

Medical Society Urges Increased Scrutiny of Private Equity Involvement in Health Care

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On October 23, 2023, the Michigan State Medical Society (“MSMS”) [penned a letter to Michigan Attorney General Dana Nessel](#) asking her to investigate what MSMS believes are widespread violations of Michigan’s prohibition on the corporate practice of medicine (the “CPOM Doctrine”). While it is unclear at this point whether the attorney general’s office will take any action as a result of this request, private equity groups that are involved in health care services and medical practices should take steps to assure that they are in compliance with federal and Michigan laws surrounding these types of relationships.

The MSMS letter seeks to have the Michigan attorney general increase enforcement. Generally, the CPOM Doctrine prohibits unlicensed individuals and entities from owning and operating medical practices in Michigan. The MSMS letter contends that despite this prohibition some private equity groups have created work around structures in which a physician is the owner of a medical practice “in name only.” In these structures, the MSMS argues that the private equity group controls decisions that involve medical services and health care delivery.

Broadly, the letter contends that the use of private equity dollars in health care is to the detriment of both patients and doctors because the private equity groups who allegedly control the delivery of health care are more concerned about profitability than patient care. In support of its contentions, the MSMS references certain data, testimonials, and reports of current out-of-state litigation that it believes illustrate the harmful effects of violations of the CPOM Doctrine.

There are some that push back against the MSMS contentions. The American Investment Council advocates for the inclusion of private equity in health care believing that such investments provide capital to medical practices who do not “possess the capital on hand to upgrade services, renovate facilities, and modernize their practice.” Specifically, [in a 2023 op/ed](#), American Investment Council President & CEO Drew Maloney described the investments in technology services, talent, and funds that come from private equity groups,

as well as private equity groups' practice of pouring capital "into clinical trials and medical innovation," as prime examples of the benefits of private equity investment in health care. In support, Maloney cites a study from Indiana University that, "showed improved patient-satisfaction scores at private-equity owned compared to non-PE owned hospitals."

Crain's Grand Rapids Business recently reported that, in response to the MSMS letter and the rising debate surrounding the topic, the attorney general's office is "reviewing this and considering whether and how to proceed."

Private equity groups that are currently involved in health care services and medical practices with private equity funding should have a written Management Services Agreement ("MSA") in place. These groups should take the time to review their MSA, other agreements, and their policies and practices to ensure compliance with federal and Michigan laws surrounding these types of relationships.

Best practices include reviewing the management services organization structure to:

- Confirm that the corporate structure is compliant with all Michigan formation regulations, including PC or PLLC formation requirements and licensure requirements;
- Clearly delineate between the medical and non-medical aspects of the practice to ensure that licensed physician owners have ultimate control over medical decisions and patient care; and
- Verify that compensation is consistent with fair market value, the compensation under the MSA is reasonable given the services provided by the management services organization to the medical practice, and the compensation arrangement does not trigger any prohibited fee splitting under Michigan.

Violations of the CPOM Doctrine can result in potential civil and criminal liability for the medical practitioner and the private equity groups alike. The CPOM Doctrine may prove somewhat complex for some entities and seeking advice from a legal professional may be required to fully understand best practices.

Bodman PLC can provide guidance on this matter and others and provide practical advice to meet your needs. To discuss these or any other legal issues affecting your organization, please contact Brandon Dalziel, Health Care Practice Chair, at (313) 393-7507 or bdalziel@bodmanlaw.com, Annalise Lekas Surnow at (313) 392-1059 or alekas@bodmanlaw.com, or Grace Connolly at (313)-393-7563 or gconnolly@bodmanlaw.com. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.