Corporate Practice of Medicine

Nelson Hardiman has been on the forefront of guiding clients on corporate practice of medicine (CPOM) compliance issues, both for new ventures and in responding to government investigations and disputes. The largest law firms in America, as well as multiple public companies relying upon the model, turn to Nelson Hardiman for our depth and expertise in the nuances of CPOM compliance. Nelson Hardiman's work around CPOM includes:

• Establishing CPOM-compliant professional entities and corporate documents in all 50 states (including particular state requirements for formation, ownership, registration of foreign PCs)

• Preparing CPOM-compliant contracts between professional entities (PCs) and management service organizations (MSOs) in all 50 states

• Advising on all operational aspects of CPOM compliance, including requirements for ownership, governance, and management roles; requirements of physician operational oversight and involvement in decision-making; banking and finance requirements for PCs; issues related to management fee and intellectual property licensing; and control mechanisms

• Remediating noncompliance with respect to CPOM

• Responding to and defending government investigations of CPOM compliance

• Providing opinion letters and expert witness testimony on CPOM compliance

CPOM has been an increasingly essential issue for all organizations engaged in the practice of medicine and other health professions. Roughly half of all states adhere to varieties of a CPOM doctrine, requiring the entities providing medicine, dentistry, and other health professional services to be owned and clinically directed by health professionals and prohibiting lay-owned entities from employing or contracting with health professionals or otherwise holding themselves out as practicing medicine and other health professions. Nelson Hardiman advises nationally on CPOM compliance across all applicable health professions to which corporate practice restrictions apply (varying from state to state).

Over the past two decades, the "solution" to CPOM compliance has been the development of appropriate management service and practice management entities (most commonly referred to as management service organizations or "MSOs") that contract with professional entities (most commonly professional corporations or "PCs") to provide non-clinical services, raise capital, and support the growth of healthcare businesses. The model has proliferated, with dozens of MSOs using the PC-MSO structure to function as public companies (including Amazon subsidiary One Medical, Teladoc, and United Health subsidiary Optum) and thousands more having been acquired or established or rolled up by private equity and other investment groups. Nelson Hardiman is experienced in both setting up the corporate and contractual structures and refining the model after discoveries that it has been structured in a noncompliant or suboptimal manner by other law firms. We routinely establish 50-state compliant structures for organizations from new ventures to established organizations utilizing the model.

As a consequence of the extent to which the use of CPOM has expanded within the industry without being fully understood (let alone regulated) by state medical boards, there is widespread confusion around CPOM. Several states, such as California and New York, are making ongoing and increasing efforts to regulate CPOM. Nelson Hardiman is one of the few law firms that handles both the proactive venture aspects of CPOM and also responds to crises and defends enforcement actions and litigation related to CPOM as well. While the Internal Revenue Service (IRS) has clarified the federal tax treatment of PC-MSO structures, state agencies have taken inconsistent and unclear positions, frequently requiring careful legal guidance. Contrary to predictions from observers that

CPOM is an anachronistic concept that would fade away from the American healthcare landscape, CPOM issues remain front and center as significant risk and strategic challenges for healthcare organizations. Nelson Hardiman is called upon regularly to navigate those issues.

In this environment, Nelson Hardiman has come to be known as authoritative in dealing with problems arising related to CPOM. Firm founder Harry Nelson has testified in several high stakes cases as an expert witness on industry custom and practice related to CPOM. In a 2017 case involving a public company threatened with being shut down across dozens of locations statewide over supposed CPOM violations, Nelson's testimony was decisive in leading licensing authorities to abandon their effort. As a result of that victory and other cases, Nelson has been asked to provide industry-wide guidance on developing standards and best practices.

It is not a surprise that Nelson Hardiman is thought of by many as the leading law firm in the United States on corporate practice of medicine compliance. We stand ready to take on CPOM challenges as they arise.

NELSON HARDIMAN
HEALTHCARE LAWYERS