

WASHINGTON STATE MEDICAL ASSOCIATION  
HOUSE OF DELEGATES

Resolution: B-7  
(A-20)

Subject: Corporate Practice of Medicine  
Introduced by: Kay Funk, MD, Delegate  
Yakima County Medical Society  
Referred to: Reference Committee B

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1 WHEREAS, the Corporate Practice of Medicine (CPM) has long been a concern in public policy  
2 regulating quality of patient care, because the responsibility and liability for the practice of  
3 medicine ultimately falls to the licensed physician. The CPM "doctrine"

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5 "is based on state medical practice acts, which are statutes that list the qualifications  
6 needed to obtain a license to practice medicine, and prohibit anyone without a valid  
7 license from practicing medicine." "Limitations on the rights, privileges, and powers of  
8 corporate and other artificial entities are intended to prevent unlicensed persons from  
9 interfering with or influencing the physician's professional judgment. The reasoning  
10 behind this intention is that corporations cannot have the training, education, and  
11 personal characteristics that are needed to receive a medical license. In addition,  
12 corporations are unable to develop the relationship of trust and confidence that is  
13 necessary for the relationship between a professional and patient or client...Establishing  
14 medicine as a profession is central to the prohibition on the corporate practice of  
15 medicine because of the requirements for physician licensure. States' medical practice  
16 acts require physicians to meet high standards of training and character in order to obtain  
17 licenses to practice medicine. Corporations cannot receive medical training and do not  
18 possess human qualities such as character and judgment, and therefore may not be  
19 licensed to practice medicine."<sup>1</sup>; and  
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21 WHEREAS, in *Columbia Physical Therapy, Inc. v. Benton Franklin Orthopedic Assocs., PLLC.*  
22 Supreme Court of Washington reiterated

23  
24 "the commercialization of professions would destroy professional standards and that the  
25 duties of professionals to their clients are incompatible with the commercial interests of  
26 business entities," and stated,

27  
28 "We reject BFOA's argument and adhere to the traditional understanding that the  
29 corporate practice of medicine doctrine forbids employment of health care professionals  
30 by business entities or nonprofessionals absent legislative authorization." The court  
31 further stated that the Professional Services Corporation Act

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33 "carved out "a narrow statutory exception" to the general rule prohibiting corporations  
34 from practicing learned professions.<sup>2</sup> ; and  
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<sup>1</sup> *The Corporate Practice of Medicine Doctrine*. Allegra Kim, for the California State Assembly Commission on Health, October, 2007. <https://docplayer.net/9712293-The-corporate-practice-of-medicine-doctrine.html>

<sup>2</sup> *Columbia Physical Therapy, Inc. v. Benton Franklin Orthopedic Assocs., PLLC.* Supreme Court of Washington. March 18, 2010. No. 81734-1

1 WHEREAS, beginning in 2003, the former Sisters of Providence hospital in Yakima underwent  
2 a series of three corporate ownership changes which progressively looted its assets and  
3 culminated in the abrupt closure of the hospital in January 2020. The formerly award-winning  
4 cardiac surgery program was entirely lost and healthcare shortages in the community are  
5 severely exacerbated; and

6  
7 WHEREAS, the current hospital owner, Astria Corp (501(c)3) disingenuously claimed that it is  
8 impossible for a hospital to survive financially when serving a rural area with a high percentage  
9 of Medicaid/Medicare patients. In reality, the hospital administration was capricious and  
10 wasteful and specifically doomed by failure to collect -\$157M in accounts receivable; and

11  
12 WHEREAS, Astria Corp exploited the WA provision for enhanced reimbursement to rural  
13 critical access hospitals<sup>3</sup> by transferring patient procedures from the Astria Yakima Hospital to  
14 the Astria Sunnyside Hospital (designated rural critical access); and

15  
16 WHEREAS, the WA Department of Health approved the 2003 sale of Providence Yakima  
17 Hospital to Health Management Associates (HMA), a for-profit chain which was then  
18 prosecuted by the US Department of Justice for fraudulent billing and interference with the  
19 practice of medicine<sup>4</sup>; and

20  
21 WHEREAS, in 2017 the WA Department of Health approved the sale of the hospital to Astria  
22 Health Corporation, then Sunnyside Community Hospital, despite its dubious financing and  
23 opposing testimony from multiple local physicians; and

24  
25 WHEREAS, the WA Department of Health allowed the corporate owners to maintain an  
26 exclusive Certificate of Need (CON) for elective cardiac catheterization and cardiothoracic  
27 surgery until three weeks prior to the hospital closure. The CON was not modified when  
28 unlicensed administrators illegally interfered with the practice of medicine. The DOH failed to  
29 hold the hospital accountable for worsening cardiac outcomes even when it stopped reporting  
30 outcomes to the statewide Cardiac Clinical Outcomes Assessment Program registry two years  
31 prior; and

32  
33 WHEREAS, the WA Department of Health failed to provide a program of receivership to protect  
34 the public interest when Astria Corporation declared bankruptcy; and

35  
36 WHEREAS, the US Internal Revenue Service grants tax free status to public charities  
37 (501(c)(3)s), on the condition that a "tax exempt organization serves a public interest, not a  
38 private interest"<sup>5</sup>. There is a specific prohibition on "inurement" of "insiders" who have decision  
39 making authority, such as officers, directors, or key employees. However, if the Board of  
40 Trustees fails to exercise due diligence in preventing inurement of insiders, there is no other  
41 accountability; and

42  
43 WHEREAS, 501(c)(3)'s are required to report "for public inspection" in 990 tax forms, the total  
44 compensation of the five highest paid employees. The salaries of Astria administrators were  
45 concealed by payment through a Tennessee shell corporation. The bankruptcy court allowed the

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<sup>3</sup> *Hospital Safety Net Assessment*, RCW 74.60.005 <https://app.leg.wa.gov/rcw/default.aspx?cite=74.60>

<sup>4</sup> *Hospital Chain Will Pay Over \$260 Million to Resolve False Billing and Kickback Allegations; One Subsidiary Agrees to Plead Guilty*. The United States Department of Justice News. September 25, 2018. <https://www.justice.gov/opa/pr/hospital-chain-will-pay-over-260-million-resolve-false-billing-and-kickback-allegations-one>

<sup>5</sup> *Compliance Guide for 501(c)(3) Public Charities*. Department of the Treasury Internal Revenue Service. March 6, 2008. <https://www.irs.gov/pub/irs-pdf/p4221pc.pdf>

1 information to remain sealed, so there has not been public disclosure of how much the  
2 administrators were paid while this hospital was destroyed; and

3  
4 WHEREAS, public charities are directed to maintain transparency in their "activities, finance,  
5 and governance". Astria's repeated assurances to employees, patients, creditors, and the public  
6 that the Yakima hospital would continue open and functioning, were never credible and appear  
7 to be knowingly false statements. There was no "public interest" in these false statements, and  
8 the false narrative undermined efforts to explore other options, such as organization of a public  
9 hospital district; and

10 WHEREAS, Astria Corporation defrauded employees of their earned wages and benefits<sup>6</sup>; and

11  
12  
13 WHEREAS, in *Romney, et. al. v. Franciscan Medical Group, et. al.*, the employer hospital  
14 capriciously used "at will" employment prerogatives, and violated their own internal procedures  
15 in terminating two physician whistleblowers<sup>7 8</sup>. The arbitrator for the court has created a helpful  
16 precedent by favorably weighing the public policy interest of safe patient care against "at will"  
17 employment. This is the second physician wrongful termination case decided against  
18 Franciscan<sup>9</sup>; and

19  
20 WHEREAS, the COVID-19 pandemic has seen multiple terminations of physicians and nurses  
21 in retaliation for complaints regarding lack of personal protective equipment. Litigation of these  
22 cases will weigh the public policy interest of workplace safety against "at will" employment<sup>10</sup>;  
23 and

24  
25 WHEREAS, in the 2017 Washington legislature, SB 5322 Concerning Agreements Between  
26 Dentists and Third Parties That Provide Supportive Services to Dentists, (Sen. Curtis King; R,  
27 Yakima) passed unanimously in both houses, indicating that our legislators have a strong  
28 concern for protecting the public from conflict of interest inherent in corporate practice  
29 controlled by unlicensed individuals<sup>11</sup>; and

30  
31 WHEREAS, in the 2019 Washington legislature, HB 1049 Concerning Health Care Provider  
32 And Health Care Facility Whistleblower Protections passed unanimously in both houses,  
33 indicating that our legislators strongly encourage physicians to report substandard care and  
34 interference with the practice of medicine<sup>12</sup>; and

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<sup>6</sup> *Washington State Nurses Association v. SHC Medical Center-Yakima, Astria Health*. January 31, 2020.  
<https://cdn.wsna.org/assets/local-unit-assets/yakima-regional-medical-center/1-Complaint.pdf?mtime=20200204074946&focal=none>

<sup>7</sup> *Nearly \$9M awarded to former Gig Harbor physicians who were fired after complaining about impaired doctor*. Elise Takahama, Seattle Times. April 3, 2020  
<https://www.seattletimes.com/seattle-news/nearly-9m-awarded-to-former-gig-harbor-physicians-fired-after-complaining-about-impaired-doctor/>

<sup>8</sup> *\$8.78 Million Awarded To Doctors Fired For Reporting Patient Harm*. The Blankenship Law Firm, PLLC. April 2, 2020. <http://www.blankenshiplawfirm.com/results/8-78-million-awarded-to-doctors-fired-for-reporting-patient-harm/>

<sup>9</sup> *Tacoma doctor settles wrongful-firing case for \$2.5 million*. Adam Lynn. The News Tribune, Dec 4, 2015.  
<http://www.thenewstribune.com/news/local/article48099685.html>

<sup>10</sup> *MD Loses Job for Speaking Out Against Lack of PPE: What's His Recourse?* Alicia Gallegos, Medscape. July 22, 2020  
[https://www.medscape.com/viewarticle/934381?src=WNL\\_confprev\\_200726\\_MSCPEDIT&uac=1426SR&impID=2477277&faf=1#vp\\_1](https://www.medscape.com/viewarticle/934381?src=WNL_confprev_200726_MSCPEDIT&uac=1426SR&impID=2477277&faf=1#vp_1)

<sup>11</sup> <https://app.leg.wa.gov/billsummary?BillNumber=5322&Year=2017>

<sup>12</sup> <https://app.leg.wa.gov/billsummary?BillNumber=1049&Initiative=false&Year=2019>



WSMA Policy

**"Corporate Practice of Medicine" Doctrine**

The WSMA supports the clarification of the "Corporate Practice of Medicine" Doctrine in such a way as to:

1. Preserve independent clinical decision-making;
2. Provide protection to physicians who bring to light quality of care concerns arising out of an employment situation;
3. Prohibit non-compete clauses in physician-hospital employment contracts;
4. Require that hospitals and employed physicians be insured for professional negligence separately and that physicians be allowed to select their own carrier;
5. Require that medical staff and clinical privileges be considered separately from employment considerations;
6. That physicians be allowed to own hospitals and ambulatory care centers; and,
7. That closed medical staff policies be prohibited within any hospital facility in Washington State; assuming the provider meets that hospital's medical staff requirements.

(EC Rpt I, A-94) (Reaffirmed A-17)