From: "R.Joe Ybarra" <rjybarra5@gmail.com>
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Date: Friday, September 07, 2018 02:23PM
Subject: Corporate practice of Medicine

9/7/2018

Honorable Judge Isgur

Please accept my apologies for not having appropriate evidence to support my comments in the hearing yesterday.
Understand that a strong incentive for physicians like myself to have created the independent Freestanding Emergency Medicine industry (which occurred with passage of House Bill 1354 in 2009), was the ability to have a choice "not to work with corporate medical groups".
My centers in Harlingen and Brownsville were the first independent Freestanding Emergency Centers, and the land in Harlingen which I owned was traded in exchange for shares in Neighbors. I invested my life savings on this project, and bankruptcy wiped out my investment.
That I can live with. However, a corporation (Tenet) acquiring my centers which I "grew" is disheartening and disappointing because it is not consistent with the initial Vision of the industry, or Neighbors initial Vision, and definitely not my own.

I've reference my own evidence for the opinions I expressed yesterday, below.

Here's an article by Dr. McNamara that addresses the Corporate Practice of Medicine
- https://www.aaem.org/resources/key-issues/corporate-practice/ppm

Section 4 of the Texas Medical Association's Amicus Curiae Brief – PDF is attached below.

For the full brief and for more information about CPOM,
see https://www.aaem.org/resources/key-issues/corporate-practice

Respectfully submitted.

R Joe Ybarra MD.
Founder of
ACEP FEC Section
Founder of
AAEM FEC interest group.

Majority Class B Owner of my own FECs in Harlingen, Brownsville and Mcallen Texas.

Author of AAEM FSED Position Statement
https://www.aaem.org/resources/statements/position/freestanding-emergency-departments

Sent from my iPhone

Attachments:

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Section 4 of Brief.pdf

4. Due to the continued enforcement of the prohibition on the corporate practice of medicine by the Texas Medical Board against physicians, it is imperative that physicians and professional societies have a means of assessing potential violations through declaratory judgment actions.

The first corporate practice of medicine case law in Texas stemmed from appeals of disciplinary orders imposed on physicians by the Texas Board of Medical Examiners ("TBME"), the predecessor of the Texas Medical Board. *See Rockett*, 287 S.W.2d 190(in which the appellate court affirmed the district court's decision in support of the TBME's cancellation of Dr. Rockett's medical license due to his violation of the Medical Practice Act's provision prohibiting physicians from allowing unlicensed individuals (i.e. a lay clinic) to use their license); *see also Watt*, 303 S.W.2d 884 (upholding the district court's judgment in support of the TBME's suspension of the license of Dr. Watt for 18 months due to his employment by a lay cancer clinic in violation of the corporate practice of medicine doctrine). The TMB's enforcement of the corporate practice of medicine doctrine as applied to *physicians* continues from its inception in the 1950s well

into the current decade. For example, on August 15, 2003, the TMB and a physician entered into an Agreed Order for the physician's voluntary surrender of her license due to allegations that she "violated the corporate practice of medicine doctrine by entering into a business relationship with a nonphysician to operate a clinic in a manner that aided and abetted the unlicensed practice of medicine." Texas Medical Board Bulletin, Vol. 1, No.2, Spring 2004, p. 9, *available at* http://www.tmb.state.tx.us/news/Spring04/MedBdNLSpr04.pdf. Similarly, on March 28, 2003 the Board entered into an Agreed Order with a physician agreeing to a public reprimand, $5,000 penalty and certain restrictions on his license due to allegations of violating the corporate practice of medicine doctrine. Texas Medical Board Bulletin, Vol. 1., No.1, June-July 2003, p. 17, *available at* http://www.tmb.state.tx.us/news/Fall03/TMBnewsletterJunJul03.pdf

From these examples, it is clear that physicians face a very real threat of adverse action being taken against their medical licenses if they violate the prohibition on the corporate practice of medicine. This fact, coupled with the marked information imbalance between the contracting physicians and the lay management/staffing companies, makes it critical that physicians have an avenue to challenge questionable contractual arrangements through declaratory judgment actions, both in their own capacity and through their professional societies. Yet, the Trial Court has denied standing to both contracting physicians and professional societies.

Thus, if the Trial Court's holding stands, Texas physicians will be forced to make the Hobson's choice between forgoing contracting at all or risking adverse action on their licenses by agreeing to contracts of questionable legality. With the prevalence of exclusive contracts for hospital-based physicians, this may be a choice between risky work and no work at all. Forcing physicians to make this decision is unjust in terms of the physician's risk of adverse action to his license. Additionally, signing a questionable contract may be inconsistent with the physician's ethical mandate of placing patient care before his own financial interests. *See* Texas Medical Association, *Board of Councilors' Ethics Opinion: Health Facility Ownership, Incentive Payments and Conflicts of Interests available at*: http://www.texmed.org/Template.aspx?id=392#HEALTH (stating "Under no circumstances may the physician place his own financial interest above the welfare of his patients. …When a conflict develops between the physician's financial interests and the physician's responsibilities to the patient, the conflict must be resolved to the patient's benefit.").