

# The Corporate Practice of Medicine (CPOM) Doctrine in Oregon

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# The Corporate Practice of Medicine (CPOM) Doctrine

- The Corporate Practice of Medicine (CPOM) doctrine generally bans unlicensed lay entities from owning, employing, or controlling medical practices
- CPOM ban dates back to the 1800s; rooted in concerns about the commercialization of medicine and the tension between business interest and the ethical obligations of practicing medicine
- Stems from the prohibition on the unlicensed practice of medicine.
- Source of CPOM doctrine includes state statutes, common law, administrative actions (AG opinions, Medical Board decisions)

Perspective  
SEPTEMBER 14, 2023

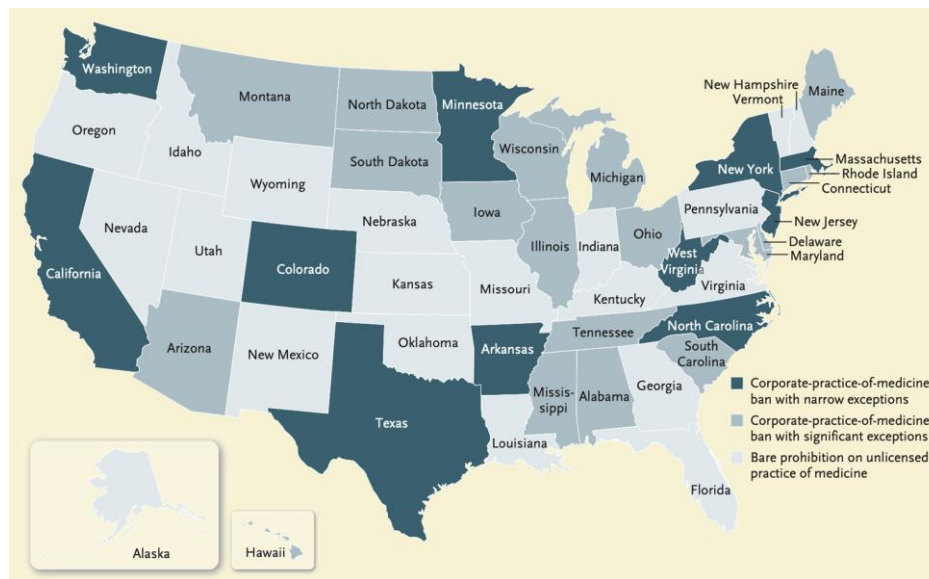
**A Doctrine in Name Only — Strengthening Prohibitions against the Corporate Practice of Medicine**

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**I**n the late 1800s, corporations began hiring U.S. physicians and profiting directly from their services without being bound by professional ethics considerations. Concerned about this commercialization of medicine, and potentially to avoid competition in health care continued? And how can the CPOM doctrine be strengthened? In 2023, private-equity investors have reached penetration rates of more than 70,000 salaried or affiliated physicians, and retailers such as Amazon, CVS, and Walgreens have spent billions of dollars expanding their primary care footprint in nearly every state.

# Weakening of CPOM in Recent Decades

- States began to weaken the CPOM ban beginning in the 1970s, coinciding with the “managed care” revolution
- Physician ownership of corporate structures relaxed
  - Professional Corporations (PCs)
  - Limited Liability Companies and Partnerships (LLCs & LLPs)
- Express exemptions for certain types of providers
  - E.g., HMOs and hospitals
- Corporations began to “contract around” CPOM bans to exert de facto control over a medical practice they did not formally own

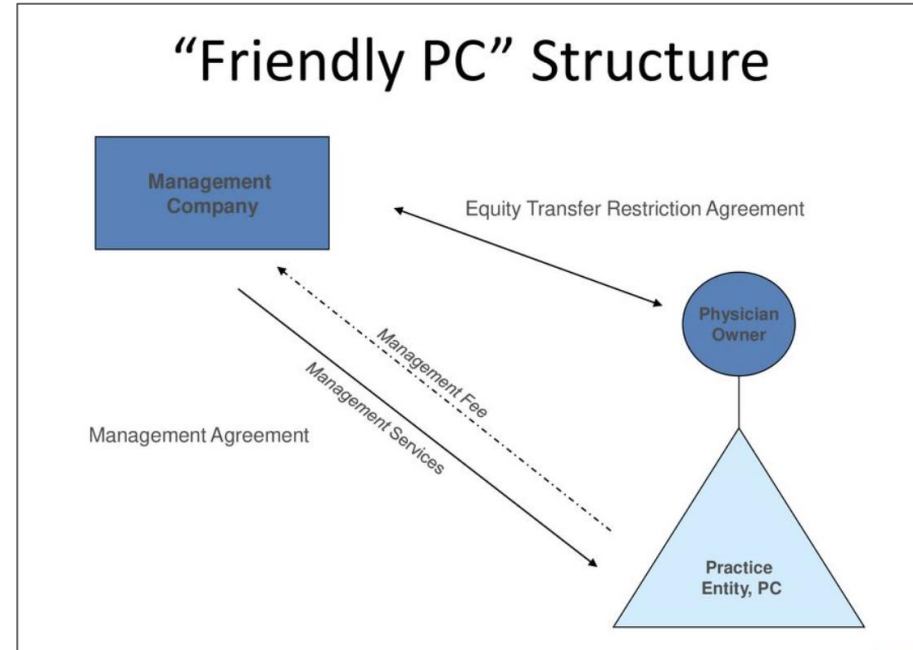


# CPOM in Oregon Today

- The Oregon Supreme Court recognized a CPOM ban in 1947 in *Sisemore*; still good law today
- But the CPOM ban has been weakened over time
  - Express exemptions
    - Hospitals and other health care “facilities” (1975 AG opinion)
  - Corporate structures permitted through statute + courts
    - Professional Corporations (majority MD ownership required)
    - Limited Liability Corporations and Partnerships (majority MD ownership not required)
  - Contracting around the CPOM
    - “MSO” Model
    - “Friendly PC” Model

# Corporate Control via Contracting

- **MSO Model:** Corporate-owned management services organization (MSO) contracts to run the PC
- **Friendly PC Model:** Corporate investor selects a “friendly physician” to run, and often to exclusively own, the practice’s PC
- Ways in which corporate owner exerts control
  - Requiring stock restriction agreements, non-competes, gag clauses;
  - Purchasing practice assets;
  - Hiring and terminating physicians and clinical staff;
  - Setting work schedules, terms of employment, compensation, and staffing levels;
  - Dictating the volume of encounters and controlling diagnostic coding decisions;
  - Establishing clinical standards and protocols; requiring performance standards for physicians
  - Making policies for billing and collection
  - Controlling payer contracting



# Oregon's Enforcement of CPOM

- Lax and uncertain enforcement
  - Two enforcement cases since 1940s
- Unclear whether AG or Oregon Medical Board is the primary enforcement body
  - Consider: private enforcement (e.g., by aggrieved employee or competitor) as a supplement to administrative enforcement
- Difficult for administrative officials to determine structure, contractual terms, and compliance of corporate MSO and Friendly PC arrangements
  - Allow insiders to function as private attorneys general to enhance enforcement