

Legal Brief

Corporate Practice of Medicine

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of January 1, 2013; readers should consult the most recent versions of referenced statutes, regulations and cases to ensure there have been no material changes.

Summary

Physicians may form corporations or limited liability companies to own and operate their practices or clinics.

Corporations, limited liability companies, and similar entities--the officers, directors, and shareholders of which are not physicians--may not engage in the practice of medicine. They may, however, contract with physicians to provide medical services under certain circumstances.

Physician employment agreements and restrictive covenants are discussed in a separate Legal Brief.

Discussion

Licensed physicians may form medical corporations or limited liability companies under SDCL Chapter 47-11 to operate their practices or clinics. All of the officers, directors, and shareholders (or in the case of an LLC, members) must be licensees. No person who is not so licensed may have any part in the ownership or control of such corporation, nor may any proxy to vote any shares of such corporation be given to a person who is not so licensed.

Generally speaking, a physician-owned medical corporation or LLC may employ physicians upon such terms and conditions as the parties may agree are appropriate.

A physician-owned medical corporation or LLC must be registered with the Board of Medical and Osteopathic Examiners. The Board may revoke a medical corporation or LLC's designation as such if the corporation or LLC fails to promptly remove any officer, director, shareholder, member, or employee of the corporation or LLC whose license is revoked or suspended or who is guilty of unethical professional conduct. SDCL 47-11-13.

Generally speaking, corporations and limited liability companies that aren't owned by physicians cannot practice medicine. It is not considered the unauthorized practice of medicine, however, if a non-physician owned corporation enters into employment contracts with physicians that don't act to interfere with the physician's professional judgment. More specifically, a non-physician owned corporation or limited liability company may enter into employment contracts with physicians that do not: (i) directly or indirectly affect the physician's independent judgment concerning the diagnosis and treatment of patients; (ii) result in profit to the corporation from the practice of medicine itself, such as charging a greater fee than the physician could reasonably charge; and (iii) have a term longer than three (3) years, after which they may be renewed annually by mutual consent.

At least one local court has ruled that a covenant in a physician employment agreement that limited the physician's ability to practice in a certain geographic area after leaving the employ of a non-physician owned corporation acted to impede the physician's professional judgment and his patient's choice of physicians, and thus was unenforceable as being against public policy. Employment agreements between physicians and corporation-owned clinics are covered in a separate Legal Brief entitled "*Restrictive Covenants in Physician Employment Agreements*."



SDSMA gratefully acknowledges the SDSMA Foundation for its support of this publication through funds awarded by The Physicians Foundation.