was controlled by the chiropractor instead of the physician in violation of the New Jersey CPOM prohibition.

Submitting claims while a practice is structured in violation of the CPOM doctrine can lead to insurers recouping payments as false claims. Individual physicians, corporations, and attorneys can also face disciplinary action for their involvement in setting up or operating the fraudulent entity.

It is important that the organizational documents are set up to give the physician control over the practice, but this control should be exercised in reality and not just on paper. Physicians often have managers run many of the business aspects of the practice, but the physician should have the final say with respect to the medical and financial decisions of the practice and the hiring and firing of professionals. Courts may look past the face of the documents to see who is really calling the shots on a daily basis.

While this recent case is spurring attorneys to evaluate their clients' structures in New Jersey, this is a good reminder to take a fresh look at CPOM restrictions in other states as well. Make sure your structure works at the outset and re-examine every so often to adapt with evolving laws and court interpretations of such laws.

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