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Do nonphysician owners of medical clinics violate Michigan's corporate practice of medicine laws?

By JAY GREENE



- State law requires doctors to own most medical businesses.
- Owners of certain services such as MRIs say the law doesn't apply to them.

Dozens of for-profit MRI diagnostic centers, urgent care centers and cosmetic medical spas in Southeast Michigan are owned by businesspeople who aren't doctors.

This common practice has now come under scrutiny in a lawsuit that charges they are violating Michigan laws that require medical facilities to be 100 percent owned and operated by either physicians, nonprofit hospitals or nursing homes.

The legal challenge mounted by radiologists against the nonphysician owner of an MRI center in Oakland County, now on appeal in the Michigan Court of Appeals, seeks to answer this long-standing question.

The lawsuit — Michigan Radiology Society v. Oakland MRI and business owner Susan Swider — and letters of support from the Michigan State Medical Society allege major gaps exist in state government's enforcement of laws governing the corporate practice of medicine.

The Michigan Radiological Society argues that the proliferation of business-owned MRI centers can threaten patient safety because lack of quality controls and also says it financially injures physician practices. It "forms a basis of unfair competition with properly licensed physicians that results in loss of income to doctors," the lawsuit says.

Christine Dardarian, an attorney in Sylvan Lake representing the Michigan Radiological Society, said the corporate practice of medicine doctrine was created to protect the public and recognize that "learned professions" such as medicine, law and the clergy operate differently than other businesses.

"(Physicians operating medical service practices) require a tremendous amount of training because lives are at stake," Dardarian said. "Investors and entrepreneurs are drawn to (owning medical service companies because of the money from) Medicare, Medicaid and commercial payers."

Chris Cataldo, an attorney with Jaffe Raitt Heuer & Weiss in Southfield who represents Oakland MRI, said the radiologist society simply wants to limit legitimate competition.

"We followed all the rules the state put before us," said Cataldo of Oakland MRI. He contends the laws apply only to individuals delivering medicine without a license, not the owners of medical facilities that manage the services. [*\(See story.\)*](#)

Gaurang Shah, M.D., past president of Michigan Radiological Society, said the society is suing Oakland MRI out of principle because of the proliferation of business-owned imaging centers and other medical centers in the past decade. He said the board has nothing against Oakland MRI or Swider specifically.

"We believe that patient safety and welfare of the patient is best served by having a physician own (the medical facility) rather than a businessperson," said Shah, who is an associate professor of radiology and director of clinical functional MRI at the University of Michigan. "Businesspeople have responsibility to their shareholders, and that takes precedence over patient welfare. This is why the law was enacted."

On its face, Michigan state law appears clear, as illustrated by Attorney General Bill Schuette's successful legal action to shut down three abortion clinics because the medical facilities were owned by nonphysician businesspeople.

In addition, the U.S. attorney's office in Detroit has successfully prosecuted and convicted several fraudulent medical clinics owned by businesspeople. [\(See story.\)](#) It has cited Michigan's corporate practice of medicine doctrine in court filings, suggesting the federal government recognizes Michigan's laws on ownership of medical facilities.

Under the law, physicians, lawyers, dentists and ministers are required to incorporate their practices or medical facilities either as a professional services corporation or a professional limited liability corporation and they must be licensed, several legal experts and state officials told *Crain's*. The types of professionals are listed in the state's "learned professions doctrine."

At least two attorneys, however, who have ties to business owners of imaging centers, told *Crain's* that the law is unclear and may not apply to certain types of services. They say imaging centers are not specifically listed as being covered as medical facilities and that they only offer "technical services," not professional medical services. The attorneys say contracted or employed radiologists perform those services and sometimes bill separately for their services.

However, various Michigan laws "prohibit a for-profit entity, either a corporation or a limited liability company, from practicing medicine or employing a physician to provide professional medical services," according to a 2014 opinion by the State Bar of Michigan Health Care Law Section.

The various laws clearly state that "only licensed physicians may own and manage medical service businesses," said Patrick Haddad, co-chair of the health law practice with Kerr Russell in Detroit. Russell represents the Michigan State Medical Society.

Haddad said the corporate practice of medicine doctrine is not unique to Michigan.

However, there is an exemption for nonprofit entities like hospitals owning covered physician services. In 2015, the Michigan Legislature also exempted all types of nursing homes, both nonprofit and for-profit.

Ownership defended

Business owners and legal representatives of MRI centers told *Crain's* they are operating legitimate and legal operations.

Joshua Katke, CEO of M1 Imaging Center in Berkley, said he doesn't believe state law required him to be a physician to own his three imaging centers. In July, M1 Imaging acquired Great Lakes MRI of Michigan in Warren and also operates LIV Open MRI in Livonia.

But Katke told *Crain's* after discussing the issue with MRS he now believes licensed physicians should be the only ones allowed to own imaging centers. He is supporting possible state legislation to clarify public health code rules. He also has reorganized his three imaging centers and sold his

ownership interest to radiologist Chinton Desai, M.D., his medical director. Katke remains as the centers' CEO.

"We want to be on the right side of this issue. ... Dr. Desai (is) the sole owner" of M1, Katke said. "I believe only licensed doctors should own imaging centers. This is the way it should be."

Katke said he adopted this position last fall based on his belief that physician ownership of MRI centers can ensure high quality care. He said lay ownership can create conditions where insurance fraud and abuse could occur.

But Katke said he disagrees with the radiological society's interpretation of the corporate practice of medicine doctrine. When he owned the imaging centers, he said he fully complied with the state laws, incorporating as a limited liability company and obtaining a certificate of need.

When Katke owned M1 and employed Desai as medical director and contracted with other radiologists, he said he wasn't practicing medicine. He said he submitted global payment bills to health insurers that included charges for technical services by his office staff and professional services performed by the radiologists. He received the insurance payments and then transferred the professional fee portion of the payment to the radiologists, he said.

"M1 provides the technical side of various imaging procedures, but the professional medical services are provided by independent board-certified, fellowship-trained radiologists who, of course, use their clinical skills and exercise their best judgment in the interest of the patient," Katke said.

Technical services include charges for the provision of all equipment, supplies, personnel, and costs related to the performance of the exam.

On M1 Imaging, Shah said: "If Dr. Desai owns the imaging centers, he is following the letter of the law. That is fine with us."

But to clarify the law because of the controversy, Katke said he has drafted a bill to change the public health code. The bill would require ownership of imaging centers be held by licensed physicians.

Katke said he has discussed the proposed bill with State Sen. Arlan Meekhof, R-West Olive, the Senate majority leader. Meekhof told *Crain's* he is considering sponsoring the bill.

Shah said the radiological society doesn't feel a need to go to legislators for clarification of the law because he said it is already clear.

Lack of enforcement

Derdarian and Chesbrough said they have alerted LARA officials since 2012 and the attorney general's office since last year about business entities violating the state's corporate practice of medicine laws. Because of this, they said the radiological society decided to initiate the lawsuit.

But in a Sept. 22, 2015, opinion from Mike Zimmer, the former LARA director, current state laws on the corporate practice of medicine are clear and "unambiguous" and require "no further clarification."

Zimmer also cited opinions from former state Attorney General Frank Kelley going back 37 years that "it is not a lawful purpose of a corporation to contract with other persons to provide medical care through the officers, agents or employees of the corporation."

Derdarian said Zimmer's letter confirmed current state law prohibits unlicensed individuals or corporate entities from offering medical services to public unless their businesses are wholly owned or managed by physicians.

"The problem here is if businesspeople apply under limited liability or the business corporation act, there is not sufficient information asked for on the form to trigger action by the state," Derdarian said. "People are slipping through the cracks."

LARA officials declined to comment on the 2015 Zimmer letter, citing advice of its lawyers. But a LARA spokesman, Jason Moon, said the following in a statement: "LARA works to ensure that businesses offering covered medical services are incorporated according to state law. When we discover or receive information that a business entity has unlawfully incorporated, we first attempt to bring the business into compliance."

If LARA receives a complaint about an unlawfully incorporated business, Moon said LARA would refer the complaint to the Michigan attorney general's office.

Julia Dale, LARA's bureau director for corporations, securities and commercial licensing, said LARA has referred an unspecified number of complaints of improperly organized companies to the attorney general's office.

In June 2016, after the Michigan Radiological Society gave up trying to alert LARA to problems with its business application review process, the society filed a complaint to Schuette about for-profit Oakland MRI, Derdarian said.

However, Schuette declined to use the same state corporate practice of medicine statutes to take action against Oakland MRI and Swider, a gemologist by training who does not hold a medical license, as he did against the abortion providers.

Derdarian, who was an assistant attorney general for 28 years under Kelley and former Gov. Jennifer Granholm, said Schuette is hypocritical because he has taken action on abortion clinics owned by businesspeople.

"They can select what cases to pursue. Like a cop selecting one car to stop and ticket and let the others go," she said.

For example, Schuette shut down three abortion clinics owned by non-physicians — Summit Women's Center in Detroit in 2016, the Health Care Clinic in Delta Township and the Women's Choice Clinic in Saginaw in 2011.

"To protect the public, state law requires that medical and other professional services be provided through corporations owned by licensed professionals," said Schuette in a press release in April 2016.

In May 2016, Rose Ramirez, M.D., at the time president of the Michigan State Medical Society, issued a letter demanding state government enforce its corporate practice of medicine laws.

"We insist on active enforcement of existing Michigan law and will no longer accept physicians working for, or contracting with, unscrupulous business professionals, illegally structured corporations or entities associated with organized crime," Ramirez wrote.

Schuetz's office declined to comment, citing ongoing litigation.

When asked about complaints filed by Chesbrough and the Michigan Radiological Society that LARA isn't reviewing applications related to the corporate practice of medicine closely enough, Dale said she is unaware of any such complaints. "It has not been brought to my attention," she said.

Dale said LARA reviews a number of business incorporation applications and each is different.

Kim Gaedeke, LARA's director of the bureau of professional licensing, said it is "very infrequent" that the bureau advises Dale's corporation bureau of problems with applications that were filed as an LLC but should have been filed as a PC or PLC because they are medical service companies.

"There is personal responsibility. They know what the law is and should file appropriately," Gaedeke said when asked about companies that attempt to disguise their true business operation.

Bret Jackson, president of the Economic Alliance for Michigan, said the state should do more to enforce the corporate practice of medicine laws. He said the proliferation of hospitals and imaging centers can lead to unnecessary and costly medical procedures, driving up health care costs for businesses and insurance premiums.

"No matter who owns the facilities we want to make sure patients are treated with appropriate care," Jackson said. "Any motive that is different from that objective we'd be concerned about."