

Corporate Practice of Medicine

AB11
Patient Protection
Commission Bills
NV legislature 2023
Assembly Health
Committee

EXHIBIT L Senate Committee on Health
and Human Services

Date: 5-9-2023

Total pages: 18

Exhibit begins with: L1

thru: L18

AG Opinions

219 Physicians and Surgeons—Corporate practice of medicine legal only under Chapter 89 of Nevada Revised Statutes. Illegal if done by a Chapter 78 corporation. A corporate health maintenance organization is a special, exempt entity under Chapter 695C.

CARSON CITY, October 3, 1977

CONCLUSION

Under Nevada law, one or more physicians may practice medicine in the corporate form so long as they strictly comply with the provisions of the Professional Corporations and Associations Act, including organization, membership, corporate name, etc. **The practice of medicine by a general corporation organized under Chapter 78 of Nevada Revised Statutes is illegal. Nevada licensed physicians who aid or abet a corporation to illegally practice medicine may be charged with unprofessional conduct and have their licenses suspended or revoked.** A corporation acting as a Health Maintenance Organization may lawfully perform acts ordinarily constituting the practice of medicine, but is exempt from the provisions of Chapter 630 if the corporation is duly authorized by the Insurance Commissioner as an HMO.

Respectfully submitted,

ROBERT LIST, Attorney General

By WILLIAM E. ISAEFF, Deputy Attorney General

1977
Robert List
Attorney
General

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

QUESTION TWO

Does the corporate practice of medicine usurp the authority of the state to protect the public?

ANALYSIS

As has been explained, the corporate practice of medicine doctrine still exists in Nevada, with certain exceptions. The corporate practice of medicine is permissible if the corporation is in the form of a professional corporation pursuant to NRS chapter 89, in the form of an HMO pursuant to NRS chapter 695C, a medical services corporation pursuant to NRS chapter 695B, or a managed care organization or prepaid limited health organization pursuant to NRS chapters 695G and 695F, respectively. Such corporations do not interfere with the authority of the state to protect the public. Each form of organization is regulated and protected by the state either by the regulatory agency that licenses the individuals that comprise the professional corporation or by the Commissioner of Insurance. It is either the licensing body or the Commissioner of Insurance that will hold the organizations accountable for the health care services rendered.

CONCLUSION TO QUESTION TWO

A review of Nevada statutes and case law reflects that the law is generally unchanged from that reviewed in Op. Nev. Att’y Gen. No. 219 (October 3, 1977). The corporate practice of medicine is still prohibited unless in the form authorized by NRS chapters 89, 695B, 695C, 695F and 695G. If a corporation is engaged in the practice of medicine and does not come within one of the above-referenced statutes, it would be operating unlawfully.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: CHARLOTTE MATANANE BIBLE
Assistant Chief Deputy Attorney General

2002
Frankie Sue
Del Papa,
Attorney
General

In Nevada, the State Supreme Court and the State Legislature have never expressly determined that private hospitals licensed under NRS Chapter 449 cannot employ a physician. And there has never been an express indication that the corporate practice of medicine doctrine pertains to the employment of physicians by private hospitals. Yet, it has been the longstanding practice in Nevada that physicians only work as contractors for private hospitals, and not as employees. To depart from this practice would mark a significant change that would be tantamount to a change in state public policy. Ideally such change should occur through the legislative process in order to ensure full deliberation of the affected policies and interests of the public, physicians and hospitals. In the absence of such legislative change, the State Board of Health might address this through the regulatory process which affords some of the same

2010 Catherine Cortez-Masto, Attorney General

Legislative History

Legislative Commission Subcommittee
to Study Competition Between Local
Governments and Private Enterprises
on January 23, 2002-Item 6

Allan Stipe

Allan Stipe, President and Chief Executive Officer, Sunrise Hospital and Medical Center, Las Vegas, stated that Sunrise Hospital and Medical Center does not seek to close operations or limit the growth of the University Medical Center's (UMC's) Quick Care Centers (QCCs). He said the private sector needs a level playing field to compete with the government in the field of health care, especially in the area of governmental protections in medical malpractice and liability insurance issues.

Continuing, Mr. Stipe referred to a report by UMC (**Exhibit A**) and noted a \$12 million revenue loss last year from the QCCs, but said UMC benefited from \$20 million in referrals to the hospital. He referred to Nevada's Corporate Practice of Medicine Law and an unnamed federal statute and said private sector hospitals cannot hire physicians. The UMC however, can hire physicians. Additionally, he explained that the private sector must demonstrate medical malpractice insurance for \$1 million and coverage to \$3 million.

I am Dr. Michael Harter, Chief Executive Officer and Vice President for Touro University Nevada, and with me today are Dr. Mitchell Forman, Dean, College of Osteopathic Medicine, and Dr. Winona Anhaiser, the Director of our developing clinical program. Thank you for giving us the opportunity to comment on Senator Heck's amendment to Senate Bill 412.

In the State of Nevada there is a prohibition against the corporate practice of medicine if the corporation is not owned by physicians. The Attorney General has written legal opinions on two occasions on this subject, and the result is that private not for profit corporations such as Touro University Nevada (and includes Touro University Nevada's College of Osteopathic

Testimony on Senate Bill 412 from 2007

Sec. 5. 1. A private nonprofit medical school or a nonprofit medical research institution may, notwithstanding any provision of law to the contrary:

(a) Operate as a corporation or other business organization or association with ownership or control shared by persons licensed pursuant to this chapter and persons not licensed pursuant to this chapter;

(b) Operate a clinic in conjunction with the school or institution which is staffed by physicians or osteopathic physicians who are employed by the school or the institution and who are:

(1) Licensed pursuant to this chapter or chapter 633 of NRS, respectively; and

Senate Bill
412 from
2007 allows
nonprofit
medical
school/medic
al research
institution

Issue brief: Corporate practice of medicine

Background

The corporate practice of medicine doctrine prohibits corporations from practicing medicine or employing a physician to provide professional medical services. This doctrine arises from state medical practice acts and is based on a number of public policy concerns, such as (1) allowing corporations to practice medicine or employ physicians will result in the commercialization of the practice of medicine, (2) a corporation's obligation to its shareholders may not align with a physician's obligation to his patients, and (3) employment of a physician by a corporation may interfere with the physician's independent medical judgment. While most states prohibit the corporate practice of medicine, almost every state has broad exceptions, such as for professional corporations and employment of physicians by certain health care entities. Overview of state laws

What are other states doing on this?

There are 17 states that have no CPOM doctrine but 2/3 of states do. 34 that have a CPOM doctrine in some shape or form.

State Corporate Practice of Medicine (CPOM) Doctrines & Nonprofit Exceptions

Key:



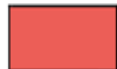
States with no CPOM doctrine (17)



States with a CPOM doctrine and an exception for nonprofits (12)



States with a CPOM doctrine and an exception for specific types of nonprofits (11)



States with a CPOM doctrine and no nonprofit exceptions (11)

Key Points from History

- Nevada has operated under a corporate practice of medicine framework based on court decisions and statutory exceptions for over 45 years.
- 3 separate AGs have stated that the physicians being hired by hospitals is prohibited, or the practice, any change to that should be legislated.
- The last opinion was issued in 2010. Since that time, there have been some attempts by the hospitals to legislate that private hospitals can employ physicians, but those have not been successful. There is no law stating that hospitals can employ physicians, and repeated evidence that they cannot.
- The statute offers exceptions to the general prohibition of hospitals employing physicians. Public hospitals (NRS450) and Academic /Research institutions. These entities allowed to employ physicians are specifically outlined in NRS statute.

Nevada Hospitals : a few companies control most care

Over the last five years, and despite COVID, Nevada's acute care hospitals generated billions in operating revenues and net income.

HCA, UHS, Renown, Common Spirit –

Just four companies own the majority of the state's acute care hospitals, generating over 70% of the hospital revenues and profit in Nevada from 2018-2022.

The remaining 30% of revenue is generated by one public safety net hospital in Clark County (University Medical Center) and 14 rural hospitals.

37 Acute Care Hospitals
(14 rural, 1 county)

\$35.8 billion

in Operating Revenues 2018-2022

\$1.8 billion

in Net Income 2018-2022

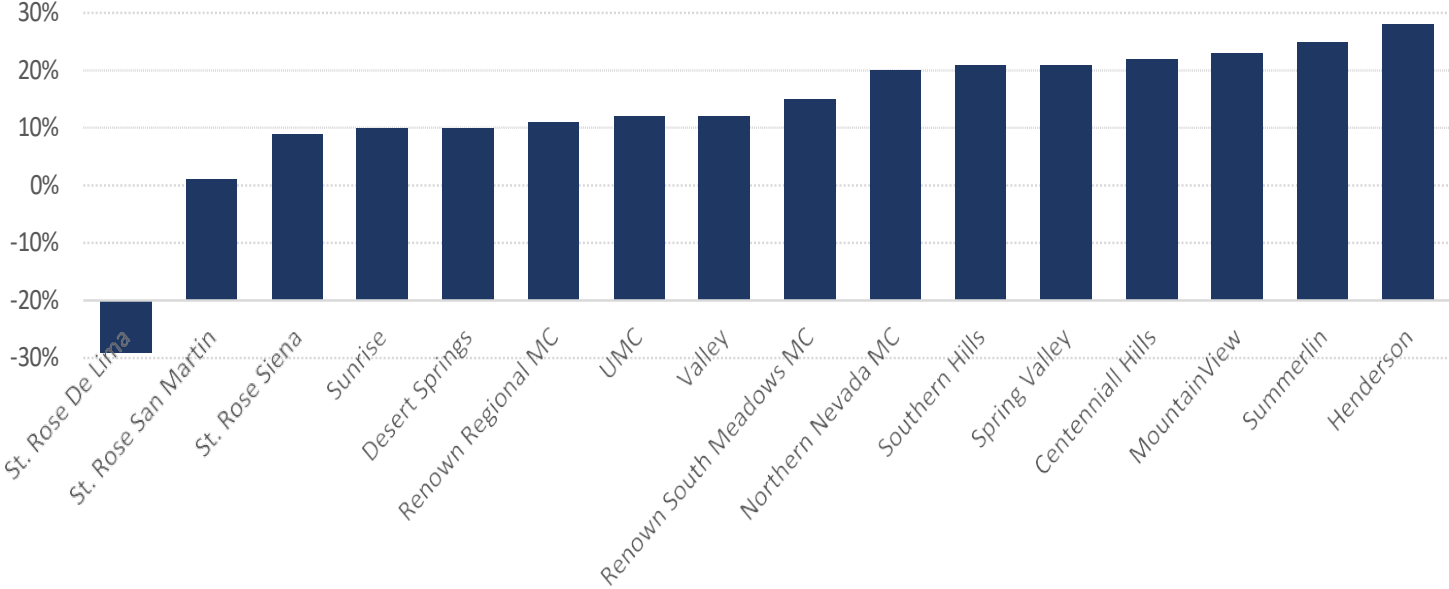
4 major hospital systems own

22 of the state's acute care hospitals

>70% of hospital operating revenues and net income in the state come from 4 systems

Most Big System NV Hospitals Have Healthy Profit Margins

Operating Profit Margin for Nevada Hospitals Owned by Major Health Systems, 2021^{xvi}



^{xvi} National Academy for State Health Policy Hospital Cost Tool <https://tool.nashp.org/>. Accessed 3/8/23.

AB11

- WHAT:
 - This bill seeks only to:
 - Confirm the longstanding practice explained by the last AG opinion that hospitals do not hire physicians, keeping exceptions stated in statute, and allowing GME programs in hospitals to also have hired doctors, allowing existing hired physicians to remain as they are.
 - Ensure patients can get care at all hospitals with doctors having contracts or privileges, as is the current state.
- WHY:
 - Anecdotal information presented to PPC about physicians hired by hospitals
 - The Nevada Hospital Association has stated, as recently as last year, that hiring physicians is prohibited in Nevada.
 - The Nevada Hospital Association is stating this year that no prohibition exists.

If nothing is clarified in NRS Statute, all hospitals could decide to just start hiring doctors based on the opinion of the Nevada Hospital Association that there are no restrictions

END

- *In Nevada there is a prohibition against the corporate practice of medicine if the corporation is not owned by physicians. The Attorney General has written legal opinions on two occasions on this subject, with the result that private not for profit corporations, such as Touro University Nevada (which includes Touro University Nevada College of Osteopathic Medicine), are prohibited from engaging in a medical practice. States which have enacted legislation similar to Nevada's have passed additional legislation that enabled medical schools to create clinical practices. Currently California, New York, Illinois, Texas, Alabama, South Carolina, Colorado, and Wisconsin have statutes or implied statutory and case based exceptions that allow medical schools to employ physicians and practice medicine, thus avoiding violation of corporate practice of medicine statutes.*