NOTES

ENFORCING THE CORPORATE PRACTICE OF MEDICINE DOCTRINE THROUGH FALSE CLAIM LIABILITY

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Most states have laws prohibiting corporations from owning healthcare practices or employing physicians, collectively forming the corporate practice of medicine doctrine (CPOM). CPOM laws were designed to ensure that licensed professionals, not corporate laymen, decide patient treatment.

Large corporations and private equity firms routinely circumvent CPOM laws by creating subsidiary companies that ostensibly "manage" healthcare practices. These managing subsidiaries can set staffing levels, choose medical supplies, and dictate the course of patient treatment—effectively giving their corporate owners control over the practice without owning it on paper. Courts have consistently found these arrangements illegal when corporate owners assume too much control over their managed healthcare practices.

The False Claims Act imposes liability on parties that submit false claims to the government or receive money from the government under fraudulent circumstances. For a healthcare practice to bill the government, it must comply with applicable federal and state regulations, including CPOM laws. This Note argues that billing the government for healthcare services without complying with CPOM laws constitutes fraud under the False Claims Act.

Attaching false claim liability to CPOM violations will prevent corporations from unlawfully controlling healthcare practices and protect patients from the predatory abuses of corporate actors.

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* J.D. Candidate 2025, Columbia Law School. Thank you to my parents and my grandparents for your love and support. Thank you to Professors Debra Cohn and Chris Morten for your invaluable mentorship throughout law school. Thank you also to the editors of the *Columbia Law Review*, especially Sara Graziano, Makayla Haussler, Ryan Lattavo, Sydney Myers, Alexandra Saueressig, and Charlotte Waldman. All mistakes are my own.

INTRODUCTION

EmCare, a publicly traded company on the New York Stock Exchange, was the nation's largest physician management company, hiring almost 16,000 clinicians to staff over 4,600 hospitals and healthcare facilities, including Overland Park Regional Medical Center.[1] When physicians at Overland Park grew concerned with dangerously low staffing levels in the emergency room, they organized under their director, Dr. Raymond Brovont, to communicate their concerns to management.[2] Dr. Brovont held a meeting articulating the doctors' concerns with the staffing policy, which required a single doctor to work in the emergency room while on call for emergencies in other units of the 343-bed hospital.[3] An EmCare executive responded by circulating an email with links to EmCare's stock and financial information, stating: "[S]taffing decisions are financially motivated. . . . Profits are in everyone's best interest."[4] Dr. Brovont was subsequently fired and reprimanded by the EmCare executive, who told him: "[Y]ou cash the check every month to be a corporate representative,

1. Brovont v. KS-I Med. Servs., P.A., 622 S.W.3d 671, 678–79 (Mo. Ct. App. 2020).

2. See id. at 680 (describing how increased demands on physicians led to periods when the emergency room was unstaffed by a physician, leading the physicians to approach Dr. Brovont with their concerns).

3. See id. at 680–81 ("[Dr. Brovont] specifically brought up the physicians' concerns about being responsible for responding to Code Blue patients throughout the hospital, requiring them to be in potentially three places at once . . . .").

4. Id. at 681 (internal quotation marks omitted) (quoting email from Dr. Patrick McHugh, Exec. Vice President, EmCare, to EmCare Emergency Department Physicians).

and there is a responsibility as the corporate representative to support the corporation's objectives."[5]

The EmCare episode highlights the danger of corporate influence in healthcare: Decisionmaking prioritizes profit over the concerns and expertise of licensed professionals.

In theory, however, a corporation like EmCare should have been prohibited from staffing physicians in the first place. In Kansas, where Overland Park is located, "[a] general corporation is prohibited from providing medical services or acting through licensed practitioners."[6] To provide medical services in Kansas, a corporation must be specially registered, and only licensed physicians and other qualified persons can hold equity interests in it.[7] These rules combine to prevent for-profit, publicly traded corporations like EmCare from controlling healthcare services.

Every state has its own regulations and court decisions prohibiting corporations from practicing medicine or employing physicians, which collectively form the corporate practice of medicine doctrine (CPOM).[8] The public policy underlying CPOM is rooted in the dual fears that, first, "a corporation's obligation to its shareholders may not align with a physician's obligation to [their] patients," and, second, that corporate management may interfere with a physician's medical judgment.[9]

Over the last three decades, corporate investors have found ways to bypass CPOM by forming corporate structures through which they can control healthcare groups indirectly.[10] For example, EmCare created separate subsidiary corporations in each state in which it employed physicians and then made physicians the owners of those subsidiaries.[11] Under this structure, the subsidiaries could facially comply with CPOM while the parent company retained control.

This model of corporate ownership has grown increasingly popular, opening the floodgates to corporatization in healthcare, especially through large, publicly traded companies and private equity firms. For

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5. Id. at 682 (internal quotation marks omitted) (quoting Dr. McHugh).

6. Early Detection Ctr., Inc. v. Wilson, 811 P.2d 860, 868 (Kan. 1991).

7. See Kan. Stat. Ann. § 17-2712(a) (West 2025) ("No shares may be . . . issued by the professional corporation until there is . . . a certificate by the regulating board stating that the person . . . is duly licensed to render the same type of professional services as that for which the corporation was organized.").

8. See AMA, Issue Brief: Corporate Practice of Medicine 1 (2015), https://www.ama-assn.org/media/7661/download (on file with the *Columbia Law Review*) ("The corporate practice of medicine doctrine prohibits corporations from practicing medicine or employing a physician to provide professional medical services.").

9. Id.

10. See infra notes 63–76 and accompanying text (describing how corporate managers circumvent CPOM).

11. Brovont v. KS-I Med. Servs., P.A., 622 S.W.3d 671, 678 (Mo. Ct. App. 2020).

instance, in July 2022, Amazon announced a deal to purchase One Medical, a primary care organization.[12] A year later, CVS closed on its acquisitions of Oak Street and Signify Health, a primary care provider and a home healthcare company.[13] Today, four of the Fortune 10 companies have acquired physician groups.[14] One report showed that in 2021, a single private equity firm owned more than 30% of specialty medical practices in over a quarter of local markets.[15] This trend is especially concerning as more studies indicate that corporate ownership of healthcare groups correlates with problems such as understaffing and poor patient outcomes.[16]

One study found that rates of hospital-acquired complications, like infections and falls, increased by an average of 25% at hospitals that were

12. Press Release, Amazon, Amazon and One Medical Sign an Agreement for Amazon to Acquire One Medical (July 21, 2022), https://press.aboutamazon.com/2022/7/amazon-and-one-medical-sign-an-agreement-for-amazon-to-acquire-one-medical [https://perma.cc/5NGB-UDE6].

13. See Press Release, CVS Health, CVS Health Completes Acquisition of Oak Street Health (May 2, 2023), https://www.cvshealth.com/news/company-news/cvs-health-completes-acquisition-of-oak-street-health.html [https://perma.cc/3DXP-X4AZ] (announcing CVS's 2023 acquisition of Oak Street Health); Press Release, Signify Health, CVS Health Completes Acquisition of Signify Health (Mar. 29, 2023), https://www.signifyhealth.com/news/cvs-health-completes-acquisition-of-signify-health [https://perma.cc/5L5E-AXGV] (announcing CVS's 2023 acquisition of Signify Health).

14. The other two companies are UnitedHealth Group and Walmart. UnitedHealth Group has been acquiring physician groups for years. See, e.g., Bob Herman, UnitedHealth's Physician Buying Spree Continues With Takeover of Crystal Run, STAT (Apr. 10, 2023), https://www.statnews.com/2023/04/10/unitedhealth-crystal-run-physician-acquisition/ (on file with the *Columbia Law Review*) (discussing UnitedHealth Group's 2023 acquisition of Crystal Run Healthcare). Walmart has opened nearly two dozen health centers across Florida. See Press Release, Walmart, Walmart Health Grows in Florida With 16 New Health Centers Opening in 2023 (Oct. 26, 2022), https://corporate.walmart.com/news/2022/10/26/walmart-health-grows-in-florida-with-16-new-health-centers-opening-in-2023 [https://perma.cc/3XTE-3ABV] (announcing plans to bring Walmart Health's presence in Florida up to twenty-two locations).

15. Richard M. Scheffler, Laura Alexander, Brent D. Fulton, Daniel R. Arnold & Ola A. Abdelhadi, Am. Antitrust Inst., Petris Ctr. & Wash. Ctr. for Equitable Growth, Monetizing Medicine: Private Equity and Competition in Physician Practice Markets 20 (2023), https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf [https://perma.cc/BJL3-X6UN].

16. See, e.g., Physicians Advoc. Inst., The Impact of Practice Acquisitions and Employment on Physician Experience and Care Delivery 5 (2023), https://www.physiciansadvocacyinstitute.org/Portals/0/assets/docs/PAI-Research/NORC-Employed-Physician-Survey-Report-Final.pdf [https://perma.cc/2BK3-Q5P4] (finding that physicians reported that ownership changes led to reduced autonomy and strained patient relationships); Alexander Borsa, Geronimo Bejarano, Moriah Ellen & Joseph Dov Bruch, Evaluating Trends in Private Equity Ownership and Impacts on Health Outcomes, Costs, and Quality: Systematic Review, BMJ, July 19, 2023, at 1, 7–10 (finding that private equity ownership of healthcare facilities is often associated with increased costs, mixed-to-harmful impacts on quality, and reduced nurse staffing levels); Sneha Kannan, Joseph Dov Bruch & Zirui Song, Changes in Hospital Adverse Events and Patient Outcomes Associated With Private Equity Acquisition, 330 JAMA 2365, 2366 (2023) (finding that, on average, private equity acquisition of hospitals led to increased hospital-acquired adverse events).

purchased by private equity firms.[17] In a survey of a thousand physicians across the country, more than half stated that changes to corporate ownership resulted in reduced quality of patient care, due to "an erosion in clinical autonomy and a greater focus on financial incentives."[18]

CPOM was designed to prevent these problems and protect patients by giving their physicians, rather than profit-motivated laymen, agency to make appropriate clinical decisions.[19] But in the 1970s, CPOM became increasingly underenforced as corporate entities began to take control of the healthcare sector.[20] Today, corporate actors dominate the healthcare market, and many states choose not to enforce CPOM without expressly rejecting it.[21]

Fortunately, CPOM laws still exist, despite the preponderance of corporate arrangements that blatantly violate their spirit. Penalties for CPOM violations vary by state but generally involve fines, revocation of licenses, and even criminal penalties.[22] There is an area of active litigation challenging the legality of corporate control of healthcare groups;[23] however, in some states, private citizens lack a cause of action to enforce CPOM.[24] Furthermore, it is not typical for courts to award monetary damages to plaintiffs in CPOM cases.[25] These limitations exacerbate the underenforcement of CPOM.

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17. See Kannan et al., supra note 16, at 2368 (finding that private equity hospitals experienced an additional 4.6 hospital-acquired conditions per ten thousand hospitalizations, equaling a 25.4% increase from the private equity hospitals' mean preacquisition levels).

18. Physicians Advoc. Inst., supra note 16, at 2.

19. See Allegra Kim, Cal. Rsch. Bureau, CRB 07-011, The Corporate Practice of Medicine Doctrine 4 (2007), https://www.compcom.co.za/wp-content/uploads/2015/05/Mediclinic-Annexure-20-CRB-Paper-dated-October-2007.pdf [https://perma.cc/5FEP-Y3ER] ("The policy rational for the CPM Doctrine can be summarized as follows: A profit motive will lead to commercial exploitation of physicians and lower professional standards.").

20. See infra notes 50–52 and accompanying text (discussing the effects of the 1973 Health Maintenance Organization Act).

21. See Michele Gustavson & Nick Taylor, At Death's Door—Idaho's Corporate Practice of Medicine Doctrine, 47 Idaho L. Rev. 479, 481 (2011) ("Many states, although not always expressly rejecting the corporate practice of medicine doctrine, have adopted, or otherwise chosen not to enforce the doctrine . . . .").

22. Michael F. Schaff & Glenn P. Prives, The Corporate Practice of Medicine Doctrine: Still Alive and Kicking, Bloomberg L. (Oct. 6. 2011), https://www. bloomberglaw.com/bloomberglawnews/health-law-and-business/XFOQUIKS000000?bna_news_filter=health-law-and-business#jcite (on file with the *Columbia Law Review*).

23. See infra section II.C.

24. See, e.g., Treiber v. Aspen Dental Mgmt., Inc., 94 F. Supp. 3d 352, 363 (N.D.N.Y. 2015) ("[I]t is undisputed that New York's licensing and business laws which prevent corporations from practicing dentistry do not confer a private right of action.").

25. See Christopher Anderson & Loreli Wright, BLOG: Corporate Practice of Medicine Prohibitions, Healio (July 11, 2023), https://www.healio.com/news/ophthalmology/20230711/blog-corporate-practice-of-medicine-prohibitions [https://perma.cc/7WYH-APMW] (noting that rescission of the contract is a more common remedy).

This Note proposes that false claim liability should attach to corporations that bill government health plans while violating CPOM. The Centers for Medicare and Medicaid Services (CMS) coordinates government health plans, and its conditions for participation include compliance with "all applicable Federal, State, and local laws and regulations related to the health and safety of patients,"[26] which presumably include CPOM laws. Therefore, to participate in CMS programs, a healthcare practice must comply with CPOM regulations.

Under the "implied false certification" doctrine, submitting a reimbursement claim to a government program without complying with the underlying preconditions to payment constitutes a false claim.[27] Under this theory, a corporation that bills a government health plan while violating CPOM would be submitting false claims and therefore subject to hefty fines. Because most healthcare groups rely on government reimbursement,[28] this approach would implicate virtually any healthcare group in violation of CPOM.

Furthermore, through its qui tam/whistleblower provisions, the False Claims Act enables private citizens with evidence of fraud to file suit on behalf of the government.[29] These provisions provide private citizens a cause of action to enforce CPOM in states where they would otherwise lack standing to sue.

States also have their own false claims and insurance fraud acts that CPOM plaintiffs can invoke.[30] Based on their legislative and judicial constructions, these laws may be more permissive to certain CPOM complaints than the Federal False Claims Act.[31]

Attaching false claim liability to CPOM violations would incentivize plaintiffs to enforce CPOM through litigation and encourage

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26. 42 C.F.R. § 418.116 (2025).

27. See Universal Health Servs., Inc. v. United States, 579 U.S. 176, 180 (2016) (internal quotation marks omitted) ("This case concerns a theory of False Claims Act liability commonly referred to as 'implied false certification.' According to this theory, when a defendant submits a claim, it impliedly certifies compliance with all conditions of payment.").

28. Ctrs. for Medicare & Medicaid Servs., CMS Roadmaps Overview 1, https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityInitiativesGenInfo/Downloads/RoadmapOverview_OEA_1-16.pdf [https://perma.cc/7BVD-A3RQ] ("Nearly 90 million Americans rely on health care benefits through Medicare, Medicaid, and the State Children's Health Insurance Program (SCHIP).").

29. 31 U.S.C. § 3730(b)(1) (2018).

30. See State and Local False Claims Acts, Constantine Cannon, https://constantinecannon.com/practice/whistleblower/whistleblower-types/whistleblower-reward-laws/state-local-false-claims-acts/ [https://perma.cc/EDD9-U25T] (last visited Jan. 25, 2025) (listing thirty states whose False Claims Acts contain qui tam provisions, though seven states limit qui tam suits to health care fraud cases).

31. See infra section IV.E.

whistleblowers to expose corporate arrangements that give laymen undue influence over physicians.

I. BACKGROUND

CPOM has been shaped over the decades by statutes, court decisions, attorney general opinions, and actions by state medical licensing boards.[32] The doctrine prohibits laymen-run corporations from providing healthcare services, but it fell out of favor in the 1980s.[33] Although CPOM is no longer strongly enforced, a study of its history and contemporary application illustrates how it can be used to combat the predatory practices of corporations in healthcare.

A. *The Origins of CPOM*

CPOM originated during the nineteenth century in a time when quack doctors ran rampant while trained physicians struggled to compete with them in the services market.[34] In 1847, a group of physicians formed the American Medical Association (AMA), a professional association that advocated for medical licensure requirements among the states to improve the quality of medical service and decrease competition from untrained physicians.[35]

As corporate presence in the medical marketplace increased during the early twentieth century, "the AMA became concerned that corporations were threatening physician autonomy."[36] In some cases, nonphysicians dictated the length of hospital stays and determined pre-set salaries and fees for the services of their contracted physicians.[37] The AMA spoke against such arrangements, charging them with introducing too much of a "spirit of trade" into the profession.[38]

State medical practice acts, the laws that dictate medical licensing requirements, incorporate these concerns. At first, these acts did not explicitly prohibit the corporate practice of medicine, but they prohibited

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32. AMA, supra note 8, at 163.

33. See infra notes 50–53 and accompanying text.

34. See Donald E. Konold, A History of American Medical Ethics 1847–1912, at 198 (1962).

35. AMA History, AMA, https://www.ama-assn.org/about/ama-history/ama-history [https://perma.cc/FFE2-QMTX] (last visited Feb. 11, 2025).

36. Kathrine Marous, The Corporate Practice of Medicine Doctrine: An Anchor Holding America Back in the Modern and Evolving Healthcare Marketplace, 70 DePaul L. Rev. 157, 161 (2020).

37. Adam M. Freiman, Comment, The Abandonment of the Antiquated Corporate Practice of Medicine Doctrine: Injecting a Dose of Efficiency Into the Modern Health Care Environment, 47 Emory L.J. 697, 701 (1998).

38. In re AMA, 94 F.T.C. 701, 898 (1979) (final order) (internal quotation marks omitted) (quoting internal AMA report).

the practice of medicine by a "person" without a valid license.[39] Courts constructed CPOM by finding in the medical practice acts a legislative intent to prohibit corporations from qualifying for a medical license and providing medical services.[40]

B. *Early Case Law*

In *Parker v. Board of Dental Examiners*, the California Supreme Court interpreted the state's Dental Act as prohibiting the corporate practice of dentistry.[41] The court explained that the Act "authorizes persons only to engage in the practice of dentistry" and that a licensee must possess "consciousness, learning, skill, and good moral character," none of which can be attributed to a corporation.[42]

The court also rejected defendants' assertion that they merely managed the "business side" of the dental practice and therefore did not violate the statute which governed the practical side of dentistry. [43] "The law does not assume to divide the practice of dentistry into [those] kind[s] of departments," it explained, since "[e]ither one may extend into the domain of the other in respects that would make such a division impractical if not impossible."[44] The court furthered that to distinguish between the "business" side and the practical side of medicine would "render the [Dental] act impotent . . . , and it would defeat the object of legislation."[45]

Soon thereafter in *People v. United Medical Service*, the Illinois Supreme Court similarly interpreted its state's medical practice act as prohibiting a corporation from providing service through a medical clinic, concluding that "[t]he legislative intent . . . is that only individuals may obtain a

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39. Alanson W. Willcox, Hospitals and the Corporate Practice of Medicine, 45 Cornell L. Rev. 432, 438 (1960).

40. See infra notes 41–46 and accompanying text.

41. See 14 P.2d 67, 73 (Cal. 1932).

42. Id. at 71 (emphasis omitted).

43. Id. at 71–72.

44. Id. at 72.

45. Id. This holding has been affirmed by more recent California court decisions. See People ex rel. Allstate Ins. Co. v. Discovery Radiology Physicians, P.C., 311 Cal. Rptr. 3d 901, 911 (Cal. Ct. App. 2023) ("The unlicensed practitioner in . . . *Parker* was a corporation, but it has long been 'well settled' that 'any other unlicensed person or entity' is subject to the same sanctions for unlawful practice as an unlicensed corporation."); see also Steinsmith v. Med. Bd., 102 Cal. Rptr. 2d 115, 120 (Cal. Ct. App. 2000). In *Steinsmith*, a corporate manager of a healthcare clinic, Steinsmith, also claimed that he was managing business affairs without violating CPOM regulations. See id. at 119. The court responded that: "A similar argument was rejected long ago in . . . *Parker* . . . . Accordingly, the . . . *Parker* case disposes of Steinsmith's argument that there was no unlicensed practice he could have aided." Id. at 120 (citing *Parker*, 14 P.2d at 72).

license" and "[n]o corporation can meet the requirements of the statute essential to the issuance of a license."[46]

Since then, states have expanded their CPOM laws by passing legislation that explicitly prohibits corporations from providing healthcare services.[47] Most states define the scope of prohibited corporate activities through their case law.[48] Some states offer specific guidance regarding prohibited services and business arrangements through their medical boards, the licensing agencies that govern healthcare providers.[49]

II. THE CONTEMPORARY CPOM LANDSCAPE

In 1973, Congress passed the Health Maintenance Organization (HMO) Act, creating a new type of healthcare organization in which networks of physicians are directly employed by an insurance company, the HMO.[50] Prior to the HMO Act, insurance companies could not hire physicians in most states, but the Act preempted any state laws that would frustrate the formation of HMOs,[51] specifically CPOM laws.[52] Industry advocates subsequently began advocating for the repeal of CPOM laws to make way for new forms of integrated corporate healthcare systems, leading to underenforcement.[53]

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46. 200 N.E. 157, 162–63 (Ill. 1936).

47. See Cal. Bus. & Prof. Code § 2400 (2024) ("Corporations and other artificial legal entities shall have no professional rights, privileges, or powers."); see also infra notes 56–64 and accompanying text for a discussion of corporations' authority to provide professional services.

48. See infra section IV.D for an analysis of case law surrounding prohibited acts.

49. The New Jersey Board of Examiners has addressed the permissible forms of professional practices, such as solo practices and partnerships, which are codified in N.J. Admin. Code § 13:35-6.16 (2025). Similarly, the Medical Board of California (MBC) has also issued guidance regarding prohibited business structures and corporate activities. See infra notes 97–98 and accompanying text for a more detailed analysis of MBC guidance.

50. HMO Act of 1973, Pub. L. No. 93-222, 87 Stat. 914 (codified at 43 U.S.C. § 300e (2018)).

51. Id. at 931 ("No State may establish or enforce any law which prevents a health maintenance organization . . . from soliciting members through advertising its services, charges, or other nonprofessional aspects of its operation.").

52. The CPOM "doctrine was part of the impetus for Congress to create the HMO Act." Nicole Huberfeld, Be Not Afraid of Change: Time to Eliminate the Corporate Practice of Medicine Doctrine, 14 Health Matrix: J.L.-Med. 243, 277 (2004).

53. See, e.g., Jeffrey F. Chase-Lubitz, The Corporate Practice of Medicine Doctrine: An Anachronism in the Modern Health Care Industry, 40 Vand. L. Rev. 445, 447 (1987) ("Many of the reasons that once existed for limiting corporate involvement in medicine no longer apply. Accordingly, both courts and state legislatures should clarify the doctrine's scope and modify the doctrine to reflect current practices in the health care market."); James Flannery, Time to Rethink the Illinois Corporate Practice of Medicine Doctrine in the PPACA Healthcare Market Era, 24 Annals Health L. Advance Directive 64, 65 (2015), https://www.luc.edu/media/lucedu/law/centers/healthlaw/pdfs/advancedirective/pdfs/issue14/Flannery%20formatted.pdf [https://perma.cc/S45S-PRUJ] ("In an era of greater need for clinical integration, the corporate practice of medicine doctrine in Illinois should be relaxed."); Freiman, supra note 37, at 697 ("Today's health care industry is dominated by . . . large corporations which operate in the era of

Currently, state CPOM laws vary widely in scope and strictness. Most states have weak prohibitions that allow corporate entities to hire physicians so long as the employment contracts clarify that the corporate entity cannot interfere with clinical decisionmaking.[54] For example, in a Statement of Position, the Louisiana Board of Medical Examiners announced that "a physician's employment by a business corporation does not per se violate the Medical Practice Act."[55]

States with stronger forms of prohibition will find a per se violation when physicians are hired by a corporation unless that corporation is registered as a "professional corporation."[56] Professional corporations (PCs) are registered to provide a specific professional service and subject to the relevant regulations.[57]

States have different laws regarding how a PC is to be structured, who can participate as shareholders, and who can serve on the board of directors.[58] Some states, like Kansas, require all shareholders of a PC to be licensed in the relevant profession,[59] while others require at least half of shareholders to be licensed.[60] Some states have fee-splitting prohibitions which prohibit medical professionals from sharing their revenue with individuals or entities not licensed to provide healthcare services.[61] Additionally, in states like New Jersey, practitioners with plenary licenses

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'managed care.' . . . [T]he corporate practice of medicine doctrine not only fails to reflect the evolution of the health care industry but also threatens to impede this evolution towards efficiency."); Lisa Rediger Hayward, Revising Washington's Corporate Practice of Medicine Doctrine, 71 Wash. L. Rev. 403, 404–05 (1996) ("Regrettably, the corporate practice of medicine laws have failed to keep pace with the rapidly changing health care environment. The trend is clearly moving toward more integrated delivery systems, yet many of these organizations violate the fundamental terms of the corporate practice of medicine doctrine."); Sara Mars, The Corporate Practice of Medicine: A Call for Action, 7 Health Matrix: J.L-Med. 241, 243 (1997) ("[T]he justification behind barring corporations from practicing medicine appears to overlook the realities of the current health care market place.").

54. See Marous, supra note 36, at 166 (explaining that "there is often a corporate practice of medicine exception for hospitals that hire physicians").

55. La. State Bd. of Med. Exam'rs, Statement of Position: Employment of Physician by Corporation Other Than a Professional Medical Corporation 4 (1992), https://a.storyblok.com/f/150540/0db19327a3/employmentofphysician.pdf [https://perma.cc/N35L-DHZ3] (emphasis omitted).

56. Marous, supra note 36, at 164–65.

57. See Professional Corporation, Cornell L. Sch., https://www.law.cornell.edu/wex/professional_corporation [https://perma.cc/VWZ6-HG9U] (last visited Jan. 25, 2025) (defining professional corporations as entities created by state statutes governing professional services).

58. AMA, supra note 8, at 1.

59. Kan. Stat. Ann. § 17-2712(a) (West 2025).

60. Are There Special Requirements for Professional Corporations?, BizCounsel (Jan. 14, 2020), https://bizcounsel.com/articles/Special-Requirements-for-Professional-Corporations [https://perma.cc/7B4J-QV4K].

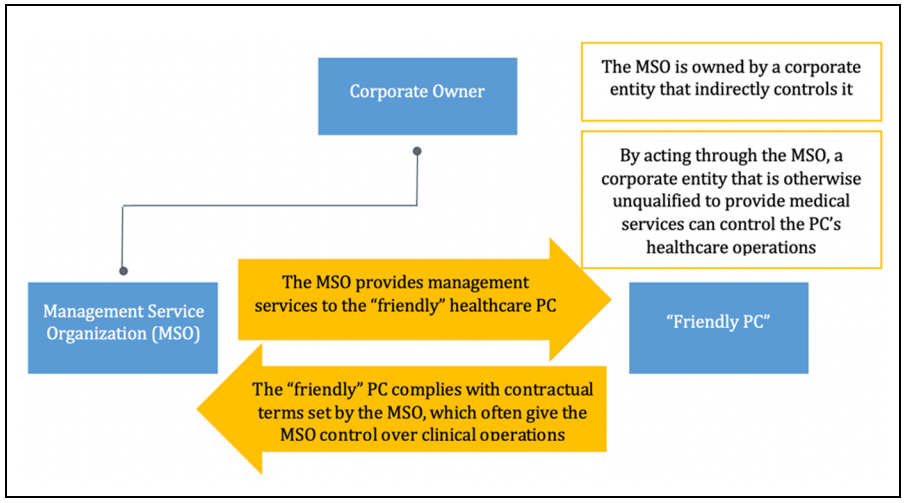
61. See, e.g., Cal. Bus. & Prof. Code § 650(a) (2024); N.Y. Educ. Law § 6509-a (McKinney 2025); N.J. Admin. Code § 13:42-10.14 (2025).

like M.D.s and D.O.s cannot be employed by practitioners with limited licenses like podiatrists, chiropractors, or midwives.[62] The purpose of these rules is to prevent unqualified individuals from exerting influence over physicians and other healthcare providers.

A. *The "Friendly PC" Model*

Corporate managers circumvent these regulations through the "[f]riendly PC" model.[63] Under this arrangement, a laymen corporation operates through its subsidiary to control a healthcare practice. The subsidiary, a management service organization (MSO), contracts with a PC to provide administrative services, setting contractual terms that oftentimes give the MSO meaningful control of clinical operations.[64] The parent corporation is unqualified to provide medical services, but by "managing" the friendly PC through its MSO, it can effectively practice medicine.

FIGURE 1. THE "FRIENDLY PC" CORPORATE STRUCTURE



62. N.J. Admin. Code § 13:35–6.16 (2025).

63. Michael Gawley, A Friendly Reminder: Friendly PC Arrangements Are Subject to Scrutiny, JD Supra (June 20, 2022), https://www.jdsupra.com/legalnews/a-friendly-reminder-friendly-pc-9552891/ [https://perma.cc/2CPE-9SY4].

64. See Daniel C. Fundakowski, Corporate Practice of Medicine: The Unseen Hurdle in Telehealth, Health L. Advisor (Feb. 6. 2013), https://www.healthlawadvisor.com/corporate-practice-of-medicine-the-unseen-hurdle-in-telehealth [https://perma.cc/M86E-J7FC] (explaining that stock transfer restriction agreements are used to set the contractual terms); see also Gawley, supra note 62 (explaining how many companies employ the friendly PC model to avoid violating state CPOM regulations).

An MSO's involvement often goes beyond basic administrative oversight.[65] MSOs can set staffing levels,[66] choose medical supplies,[67] and, in extreme cases, dictate the course of patient treatment against the recommendation of clinicians.[68]

When a private equity firm bought the dermatology chain Advanced Dermatology and Cosmetic Surgery, it "limited the purchase of basic supplies," leaving offices "without gauze, antiseptic solution, or even toilet paper."[69] At another private equity-owned dermatology office, corporate management procured cheap needles without consulting the medical staff.[70] According to one doctor, the needles often broke off into patients' bodies.[71]

Friendly PCs are kept "friendly" through stock transfer agreements, contracts that prevent physicians from transferring their equity in the PC without permission from the MSO.[72] Because the physician owners are often paid in equity,[73] their livelihoods are conditioned upon acquiescence to the MSO's policies. MSOs can subject physicians to other restrictions, including restrictive covenants that prevent them from working at other firms and nondisclosure agreements that prevent them from speaking publicly about the terms of their arrangement.[74]

On paper, the PC is owned by a physician, but the physician is selected by and bound to the oversight of corporate management through what some courts have referred to as the "Doc-in-the-Box" structure.[75] A single physician can be appointed to oversee several PCs, and in one reported

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65. See Fundakowski, supra note 64 ("The combination of business management control and the threat of exercising its rights under the transfer agreement allow the MSO to maintain control over the administrative and management side of the entity without infringing on the professional judgment of the physicians.").

66. See Brovont v. KS-I Med. Servs, P.A., 622 S.W.3d 671, 678 (Mo. Ct. App. 2020) (explaining that corporate managers set emergency room staffing levels).

67. See infra notes 69–71 and accompanying text.

68. See Treiber v. Aspen Dental Mgmt., 94 F. Supp. 3d 352, 357 (N.D.N.Y. 2015) (explaining that some MSOs automatically add unsuggested treatments to patients' plans, even if not explicitly recommended by dental professionals).

69. Brendan Ballou, Plunder: Private Equity's Plan to Pillage America 101 (2023) [hereinafter Ballou, Plunder].

70. Heather Perlberg, How Private Equity Is Ruining American Health Care, Bloomberg (May 20, 2020), https://www.bloomberg.com/news/features/2020-05-20/private-equity-is-ruining-health-care-covid-is-making-it-worse?embedded-checkout=true (on file with the *Columbia Law Review*).

71. Id.

72. See Fundakowski, supra note 64 (explaining how restrictive stock transfer agreements prevent PC owners from transferring their shares without the MSO's consent).

73. Perlberg, supra note 70.

74. Id.

75. See, e.g., Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 159 A.3d 412, 424 (N.J. 2017) (internal quotation marks omitted); see also Perlberg, supra note 70.

case, a single physician was appointed as an officer for over a hundred medical groups.[76] These physician "owners" cannot possibly provide meaningful clinical supervision over so many facilities; they effectively serve as strawmen that allow the PC to comply with CPOM laws while being controlled by corporate managers.

As the court in *Parker v. Board of Dental Examiners*[77] forewarned almost a century ago, the division of healthcare practice into business management and clinical practice has frustrated the intention of CPOM laws.

B. *Prominent Examples*

Many large corporations make use of the "friendly PC model." Oak Street, the physician group that CVS recently acquired, disclosed in an SEC filing that "[i]n markets where the corporate practice of medicine is prohibited, we have historically operated by maintaining long-term management contracts with multiple associated professional organizations which, in turn, employ or contract with physicians."[78]

Signify Health, another physician group that CVS acquired recently, made similar disclosures in its 2021 annual report.[79] Signify Health described "[t]he 'captive' or 'friendly' professional corporation model" as a legal structure "developed to comply with various state corporate practice of medicine and fee splitting laws."[80]

One Medical, which was acquired by Amazon, also operates through a "friendly PC" arrangement and acknowledged that CPOM laws may "circumscribe [its] business operations."[81]

The corporate structure of these "friendly PC" arrangements can be very complex. In *Treiber v. Aspen Dental Management*, the private equity firm

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76. See Am. Acad. of Emergency Med. Physician Grp., Inc. v. Envision Healthcare Corp., No. 22-CV-00421-CRB, 2022 WL 2037950, at *6 (N.D. Cal. May 27, 2022).

77. 14 P.2d 67 (Cal. 1932).

78. Oak Street Health, Inc., Registration Statement (Form S-1) 50 (July 10, 2020), https://www.sec.gov/Archives/edgar/data/1564406/000119312520191163/d918845ds1.htm [https://perma.cc/5R2P-CG9B] [hereinafter Oak Street S-1].

79. See Signify Health, Inc., Annual Report (Form 10-K) 22 (Dec. 31, 2022), https://www.sec.gov/Archives/edgar/data/1828182/000182818223000004/sgfy-20221231.htm [https://perma.cc/BS9G-DB6J] [hereinafter Signify Health 10-K] (explaining how the friendly PC model was developed to comply with state CPOM laws).

80. Id. at 23.

81. 1Life Healthcare, Inc., Registration Statement (Form S-1) 26 (Jan. 3, 2020), https://www.sec.gov/Archives/edgar/data/1404123/000119312520001429/d806726ds1.htm [https://perma.cc/Q5WA-F44Y] [hereinafter One Medical S-1] (explaining that in states that recognize the corporate practice of medicine doctrine, "we do not own the One Medical PCs and contract for healthcare provider services for our members . . . with such entities"). One Medical also notes that CPOM laws are "subject to change and to evolving interpretations by medical boards and state attorneys general, among others, each of which has broad discretion." Id.

Green & Partners "manage[d][] but d[id] not own" three firms that had a majority interest in a holding company that owned a holding company that owned a dental practice: Aspen.[82]

Aspen's dental treatment plans were tightly controlled by management and "operated in such a way as to automatically pad treatment plans whether or not the treating hygienist or dentist actually recommended . . . treatment."[83] Managers often added services to patient plans that their dentists did not find necessary.[84]

In this case, the court did not rule on whether the arrangement violated CPOM because the plaintiffs were a class of former patients, and in New York, only the Attorney General has a cause of action to enforce CPOM.[85]

The underenforcement of CPOM has opened the floodgates to arrangements that egregiously violate the spirit of the laws and subject patients to the profit-motivated whims of laymen managers.

C. *Recent Legislation*

On February 19, 2021, then-State Senator Sydney Kamlager-Dove of California put forward a bill, SB 642, to crack down on the "friendly PC" model.[86] The bill proposed to add a section to the California Business and Professions Code requiring that owners of medical corporations have "ultimate control over the[ir] assets and business operations . . . and shall not be replaced, removed, or otherwise controlled by any lay entity or individual, including, without limitation, through stock transfer restriction agreements or other contractual agreements and arrangements."[87]

Such legislation would authorize state regulators to scrutinize the terms of stock transfer agreements, which corporate managers go to great lengths to keep secret.[88] Although SB 642 failed to advance, despite generating significant attention, New York recently passed similar legislation that impacts corporate ownership in healthcare.[89]

On August 1, 2023, new sections of the New York Public Health Law went into effect, requiring healthcare entities to disclose mergers, acquisitions, affiliation agreements, and partnership formations to the New York Attorney General.[90] Healthcare entities must disclose "[c]opies

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82. 94 F. Supp. 3d 352, 355 (N.D.N.Y. 2015).

83. Id. at 357.

84. Id.

85. See id. at 363 (emphasizing that New York's CPOM law does not create a private right of action and that violations are prosecuted by the state Attorney General).

86. See S.B. 642, 2021 Leg., Reg. Sess. (Cal. 2021).

87. Id. § 4.

88. See Perlberg, supra note 70.

89. See N.Y. Pub. Health Law § 4550 (McKinney 2025); id. § 4552.

90. See id. § 4552(1).

of any definitive agreements governing the terms of the material transaction, including pre- and post-closing conditions."[91] This legislation subjects the terms of stock transfer agreements to the attorney general, who can determine if the entity cedes too much control to corporate management.

The new disclosure requirements provide increased transparency to corporate arrangements, which can be valuable for plaintiffs in CPOM suits.[92]

Massachusetts has also recently passed an array of regulations that target corporate ownership of healthcare practices. House Bill 5159 was signed into law by Governor Maura Healey on January 8, 2025.[93] The new law imposes requirements on healthcare investors, mandating reporting of "[m]aterial changes" in ownership and disclosure of financial information.[94] The law also amends the Massachusetts False Claims Act to impose liability on any entity with an "ownership or investment interest" that "knows about" a false claim.[95] This regulations shows that states are beginning to consider false claim liability as a tool in enforcing CPOM.

D. *Recent Litigation*

In *American Academy of Emergency Medicine Physician Group v. Envision Healthcare Corp.*,[96] a physician trade group sued for a declaration that Envision, a friendly PC entity that contracted with a private equity-owned firm, violated California CPOM laws.

The legal analysis in this case was simplified by the fact that California offers specific guidance as to what activities constitute unlicensed medical practice.[97] For example, an unlicensed person cannot, among other things, determine "what diagnostic exams are appropriate for a particular condition," "the need for referrals . . . or consultation[s]," or "how many

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91. Id. § 4552(1)(b).

92. See infra note 234 and accompanying text.

93. 2024 Mass. Legis. Serv. 343 (West) (codified in scattered chapters of the Mass. Gen. Laws).

94. Id. § 24. Section 24 requires the submission of notice at least sixty days before the date of proposed material changes, which are defined as (1) expansions in organizational capacity (2) mergers and acquisitions and (3) transactions involving a "significant *equity* investor which result in a change of ownership or *control* of a provider." Id. (emphasis added). Section 24 provides that the Massachusetts Health Policy Commission may require the submission of information regarding a "significant equity investor's capital structure, general financial condition, ownership and management structure and audited financial statements." Id.

95. Id. § 29. For a more detailed analysis of the amendments to Massachusetts's False Claims Act, see infra section IV.E.

96. No. 22-CV-00421-CRB, 2022 WL 2037950 (N.D. Cal. May 27, 2022).

97. See Physicians and Surgeons: Corporate Practice of Medicine, Med. Bd. of Cal., https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information [https://perma.cc/D9UB-6SRK] (last visited Jan. 27, 2025).

patients a physician must see in a given period."[98] If a corporate entity is found to be engaging in any of these activities, there is a per se violation.

In its order denying Envision's motion to dismiss, the court noted that there is enough regulatory guidance for the "court to competently determine whether such statutory guidance is being followed."[99]

Importantly, California laws do not award monetary damages to plaintiffs that enforce CPOM, and the plaintiff in Envision only sued for a declaration that the defendant's arrangement was illegal.[100] The case ended after being stayed pending Envision's bankruptcy proceeding in Texas when Envision withdrew its operations from California.[101] Private equity companies frequently enter strategic bankruptcies to dodge liability and, in the case of Envision, delay rulings that could potentially compromise their business models.[102]

Because of the steep costs of litigation and the lack of standing in certain states,[103] plaintiffs seldom pursue CPOM suits.

III. THE DANGER OF CORPORATE CONTROL IN HEALTHCARE

CPOM exists for good reason. Doctors' obligations to their patients do not align with the demands of investors. As one doctor put it: "You can't serve two masters. You can't serve patients and investors."[104]

For decades, CPOM served as a force that protected patients from predatory, financially motivated market tactics. After the passage of the HMO Act and the subsequent underenforcement of CPOM laws, publicly traded corporations and private equity firms have taken control of American healthcare. Congress passed the HMO Act under the

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98. Id.

99. *Am. Acad. of Emergency Med. Physician Grp., Inc.*, 2022 WL 2037950, at *6 (internal quotation marks omitted) (quoting Shuts v. Covenant Holdco LLC, 145 Cal. Rptr. 3d 709, 718 (Cal. Ct. App. 2012)).

100. Lawsuit Updates, Am. Acad. Emergency Med. (May 15, 2023), https://www.aaem.org/envision-lawsuit/ [https://perma.cc/S9NU-B6BY].

101. Envision Lawsuit, Am. Acad. Emergency Med., https://www.aaem.org/envision-lawsuit/ [https://perma.cc/SCK7-KNVL] (last visited Mar. 30, 2025).

102. See Brendan Ballou, When Private-Equity Firms Bankrupt Their Own Companies, The Atlantic (May 1, 2023), https://www.theatlantic.com/ideas/archive/2023/05/private-equity-firms-bankruptcies-plunder-book/673896/ (on file with the *Columbia Law Review*) (explaining how private equity firms routinely profit off the bankruptcy of their companies). The Envision CPOM lawsuit was automatically stayed during Envision's bankruptcy proceedings. Mary Mitchell, [Case Brief] AAEM-PG v. Envision Healthcare: Corporate Practice of Medicine Challenges Private Equity Acquisition in Health Care, The Source on Healthcare Price & Competition (Aug. 15, 2023), https://sourceonhealthcare.org/case-brief-aaem-pg-v-envision-healthcare-corporate-practice-of-medicine-challenges-private-equity-acquisition-in-health-care/ [https://perma.cc/342M-YD6L].

103. See Treiber v. Aspen Dental Mgmt., Inc., 94 F. Supp. 3d 352, 363 (N.D.N.Y. 2015) (noting that, in New York, only the Attorney General has standing to enforce CPOM).

104. Perlberg, supra note 70 (internal quotation marks omitted) (quoting one doctor).

assumption that corporations would contain healthcare spending costs.[105] Decades of hindsight have shown that corporate influence has had the opposite effect. One out of four Americans has delayed or skipped medical treatments due to financial concerns,[106] while healthcare costs "almost always outpace[]" the rate of inflation.[107]

A. *Private Equity*

Over the last decade, private equity firms have invested approximately $750 billion in healthcare, acquiring almost 1,000 physician practices and staffing roughly 40% of emergency departments[108] and 5–11% of nursing homes.[109] The private equity model's emphasis on short-term returns, strategic bankruptcies, and insulation from regulation threatens to undermine the core values of healthcare service. One study shows that when private equity owns more than 30% of a healthcare market, costs of ambulance care increase by double digits.[110] Another study found that

105. Samuel R. Falkson & Vijay N. Srinivasan, Health Maintenance Organization, Nat'l Libr. of Med. (Jan. 2023), https://www.ncbi.nlm.nih.gov/books/NBK554454/ [https://perma.cc/366L-42H5] (explaining that decreasing health care costs was a principle aim of the HMO Act).

106. Lunna Lopes, Alex Montero, Marley Presiado & Liz Hamel, Americans' Challenges With Health Care Costs, KFF, https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/ [https://perma.cc/DFX3-8NNW] (last updated Mar. 1, 2024).

107. Charlotte Morabito, Why Health-Care Costs Are Rising in the U.S. More Than Anywhere Else, CNBC (Feb. 28, 2022), https://www.cnbc.com/2022/02/28/why-health-care-costs-are-rising-in-the-us-more-than-anywhere-else-.html [https://perma.cc/8Z9G-TADD] (internal quotation marks omitted) (quoting Cynthia Cox, Vice President, Kaiser Fam. Found.).

108. Ballou, Plunder, supra note 69, at 102 (stating that private equity firms have acquired over 1,200 clinics in the last decade); Erin C. Fuse Brown & Mark A. Hall, Private Equity and the Corporatization of Healthcare, 76 Stan. L. Rev. 527, 536 (2024) (estimating that private equity firms have invested more than $750 billion in health care over the past decade); Lina M. Khan, Chair, FTC, Remarks at the Private Capital, Public Impact Workshop on Private Equity in Healthcare (Mar. 5, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2024.03.05-chair-khan-remarks-at-the-private-capital-public-impact-workshop-on-private-equity-in-healthcare.pdf [https://perma.cc/PUS6-26EL] (stating that 40% of American emergency departments are staffed by companies owned by private equity firms).

109. Victoria Knight, Private Equity Ownership of Nursing Homes Triggers Capitol Hill Questions—And a GAO Probe, KFF Health News (Apr. 13, 2022), https://kffhealthnews.org/news/article/private-equity-ownership-of-nursing-homes-triggers-federal-probe/ [https://perma.cc/Y24C-BKA4].

110. Richard M. Scheffler, Laura M. Alexander & James R. Godwin, Am. Antitrust Inst., Petris Ctr., Soaring Private Equity Investment in the Healthcare Sector: Consolidation Accelerated, Competition Undermined, and Patients at Risk 41 (2021), https://www.antitrustinstitute.org/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL-1.pdf [https://perma.cc/ZH2Q-376Z].

private equity ownership of nursing homes increases mortality rates by 10%.[111]

In previously mentioned examples, private equity firms dangerously understaffed an emergency room,[112] designed padded treatment plans that ignored the input of licensed professionals,[113] and acquired low-quality supplies that compromised patient care.[114] These examples unfortunately do not run the gamut of the private equity playbook. Private equity's strategy revolves around buying companies, cutting costs, and making short-term profits. Their goal is, usually, to make an annualized return of 20% to 30% within three to five years.[115]

The "sale-leaseback" is a common practice in which a private equity firm buys a company and forces it to sell most of its real estate property.[116] The private equity firm can then recoup a good percentage of its investment immediately, but things bode poorly in the long term for the acquired company that now must pay rent for property it once owned.

When the hospital chain Steward Health Care was purchased by a private equity firm, Steward sold its property as part of a sale-leaseback.[117] Afterwards, the hospital chain sat "on a financial knife's edge."[118] The private equity firm proceeded to fire hundreds of employees, leaving the hospitals understaffed and unprepared for the pandemic, while corporate investors profited.[119]

Private equity firms also engage in "roll-ups," in which they acquire a large physician practice and then consolidate smaller groups in the same practice area to develop a strong market share and exert monopolistic

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111. Atul Gupta, Sabrina T. Howell, Constantine Yannelis & Abhinav Gupta, Does Private Equity Investment in Healthcare Benefit Patients? Evidence From Nursing Homes (Becker Friedman Inst. for Econs., Working Paper No. 2021-20, 2021), https://bfi.uchicago.edu/wp-content/uploads/2021/02/BFI_WP_2021-20.pdf [https://perma.cc/XZ4V-JYHE].

112. See supra notes 1–3 and accompanying text.

113. See Treiber v. Aspen Dental Mgmt., Inc., 94 F. Supp. 3d 352, 357 (N.D.N.Y. 2015) (noting that dental treatments were controlled by corporate managers that padded "treatment plans whether or not the treating hygienist or dentist actually recommended the treatment").

114. See supra notes 69–71 and accompanying text.

115. Perlberg, supra note 70.

116. Todd Throckmorton, How Sale-Leasebacks Help Support PE Success in a Tight Financial Market, https://bridgepointconsulting.com/insights/sale-leaseback-support-pe-success-growth-benefits-tips-examples/ [https://perma.cc/9V6W-7PWP] (last visited Jan. 26, 2025).

117. Ballou, Plunder, supra note 69, at 103.

118. Id.

119. John Hechinger & Sabrina Willmer, Life and Debt at a Private Equity Hospital, Bloomberg (Aug. 6, 2020), https://www.bloomberg.com/news/features/2020-08-06/cerberus-backed-hospitals-face-life-and-debt-as-virus-rages (on file with the *Columbia Law Review*).

pricing.[120] Studies have found that the consolidation of physician groups leads to higher prices[121] and worse patient outcomes.[122]

Finally, there is strategic bankruptcy. The convoluted corporate structure of private equity ownership allows firms to shuffle their assets among shell companies, making certain portfolio companies look poorer than they actually are.[123] This way, when a portfolio company goes bankrupt, its creditors are left empty handed.

When Juanita Jackson's family brought a wrongful death suit against a private equity-owned nursing home, the nursing home shifted its assets, preventing Jackson's family from collecting on a $110 million verdict.[124] Jackson was a seventy-six-year-old great-grandmother.[125] She suffered

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120. John Pavlus, Investors Are Gobbling Up Smaller Medical Practices. Should Regulators Be Concerned?, KelloggInsight (Mar. 1, 2025), https://insight.kellogg.northwestern.edu/article/investors-are-gobbling-up-smaller-medical-practices-should-regulators-be-concerned [https://perma.cc/98Z8-NJZW] (detailing how private equity firms rolled up anesthesiology practices and raised prices after).

121. See Daniel R. Austin & Laurence C. Baker, Less Physician Practice Competition Is Associated With Higher Prices Paid for Common Procedures, 34 Health Affs. 1753, 1753–59 (2015) (finding that for fifteen common high-cost procedures, counties with the highest average physician concentrations had prices 8–26% higher than prices in counties with the lowest concentrations); Laurence C. Baker, M. Kate Bundorf, Anne B. Royalty & Zachary Levin, Physician Practice Competition and Prices Paid by Private Insurers for Office Visits, 312 JAMA 1653, 1654–61 (2014) (finding that less competition among physician practices is statistically significantly associated with substantially higher prices paid by private PPOs to physicians in ten large specialties for office visits); Thomas Koch & Shawn W. Ulrick, Price Effects of a Merger: Evidence From a Physicians' Market, 59 Econ. Inquiry 790, 790–91 (2021) (finding that the merger of six orthopedic groups in southeastern Pennsylvania led to an anticompetitive price increase without any demonstrated increase in quality); Eric Sun & Laurence C. Baker, Concentration in Orthopedic Markets Was Associated With a 7 Percent Increase in Physician Fees for Total Knee Replacements, 34 Health Affs. 916, 916–920 (2015) (finding that between 2001 and 2010, orthopedic markets that moved from the bottom quartile of concentration to the top quartile saw an increase in physician fees of 7% per procedure).

122. See Christopher S. Brunt, Joshua R. Hendrickson & John R. Bowblis, Primary Care Competition and Quality of Care: Empirical Evidence From Medicare, 29 Health Econs. 1048, 1048–49 (2020) (finding that concentration in physician markets is associated with lower-quality screenings for blood pressure, body weight, medication documentation, and tobacco use); Thomas Koch, Brett Wendling & Nathan E. Wilson, Physician Market Structure, Patient Outcomes, and Spending: An Examination of Medicare Beneficiaries, 53 Health Servs. Rsch. 3549, 3550–51, 3562 (2018) (finding that higher concentrations in local cardiology markets is associated with higher total expenditures and worse health outcomes).

123. Ballou, Plunder, supra note 69, at 92.

124. Margaret Cronin Frisk, Nursing Home Neglect Trial Fights Shell Company Transfers, Bloomberg (Sept. 22, 2014), https://www.bloomberg.com/news/articles/2014-09-22/nursing-home-neglect-trial-fights-shell-company-transfers (on file with the *Columbia Law Review*).

125. Id.

malnutrition, dehydration, overmedication, bedsores, infections, head trauma, and a fractured arm during her time in the nursing home.[126]

Another private equity-managed nursing home, HCR ManorCare, declared bankruptcy in 2018 with over $7 billion in debt.[127] The family of a resident, Annie Salley, brought a wrongful death suit against ManorCare after she died in an understaffed facility.[128] When Salley fell and hit her head, the staff neglected to perform a head scan even though she was confused and vomiting afterwards.[129] Because the private equity firm managed but "did not technically own" the nursing home, the court dismissed the suit against them.[130]

Strategic bankruptcies and liability dodging are a natural consequence of a business strategy that is hyperfixated on short-term profits. By circumventing CPOM laws through friendly PC arrangements, private equity firms can launch these predatory business tactics on patients.

B. *Publicly Traded Companies*

Publicly traded companies are subject to tighter regulation than private equity firms, and managers of publicly traded companies are typically involved for longer periods.[131] Still, publicly traded companies pose similar threats to the quality of healthcare, especially through understaffing.

HCA Healthcare is the largest health system in the country, with 219 hospitals in its network.[132] HCA is publicly traded on the New York Stock Exchange, and between 2011 and 2021 HCA paid $4.9 billion in dividends to shareholders.[133]

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126. Researching Multimillion-Dollar Awards in Nursing Home Cases, LexisNexis, https://www.lexisnexis.com/en-us/real-law/researching-nursing-home-cases.page [https://perma.cc/VXM5-GQ34] (last visited Mar. 30, 2025).

127. Brendan Ballou, Opinion, Private Equity Is Gutting America—And Getting Away With It, N.Y. Times (Apr. 28, 2023), https://www.nytimes.com/2023/04/28/opinion/private-equity.html (on file with the *Columbia Law Review*) [hereinafter Ballou, Getting Away With It].

128. Salley v. Heartland-Charleston, No. 2:10-CV-00791, 2010 WL 5136211 (D.S.C. Dec. 10, 2010).

129. Ballou, Getting Away With It, supra note 127.

130. Id.

131. Fuse Brown & Hall, supra note 108, at 539.

132. Ethan Evers, Top 10 Largest Health Systems in the U.S., Definitive Healthcare (Jan. 10, 2024), https://www.definitivehc.com/blog/top-10-largest-health-systems [https://perma.cc/N9ZH-J4CM].

133. Michael Sainato, As US Hospital Profits, Health Workers Struggle With Chronic Understaffing, The Guardian (Feb. 22, 2023), https://www.theguardian.com/global-development/2023/feb/22/hca-union-hospital-understaffing [https://perma.cc/7LVC-RX97].

In a survey of 1,500 HCA hospital nurses, 80% believed that understaffing was compromising patient care.[134] 47% of those surveyed in Florida reported wanting to leave their job due to burnout.[135] HCA allowed these conditions to persist despite reporting a profit of $7 billion and spending $8 billion on stock buybacks in 2021.[136] Understaffing saves HCA and its investors billions of dollars a year,[137] but that cost is internalized by patients and healthcare staff.

CVS, which is poised to increase its presence in the physician group market, infamously understaffs its pharmacies.[138] District and regional managers at CVS reportedly receive bonuses for limiting employee hours,[139] creating worker shortages in their stores. The poor working conditions in CVS pharmacies have led to numerous problems, including dispensing errors, prescription delays, dirty workspaces, expired medication remaining on shelves, poor drug security, and failure to report losses of controlled substances.[140]

In one inspection at an Ohio CVS store, regulators found that 1,800 doses of controlled substances were not accounted for.[141] CVS ended up reaching a $1.5 million dollar settlement with the Ohio Board of Pharmacy to resolve penalties for understaffing related problems.[142]

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134. Press Release, SEIU, New National Survey of Nurses and Healthcare Workers at HCA Hospitals Sounds Alarm Bells: Nearly 80 Percent of Respondents Report Short Staffing Is Jeopardizing Patient Care at America's Largest For-Profit Hospital Corporation (Jan. 13, 2022), https://seiu.org/2022/01/new-national-survey-of-nurses-and-healthcare-workers-at-hca-hospitals-sounds-alarm-bells-nearly-80-percent-of-respondents-report-short-staffing-is-jeopardizing-patient-care-at-americas-largest-for-profit-hospital-corporation (on file with the *Columbia Law Review*).

135. Joseph H. Saunders, Florida HCA Hospitals Woefully Understaffed Endangering Patients, Legal Exam'r (May 11, 2023), https://affiliates.legalexaminer.com/legal/florida-hca-hospitals-woefully-understaffed-endangering-patients [https://perma.cc/8R5K-Z7S7].

136. Finegan, supra note 134.

137. Id.

138. See Thomas Lee, CVS Pharmacists Are at a Breaking Point, Imperiling Company's Reinvention Plans, Bos. Globe, https://www.bostonglobe.com/2023/11/19/business/cvs-pharmacists-breaking-point/ (on file with the *Columbia Law Review*) (last updated Nov. 19, 2023) (describing how CVS faces staffing shortages after closing stores and cutting staff hours).

139. Marty Schladen, Problems at Understaffed CVS Pharmacies Are Said to Be Widespread. The Ohio AG Is Taking a Look, Ohio Cap. J. (Aug. 3, 2023), https://ohiocapitaljournal.com/2023/08/03/problems-at-understaffed-cvs-pharmacies-are-said-to-be-widespread-the-ohio-ag-is-taking-a-look/ [https://perma.cc/7WHU-269D].

140. Id.; see also Adiel Kaplan, CVS to Pay Ohio $1.5 Million in Penalties Over Understaffing and Other Safety Issues at Pharmacies, NBC News (Mar. 1, 2024), https://www.nbcnews.com/news/us-news/cvs-pay-ohio-15-million-penalties-understaffing-safety-issues-pharmaci-rcna141245 [https://perma.cc/CC6Y-L76P].

141. Schladen, supra note 139.

142. Kaplan, supra note 140.

The Virginia Board of Pharmacy fined CVS $470,000 over understaffing issues.[143] Its investigation reported unsafe working conditions, noting that "staffing levels contributed to errors" such as accidentally giving patients extra opioids and providing incorrect instructions on prescription labels.[144] A pharmacist in Virginia reported that as prescription volume increased in her CVS store, management decreased employee hours, telling her that "there's a clear message to stay under hours week to week."[145] The restricted hours increased the burden for the limited staff who worked on site, with some employees working for twenty-four hours straight and going entire shifts without taking bathroom breaks.[146] A pharmacist reported to the Texas State Board of Pharmacy: "I am a danger to the public working for CVS."[147]

When Ashleigh Anderson, a pharmacist from Indiana, felt ill behind a CVS pharmacy counter, she contacted her supervisor, who allegedly threatened to fire her if she did not stay another two hours.[148] Anderson died of a heart attack in the arms of a coworker after a patient tried to perform CPR on her.[149] Weeks later, CVS reported quarterly revenues of $73.8 billion.[150] As CVS begins to take over more primary care offices, more patients and healthcare staff will be subject to its dangerous conditions.

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143. Bill Chappell, Have a Complaint About CVS? So Do Pharmacists: Many Just Walked Out, NPR (Sept. 29, 2023), https://www.npr.org/2023/09/29/1202365487/cvs-pharmacists-walkout-protest [https://perma.cc/R4CA-N9N4].

144. CVS/Pharmacy #8302, Case No. 203229, at para. 2(b)(vi) (Va. Bd. of Pharmacy Oct. 7, 2021) (order) (internal quotation marks omitted) (quoting a pharmacist), https://www.virginiamercury.com/wp-content/uploads/2021/10/CVS-8302_Board-Order_10-5-21.pdf [https://perma.cc/WWH2-S3CJ].

145. Catherine Dunn, What's Gone Wrong at Pharmacies? A CVS Store in Virginia Beach Holds the Answer., Barron's (Feb. 9, 2024), https://www.barrons.com/articles/pharmacies-medication-mistakes-cvs-e405367a?mod=bol-social-tw (on file with the *Columbia Law Review*) (internal quotation marks omitted) (quoting Victoria Ward, Pharmacist, CVS Health).

146. Id.

147. Daniel A. Hussar, "I Believe I Am a Danger to the Public Working for CVS.", Pharmacist Activist, May 2019, at 1, https://www.pharmacistactivist.com/2019/PDFs/May_2019.pdf [https://perma.cc/U5KK-KDG6] (internal quotation marks omitted) (quoting an anonymous CVS pharmacist).

148. Grace Dean, A CVS Pharmacist at an Understaffed Store Knew She Was Having a Heart Attack but Stayed at Work Until She Died, Her Family Says, Bus. Insider (Feb. 9, 2024), https://www.businessinsider.com/cvs-pharmacist-heart-attack-understaffed-store-pandemic-ashleigh-anderson-indiana-2024-2 (on file with the *Columbia Law Review*).

149. Matt Stoller, #PizzaIsNotWorking: Inside the Pharmacist Rebellion at CVS and Walgreens, BIG (Nov. 5, 2021), https://www.thebignewsletter.com/p/pizzaisnotworking-inside-the-pharmacist [https://perma.cc/WP78-QRK9].

150. Press Release, CVS, CVS Health Reports Strong Third Quarter Results (Nov. 3, 2021), https://www.cvshealth.com/news/community/cvs-health-reports-results-2021-q3.html [https://perma.cc/V79F-C8ZV].

Amazon and Walmart have not been in the healthcare space for long, but they have their own history of understaffing and poor working conditions outside the healthcare context.[151] The problem with HCA, CVS, Amazon, and other publicly traded companies is that they must maximize value for their shareholders.

In the famous case of *Dodge v. Ford Motor Co.*, the Ford Motor Company planned to reappropriate dividends from shareholders to invest in manufacturing infrastructure.[152] Henry Ford explained: "My ambition . . . is to employ still more men, to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this we are putting the greatest share of our profits back in the business."[153] Shareholders brought suit and the court ultimately held that the board of directors lacked discretion to reduce profits for shareholders.[154] In other words, a corporation cannot legally serve the public interest at the expense of its shareholders.

This is precisely why corporations are unfit to operate healthcare practices. The shareholder supremacy principle comes at the expense of vulnerable patients and their providers.

CPOM laws were passed to protect patients and healthcare workers. The underenforcement of CPOM over the last few decades has allowed corporate actors to ceaselessly exploit the sick and those working to care for them.

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151. See Press Release, DOL, US Department of Labor Finds Amazon Exposed Workers to Unsafe Conditions, Ergonomic Hazards at Three More Warehouses in Colorado, Idaho, New York, (Feb. 1, 2023), https://www.dol.gov/newsroom/releases/osha/osha20230201-0 [https://perma.cc/5ZWY-2YBJ] (describing how workers in Amazon warehouses are exposed to ergonomic hazards that "lead[] to serious worker injuries" (internal quotation marks omitted) (quoting Doug Parker, Assistant Sec'y for Occupational Safety & Health, DOL)); see also Annie Palmer, Amazon Broke Federal Labor Law by Calling Staten Island Union Organizers 'Thugs,' Interrogating Workers, CNBC (Dec. 1, 2023), https://www.cnbc.com/2023/12/01/amazon-broke-federal-labor-law-by-racially-disparaging-union-leaders.html [https://perma.cc/4AK3-6RFE] (summarizing a ruling that Amazon illegally retaliated against union activities); Jonathan Stempel, Walmart Faces Second U.S. Lawsuit This Week Over Treatment of Workers, Reuters (Mar. 30, 2023), https://www.reuters.com/legal/walmart-faces-second-us-lawsuit-this-week-over-treatment-workers-2023-03-30/ (on file with the *Columbia Law Review*) (reporting on a lawsuit against Walmart over the firing of Adrian Tucker for taking too many unauthorized absences related to her Crohn's disease, an inflammatory bowel condition).

152. 170 N.W. 668, 671 (Mich. 1919).

153. Id. at 683 (internal quotation marks omitted) (quoting Ford).

154. See id. at 684 ("The discretion of directors . . . does not extend to . . . the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes.").

IV. ATTACHING FALSE CLAIM LIABILITY

Attaching false claim liability to violations of CPOM would increase enforcement and potentially compromise the friendly PC model.

The False Claims Act imposes liability on parties that submit false claims to the government, make false statements when facilitating claims, or receive money from the government under fraudulent circumstances.[155] Originally enacted in 1863 to curtail fraud in government military contracts during the civil war, the False Claims Act has evolved to address fraud in all sectors that the government contracts in.[156]

The Act charges anyone guilty of government fraud with "a civil penalty of not less than $5,000 . . . plus 3 times the amount of damages."[157] This fine applies to each false claim that is issued.[158] Healthcare groups often issue thousands of claims over the course of their operation.[159] If the claims are found to be fraudulent, those groups face gargantuan damages. Some of the largest settlements in history resulted from healthcare companies' false claims.[160]

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155. 31 U.S.C. § 3729(a) (2018); see also United States ex rel. Bain v. Georgia Gulf Corp., 386 F.3d 648, 652–53 (5th Cir. 2004) ("Under the reverse False Claims Act subsection, a plaintiff may recover against 'any person who . . . knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.'" (alteration in original) (quoting 31 U.S.C. § 3729(a)(7) (2002))).

156. See United States ex rel. Newsham v. Lockheed Missiles & Space Co., 722 F. Supp. 607, 609 (N.D. Cal. 1989) ("The Civil False Claims Act was born in 1863 to a nation engulfed in a civil war. . . . Based on the record of widespread fraud by contractors, Congress, at the urging of President Lincoln, enacted the False Claims Act.").

157. 31 U.S.C. § 3729(a)(1)(G).

158. Id.

159. In one case, over a five-year period, one dentist filed 3,683 false claims, resulting in a fine of $18,415,000 even though the government was only defrauded of $130,719. See United States v. Lorenzo, 768 F. Supp. 1127, 1133 (E.D. Pa. 1991).

160. See, e.g., Press Release, DOJ, GlaxoSmithKline to Plead Guilty and Pay $3 Billion to Resolve Fraud Allegations and Failure to Report Safety Data (July 2, 2012), https://www.justice.gov/opa/pr/glaxosmithkline-plead-guilty-and-pay-3-billion-resolve-fraud-allegations-and-failure-report [https://perma.cc/LLW5-PXVN] (describing what was at the time "the largest health care fraud settlement in U.S. history and the largest payment ever by a drug company"); Press Release, DOJ, Johnson & Johnson to Pay More Than $2.2 Billion to Resolve Criminal and Civil Investigations (Nov. 4, 2013), https://www.justice.gov/opa/pr/johnson-johnson-pay-more-22-billion-resolve-criminal-and-civil-investigations [https://perma.cc/KS26-FQ8E] (announcing that, in addition to paying $485 million in criminal fines and $1.72 billion in civil settlements, Johnson & Johnson was entered into a "Corporate Integrity Agreement" with the HHS Inspector General); Press Release, DOJ, Justice Department Announces Largest Health Care Fraud Settlement in Its History, (Sept. 2, 2009), https://www.justice.gov/opa/pr/justice-department-announces-largest-health-care-fraud-settlement-its-history [https://perma.cc/5FUE-NJQA] (noting that Pfizer agreed to pay $2.3 billion to settle criminal and civil claims related to its misbranding of Bextra, an anti-inflammatory drug).

Furthermore, through the qui tam provisions of the False Claims Act, private citizens can bring suit on behalf of the government.[161] The qui tam provision enables whistleblowers to expose fraudulent operations and keeps companies diligent under threat of being exposed by their own employees.

In order to establish a False Claims Act violation, a plaintiff must establish (1) a false claim; (2) materiality; (3) causation; and (4) scienter or knowledge that the claim was false.[162] The following sections will outline how a plaintiff can establish these requirements in a CPOM suit.

A. *False Claim*

Claims may trigger false claim liability if they are factually false or legally false. Factually false claims involve billing for goods or services that are incorrectly described or not provided at all.[163] A claim is legally false if it is predicated on a misrepresentation of compliance with material, contractual terms.[164] In other words, if an entity bills the government without complying with the government's conditions of payment, it has submitted a false claim. The concept of legal falsity is also known as "implied false certification."[165]

The Supreme Court endorsed implied certification theory in *Universal Health Services v. United States ex rel. Escobar*, holding that false claim liability will attach when a defendant submits a claim to the government while knowingly failing to disclose noncompliance with "statutory, regulatory, or contractual requirements."[166]

In *Escobar*, employees at a Massachusetts mental health facility misrepresented their qualifications and licensing status when submitting reimbursement claims to Medicare.[167] One nurse claimed to be a psychiatrist and prescribed medications without authority to do so.[168] Another practitioner represented herself as a psychologist without disclosing that she was not licensed.[169]

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161. 31 U.S.C. § 3730(b).

162. Molly Ruberg, False Claims Act Fundamentals: Elements of the False Claims Act, Bass, Berry & Sims (Apr. 5, 2022), https://www.insidethefalseclaimsact.com/false-claims-act-fundamentals-elements-of-the-false-claims-act/ [https://perma.cc/TVU5-7D8F].

163. See United States ex rel. Wilkins v. United Health Grp., Inc., No. 08-3425 (RBK/JS), 2010 WL 1931134, at *3 (D.N.J. May 13, 2010), aff'd in part, rev'd in part, 659 F.3d 295 (3d Cir. 2011).

164. Id.

165. Id.

166. 579 U.S. 176, 181, 187 (2016).

167. Id. at 184.

168. Id. at 183.

169. Id.

When a patient died from an adverse reaction to a medication fraudulently prescribed by the facility, her family subsequently learned that most employees at the facility were not properly licensed and brought a qui tam action.[170]

The Massachusetts Medicaid program sets forth licensing requirements for healthcare positions.[171] The Supreme Court found that Universal Health violated these requirements by employing unqualified staff and thereby submitted false claims to the government regarding their services.[172]

The CMS conditions for participation include compliance with "all applicable Federal, State, and local laws and regulations related to the health and safety of patients."[173] By billing Medicare or Medicaid, a healthcare organization implies compliance with state CPOM laws. Plaintiffs should therefore invoke implied certification theory to establish false claim liability in prospective CPOM cases.

Furthermore, several cases have held that violations of CPOM can serve as the basis of a false claim in the context of state insurance fraud laws.[174] For example, in *People ex rel. Monterey Mushrooms, Inc. v. Thompson*, the court held that a corporate management company's scheme to control a medical clinic violated California CPOM laws and resulted in fraudulent claims to insurers that covered the clinic's services.[175]

B. *Materiality and Causation*

For liability to attach, compliance with CPOM laws must be material to reimbursement. The Court in *Escobar* clarified that a payment condition can be material "even if the Government does not expressly call it a condition of payment."[176] In the context of fraud, an undisclosed fact is material if "[n]o one can say with reason that the plaintiff would have signed the contract if informed of the likelihood" of the misrepresentation.[177] Therefore, the materiality of a CPOM false claim

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170. Id. at 183–84.

171. See 130 Mass. Code Regs. §§ 429.422–.424, .429, .439 (2025).

172. See *Escobar*, 579 U.S. at 196.

173. 42 C.F.R. § 418.116 (2025).

174. See, e.g., People ex rel. Allstate Ins. Co. v. Discovery Radiology Physicians, P.C., 311 Cal. Rptr. 3d 901, 917 (Cal. Ct. App. 2023) ("The unlicensed practice of medicine may give rise to claims under the [Insurance Fraud Protection Act] . . . ."); Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 159 A.3d 412, 429 (N.J. 2017) ("[Defendants] promoted a practice scheme specifically designed to circumvent [CPOM] requirements while appearing compliant, and therefore knowingly assisted in the provision of services, the foreseeable result of which was the submission of invalid and misleading claims . . . .").

175. 38 Cal. Rptr. 3d 677, 687–88 (Cal. Ct. App. 2006).

176. *Escobar*, 579 U.S. at 178.

177. Junius Const. Co. v. Cohen, 178 N.E. 672, 674 (N.Y. 1931).

revolves around whether the government would have knowingly reimbursed a claim from an entity that violates CPOM.

To better understand what the government would do in this position, a court should consider how private insurance companies handle similar situations.

In *Andrew Carothers, M.D., P.C. v. Progressive Insurance Co.*, several private insurance companies stopped paying a radiology group, Andrew Carothers, when they discovered that it violated New York CPOM laws.[178] Carothers subsequently filed suit.[179] Carothers was a friendly PC to an entity run by nonphysicians.[180] The court found the terms of their business arrangement ceded too much control to the MSO and that insurers are not required to reimburse healthcare providers "if the provider fails to meet any applicable New York State or local licensing requirement necessary to perform such service in New York."[181]

Interestingly, if Progressive Insurance had sued Carothers for a declaration that its MSO arrangement violated New York CPOM laws, it would have lacked standing to do so.[182] But, in the context of a fraud defense to Carothers's suit for missing payments, Progressive was able to invoke CPOM.

In both *Allstate Insurance Co. v. Northfield Medical Center, P.C.* and *Allstate Insurance Co. v. Schick*, fraud investigators at Allstate Insurance discovered it had reimbursed claims from medical corporations that were in violation of New Jersey CPOM laws.[183] Allstate subsequently brought a suit under the New Jersey Insurance Fraud Prevention Act, a law similar to the False Claims Act that imposes fines on entities that submit false claims to insurance companies, and recovered over four million dollars.[184]

In the Allstate cases, an insurance company plaintiff invoked CPOM under state fraud laws. The cases serve as a blueprint for how the government can use federal fraud laws to invoke CPOM.

If private insurance companies withhold payments from improperly licensed healthcare providers, there is no reason why the government would not do so as well. When people pay for medical services, they expect their treatment to be provided and decided by qualified professionals, not laymen. Government programs like Medicare and Medicaid are funded by

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178. 128 N.E.3d 153, 156–57 (N.Y. 2019).

179. Id. at 157.

180. Id. at 156 (stating that Carothers subleased the facilities and associated equipment from a nonphysician who owned and controlled two other companies).

181. Id. at 157 (internal quotation marks omitted) (quoting N.Y. Comp. Codes R. & Regs. tit 11, § 65-3.16(a)(12) (2021)).

182. See supra note 85 and accompanying text.

183. See 159 A.3d 412 (N.J. 2017); 746 A.2d 546 (N.J. Super. Ct. Law Div. 1999).

184. Allstate Ins. Co. v. Northfield Med. Ctr., PC, No. A-0964-12T4, 2019 WL 1119664, at *1 (N.J. Super. Ct. App. Div. Mar. 11, 2019).

the public for the public.[185] It would be absurd for these programs to use taxpayer money to fund institutions that defraud taxpayers.

In *Ebeid ex rel. United States v. Lungwitz*, a pre-*Escobar* case, the government brought a Federal False Claims Act case against a healthcare clinic for violating California CPOM law.[186] The complaint did not "refer to any statute, rule, regulation, or contract that condition[ed] payment on compliance with state law governing the corporate practice of medicine."[187] The Ninth Circuit dismissed the case for failing to plead with particularity.[188]

The California Courts of Appeal have since clarified that *Ebeid* does not stand for the proposition that the unlicensed practice of medicine can never support a False Claims case.[189] In fact, since *Ebeid*, courts have found false claims in many instances of unauthorized healthcare practice, including when: a hospital submitted claims through an unlicensed physician,[190] a private equity-managed mental health center provided services through unlicensed social workers,[191] and a pharmaceutical company billed the government for drugs manufactured in an unapproved facility.[192] *Escobar* itself revolves around the premise that unlicensed medical practice can form the basis of false claims.[193]

It is therefore critical for prospective plaintiffs to include CMS participation requirements in their complaints to establish that government reimbursement is conditioned upon compliance with CPOM laws. In

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185. See How Is Medicare Funded?, Medicare.gov, https://www.medicare.gov/about-us/how-is-medicare-funded [https://perma.cc/X885-NX74] (last visited Jan. 27, 2025) (explaining that Medicare is paid for by various types of taxes).

186. 616 F.3d 993, 995 (9th Cir. 2010).

187. Id. at 1000.

188. Id. at 1001.

189. People ex rel. Allstate Ins. Co. v. Discovery Radiology Physicians, P.C., 311 Cal. Rptr. 3d 901, 921 (Cal. Ct. App. 2023) ("[*Ebeid*] does not hold that the unlicensed practice of medicine could *never* support a claim under the False Claims Act, but only that the operative complaint had not pled such a claim with the requisite specificity." (citing *Ebeid*, 616 F.3d at 1000)).

190. See United States ex rel. Riley v. St. Luke's Episcopal Hosp., 355 F.3d 370, 379 (5th Cir. 2004) (holding that a hospital had submitted false claims by knowingly submitting medical claims for services provided by unlicensed physicians).

191. See United States ex rel. Martino-Fleming v. S. Bay Mental Health Ctrs., 540 F. Supp. 3d 103, 119 (D. Mass. 2021) (concerning obscure corporate ownership in which a private equity firm owned a subsidiary, which was the majority shareholder of a holding company, which indirectly owned another holding company that owned a mental health center).

192. See United States ex rel. Campie v. Gilead Scis., Inc., 862 F.3d 890, 902 (9th Cir. 2017) (holding that Gilead had submitted false claims by manufacturing pharmaceutical ingredients from unapproved facilities).

193. See Universal Health Servs., Inc. v. United States ex rel. Escobar, 579 U.S. 176, 185 (2016) (summarizing plaintiff's allegations that the defendant violated federal law by billing "for mental health services that were performed by unlicensed and unsupervised staff").

addition to the general terms of CMS participation, there are specific participation terms for different types of healthcare organizations.[194]

For example, CMS will only reimburse a Home Health Agency (HHA) if "its branches, and all persons furnishing services to patients [are] licensed, certified, or registered as applicable, in accordance with the state licensing authority as meeting those requirements."[195] CPOM laws are clearly within the scope of state licensing and registration requirements; therefore, compliance with CPOM is material to CMS reimbursements for HHAs.

There are similar requirements for clinics,[196] long term care facilities,[197] ambulatory surgical centers,[198] and more. Some CMS requirements resemble CPOM regulations insofar as they require the involvement of licensed professionals in clinical operations.[199] Plaintiffs should familiarize themselves with the relevant CMS rules to establish materiality.

Closely associated with the concept of materiality is causation. The False Claims Act requires a causal relationship between fraud and payment.[200] Under the implied certification theory developed in *Escobar*, failure to disclose noncompliance with a material condition of payment causes the government to pay.[201]

C. *Scienter*

In light of *United States ex rel. Schutte v. Supervalu Inc.*, false claim scienter turns on whether a defendant subjectively knew its claim was false,

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194. Conditions for Coverage (CfCs) & Conditions of Participation (CoPs), CMS.gov, https://www.cms.gov/medicare/health-safety-standards/conditions-coverage-participation [https://perma.cc/DT8W-LHAS] (last modified Sept. 10, 2024).

195. 42 C.F.R. § 484.100(b) (2025).

196. See id. § 485.705(a) ("[A]ll personnel who are involved . . . must be legally authorized (licensed or, if applicable, certified or registered) to practice by the State in which they perform the functions or actions, and must act only within the scope of their State license or State certification or registration.").

197. See id. § 483.24(c)(2) (requiring that clinics be directed by a licensed professional).

198. See id. § 416.246 (requiring that a registered nurse be available for emergency treatment).

199. See, e.g., id. § 418.62(b) ("Licensed professionals must actively participate in the coordination of all aspects of the patient's hospice care, in accordance with current professional standards and practice, including participating in ongoing interdisciplinary comprehensive assessments, developing and evaluating the plan of care, and contributing to patient and family counseling and education . . . .").

200. See Ruberg, supra note 162.

201. See Universal Health Servs., Inc. v. United States ex rel. Escobar, 579 U.S. 176, 186–87 (2016) ("When, as here, a defendant makes representations in submitting a claim but omits its violations of statutory, regulatory, or contractual requirements, those omissions can be a basis for liability if they render the defendant's representations misleading with respect to the goods or services provided.").

not whether a hypothetical "objectively reasonable person" would have concluded the claim was false.[202] This framework makes it difficult to establish scienter in the context of a CPOM false claim because a plaintiff must show not only that an arrangement was improper but also that the defendant knew it was improper.

Fortunately, in their SEC shareholder disclosures, many physician groups acknowledge that their operations may be prohibited by CPOM. For example, Signify Health discloses in its 10-K filing that "although we have endeavored to structure our operations to comply with all applicable state corporate practice of medicine and fee splitting rules, there remains some risk that we may be found in violation of those state laws."[203] It goes on to disclose that any determination that Signify Health is acting in the capacity of, exercising undue influence over, or impermissibly splitting fees with a healthcare provider will "result in significant sanctions against us and our providers, including civil and criminal penalties and fines."[204]

Fines for violating CPOM generally do not exceed one hundred thousand dollars. In California, violations are "punishable by a fine not exceeding ten thousand dollars."[205] In Pennsylvania, any person that violates CPOM "commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than $2,000."[206] For a corporation like Signify Health to acknowledge that CPOM violations may lead to "significant sanctions" suggests that it is likely aware of sanctions outside of state fines, like false claim liability.

It would be difficult for a company like CVS to claim it was not aware of such legal liability before purchasing Signify. HCA and One Medical also acknowledge the risk of violating CPOM laws in their 10-K filings.[207]

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202. 143 S. Ct. 1391, 1399 (2023).

203. See Signify Health 10-K, supra note 79, at 55 (emphasis added). Oak Street also discloses that "[r]egulatory authorities and other parties may assert that, despite the management agreements and other arrangements through which we operate, we are engaged in the prohibited corporate practice of medicine." See Oak Street S-1, supra note 78, at 50.

204. See Signify Health 10-K, supra note 79, at 55.

205. Cal. Bus & Prof. Code § 2052(a) (2024).

206. 63 Pa. Stat. and Cons. Stat. Ann. § 422.39(a) (2025).

207. See HCA Inc., Annual Report (Form 10-K) 16–17 (Dec. 31, 2005), https://www.sec.gov/Archives/edgar/data/860730/000095014406002233/g99681e10vk.htm (on file with the Columbia Law Review) ("Some of the states in which we operate have laws that prohibit corporations and other entities from employing physicians and practicing medicine . . . . Possible sanctions for violation of these restrictions include loss of license and civil and criminal penalties."); One Medical S-1, supra note 81, at 26 ("[W]e cannot guarantee that subsequent interpretation of the corporate practice of medicine and fee splitting laws will not circumscribe our business operations. . . . If a successful legal challenge or an adverse change in relevant laws were to occur . . . our operations in affected jurisdictions would be disrupted . . . .").

These disclosures, in combination with other internal communications, can help establish scienter.

Furthermore, as more case law develops in this area, it will be difficult for larger commercial actors to claim ignorance of CPOM laws.

In *Northfield Medical*, the Supreme Court of New Jersey analyzed whether defendants "knowingly" violated a CPOM law that prohibits physicians from being employed by chiropractors.[208] In a 1995 letter-opinion, the New Jersey Board of Medical Examiners clarified that a chiropractor cannot be a majority shareholder in a corporation that employs physicians because of the "potential for override of [a] physician's professional judgment."[209]

The defendants ran a chiropractor-owned management company that contracted with a medical PC. They essentially coordinated a friendly PC operation in which the nominal doctor-owner of the PC was bound by contract terms—including provisions that the doctor could be removed and fined at the management company's discretion—that prevented the doctor from "seizing control of the practice."[210] Prior to starting their management company, defendants attended a lecture for medical professionals where they learned of the relevant law prohibiting chiropractors from employing physicians.[211]

The appellate court found that in light of existing case law and informal guidance, the defendant had a "reasonable basis to believe that the [business] model he advocated was not illegal in New Jersey" and that the corporate arrangement in question "was similar to others used in business."[212]

The Supreme Court of New Jersey reversed, holding that the defendants "promoted a practice scheme specifically designed to circumvent . . . requirements while appearing compliant, and therefore knowingly assisted in the provision of services, the foreseeable result of which was the submission of invalid and misleading claims."[213] Based on the plain language of the regulation and the clarity of the Board's

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208. Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 159 A.3d 412, 422, 428 (N.J. 2017) ("N.J.A.C. 13:35–6.16 establishes the proper structure of a medical practice and incorporates the manner in which the corporate practice of medicine may be employed."); see also N.J. Admin. Code 13:35–6.16(3)(i) (2025) (explaining that doctors cannot be hired by healthcare providers with "limited license[s]" like chiropractors).

209. See *Northfield Med. Ctr.*, 159 A.3d at 416.

210. Id. at 419.

211. Id. at 418.

212. Allstate Ins. Co. v. Northfield Med. Ctr., P.C., No. A-0636-12T4, 2014 WL 8764091, at *12–13 (N.J. Super. Ct. App. Div. May 4, 2015), rev'd, 159 A.3d 412 (N.J. 2017).

213. *Northfield Med. Ctr.*, 159 A.3d at 429.

guidance, the court found "no basis" to hold that the defendants did not know that their structure violated the Board's regulatory guidance.[214]

Northfield Medical demonstrates that, at least in New Jersey, designing a corporate structure that clearly exists to circumvent CPOM laws can, by itself, demonstrate knowledge of fraud. Showing that the defendant had awareness of CPOM laws is critical to showing that they deliberately circumvented them; in *Northfield Medical*, the court assigned weight to the fact that the defendants' legal counsel was aware of the relevant regulations, evidenced by a trade article the counsel wrote discussing them.[215] The level of awareness and sophistication of a defendant's legal counsel can be crucial in proving the defendant's scienter.

D. *Establishing the Underlying CPOM Violation*

Before a court can assess any of these elements, it must first determine whether there is an underlying violation of CPOM. In states like California, where prohibited acts are clearly outlined in regulatory guidance,[216] the inquiry is a simple matter of fact of whether the defendant engaged in any of the prohibited activities.

In states like New York, where the laws do not explicitly state which activities constitute a violation of CPOM,[217] courts must scrutinize the specific terms of agreement between a friendly PC and MSO. The legality of these agreements turns on whether a nonlicensed entity retains the right to exercise "control over" a medical practitioner's decisions.[218]

In *Andrew Carothers*, the court found it suspect that the terms of the agreement between Carothers and its MSO disproportionately benefited the latter.[219] Specifically, the MSO charged equipment leases to the friendly PC that were far above fair market value, and the MSO had an exclusive right to terminate its contracts without cause.[220] Furthermore, the "owner" of the PC had virtually no involvement in patient care or business arrangement.[221]

In *State Farm Mutual Automobile Insurance Co. v. Mallela*, an unlicensed individual controlled a medical corporation under the guise of providing

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214. Id. Earlier, the court stated that "professionals engaged in the provision of health care . . . are on notice of the legal requirements applicable to their practice and operations." Id. at 428 (citing Material Damage Adjustment Corp. v. Open MRI, 799 A.2d 731 (N.J. Super. Ct. Law Div. 2002)).

215. See id. at 419.

216. See supra notes 97–99 and accompanying text.

217. See infra notes 218–224 and accompanying text for an application of New York CPOM laws.

218. Andrew Carothers, M.D., P.C. v. Progressive Ins. Co., 128 N.E.3d 153, 162 (N.Y. 2019).

219. See id. at 155–56.

220. See id. at 156–57.

221. Id.

management services.[222] The court found it suspect that the management services were billed at grossly inflated rates and held that the arrangement violated CPOM.[223] When a corporate entity sets management fees grossly above fair market value, it takes impermissible control of the professional corporation's revenue and compromises the independence of the healthcare staff it manages.[224]

In *Allstate Indemnity Co. v. Twin Cities Diagnostic Center, LLC*, Allstate sued for a declaration that bills from a laymen-controlled radiology company, Twin Cities, were noncompensable because Twin Cities violated Minnesota CPOM laws.[225] The lower court held that, because Twin Cities only performed a technical component of MRI scans, it was not subject to CPOM.[226] The court of appeals refused to accept this theory, noting that state regulations do not "bifurcate" MRI practice into "technical" and "professional" components.[227] An MSO may similarly attempt to exempt its services from CPOM regulation by claiming that they are purely "technical." Plaintiffs should look to the relevant state regulations and case law to determine whether such a classification is tenable.

Many other insurance companies have invoked CPOM to refuse payments to violating entities.[228] The factual analysis in these cases provide the groundwork for assessing unauthorized medical practice within a given state.

The instruction of medical boards can be critical to establishing a violation of CPOM. In *Northfield Medical*, the court relied on an opinion from the New Jersey Board of Medical Examiners to interpret state CPOM laws.[229]

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222. 827 N.E. 2d 758, 759 (N.Y. 2005).

223. Id. at 759.

224. See Three Ways Your Healthcare MSO May Be Violating the Prohibition Against the Corporate Practice of Medicine (CPOM), Hendershot Cowart P.C. (Sept. 8, 2020), https://www.hchlawyers.com/blog/2020/september/three-ways-your-healthcare-mso-may-be-violating-/ [https://perma.cc/7S3W-7JM2].

225. 974 N.W.2d 842, 843–44 (Minn. Ct. App. 2022).

226. Id. at 845.

227. Id.

228. See, e.g., State Farm Mut. Auto. Ins. Co. v. Mobile Diagnostic Imagine, Inc., 7 F. Supp. 3d 934, 936–37 (D. Minn. 2014) (summarizing State Farm Insurance's argument that it was not required to reimburse radiologists who violated CPOM laws); Allstate Ins. Co. v. Linea Latina De Accidentes, Inc., 781 F. Supp. 2d 837, 851 (D. Minn. 2011) (holding that Allstate adequately alleged that a lay person indirectly owned a chiropractor clinic); Isles Wellness, Inc. v. Progressive N. Ins. Co., 703 N.W.2d 513, 515 (Minn. 2005) (summarizing Progressive Insurance's argument that it was not required to reimburse chiropractors that violated CPOM laws).

229. Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 159 A.3d 412, 416–18 (N.J. 2017) (examining letters from the Board of Medical Examiners for guidance on New Jersey's corporate practice of medicine regulations).

Attorneys' General Opinions can also be instructive.[230] For example, in 1982, the California Attorney General stated that, as a general rule, a corporation "may neither engage in the practice of medicine directly, nor may it do so indirectly by 'engaging [physicians] to perform professional services.'"[231] Decades later, Californian courts still defer to this opinion in CPOM decisions.[232]

In egregious cases of unlicensed medical practice, like in *Aspen*,[233] the nature of a health care organization's clinical operations may be enough to establish a violation. For example, if patient treatment decisions are decided by laymen managers over the advice of clinicians, there is a blatant case of unlicensed medical practice.

Plaintiffs can help build their cases from the corpus of insurance cases disputing corporate control in healthcare. Furthermore, as states like California, New York, and Massachusetts increase their scrutiny of corporate healthcare arrangements,[234] the government will have increasing access to the terms of stock transfer agreements between MSOs and friendly PCs. Government enforcers can use this information to investigate potential violations of CPOM and initiate or intervene in false claim litigation.

E. *State False Claims Acts*

CPOM plaintiffs are not limited to suing under the Federal False Claims Act. Most states have their own false claims acts and other laws targeting insurance fraud. As mentioned previously, the plaintiffs in *Northfield Medical* brought suit under the New Jersey Insurance Fraud Prevention Act (IFPA).[235] According to the statute, "[a] person or a practitioner violates this act if he . . . [p]resents or causes to be presented any written or oral statement . . . knowing that the statement contains any

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230. See, e.g., People ex rel. Allstate Ins. Co. v. Discovery Radiology Physicians, P.C., 311 Cal. Rptr. 3d 901, 914 n.7 (Cal. Ct. App. 2023) ("In the absence of controlling authority, [Attorney General] opinions are persuasive [because] . . . we presume the [Attorney General's] interpretation 'has come to the attention of the Legislature, and if it were contrary to the legislative intent that some corrective measure would have been adopted . . . .'" (quoting Cal. Ass'n of Psych. Providers v. Rank, 793 P.2d 2, 11 (Cal. 1990))).

231. 65 Ops. Cal. Atty. Gen. 223 (1982) (emphasis omitted) (alteration in original) (quoting Pac. Emps. Ins. Co. v. Carpenter, 52 P.2d 992, 994 (Cal. Dist. Ct. App. 1935)).

232. See *Discovery Radiology*, 311 Cal. Rptr. 3d at 914 n.7 ("Opinions of the Attorney General, while not binding, are entitled to great weight.").

233. See Treiber v. Aspen Dental Mgmt., Inc., 94 F. Supp. 3d 352, 357 (N.D.N.Y. 2015) (stating that corporate management "pad[ded] treatment plans whether or not the treating hygienist or dentist actually recommended . . . treatment").

234. See supra notes 86–87, 90–95 and accompanying text.

235. See supra note 184.

false or misleading information concerning any fact or thing material to the claim."[236]

Baked into this language are the same elements of falsity, causation, scienter, and materiality present in the Federal False Claims Act. Unlike the Federal False Claims Act, the IFPA does not have a qui tam provision, and therefore private citizens do not have standing to bring actions on behalf of the state.[237] In addition to the IFPA, New Jersey has its own state False Claims Act (NJFCA) which has a qui tam provision.[238] If the PC in *Northfield Medical* had billed government insurance programs, a whistleblower could have presumably brought a qui tam action under the NJFCA.

Most state false claims acts tend to be very similar and "require substantially identical proofs to the Federal [Act.]"[239] There is still variation between states regarding the liability of investors. As discussed in section II.C, Massachusetts amended its False Claims Act to impose liability on any investors who know of false claim violations and fail to report them to the commonwealth within sixty days.[240] Such provisions can be crucial to CPOM plaintiffs when they collect on favorable judgments and settlements, especially when a defendant's investors attempt to shuffle their assets to avoid liability.

Every state false claims act has unique features. By researching these laws, CPOM plaintiffs can potentially find statutes that are more permissive to their claims than the Federal False Claims Act.

CONCLUSION

Corporate influence in healthcare poses serious risks to patient safety and quality of care. Over the last decade, the friendly PC model has been abused to give laymen corporations increasing control over healthcare, creating degrading conditions for healthcare workers and dangerous conditions for patients. Attaching false claim liability to corporate managers that engage in the practice of medicine will incentivize whistleblowers and plaintiffs to expose illegal relationships.

At a medical conference in 2019, a managing director at BlueMountain Capital, a private equity firm, spoke about the relationship between healthcare groups and their corporate investors, saying: "When we partner with you, it's a marriage . . . . We have to believe it. You have to

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236. N.J. Stat. Ann. § 17:33A–4(a)(1) (West 2025).

237. See id.

238. See N.J. Stat. Ann. §§ 2A:32C-1, -7 (West 2025).

239. United States ex rel. Schieber v. Holy Redeemer Healthcare Sys., Inc., No. 19-12675, 2024 WL 1928357, at *8 (D.N.J. Apr. 30, 2024).

240. 2024 Mass. Legis. Serv. Ch. 343, § 29.

believe it. It's not going to be something where clinical is completely not touched."[241]

Unfortunately for these newly wed corporate couples, their love is forbidden. By attaching false claim liability to the corporate practice of medicine, healthcare providers can focus on putting patients over profit.

241. Perlberg, supra note 70 (internal quotation marks omitted) (quoting Matt Jameson, Managing Dir., BlueMountain Cap.).