By Padraic B. Deighan, JD, PhD

The Corporate Practice of Medicine

Most states have regulations prohibiting the corporate practice of medicine, but violations are widespread in the field of medical aesthetics.

The corporate practice of medicine (CPoM) doctrine prohibits a business entity from practicing medicine or employing a physician to provide professional medical services. Most states have CPoM regulations, which may manifest themselves through state law, medical boards and/or court opinions addressing ownership or control of healthcare providers by individuals or corporations that are not directly licensed to provide healthcare services. Some states merely prohibit the practice of medicine without a license or the sharing of fees between licensed and unlicensed individuals, while other states flatly prohibit unlicensed individuals from owning medical practices or employing medical professionals.

The rationale behind CPoM regulations is that corporate profits should never be a factor in medical treatment decisions or interfere in any way with the physician's ability to exercise independent medical judgment. Medical decisions should be based solely on what is in the best interest of the patient. Another way to look at the CPoM doctrine is that it exists to prevent business entities or individuals who are not licensed to practice medicine—and therefore are not subject to the same professional standards and regulatory controls as licensed medical providers—from intruding into the practice of medicine.

Identifying Regulations

Determining whether a state has CPoM regulations and what they are is challenging because they can originate and be enforced in many different ways. According to my investigation, 45 states have some form of CPoM prohibition. The prohibitions may be established via statute, case law, mandates from a state board of medicine or through decisions made by the state attorney general. The degree of regulation and the manner in which the doctrine is regulated varies widely from state to state. For example, I have heard many times that Florida "allows" the corporate practice of medicine. While there are no statutory prohibitions against it, decisions by the state's attorney general dating back to 1995 prohibit non-physicians from owning a medical practice or hiring medical personnel.

There are exceptions to the CPoM doctrine and its application in certain, limited situations. For example, hospitals are largely exempted from the doctrine and Health Maintenance Organizations (HMO's) have received exemptions as well, due to the understanding that these entities are essential to modern era delivery of health care. It is important to note that the CPoM doctrine applies to all licensed medical providers—not just physicians. This is especially important in aesthetic medicine as we will see below.

Aesthetic Medicine and CPoM

The expansion of aesthetic medical practices and the introduction of medspas created an entirely new set of issues

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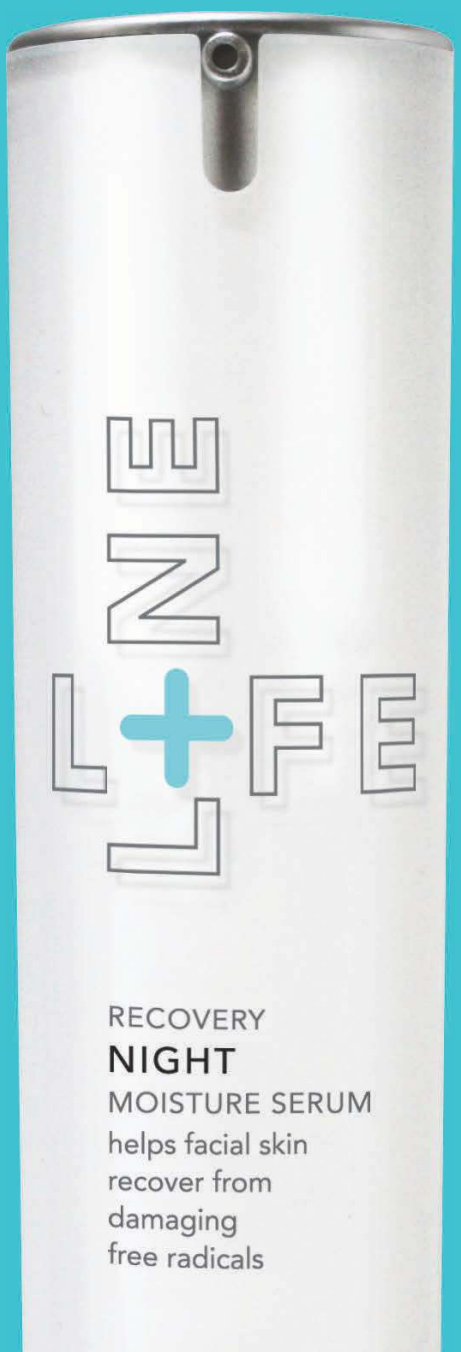

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relative to the CPoM doctrine. In the 1990s, spa owners began contracting with physicians to deliver aesthetic medical services within the spas. They also began to employ other medical professionals, such as registered nurses, under the license of non-owner physicians. Medical Supervision Agreements became prevalent in the medical spa and spa industries, many of which clearly violate the CPoM doctrine. A non-medical entity cannot directly employ a physician (or other medical professional) and a physician should not be "employed" by a non-medical entity.

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Many people erroneously believe that there is some exception for aesthetic medicine. They claim that because aesthetic services are provided as a fee for service, independent medical judgment is not affected by profit considerations. The service is provided for a set fee that is known by the patient in advance, and the patient is agreeable to the service and the fee. Others assert that the CPoM doctrine does not apply because so many entities violate the doctrine. I agree that the doctrine is abused on a massive level, but this is no justification for a violation. This argument is analogous to saying that you should not receive a speeding ticket because someone else was driving faster than you and he did not receive a speeding ticket. The proverbial bottom line is that there is no exemption to the CPoM doctrine for aesthetic medicine.

Staying Aboveboard

We can focus on two considerations in regard to this issue in aesthetic medicine. First, we'll discuss what to do if you are already in an arrangement that may violate the CPoM doctrine. Second, we'll explore possibilities if you want to contract with a non-medical entity and avoid CPoM issues.

If you are already in a situation in which there appears to be a non-conforming agreement, you *must* take action. CPoM compliance enforcement is rapidly escalating. In fact, California is issuing criminal indictments for violations of this doctrine in the aesthetic medicine field. Criminal prosecution is a reality for flagrant violations. It would be prudent to contact the entity that "employs" you and mention that you have a concern about the nature of the relationship. There are ways to continue a relationship with the non-medical entity but you will likely need to change the agreements and the nature of the relationship.

Don't be swayed by the entity's insistence that its attorney has approved the agreements. The attorney may have approved the relationship based upon his or her duty to the client—the business entity. That doesn't mean you are protected. If a state medical board or regulatory agency takes action or a patient is injured, it is your license that is in jeopardy.

It is very important to note that the CPoM doctrine applies to physicians who work part-time or on an independent contractor basis. It does not matter that the physician maintains a traditional office in another location. It is also important to note that physicians cannot employ other medical providers, such as nurses and nurse practitioners, when they are "employed" by a non-medical facility.

If you desire to form a relationship with a non-medical entity, such as a spa or medspa, in the future, you can achieve this, but the nature of the relationship will be a bit more complex than just a traditional contract or independent contractor agreement. In this scenario, you will need to negotiate three to five agreements. These may include a business associate agreement, management marketing agreement, business entity agreements and an agreement relating to staff. Such scenarios are not overly complex, but you have to exercise care in forming a relationship with a non-medical facility.

CPoM doctrines have been in existence for more than 70 years. For most of this time, the public seemed to understand that only licensed professionals can practice medicine or direct medical care. New business models that appeared as a result of the medical aesthetic field have given rise to a new wave of compliance issues. Attorney generals, state boards of medicine and state legislatures have taken notice of the abuses, and we can expect more regulation in the future. ME

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