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## HOW CAN A CHIROPRACTOR WORK WITH OTHER TYPES OF HEALTH CARE PROVIDERS?

Over the years we have had numerous clients inquire about the different ways in which chiropractors can work with other types of health care providers. Typically, the goal is to be able to provide a greater variety of health care services to the patients under the same roof. This often also allows doctors of different disciplines to work more closely together, to share their knowledge and different approaches, allowing the patient to receive the best of all worlds as opposed to health care distinctly segregated into individual theories or approaches.

This memo will discuss the primary ways in which chiropractors can lawfully work with other types of providers, based upon current California law. These methods vary from simple to complex, and each has its own set of advantages and disadvantages.

### 1. Leasing Office Space to Another Health Care Provider

The most simple way to bring other services under the same roof is to rent office space to another type of health care provider. This methodology would work equally well with respect to a medical doctor, osteopath, physical therapist, acupuncturist, podiatrist, etc. For purposes of this discussion, let's assume that the tenant is a medical doctor.

The chiropractor can rent office space within his or her existing office to a medical physician. The medical physician would then operate a separate practice within or adjacent to the chiropractic office. The M.D. would see patients, provide services, bill for those services, and receive the income from the services. Here, the arrangement between the parties would be a lease agreement.

The specific parameters of that lease agreement vary depending upon two factors. The first factor is whether or not there will be referrals of patients between the two providers. The second factor is the type of patients who will be seen, such as Medicare, insurance, personal injury, and Workers' Compensation. These factors are important because they will determine which laws will apply to the relationship and how the lease agreement will have to be structured in order to comply with those laws.

For instance, if the doctors see Medicare patients, two federal laws apply. The first is the Anti-Kickback Statute<sup>1</sup>. This law, in broad terms, prohibits any kickback or remuneration, directly or indirectly, for the referral of a patient. The second law that may also apply is the federal self-referral law (often referred to as STARK II), depending upon the specific services that are being provided. This law prohibits a physician from referring to an entity with which the physician has a financial interest, with certain exceptions.

On the other hand, non-federal program patients may be governed by three different state laws: the California anti-kickback statute (Business and Professions Code Section 650), and two STARK-like self-referral laws (Business and Professions Code Section 650.01 and Labor Code Section 139.3).

Assuming that we have referrals between the two doctors, and the doctors see a wide variety of patients, who are served by all types of carriers, then the lease agreement would need to be structured in line with the following parameters:

- A. There must be a written lease agreement that is for a term of one year or more.
- B. The space to be leased must be described, and if the lease is for less than full time, then the intervals of time during which the space is to be used must be described. The lease can include certain areas that are for the exclusive use of the provider (such as an exam room or a private office), and other areas that are for shared use, like parking, reception, hallways, restrooms, etc.
- C. The rent to be paid must be fixed in advance, and must be fair market value for the space, not taking into account the fact that there may be referrals between the two parties.

A lease carefully constructed in accordance with these guidelines allows the referral of patients to occur between the two providers because the lease meets a specific exception or safe harbor contained in the various laws that apply<sup>2</sup>. The concept here is that there are two independent practices operating under the same roof.

The advantage to the lease arrangement is simplicity and the cost of preparing the appropriate documentation for this type of arrangement is relatively modest, typically less than \$1,000. The limitations of this arrangement are that the compensation must be limited to the fair market value for the space provided and that the practices must remain separate and distinct, instead of being truly integrated.

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<sup>1</sup> 42 USC §1320 a-7b

<sup>2</sup> Proper written disclosure of the doctor's financial interest in an entity to which patients are referred may be required.

## **2. The Multi-Disciplinary Medical Corporation**

Under California law, a medical corporation generally must be incorporated as a professional corporation under the Moscone-Knox Professional Corporations Act.

A. Owners (Shareholders). A corporation is owned by its shareholders. California Law (Corporations Code Section 13401.5) restricts ownership of a medical corporation to a number of licensed individuals, including medical doctors, podiatrists, chiropractors, psychologists, registered nurses, optometrists, physician assistants, acupuncturists, clinical social workers, naturopaths, and marriage and family child counselors.

The majority of shares must be owned by a medical doctor (or osteopathic physician) and there cannot be more non-M.D. shareholders than there are M.D. shareholders. Thus, a common structure would involve a majority (51% or more) of the shares to be owned by one or more M.D.s or D.O.s, and the balance held by a podiatrist, chiropractor, or other qualified shareholder.

B. Directors. Typically, the shareholders also serve as the directors of the corporation. The directors then elect the corporate officers. The law provides that, when a medical corporation has only two shareholders, both shareholders must also be directors of the corporation (California Corporations Code Section 13403).

C. Officers. The corporation typically has the following officers: President, Vice-President, Secretary, and Treasurer. The law provides that the shareholders must fill, between them, all the offices, with limited exceptions (California Corporations Code Section 13403). Under California law, any shareholder can be the President of the corporation.

D. Employees. The actual services provided by the corporation are provided through the people employed by the corporation. Thus, the medical corporation often employs a variety of providers including medical doctors, podiatrists, chiropractors, medical assistants, physician assistants, nurses, nurse practitioners, x-ray techs, chiropractic assistants, physical therapists, physical therapy assistants, and/or physical therapy aides.

The medical corporation, like other corporations, must meet certain legal requirements. Typically, the shareholders and the directors need to meet at least once a year, and more often if necessary. The corporation must maintain minutes of these meetings, must file the appropriate tax returns, and must file a statement of officers and directors with the Secretary of State. The medical corporation must register any fictitious names it uses with the Medical Board.

Whereas the name of a chiropractic corporation is extremely restricted by California law, the name of a medical corporation can be more creative. Typically, the

name contains the terms “Medical Group”, “Medical Associates”, “Medical Center” or “Medical Corporation”, but need not contain the name of the owners. So, for example, the name of the corporation might be “Access Medical Group, Inc.”

### **Billings by the Medical Corporation**

The medical corporation will obtain a Federal Tax ID number, which, in most cases, then becomes the provider identification number for purposes of billing. Medicare requires that each provider obtain a separate identification number (called a unique provider identification number or UPIN). The corporation would then also obtain a group provider identification number from Medicare.

All services would be billed in the name of the corporation. This assures that payments are properly made to the corporation, as opposed to payments going to individual providers. Thus, in the standard HCFA 1500 claim form, the corporate name goes in block 33 (Physician’s or Supplier’s Billing Name, Address, Zip Code & Phone Number) and the corporate I.D. number goes in block 25 (Federal Tax I.D. Number), with the box checked for “EIN”.

All payments received should be deposited to the medical corporation’s bank account.

If the medical doctor provided a service (E&M service or a procedure), then the medical doctor’s name and degree would typically be inserted in Block 31. If the chiropractor provided a service (E&M, CMT, or a procedure), then the chiropractor’s name and degree would typically be inserted in Block 31. For services provided by an assistant, then typically the name and credential of the doctor who provided the supervision for the service would be inserted in this block.

### **Assistants and Supervision Requirements**

Here, the most common question relates to the type of assistant that can provide services.

A. Medical Services. Typically, medical services are provided by M.D.s or D.O.s, nurses, nurse practitioners, physician assistants, and medical assistants. All of these categories require a state license, except for medical assistants, who may be certified, but not licensed by the State.

Medical assistants are unlicensed health professionals who perform non-invasive routine technical support services under the supervision of a licensed physician and surgeon or podiatrist in a medical office or clinical setting. The supervising physician or podiatrist must be on premises in order for the medical assistant to perform non-invasive technical support services. (See Business and Professions Code Sections 2069 - 2071).

A medical assistant who has completed the minimum training required by the Medical Board's regulations may administer medication by intra-dermal, subcutaneous, or intramuscular injection, perform skin tests, and perform other technical supportive services upon the specific authorization and supervision of a licensed physician and surgeon or podiatrist.

"Specific authorization" means a specific written order prepared by the supervising physician or podiatrist authorizing the procedures to be performed on a patient, which shall be placed in the patient's medical record.

The "other technical supportive services" which a medical assistant may perform have been established by regulation. The medical assistant must receive specific training with respect to each technical supportive service to be performed, but also must have certain minimum training including: (a) ten hours of training in administering injections and performing skin tests; (b) ten hours of training in venipuncture and skin puncture for the purpose of withdrawing blood; and (c) supervised performance of these procedures. The training must also include training in anatomy and physiology, equipment, sterile technique, hazards and complications, patient care following treatment, emergency procedures, and California law relating to medical assistants. Medical assistants must also have received training in the Center for Disease Control's "Guidelines for Infection Control in Hospital Personnel". Medical assistant training is typically provided by a board-approved training agency.

B. Chiropractic Services. Typically, chiropractic services are provided by chiropractors and by chiropractic assistants (C.A.s). Chiropractors are licensed by the California Board of Chiropractic Examiners. Their scope of practice is primarily described in Board Rule 302. Chiropractic assistants do not require any specific education or certification. Thus, training is often provided "on the job." The level of training and expertise among C.A.s varies greatly. We suggest that you either hire people who have received formal training or that you require them to obtain formal training. Any "on the job" training should be carefully documented.

Chiropractic assistants are governed by the Chiropractic Board regulations, specifically, Section 312, which provides that an "unlicensed individual" may perform permitted activities including taking the patient history and conducting standard neurological, orthopedic, physical, and chiropractic examinations -- except that they may not perform exams that require diagnostic or analytic interpretations, nor render any conclusions. These services must be performed under the "immediate and direct supervision" of the licensed chiropractor. This means that the licensed chiropractor must be in the office at all times that the chiropractic assistant is providing these specific types of services.

The rule further provides that a CA may administer modalities as an adjunct to chiropractic adjustment, with "adequate supervision of a licensed doctor of chiropractic." This portion requires that the doctor be in the same chiropractic facility at least 50% of any workweek or portion thereof when the CA is on duty. The chiropractor must be

available by phone at all other times. Further, the chiropractor must initially examine and prepare a written treatment program prior to providing therapy that will be performed in whole or in part by a C.A., and must perform periodic reevaluation of the treatment at least once every 30 days.

C. Therapy and Therapeutic Modalities<sup>3</sup>

i. Physical therapy can be performed by a physical therapist. A physical therapist may also supervise physical therapy assistants and physical therapy aides. Here's the difference:

Physical Therapist Assistant. A physical therapist assistant is a licensed person who may assist a physical therapist in treating patients and may provide physical therapy services under the supervision of a physical therapist licensed by the Physical Therapy Board (California Business and Professions Code Section 2655.7).

While the physical therapist assistant is treating patients, the supervising physical therapist must be readily available in person or by phone to the physical therapist assistant at all times. Additionally, the physical therapist must provide "periodic on site supervision and observation" of the physical therapy assistant (California Code of Regulations, Title 16, Section 1398.44).

The supervising physical therapist shall initially evaluate each patient and document in the patient record, along with his or her signature, the evaluation, and when the patient is to be reevaluated. Additionally, the supervising physical therapist shall formulate and document in each patient's record, along with his or her signature, the treatment program goals and plan, based upon the evaluation (California Code of Regulations, Title 16, Section 1398.44).

Physical Therapy Aide. A physical therapy aide is an unlicensed person who assists a physical therapist. A physical therapy aide may perform patient related tasks or non-patient related tasks, such as observation of the patient, transport of patients, physical support only during gait or transfer training, housekeeping duties, or clerical duties.

The *physical therapist* must provide continuous and immediate supervision of the aide. The physical therapist must be in the same facility as and in immediate proximity to the location where the aide is performing patient related tasks and shall be readily available at all times to provide advice or instruction to the aide. *A physical therapy assistant may not supervise a physical therapy aide.* Further, when the aide performs patient related tasks, the supervising physical therapist shall at some point during the treatment day provide direct service to the patient as treatment for the patient's condition or to further evaluate and monitor the patient's progress, and shall so

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<sup>3</sup> Note that Labor Code §139.31(e) has been interpreted by various carriers as requiring pre-authorization of physical therapy when rendered in a group practice setting. There, however, is a substantial question as to what specifically is included in the term "physical therapy" as used in that context.

document in the patient's record (California Code of Regulations, Title 16, Section 1399).

When the therapy is provided by or under the proper supervision of a physical therapist, the therapy may be billed with the therapist shown as the supervising provider.

ii. Therapeutic procedures and modalities can be performed by a medical doctor or by a chiropractor. Typically, the service would then be billed under the name of the licensed provider.

iii. Therapeutic modalities (but not therapeutic procedures) can be performed by a medical assistant performing the services under the order and supervision of the medical doctor. Even this has been an area of disagreement. While the Physical Therapy Licensing Board and the physical therapy associations have contended that a medical assistant may not perform therapeutic modalities, the recent Workers' Compensation case of PM&R Associates v. Workers' Compensation Appeals Board and Zenith Insurance Company, 80 Cal. App. 4<sup>th</sup> 357, 94 Cal.Rptr.2d 887 (2000), held specifically that medical assistants may perform technical supportive services, including those involving concepts of physical therapy, as long as those medical assistants meet the requirements for training, documentation, and supervision.

California law requires that the physician who is supervising the medical assistant be physically present in the treatment facility during the performance of the procedures (Business and Professions Code Section 2069 (b)(3)).

If the services are performed by an appropriately trained medical assistant under proper supervision, then it would be appropriate to bill the services with the M.D. reported as the Physician in Block 31 of the HCFA claim form.

iv. Therapeutic procedures and/or modalities can be performed by a chiropractic assistant performing the services under the order and supervision of the chiropractor. Based upon the Chiropractic Board's rule, the chiropractor must be on premises at least 50% of the time.

If the services are performed by a chiropractic assistant under these circumstances, then it would be appropriate to bill the services with the D.C. reported as the "physician" in block 31 of the HCFA claim form.

Note that we are not aware of any specific authority that would permit a chiropractic assistant to perform these services under the supervision of a medical doctor or that would permit the billing of chiropractic assistant services under the medical doctor's name. While the differences between a chiropractic assistant and a medical assistant may be slight, the training requirements applicable to medical assistants are not mandatory for C.A.s. Here, one solution would be to properly cross-

train and qualify the C.A.s as M.A.s, who could then perform services under the supervision of either a D.C. or an M.D.

v. Drawing Blood. The following people can draw blood: M.D.s, D.O.s, N.P.s, nurses, medical assistants, and licensed phlebotomists.

vi. Documenting Who Provided the Services. Each service should be entered in the patient's chart and legibly signed or initialed by the person who performed the service, and by the person who provided the appropriate supervision.

vii. Medicare's Special Rules. Medicare regulations relating to the providing of physical therapy in a physician's office are stricter than California law. The most recent changes in Medicare's regulation of physical therapy payments are discussed in a separate memo available from our office.

### **Referrals Between Doctors in a Medical Corporation**

Strange as it may seem, Stark II contemplates the referral from one physician to another, within the same group practice, as a potentially prohibited referral. However, among the exceptions created by Stark II is a "**group practice exception**" that permits referrals between doctors in the same group. To qualify for this protection, the group practice must meet the following criteria:

i) Each physician who is a member of the group provides substantially the full range of services that are provided by the group. This would prohibit a group from hiring a doctor just to do a specific kind of test for the group, while the doctor provides a greater range of services in a different facility.

ii) Substantially all of the services of physicians who are members of the group are provided through the group and billed by the group under a billing number assigned to the group. The amounts received from this billing are treated as receipts of the group. For purposes of group membership, CMS (formerly HCFA) defines members of the group to be physician partners and full and part time physician contractors and employees.

CMS regulations define the "Substantially all" requirement, to mean that 75% or more of the total patient care services furnished by the group members were furnished through the group. Here's how we understand the provision will be applied:

Example 1: Two physicians own the practice. Both spend their full professional time working for the practice. In addition, they employ one doctor, who works 50% of his time in this practice and 50% elsewhere.

2 physicians at 100% = 200  
1 physician at 50% = 50

Total 250 divided by 300 (total possible) = 83.3%  
The practice exceeds the 75% threshold and meets the requirement.

Example 2: One physician owns the practice. He spends 10% of his time working in the practice and 90% elsewhere. The practice employs two doctors, one of whom is full time, and the other part time at 50%.

1 physician at 10% = 10  
1 physician at 100%= 100  
1 physician at 50% = 50

Total 160 divided by 300 (total possible) = 53%  
The practice does not meet the 75% requirement.

- iii) The income and expenses of the practice are distributed in accordance with methods previously determined.
- iv) Members of the group must personally conduct no less than 75% of the physician/patient encounters of the group practice; and
- v) No physician member of the group may receive compensation based on the value or volume of referrals, except that a member may receive a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share bonus is not determined in any manner which is directly related to the volume or value of the physician's referrals.

### **The Medicare Physical Presence Requirement**

Whenever services are billed under a physician's name, Medicare requires that the physician be present when those services are performed. The requirement is one of *physical presence* in the facility (as opposed to mere availability). This, of course, presents no particular problem with respect to services rendered by the medical physician personally or with respect to spinal manipulation performed by the chiropractor.

However, with respect to those services rendered by a staff person, the medical physician must be *physically present*. For the purposes of supervision, a chiropractor does not qualify as a "physician" and therefore the requirement would be for the physical presence of the medical doctor under whose UPIN the services are billed.

Note, also, that under Medicare, the claim forms must identify the licensed health care provider who performed the service (or who supervised the service) by listing the provider's UPIN (Unique Provider Identification Number) on the claim form in the space provided.

## **The Medical Corporation -- Summary**

A multi-disciplinary medical corporation can be established and co-owned by a medical doctor and a chiropractor. The corporation can employ a variety of health care providers. The corporation bills for all services rendered.

For a variety of reasons, the corporation should have a full time medical staff and a full time chiropractic staff. Assistants (medical assistants and chiropractic assistants) can provide services, but each must be properly supervised. Thus, we typically recommend that the corporation employ a medical doctor on a full time basis. The corporation can also employ other types of health care providers and bill for all services provided.

## **The Medical Corporation -- Advantages and Disadvantages**

The multi-disciplinary medical corporation may be the best way to integrate professional services under one entity. Properly structured and managed, it offers the ability to provide a full range of services, to bill and be paid for those services, and to refer freely between the health care providers employed by the corporation.

On the other hand, the structure is more expensive. It requires a precise set-up, with a number of written agreements. Figure that legal costs will be between \$8,000 and \$10,000 initially. There will also be additional accounting costs. Then there is the increased cost of operation, including staff salaries, higher Workers' Compensation premiums, and malpractice insurance costs. M.D. salaries depend highly upon the doctor's specialty certification, but the range is anywhere from \$100,000 to \$300,000 annually.

While the chiropractor can, as an officer of the corporation, run the business aspects (without interfering in medical decision-making), the management of a medical venture is certainly more complex than managing a chiropractic practice. Not only is the entity larger, but also more diverse. Some have met this challenge easily, while others have struggled.

Lastly, some multi-disciplinary structures have been challenged by insurance companies and government agencies. These challenges have generally been made in states where the law does not expressly permit a multi-disciplinary structure and where the venture is established with only minimal medical staff coverage. In these types of challenges, the carrier claims that the operation is a sham and is actually a chiropractic practice, with chiropractic services being disguised as medical services. Obviously, we do not recommend this type of an approach.

### **3. Employment of Other Providers by a Chiropractic Corporation**

California Corporations Code Section 13401.5 describes what licensed persons may be shareholders, officers, directors or professional employees of various types of professional corporations. Under sub-paragraph (k) of that section, the following persons are listed as those who may participate in those capacities in a chiropractic corporation:

1. *Licensed physicians and surgeons*
2. *Licensed doctors of podiatric medicine*
3. *Licensed psychologists*
4. *Registered nurses*
5. *Licensed optometrists*
6. *Licensed marriage and family therapists*
7. *Licensed clinical social workers*
8. *Licensed acupuncturists*
9. *Naturopathic doctors*

Section 13405 of the California Corporations Code provides that, subject to the provisions of Section 13404, a professional corporation may lawfully render professional services in this state, but only through employees who are licensed persons.

Based on the laws discussed above, I believe that it is possible for a chiropractic professional corporation, properly registered with the California Board of Chiropractic, to employ a licensed physician or other healthcare provider, enumerated above. The physician should be employed as an employee of the corporation, and should not be an independent contractor. The chiropractic corporation would need to adopt safeguards to be certain that the judgment of the medical physician is not interfered with by anyone other than perhaps another physician employed by the corporation as a medical director. This would be provided for in the employment agreement. Additionally, there should be provisions for adequate safeguards relating to prescribing practices and the availability of drugs in the office. If an assistant will be helping the medical doctor, then that assistant should be either a nurse or a certified medical assistant following proper protocols.

The services provided by the medical doctor should be billed under the name and provider identification number of the chiropractic corporation showing the medical doctor as the physician who provided the service.

The same referral restrictions within a group practice apply here and the practice would need to meet the group practice exception which is described in the previous section relating to medical corporations.

While the employment of other types of providers by a chiropractic corporation may seem at first to be a simple solution, it is not without complications. Insurance carriers often classify claims based upon the identity of the provider under whom the

service is billed. Their knee-jerk reaction when they receive a bill submitted by a chiropractic corporation is to label it as chiropractic and to subject it to whatever chiropractic limitation or review process exists. Thus, even if the service is purely medical, or podiatry, or acupuncture, or physical therapy, the carrier may apply the chiropractic limitation. While this action by the carrier is certainly wrong, it also will certainly happen and will lead to arguments with the carriers.

Additionally, with the newly created 24 visit limit on chiropractic in Workers' Compensation cases, it should be expected that carriers, attempting to find ways to avoid payment, will attempt to label everything done in a chiropractic corporation as chiropractic, subject to the limit.

#### **4. Can a Chiropractic Corporation Hire a Physical Therapist?**

We believe that a chiropractic corporation can hire a physical therapist as an employee. Unlike other health care professionals, a physical therapist can be employed by either a professional physical therapy corporation or by a general business corporation. A resolution and opinion by the Physical Therapy Board of California holds that a physical therapist can be employed by a general business corporation and that the general business corporation can be owned by laypersons. A copy of the Physical Therapy Board's Opinion on this issue is attached hereto.

A general business corporation can be owned by anyone, licensed or unlicensed. It, therefore, is possible for a physical therapy practice to be owned by virtually anyone. The corporation would hire one or more physical therapists (plus assistants and aides) as employees. The restriction here is that a lay person, who may own the corporation, may not manage or control the professional actions or practice decisions of a physical therapist employed by the corporation.

Typically, a professional corporation (whether it be a medical professional corporation or a chiropractic professional corporation) can do anything a general business corporation can do, and the corporation can employ licensed professionals. Under Corporations Code §13401(b) professional corporations are organized under the General Corporation Law. Additionally, Corporations Code §13403 provides that "The provisions of the General Corporation Law shall apply to professional corporations, except where such provisions are in conflict with or inconsistent with the provisions of this part." A chiropractic corporation, being one of the several types of corporations which can be organized under §13401 et. seq. is a form of general business corporation and thus, in our opinion, is authorized to employ a physical therapist<sup>4</sup>.

Corporations Code §13401.5 specifically authorizes certain types of professional corporations to have as shareholders, officers, directors, or professional employees a number of listed professionals. The section relative to a chiropractic corporation is

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<sup>4</sup> This reasoning, however, would not necessarily support the hiring of a physical therapist by an individual (unincorporated) chiropractor.

§13401.5 (k), which authorizes a chiropractic corporation to have as shareholders, officers, directors, or professional employees the following:

- (1) Licensed physicians and surgeons
- (2) Licensed doctors of podiatric medicine
- (3) Licensed psychologists
- (4) Registered nurses
- (5) Licensed optometrists
- (6) Licensed marriage and family therapists
- (7) Licensed clinical social workers
- (8) Licensed acupuncturists
- (9) Naturopathic doctors

Section 13401.5 is a grant of authority, and does not take away the general powers which a corporation would have.

One of our attorneys recently spoke with the counsel for the California Medical Board. Medical corporations are regulated pursuant to the same statutory section, 13401.5. The Medical Board's counsel's opinion was the same as ours. The opinion which they expressed was that a medical corporation can employ a physical therapist and bill for the services of the physical therapist under the corporate name. This is, indeed, a very common situation with medical corporations.

Obviously, the list of people who may be employed by a professional corporation set forth in §13401.5 is not exclusive. For example, the section relating to medical corporations, §13401.5 (a) provides that the following persons may be shareholders, officers, directors, or professional employees of a medical corporation:

- (1) Licensed doctors of podiatric medicine
- (2) Licensed psychologists
- (3) Registered nurses
- (4) Licensed optometrists
- (5) Licensed marriage and family therapists
- (6) Licensed clinical social workers
- (7) Licensed physician assistants
- (8) Licensed chiropractors
- (9) Licensed acupuncturists
- (10) Naturopathic doctors

Physical therapists are not among this list, but then neither are licensed vocational nurses, licensed radiologic technicians, or licensed respiratory therapists, yet all are very commonly employed by professional corporations.

Chiropractic corporations are governed by the same statutes that govern medical corporations. Both types of corporations are, by definition, general business corporations. Under California law, a physical therapist can be employed by any general

business corporation. Therefore, we believe that it is permissible for a physical therapist to be employed by a chiropractic corporation.

The Chiropractic Board Regulations provide specifically for physical therapy treatments to be rendered in a chiropractic office by persons other than the chiropractor. Regulation 312(c) provides "Unlicensed individuals may administer physical therapy treatments as an adjunct to chiropractic adjustment, provided the physical therapy treatment is conducted under the adequate supervision of a licensed Doctor of Chiropractic." Certainly, if an unlicensed individual can provide physical therapy treatments in a chiropractic office, then there should be no legitimate barrier to a fully licensed person providing physical therapy as an employee of a chiropractic corporation.

**There are, however, two major difficulties.**

The first arises with respect to Workers' Compensation claims. Labor Code §139.3 prohibits a physician from referring a patient to any entity in which the physician has a financial interest. This section is limited to certain "designated services", but "physical therapy" is included as one of the designated services. See Labor Code §139.3 (a). "Physical Rehabilitation" is also listed in §139.3 (a) as a designated service, separate and apart from "physical therapy." This means that, if you want to make a referral for physical therapy or physical rehabilitation to an entity in which you have a financial interest, you have to fall within one of the exceptions of Labor Code § 139.31.

In Labor Code § 139.31(e), there is an exception for referrals of designated services within a group practice. This exception, known as "the group practice exception," says that a doctor may refer Work Comp patients for any designated service, including physical therapy, to another member of the referring doctor's "group practice." The group must qualify as a "group practice," and there are some additional requirements for referrals of certain services. Included among these is the requirement that all services must be billed by the group under the group's provider identification number.

The group practice exception in §139.31(e) specifically requires pre-authorization by the carrier for "physical therapy services" that are referred within a group practice<sup>5</sup>. If a provider does not obtain pre-authorization, employers may refuse to pay for physical therapy services that were rendered pursuant to a referral made within a group practice.

Thus, in a Workers' Compensation setting, the chiropractic corporation would need to seek pre-authorization for any referral to the physical therapist for physical therapy treatment.

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<sup>5</sup> The language of the statute (Labor Code §139.31(e)) is poor; this particular statement is not even a complete sentence. While an argument could be made that the statute is meaningless, one Administrative Law Judge has interpreted the sentence by adding words which he presumed to be missing.

The second difficulty applies to all types of claims (not just Workers' Compensation) and is a practical problem, as opposed to a legal restriction. Due to the requirements to qualify as a group practice, the bills must be sent in the name of the chiropractic corporation. By law, a chiropractic corporation is very limited in the names that it can use. Generally, the name must include the name of one or more of the shareholders, the word "chiropractic", and a corporate designation (such as Jones Chiropractic Corporation).

When the billings are received in this way, even if the services were performed by a physical therapist, the carrier is likely to treat the bill as chiropractic and apply the chiropractic limitations and discriminatory techniques which are unfortunately still prevalent within the insurance industry. The result is a greater need to argue with the carrier about proper payment. Although these arguments should be winnable, they may be time-consuming.

The basic legal cost involved in setting up a chiropractic corporation ranges from \$1,500 to \$2,500. The documents for hiring a different type of provider would range from \$500 to \$1,000, depending upon complexities.

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***THIS MEMORANDUM CONTAINS A GENERAL DISCUSSION OF LEGAL PRINCIPLES APPLICABLE IN CALIFORNIA AS OF MARCH 1, 2005. IT SHOULD NOT BE TAKEN AS SPECIFIC LEGAL ADVICE. PRACTICE STRUCTURE AND OPERATIONAL ISSUES HAVE BECOME LEGALLY COMPLEX DUE TO SIGNIFICANT AMOUNTS OF GOVERNMENTAL REGULATION. WE URGE EACH DOCTOR TO CONSULT WITH A COMPETENT HEALTH CARE ATTORNEY ON THESE AND OTHER ISSUES AFFECTING THE PRACTICE OF THE HEALTH PROFESSIONS.***