

Mississippi OVERVIEW

Source	Title	Citation
Statutes	Injunction to prohibit unlicensed practice of profession	Miss. Code Ann. § 73-51-1
	Profession; practicing without license	Miss. Code Ann. § 97-23-43
	Physicians	Miss. Code Ann. §§ 73-25-1, et seq.
	Dentists	
	Mississippi Professional Corporation Act	Miss. Code Ann. §§ 73-9-1, et seq.
	Mississippi Uniform Partnership Act	Miss. Code Ann. §§ 79-10-1, et seq.
	Mississippi Limited Partnership Act	Miss. Code Ann. §§ 79-13-101, et seq.
Regulatory	Revised Mississippi Limited Liability Company Act	Miss. Code Ann. §§ 79-14-101, et seq.
	Powers of health maintenance organization generally; notice of exercise of powers affecting financial condition of organization	Miss. Code Ann. §§ 79-29-101, et seq.
	Minimum net worth requirement; deposits generally; computation of liabilities; contracts between health maintenance organizations and participating providers of services; insolvency plans	Miss. Code Ann. § 83-41-309
		Miss. Code Ann. § 83-41-325
Attorney General Opinions	Mississippi State Board of Medical Licensure Policies	Policy 3.02—Corporate Practice of Medicine
	Regulations Adopted by the Mississippi State Board of Dental Examiners	Regulation Number 55—Trade Names and Corporate Practice
Case Law	None	None
	<i>Sears Roebuck & Co. v. State Bd. of Optometry</i>	57 So. 2d 726 (Miss. 1952)
	<i>Busch Jewelry Co. v. State Bd. of Optometry</i>	62 So. 2d 770 (Miss. 1953)

1. ABSTRACT

Early case law recognizes a prohibition against the corporate practice of licensed professions (specifically optometry) in the State of Mississippi. The Mississippi State Board of Medical Licensure (BOML) and State Board of Dental Examiners (Board of Dental Examiners) have statutory authority to enjoin the unlicensed practice of medicine and dentistry, respectively, in the state. However, both boards have adopted policies that provide they will not concern themselves with the forms of business arrangements into which licensees enter, as long as those arrangements meet certain criteria.

Mississippi does not have a specific statute or regulation prohibiting “fee-splitting” in the context of health care services. The Mississippi Medical Practice Act prevents physicians from engaging in “unprofessional conduct” which includes “being guilty of any dishonorable or unethical conduct likely to deceive, defraud or harm the public.” Miss. Code Ann. § 73-25-29(8)(d). However, Mississippi courts have

not addressed whether “fee-splitting” constitutes unprofessional conduct.

2. CORPORATE PRACTICE OF MEDICINE AND DENTISTRY

A. Corporate Practice of Medicine

In Mississippi, the corporate practice of a health care profession doctrine stems from two early Mississippi Supreme Court cases, *Sears Roebuck & Co. v. State Bd. of Optometry*, 57 So. 2d 726 (Miss. 1952) and *Busch Jewelry Co. v. State Bd. of Optometry*, 62 So. 2d 770 (Miss. 1953). These cases, both of which involved optometrists, specifically prohibit the corporate practice of optometry. Under each case, the rationale is that, absent statutory authority, because a corporation is a non-individual who cannot be licensed by the appropriate licensing agency, it cannot practice optometry directly, or indirectly through a licensed employee. *Sears*, 57 So. 2d at 731; *Busch*, 62 So. 2d at 771. Underlying the corporate practice doctrine is the concern that a patient seeking professional care be protected from a corporation whose primary interest may be profit rather than the health of the patient. *Sears*, 57 So. 2d at 732. In assessing the appropriateness of a corporate arrangement, the specific facts of operation must be examined for both responsibility for patient care and the presence of any “distracting influence which may adversely affect [the practitioner’s] loyalty to the interests of his patient.” *Sears*, 57 So. 2d at 732 (internal citation omitted).

Mississippi law generally prohibits any person from practicing medicine without first obtaining a license. See Miss. Code Ann. § 73-25-1. The law also provides that if any person practices as a physician, surgeon, dentist or pharmacist without first obtaining a license, such person may be subject to criminal fines and/or imprisonment. Miss. Code Ann. § 97-23-43. The BOML, which regulates the ethical conduct of physicians and osteopaths in Mississippi, or another state licensing board may bring an injunction to enjoin and prohibit any person from the unlicensed practice of medicine or other licensed professions. Miss. Code Ann. § 73-51-1. However, the BOML has issued a policy entitled “Corporate Practice of Medicine,” wherein the BOML announced that it would not concern itself with the form or type of business arrangements entered into by a licensee, provided certain prerequisites are met. These prerequisites are described in detail below.

THE BOARD OF MEDICAL LICENSURE’S CORPORATE PRACTICE OF MEDICINE POLICY

This policy provides that the BOML will not concern itself with the form or type of business arrangements entered into by a licensee, provided certain prerequisites are met, including:

1. The physician employed or associated with the entity is licensed by the Board.
2. The method and manner of patient treatment and the means by which patients are treated are left to the sole and absolute discretion of the licensed physician. The provision of medical services and the exercise of sound medical judgment at all times shall be exercised solely in the discretion of the licensed physician and he or she shall not be subject to any influence, direct or indirect, to the contrary.
3. The manner of billing and the amount of fees and expenses charged to a patient for medical services rendered shall be left solely to the discretion of the licensed physician. It is recognized that when physicians choose to affiliate with an HMO, PPO or other managed care entity, some discretion as to fees and expenses is lost. Whenever possible, however, the manner of billing and the amount of fees and expenses charged to a patient for medical services rendered shall be left solely to the discretion of the licensed physician.
4. At no time shall a physician enter into any agreement or arrangement whereby consideration or compensation is received as an inducement for the referral of patients, referral of medical services or supplies, or for admissions to any hospital.
5. The business arrangement and the actions of the physician in relation thereto, cannot be contrary to or be in violation of the Medicare or Medicaid Payment and Program Protection Act of 1987, 42 U.S.C. § 1320(a-7)(b), commonly known as the “Medicare Anti-Kickback Statute”; the Anti-Kickback Act of 1986, 41 U.S.C. § 5158, and related statutes, rules and regulations.
6. Free choice of physicians and hospitals is a right of every individual. One may select and change

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at will one's physician or hospital or may choose a medical care plan such as that provided by a closed panel or group practice or health maintenance organization (HMO) or service organization (PPO). While it is recognized that the choosing to subscribe to an HMO or PPO or accepting treatment in a particular hospital will result in the patient accepting limitations upon freedom of choice of medical services, all physicians must recognize that situations will exist where patients will be best served by physicians or hospitals outside such contractual arrangements. If the HMO or PPO contract or other business arrangement does not permit referral to a non-contracting medical specialist, diagnostic or treatment facility or hospital, and the physician believes that the patient's best interest will be served by a specialist, facility or hospital outside of the contractual relationship, the physician has an ethical and contractual obligation to inform the patient of this fact. The physician should so inform the patient so that the patient may decide whether to accept the outside referral at his or her own expense or confine herself or himself to the services available within the HMO, PPO or other business arrangement.

7. Licensed physicians shall have the sole responsibility for approval of any and all public communications or advertisements, and these communications and/or advertisements must be in full compliance at all times with Board requirements relating to Physicians Advertisements.
8. Pursuant to Miss. Code Ann. § 79-10-31, shareholders of a professional corporation rendering medical services shall only be licensed physicians.

The Mississippi State Board of Medical Licensure, Rules and Regulations, Laws and Policies, Policy 3.02 1-2 (2013).

B. Corporate Practice of Dentistry

Mississippi law generally prohibits the unlicensed practice of dentistry. *See* Miss. Code. Ann. § 73-9-41. Mississippi law also provides that if any person practices as a dentist without first obtaining a license, such person may be subject to criminal fines and/or imprisonment. Miss. Code Ann. § 97-23-43. The Board of Dental Examiners may bring an injunction to enjoin and prohibit any person from the unlicensed practice of dentistry. Miss. Code Ann. § 73-51-1.

Like the BOML, the Board of Dental Examiners has indicated its intent not to concern itself with the form or type of business arrangements entered into by its licensees, provided certain prerequisites are met. However, unlike the BOML, the Board of Dental Examiners has promulgated a regulation to this effect, which is set forth below.

THE BOARD OF DENTAL EXAMINERS CORPORATE PRACTICE OF DENTISTRY POLICY

The Board of Dental Examiners will not concern itself with the form or type of business arrangements entered into by dentists so long as the following conditions are met:

1. The dentist employed or associated with the entity is licensed by this Board.
2. The method and manner of patient treatment and the means by which patients are treated are left to the sole and absolute discretion of the licensed dentist. The provision of dental services and the exercise of sound dental judgment at all times shall be exercised solely at the discretion of the licensed dentist, and he/she shall not be subject to any influence, direct or indirect, to the contrary.
3. The manner of billing and the amount of fees and expenses charged a patient for dental services rendered shall be left solely to the discretion of the licensed dentist.
4. At no time shall a dentist enter into any agreement or arrangement whereby consideration or compensation is received as an inducement for the referral of patients or for the referral of dental services or supplies.
5. Licensed dentists shall have the sole responsibility for approval of any and all public communications or advertisements, and these communications and/or advertisements must be in full compliance at all times with the requirements set forth in Board Regulation 43.

- Pursuant to Miss. Code Ann. § 79-10-31, shareholders of a professional corporation which renders dental services shall only be licensed dentists.

Miss. State Bd. of Dental Exam'rs R. No. 55 (March 8, 1996).

3. PROFESSIONAL ENTITIES

The Mississippi Professional Corporation Act, Miss. Code Ann. §§ 79-10-1, et seq., authorizes the establishment of professional corporations for the rendering of “professional services,” which includes services “lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service, including, without limitation, certified public accountants, dentists, architects, veterinarians, osteopaths, physicians, surgeons and attorneys-at law.” Miss. Code Ann. § 79-10-5(g). The Revised Mississippi Limited Liability Company Act authorizes the establishment of professional limited liability companies for the same purpose. Miss. Code Ann. § 79-29-902(g). *See also* Miss. Code Ann. §§ 79-29-901, et seq. A domestic or foreign corporation or limited liability company may render professional services in Mississippi only through individuals licensed or otherwise authorized in Mississippi to render the services. Miss. Code Ann. §§ 79-10-17(1) and 79-29-906(1). However, neither the Mississippi Professional Corporation Act nor the Mississippi Limited Liability Company Act: (a) requires an individual employed by a professional entity to be licensed to perform services for the entity if a license is not otherwise required; (b) prohibits a licensed individual from rendering professional services in his individual capacity although he is a shareholder, director, officer, employee or agent of a domestic or foreign professional corporation or a member, manager, employee or agent of a domestic or foreign professional limited liability company; or (c) prohibits an individual licensed in another state from rendering professional services for a domestic or foreign professional entity in this state if not prohibited by the licensing authority. Miss. Code Ann. §§ 79-10-17(2) and 79-29-906(2).

4. PHYSICIAN EMPLOYMENT BY A HEALTH MAINTENANCE ORGANIZATION

The general powers designated to health maintenance organizations (HMO) licensed by the Department of Insurance in the State of Mississippi imply that an HMO may employ physicians to provide services to HMO enrollees. According to the statute, the powers of an HMO include, but are not limited to, “the furnishing of health care services through providers, provider associations or agents for providers which are under contract with or employed by the health maintenance organization.” Miss. Code Ann. § 83-41-309(1)(c). There is no other Mississippi legal authority that elaborates on an HMO’s ability to employ physicians to provide services to HMO enrollees. The HMO statutes go on to state that contracts between HMOs and “participating providers” of health care services must be in writing and must state that if the HMO fails to pay for health care services provided under the contract, the HMO subscriber or enrollee shall not be liable to the provider for any sums owed by the HMO to the provider. Miss. Code Ann. § 83-41-325(13). If the participating provider’s contract has not been reduced to writing, or the contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the HMO’s subscriber or enrollee sums owed by the HMO to the participating provider. Miss. Code Ann. § 83-41-325(14). Finally, any agreement to provide health care services between a provider and an HMO must require that if the provider terminates the agreement, the provider shall give the HMO at least sixty (60) days’ advance notice of termination. Miss. Code Ann. § 83-41-325(17). Therefore, if a Mississippi HMO is permitted to employ physicians to provide services to HMO subscribers or enrollees, as appears to be the case, the employed physicians should generally have written contracts with the HMO that prohibit them from seeking payment for services directly from HMO enrollees or subscribers, and the contract should further require the employed physicians to provide at least sixty (60) days’ advance notice of termination of the employment agreement.

5. FEE-SPLITTING

Mississippi does not have a specific statute or regulation prohibiting “fee-splitting” in the context of health care services. The Mississippi Medical Practice Act prevents physicians from engaging in “unprofessional conduct” which includes “being guilty of any dishonorable or unethical conduct likely to deceive, defraud or harm the public.” Miss. Code Ann. § 73-25-29(8)(d). The penalties for violating this statute include but are not limited to nonissuance, suspension, revocation, or restriction of the license. Miss.

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Code Ann. § 73-25-29. Mississippi courts have not addressed whether “fee splitting” constitutes unprofessional conduct under the Mississippi Medical Practice Act.

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