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AB 1000 and Corporate Practice in California: More than Meets the Eye—or Less?

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On the way to authorizing direct access to physical therapy, the California legislature may have broadly loosened the restrictions on numerous business arrangements imposed by California's corporate practice ban. AB 1000, which went into effect on January 1, 2014, provides that patients no longer need a medical diagnosis and a referral to a physical therapist, but may directly self-refer for physical therapy treatments of up to 45 days or 12 visits (whichever comes first). AB 1000 states explicitly that it does not expand the scope of physical therapy practice and that payers are not required to provide coverage for direct access physical therapy services. Nonetheless, the bill represents the achievement of a long-held ambition of the physical therapy profession: licensed physical therapists may now market and provide services directly to the public, like other licensed professionals.

At the same time, the legislature gave physicians something they had been wanting for some time: the right to employ physical therapists in their practices. Medical groups had routinely provided physical therapy services in their offices through employed physical therapists until the California Physical Therapy Board announced in 2010 that such employment violated the corporate practice ban and constituted unprofessional conduct for a physical therapist, which conduct could lead to licensure action. Medical groups were understandably dismayed by this about face on the part of the Physical Therapy Board; having an employed physical therapist in the office was convenient, enhanced patient compliance and expanded the rehabilitation services the practice could offer. Further, the ability to bill for physical therapy services represented income to the practice. In order to restore the status quo ante 2010, AB 1000 added licensed physical therapists to the list of licensed professionals who could be officers, directors, minority shareholders and professional employees of medical corporations and podiatry corporations. It also added 10 categories of licensees who could be shareholders, officers, directors and professional employees of physical therapy corporations, including physicians and surgeons, podiatrists, acupuncturists, naturopathic doctors, registered nurses and psychologists.

AB 1000 went much further, however, by adding the following language to Corporations Code Section §13401.5, the primary section governing professional corporations in California: "This section does not limit employment by a professional corporation designated in this section of only those licensed professionals listed under each subdivision. Any person duly licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed to render professional services by a professional corporation designated in this section."

Until this amendment, §13401.5 had carefully listed out, for each specific type of professional corporation, all of the other licensed persons who could be officers, directors, minority shareholders and professional employees of a particular type of professional corporation. If a license category was not listed, a person holding that license could not provide professional services through that type of professional corporation. For example, dentists were not listed under medical corporations although physicians and surgeons were listed under dental corporations. That meant, until January 1, 2014, that a medical group could not employ a dentist even though a dental corporation could employ a physician. Further, no dentist could own shares in a medical corporation or serve on its board, even though a physician could own up to 49% of the stock of a dental corporation and be a member of its board of directors.

As a result of the language added to §13401.5 any of the listed professional corporations may now employ any licensed person and offer their services. In theory, as a result of AB 1000, a properly constituted audiology corporation, owned by licensed audiologists and speech-language pathologists as authorized by §13401.5(e), could

open a clinic and offer medical services through employed physicians. This would represent a significant change in corporate practice as it relates to inter-license practice in California.

Licensees should be cautious in implementing this new authority, however. A number of previously existing statutes applicable to individual licensed professions appear to be in direct conflict with the current version of §13401.5. For example, Business and Professions Code §3109, applicable to optometrists, prohibits employment of optometrists except by optometric corporations or ophthalmologists (but not other medical specialties), in direct conflict with §13401.5. It is not clear which section would prevail if a medical corporation (other than one practicing ophthalmology) employed an optometrist, even though optometrists are listed among the authorized persons who may be officers, directors, minority owners or professional employees of a medical corporation. Even more uncertain is the result if an optometrist were employed by a license category that does not explicitly list optometrists as permitted professional employees, such as a physician assistant corporation. Only time will tell how these conflicts will be resolved or whether AB 1000 represents a significant erosion of corporate practice in California.

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