

October 23, 2023

The Honorable Dana Nessel
Attorney General
G. Mennen Williams Building
525 W. Ottawa Street
P.O. Box 30212
Lansing, Michigan 48909

Dear Attorney General Nessel,

The Michigan State Medical Society (“MSMS”) and the undersigned specialty organizations are writing to request that your office investigate what we believe are widespread violations of Michigan’s prohibition on the corporate practice of medicine (the “CPOM Doctrine”) by Michigan Professional Corporations (“PCs”) and Professional Limited Liability Companies (“PLLCs”) owned by Michigan MDs and DOs in name only. The CPOM Doctrine protects the public by prohibiting unlicensed, for-profit businesses from practicing medicine. Enforcement of the CPOM Doctrine will ensure that the quality of medical care furnished by physicians to the public, a physician’s independent medical judgment, as well as the confidential physician-patient relationship, cannot be interfered with by unlicensed business decision-makers motivated solely by profit.

Many states have a CPOM Doctrine similar to ours. The CPOM Doctrine has been shaped by several broad concerns including the following:

- The commercialization of the practice of medicine.
- The overutilization and/or unnecessary ordering of medical services and tests.
- Unaligned or imbalanced obligations to shareholders over patients.
- Interference with the physician’s independent medical judgment.
- The practice of medicine directly or indirectly by laypeople.
- Shareholder interests in profits damaging necessary confidential and professional physician-patient relationships.
- The impossibility of corporations to fulfill the licensing and ethical requirements demanded of physicians.

Michigan’s CPOM Doctrine prohibits unlicensed individuals from owning medical practices. The CPOM doctrine serves to protect the public by “ensuring that medical decisions are made by licensed professionals accountable to their respective licensing boards.”ⁱ Entities that provide professional medical services are required to be organized as PCs or PLLCs and must generally be owned by licensed individuals within the same health profession. The Michigan Business Corporation Act and Limited Liability Company Act include limited exceptions where multidisciplinary ownership by specified health licensees is permitted. In 1993, the Michigan Attorney General established an exception allowing non-profit entities to employ physicians and other licensed persons to provide medical careⁱⁱ. No Michigan law permits nonphysicians or for-profit entities owned by nonphysicians to own medical practices.

Through a series of deceptive legal loopholes and shell corporations, the CPOM Doctrine has been circumvented in many states, including Michigan, causing widespread harm to the health care system and patients. This is particularly well documented in evaluations of private equity groups, which organize into management service organizations (“MSOs”) or physician management companies (“PMCs”) for ownership of the nonclinical assets of a medical practice. In an effort to comply with the technicalities of the CPOM Doctrine requiring physician ownership, they recruit a physician to be the owner of the PC or PLLC. This physician is subject to various restrictions on his/her ownership, which essentially eliminates any direction and control an owner of a PC or PLLC would normally have. Instead, the corporation vests all control of medical delivery and decision-making in the MSO or PMC, resulting in a “physician in name only,” who is a captive of the MSO or PMC with no actual control over the delivery of healthcare. The reality in these situations is that the MSO or PMC controls all medical decisions, violating the intent of Michigan’s CPOM Doctrine. This model is particularly dangerous in healthcare as evidenced in a 2021 white paper by experts from UC Berkeley and the American Antitrust Institute - “when the fundamental characteristics of the private equity business model are combined with the unique structure of the United States healthcare market, the results are potentially catastrophic for patients, payers, and the long-term stability of the healthcare supply chain. And, because the consequences in healthcare involve not just dollars but lives, these potential harms must not be ignored.”ⁱⁱⁱ

There is growing research on this issue and related abuses nationally. For example, TeamHealth, present in Michigan, is a private equity medical staffing firm contracted by some corporations that own health facilities in Michigan. They have been the subject of news reports for relentlessly suing impoverished patients and garnishing their wages. In 2020, ProPublica published an expose on TeamHealth entitled “How rich investors, not doctors profit from marking up ER bills^{iv}.” By being both for-profit and private equity owned, entities like TeamHealth have a stronger profit motive than other entities and that has been reflected in the company’s frank willingness to be in litigation and why they are a frequent subject of investigative reporting. Most recently, TeamHealth was sued in the Eastern District of Tennessee for overcharging not only patients but also self-funded insurance plans and commercial insurers. TeamHealth has also been sued for False Claim Act violations and was even sued by its own doctors for lack of pay.

TeamHealth is not the only concern in Michigan; many private equity groups are utilizing similar business strategies to circumvent the CPOM doctrine and control healthcare delivery in all specialties. Envision Healthcare is a national organization employing physicians in Michigan. Envision Healthcare is currently enthralled in a lawsuit for violating California’s ban on the corporate practice of medicine^v. Sound Physicians is no longer physician-led and is widespread across Michigan, providing physician staffing for ICUs, hospital floors, emergency departments, and anesthesiology services. SCP Health is gaining traction and currently has job listings for emergency medicine physicians in mid- and northern Michigan, abruptly replacing an existing, respected emergency physician-owned group in the community. These are just a few examples, but perhaps the best demonstration of the negative effects on patients, physicians, and other health care team members of unlicensed, for-profit entities controlling the practice of medicine is the recent action by American Physician Partners (APP). APP is the most recent private equity physician staffing firm to file for bankruptcy, abruptly announcing its closure in July, affecting 21 emergency departments in Michigan^{vi}. Despite APP’s public comments about a smooth transition, actively practicing emergency physicians working and living in Michigan describe APP not covering payroll or tail coverage and health systems scrambling to find new entities to provide coverage. This outcome is not surprising as private equity groups in healthcare end in bankruptcy at a higher rate than in any other market and the consequences fall on Michigan physicians and patients.

The more these entities owned by “physicians in name only” are investigated, the more examples of how corporations practicing medicine harm patients and our healthcare system as a whole will become known. In its investigation of the wrongful termination of emergency physician Ray Brovont at an HCA hospital, NBC News exposed how CPOM laws are circumvented and how physicians who raise concerns about profit motives

harming patients are silenced. That report revealed that one physician, Dr. Gregory Byrne, had been a “paper owner,” or “physician in name only,” for up to 300 emergency practices tied to Envision or EmCare. NBC estimates that over 40 percent of emergency departments are staffed by corporate entities in this indirect, misleading manner. In this paper owner scheme, the corporation strips the physician-owner of control of the corporation through a stock transfer restriction agreement, making it appear that a physician owns the group while the corporation retains all practical control including finances.^{vii}

Just weeks ago, the Federal Trade Commission (FTC) entered the debate to challenge these private equity schemes and corporations practicing medicine through its lawsuit against U.S. Anesthesia Partners^{viii}. Quoted in the Wall Street Journal article, FTC Chair Lina Khan said “Private equity firm Welsh Carson spearheaded a roll-up strategy and created USAP to buy out nearly every large anesthesiology practice in Texas. Along with a set of unlawful agreements to set prices and allocate markets, these tactics enabled USAP and Welsh Carson to raise prices for anesthesia services—raking in tens of millions of extra dollars for these executives at the expense of Texas patients and businesses.”

Michigan physicians and patients have been affected by these complex private equity strategies designed to skirt the intent of the CPOM Doctrine. A proliferation of imaging centers owned by non-physicians resulted in the Michigan Radiological Society filing a lawsuit against Oakland MRI in 2018. Additionally, Crain’s Detroit Business reported that the U.S. Attorney’s office in Detroit has successfully utilized the Michigan CPOM Doctrine to prosecute and convict fraudulent medical clinics owned by non-physician businesspersons.^{ix} Physicians, other health care professionals, medical staff, and patients all suffer from the degradation of autonomy, clinician and patient satisfaction, and quality of employment conditions and care delivery.

MSMS members employed by private equity groups have also shared the following, anonymously for their own protection, about problems that have arisen from private equity acquisition and operation of medical practices and related entities:

- Utilizing “efficiency consultants” to reduce physician coverage to dangerously low levels. For example, one emergency department decreased physician coverage during certain time periods to a single emergency medicine physician in order to “optimize workflow,” leaving the sole physician to put pressure on a gunshot wound while running a code on a patient in another room.
- Not staffing hospital floors with physicians overnight and instead pulling emergency medicine physicians away from the emergency department to run a code on the floor of the hospital and making the physician unavailable to emergency patients for up to an hour.
- Coercing physician resignation after bringing patient safety concerns to corporate officials due to concerns regarding inadequate staffing and its effect on patient care.
- Requiring physicians and other medical staff to get permission from non-physician administrators before transferring patients out of the emergency room. This results in laypersons making medical decisions that affect direct patient care and that may directly conflict with the opinions of medical professionals.
- Stretching the intent of regulations, policies, and statutes that rely on collaboration and supervision by putting physicians in a position whereby they are contractually obligated to sign-off on multiple non-physician practitioners’ charts regardless of their ability to have input into the quality of care provided to those patients.

October 23, 2023

The Honorable Dana Nessel, Attorney General

Page 4

- Requiring physicians to utilize mandatory corporate phrases in their documentation and attestation statements and to “correct” any statements that deviate.
- Avoiding price transparency with physician billing. Because billing occurs at the corporate level, physicians are not allowed access to information billed under their names. There have been situations in which private equity firms have determined charges at a level they deem appropriate, but in actuality they are considered upbills.
- Firing physicians (often replacing them with non-physician practitioners) who question or refuse to comply with a corporate mandate that is in opposition to the ethical practice of medicine.

In July 2023, the American Antitrust Institute (AAI) published a report entitled “Monetizing Medicine: Private Equity and Competition in Physician Practice Markets,” in which they acknowledged that private equity acquisitions of physician practices are increasing, private equity firms are amassing high market shares in local physician practices, private equity expenditures are associated with price and expenditure increases especially in areas where a single private equity entity controls a large share of the market. As costs rise, the quality of healthcare *does not* improve (in fact it has been shown to worsen), overutilization occurs, physician autonomy is eroded, and physician salaries, which currently account for a small percentage of every healthcare dollar spent, decrease further. The AAI urgently calls for increased attention to competition acts of private equity in physician markets as they are operating without federal and/or with limited state antitrust scrutiny.^x

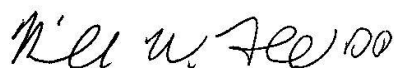
MSMS continues its long-standing support for enforcement of Michigan’s CPOM Doctrine as it was intended, recognizing that protecting physicians, medical team members, and patients from corporate interests will take bold and necessary actions. MSMS believes full transparency regarding private equity and investment is essential in healthcare. Financial motives should never supersede a physician’s autonomy to make bedside decisions in the best interest of the patient. The legal tools are there to protect physicians and patients from corporate interests, but they must be enforced. We respectfully request your office investigate our concerns and immediately enforce Michigan’s CPOM Doctrine.

Thank you for your consideration. My colleagues and I look forward to discussing this issue with you at your earliest convenience.

Sincerely,



Tom M. George, MD
Chief Executive Officer, Michigan State Medical Society



Michael Fill, DO, FACEP
President, Michigan College of Emergency Physicians

October 23, 2023

The Honorable Dana Nessel, Attorney General

Page 5



Traci Kimbrough, MD, MDS
President, Michigan Dermatological Society



Matthew Sardelli, MD
Immediate Past President and Board of Councilors, Michigan Orthopaedic Society



Walter Sahjidak, MD, FACR
President, Michigan Radiological Society



Jerome Winegarten, MD, MSHO
President, Michigan Society of Hematology & Oncology



Michael C. Lewis, MD, FASA
President, Michigan Society of Anesthesiologists

ⁱ Navigating Michigan's Corporate Practice of Medicine Doctrine: A Reference for Starting Medical Practices and Investing in Health Care-Related Entities, *The National Law Review*, July 26, 2023, Volume XIII, Number 207. Accessed at <https://www.natlawreview.com/article/navigating-michigan-s-corporate-practice-medicine-doctrine-reference-starting#:~:text=Michigan's%20Corporate%20Practice%20of%20Medicine%20doctrine%20requires%20that%20medical%20practices,mitigate%20compromises%20of%20professional%20judgment.>

ⁱⁱ Opinion No. 6770. September 17, 1993. <http://opinion/datafiles/1990s/op06770.htm>.

ⁱⁱⁱ Soaring Private Equity Investment in the Healthcare Sector: Consolidation Accelerated, Competition Undermined, and Patients at Risk. Accessed at <https://petris.org/soaring-private-equity-investment-in-the-healthcare-sector-consolidation-accelerated-competition-undermined-and-patients-at-risk/>.

^{iv} <https://www.propublica.org/article/how-rich-investors-not-doctors-profit-from-marking-up-er-bills#:~:text=Civil%20Rights->

[,How%20Rich%20Investors%2C%20Not%20Doctors%2C%20Profit%20From%20Marking%20Up%20ER,doctors%20who%20treated%20the%20patients.](https://www.propublica.org/article/how-rich-investors-not-doctors-profit-from-marking-up-er-bills#:~:text=Civil%20Rights-)

^v <https://californiahealthline.org/news/article/er-doctors-vow-to-pursue-case-against-envision-even-in-bankruptcy/#:~:text=Envision%20Healthcare%20announced%20Monday%20it,ran%20on%20The%20Sacramento%20Bee.>

^{vi} <https://docs.google.com/spreadsheets/d/101GwgjNv-voMS-C127m8zvQKydt3VURqCXtKvj7J7Jw/edit#gid=2044866104>

^{vii} Doctor fired from ER warns about effect of for-profit firms on U.S. health care. Accessed at <https://www.nbcnews.com/health/health-care/doctor-fired-er-warns-effect-profit-firms-us-health-care-rcna19975?>

^{viii} https://www.wsj.com/finance/regulation/ftc-sues-large-private-equity-backed-anesthesia-provider-c2433e3a?st=73hmcrtxs0lzpsn&reflink=desktopwebshare_permalink.

^{ix} Do nonphysician owners of medical clinics violate Michigan's corporate practice of medicine laws?, Crain's Detroit Business, September 17, 2017. Accessed at <https://9bab34.p3cdn1.secureserver.net/wp-content/uploads/2017/09/9.17.17-Do-nonphysician-owners-of-medical-clinics-violate-Michigans-corporate-practice-of-medicine-laws-M1.pdf>.

^x https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf.