

# Bar to the Corporate Practice of Medicine

## Background

California law prohibits any person from practicing medicine in this state without a valid certificate of licensure (Bus. & Prof. Code section 2052). This prohibition not only applies to lay individuals but, with limited exceptions, also to corporations and other artificial entities that have “no professional rights, privileges, or powers” under California’s Medical Practice Act (Bus. & Prof. Code section 2400).

The bar to the corporate practice of medicine — corporate bar — is designed to protect the public from possible abuses stemming from the commercial exploitation of the practice of medicine. It ensures that those persons who make decisions affecting the provision of medical care understand the quality of care implications of those decisions, possess the professional ethical obligation to place the patient’s interests foremost, and are subject to the full panoply of enforcement powers of the Medical Board of California, which is charged with the administration of the Medical Practice Act.

The corporate practice of medicine prohibition has been interpreted broadly to encompass not only direct medical decisions, but “business” and “administrative” decisions that have medical implications as well. For example, the prospective purchase of a piece of radiological equipment could be impacted by business considerations, medical considerations, or by an amalgam of factors emanating from both business and medical areas.

## Threats

The corporate bar protects patients and preserves physician autonomy by keeping hospitals and other commercial entities from directly hiring physicians and from dictating clinical decisions based on profit. With tightening economic pressures, hospitals and others are constantly seeking to erode the corporate bar. They would like to directly hire doctors and control physician freedom and patient access to care. Compromising physicians’ professional judgment would result in higher healthcare costs and diminished quality of care for our patients.

It is critical for the integrity of patient care that physicians remain independent from the corporate influence of hospital administrators and CEOs, who must answer to priorities other than patient care. When hospitals are allowed to directly employ and charge for physician services, quality of care suffers because hospitals derive income from patient beds being filled.

 **Argument Against the Corporate Bar:** Isn't

there a shortage of physicians in some areas that limits access to care?

**Response:** There are ways to address physician shortages in California without allowing hospitals to control physician employment. Increasing slots to allow residents to train in California, developing the medical schools at UC Merced, UC Riverside, and expanding access to California's loan repayment program will truly ensure physicians go to and stay in rural and underserved areas.

Simply allowing hospitals to employ physicians may actually result in reduced access and increased costs. Hospital employment of physicians eliminates competition for outpatient services and instead forces all care to be delivered through the hospital. As hospitals gain market share in small communities, physicians not employed will likely be forced out of business, and surgery centers outside the hospital will likely be forced to close. This results in fewer options for patients and increased costs as the hospital is able to charge higher rates with the elimination of competition.

Allowing a hospital to directly employ a physician will not increase access to physician services. The hospital will push patients to their preferred provider thereby controlling the competitive market. Other non-employed physicians will not be able to compete and will likely be forced out of town, resulting in no increased access.

 **Argument Against the Corporate Bar:** Bills

to eliminate the corporate bar would not have an effect on the quality of care in California's hospitals.

**Response:** These bills would give hospital CEOs and administrative staff, who have different motivations, control over physicians who should be making treatment decisions. This will create conflicted loyalties in an institution that must remain true to the patient's interests, and will erode the quality of care patients receive in California hospitals. In fact, hospitals are already interfering with medical staffs' ability to ensure quality care through independent self-governance. For example, some hospitals have adopted medical management protocols that have resulted in inappropriate hospital tests, procedures, and stays, jeopardizing patients and increasing costs.

 **Argument Against the Corporate Bar:**

Physicians' independent medical judgments would not be compromised.

**Response:** Placing doctors under the oversight of hospital administrators and CEOs who are under enormous pressures to cut costs or increase revenue would threaten the independent medical judgment necessary to ensure patients are protected. A recently released study shows the hospitals' interest in acquiring physician practices is based on financial and anti-competitive motivations, not just to increase access for patients.

 **Argument Against the Corporate Bar:**

CMA isn't doing anything to increase patient access to physicians.

**Response:** CMA supports policies that will truly increase access to care, without compromising the quality of care. CMA supported bills that now are providing more than

\$2 million in medical school loan repayments for physicians who agree to practice in underserved areas. Since loan repayment obligation is one of the primary reasons physicians will not go to underserved areas, this will attract physicians to these areas without compromising the quality of care patients receive.

 **Argument Against the Corporate Bar:** It's difficult for hospitals in California to recruit physicians.

**Response:** Hospital districts already have numerous financial incentives they can use to recruit physicians. Proponents of eliminating the corporate bar, including hospital districts, have failed to show why allowing corporate entities to directly hire physicians would work where these incentives have failed. A list of incentives currently available to hospitals and hospital districts include:

- guarantee to a physician and surgeon a minimum income for a period of no more than three years from the opening of the physician and surgeon's practice,
- guarantee purchases of necessary equipment by the physician and surgeon,
- provide reduced rental rates of office space in any building owned by the district or any of its affiliated entities, and
- provide other incentives to a physician and surgeon in exchange for consideration and upon terms and conditions the hospital district's board of directors deems reasonable and appropriate.

None of these incentives grant hospitals or hospital districts the control over the actions of physicians, which they seek through the ability to hire physicians — the real goal of eliminating the patient protections of the corporate bar. **SDP**

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