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Litch's Law Log

Corporate Ownership of Dental Practices and Management Service Organization Issues: Part I

States regulate who can own and operate a dental practice, employ a dentist, and the level of control non-dentist owners and managers may exercise over a dental practice. Organized dentistry is naturally concerned about the potential for interference by non-dentists in the operation of a dental practice.¹ Many state practice acts specify that only a licensed dentist can own and operate a dental practice, including hiring other dentists.

Challenging issues have been raised with the advent in recent years of dental management service organizations or MSOs. *The Journal of the American Dentistry Association*² first published an article about this in 1997, indicating that while such organizations may free dentists to concentrate on dentistry, they also raise certain legal and professional questions.

The article defined an MSO as follows:

“In general, a dental MSO provides management services that support the dental services provided by a dentist or his or her group practice. An MSO may provide a wide range of services—billing and collections, scheduling and record management, negotiating with insurers, recruiting staff, leasing space, purchasing equipment, credentialing, utilization review and quality assurance review.”

Two basic structural models were noted:

“An MSO may provide comprehensive management services for a dental practice in exchange for a fee. Or it may actually buy the dental practice from the dentist and employ the dentist either directly or indirectly through an affiliated entity such as a professional corporation. “

Obviously, in the latter situation questions are raised as to whether the MSO is engaged in the unauthorized practice of dentistry. For example, in Illinois there is a general prohibition on corporations practicing

dentistry, with an exception for MSOs providing non-clinical business services:

(225 ILCS 25/44) (from Ch. 111, par. 2344)

Sec. 44. Practice by Corporations Prohibited. Exceptions. No corporation shall practice dentistry or engage therein, or hold itself out as being entitled to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentist or dental surgeon or equivalent title, or furnish dental advice for any compensation, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service or dentists, or solicit through itself, or its agents, officers, employees, directors or trustees, dental patronage for any dentist employed by any corporation.

Nothing contained in this Act, however, shall:

(a) prohibit a corporation from employing a dentist or dentists to render dental services to its employees, provided that such dental services shall be rendered at no cost or charge to the employees;

(b) prohibit a corporation or association from providing dental services upon a wholly charitable basis to deserving recipients;

(c) prohibit a corporation or association from furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any dentist when such dentist assumes full responsibility for such information or services;

(d) prohibit dental corporations as authorized by the Professional Service Corporation Act, dental associations as authorized by the Professional Association Act, or dental limited liability companies as authorized by the Limited Liability Company Act;

(e) prohibit dental limited liability partnerships as authorized by the Uniform Partnership Act (1997);

(f) prohibit hospitals, public health clinics, federally qualified health centers, or other entities specified by rule of the Department from providing dental services; or

(g) prohibit dental management service organizations from providing non-clinical business services that do not violate the provisions of this Act.

Any corporation violating the provisions of this Section is guilty of a Class A misdemeanor and each day that this Act is violated shall be considered a separate offense.

(Source: P.A. 96-328, eff. 8-11-09.)

But state laws do vary and some allow non-dentists to have a degree of ownership in a dental practice.

“Thus, whether the prohibition on the corporate practice of dentistry is an issue, and to what extent it is an issue, depends on the law in the dentist's state and the structure of the MSO arrangement.”

Coming up in Part II in the Sept. 2010 *PDT*, some recent legal cases in this area will be analyzed.

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(Footnotes)

¹ A number of states do include a legislative exception to enable a spouse or personal representative of a deceased or disabled dentist to continue the operation of a dental practice for a specific period of time.

² PM Sfikas. *Who's minding the store?* *J. Am. Dent. Assoc.* 1997;128:1462-1465.