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# How Should My Telehealth Business Be Structured?

## Telehealth & Telemedicine Crash Course

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# Presented by



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# This Webinar will Answer Three Questions:


- How do corporate practice laws restrict a company from providing telehealth services directly to patients?
- If corporate practice laws prohibit a corporation from providing certain services to patients, what corporate forms should be utilized to provide telehealth services directly to patients?
- How does revenue flow into telehealth business when services are provided directly through other entities?

**Understanding state corporate laws and the options available to work around their limitations is imperative to model new telehealth ventures before launching the business. It is also a necessary step for expanding successfully into new states.**

# Question 1: Corporate Practice Limitations


- What does "Corporate Practice" mean?
  - CP laws prohibit corporations from employing certain healthcare providers (i.e., they prohibit the "corporate practice of ______").
- Do laws vary by state?
  - Yes – CP laws are always at a state level (not federal). States vary dramatically both in the scope of activities prohibited as well as what professions are affected by its prohibitions. Often, state laws will carve out applicability for hospitals, HMOs, or other limited circumstances or entities.
- What does a CP law look like?

  *"MISREPRESENTATION REGARDING ENTITLEMENT TO PRACTICE MEDICINE. A person, partnership, trust, association, or corporation commits an offense if the person, partnership, trust, association, or corporation, through the use of any letters, words, or terms affixed on stationery or on advertisements, or in any other manner, indicates that the person, partnership, trust, association, or corporation is entitled to practice medicine if the person, partnership, trust, association, or corporation is not licensed to do so."* – Texas Medical Practices Act, § 165.156

# Question 1: Corporate Practice Limitations


- Existence of CP laws in a state traditionally requires the services to be provided through "Friendly Professional Corporations". These PCs often carry most or all of the following limitations:
  - Ownership. PC ownership is limited to professionals (usually of the same profession). No general business corporation or lay person may own shares in a PC. Non-professionals may also not serve as officers or directors.
  - Profit-sharing. Corporations and non-professionals cannot receive profits from the company. Some laws discuss compensation based on percentages.
  - Decision-making. In a PC, all professional decisions must be made by the duly licensed professionals within the PC. Other decisions may also be limited. (See "Management Agreements" on the next slide)
- Violation of a CP laws:
  - May be charged as a felony in some states; could include aiding and abetting.
  - Conviction may include fines and/or imprisonment.
  - Professionals could face loss of licensure.

# Question 2: What to do if CP laws apply


- Administration of the Friendly PC can be performed in a few ways.
  - If state law allows, a management corporation can enter into a management agreement with the PC. Often, the management agreement cannot allow the management corporation to:
    - ❖Determine how many patients to see/treat, what tests to use for particular conditions, or how to treat patients (or other professional decision-making)
    - ❖Advertise the PC’s professional services
  - Also, the management company can enter into a Stock Transfer Agreement with a professional within the Friendly PC.
    - o The STA permits the management company to designate the owner of the PC stock under certain pre-determined circumstances
    - o The use of a STA may be restricted or prohibited in some states

# Question 3: Legal Revenue Streams


- Profit-Sharing
  - Even in states with CP limitations, a corporation may be permitted to collect fees for administrative/non-professional work based upon a percentage of revenue
  - In states with CP limitations that do not allow for percentage based compensation, more traditional models, such as fixed fee or cost plus, should be utilized to pay the corporation for the services it provides
- Ownership of Shares
  - In CP states, PC laws almost always limit ownership of shares to only professionals within the PC. Therefore, a management agreement or STA is used to ensure a relationship between the management company and the PC is established under which the management company is paid for its services.
    - In the telehealth space, these management services often will include the use of proprietary software, training, and support.

# Know your Business Model


- Knowing your business model will help you navigate problems that may arise during expansion. Key questions to ask when faced with CP issues:
  - Have you prioritized your expansion? Do you need to be ready to practice in all states? Are there bills that could be enacted that will eliminate the problem if you wait to enter the market?
  - Could the same or a similar level of care be provided by a non-professional in order to avoid CP limitations? Is there a lower level of care that can be provided by non-professionals so that the only “professional” service is an add-on service?
- Telehealth/telemedicine is expanding at an incredibly fast rate with states constantly passing bills and enacting new laws that expand the ability to practice telehealth/telemedicine. But…
  - Understanding corporate practice limitations is only one piece of the whole telehealth puzzle. In the next two webinars, we will discuss inter-related issues of licensure, liability, and prescribing, which will often drive your business model and corporation formation strategies.

# Questions?


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# Upcoming Webinars


## Telehealth & Telemedicine Crash Course Series

- **What Are My Risks as a Telehealth Provider?**
  Tuesday, July 18 at 2:00 – 2:15 p.m. ET
  Presenter: Francesca R. Ozinal

- **Can I Prescribe to Patients via Telehealth?**
  Tuesday, July 25 at 2:00 – 2:15 p.m. ET
  Presenter: Theresa E. Thompson

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# Thank you.