



The Honorable
Joshua Stein
Attorneys General
North Carolina Department of Justice
114 West Edenton Street
Raleigh, NC 27603

July 15, 2022

Dear Attorney General Stein,

We write to you to request an investigation into what we believe are widespread violations of the prohibition on the Corporate Practice of Medicine (CPOM) in North Carolina. As you are also the president-elect of the National Association of Attorneys General, we also request that you consider taking the lead with all state attorneys generals so as to launch a multi-state investigation into the widespread lack of enforcement of CPOM laws in the United States.

The American Academy of Emergency Medicine defines CPOM as occurring "whenever a non-physician individual or corporation exerts control over medical decision-making or collects reimbursement for the medical services of physicians." The American Medical Association explains that the majority of states prohibit the corporate practice of medicine and that the CPOM doctrine has been shaped by three broad concerns:

First, that "Allowing corporations to practice medicine or employ physicians will result in the commercialization of the practice of medicine."

Second, that "...a corporation's obligation to its shareholders may not align with a physician's obligation to his patients, and"

Third, that "employment of a physician by a corporation may interfere with the physician's independent medical judgment."

Through a series of deceptive legal loopholes and shell corporations, CPOM laws have been circumvented in many states and are causing widespread harm to the healthcare system and patients. Nowhere is this more salient than in Western North Carolina, where there exist now two ongoing antitrust lawsuits against the Hospital Corporation of America (HCA). These lawsuits explicitly allege that one result of HCA's imposition of a monopolistic for-profit business model on previously non-profit Mission is a degradation of autonomy of and quality of employment conditions for the medical staff and a degradation of the overall quality of care for the ultimate consumer of healthcare, i.e. the patient. In other words, the deleterious effects of the corporate practice of medicine are squarely at issue in both of the cases. In economic terms, one effect of a monopoly and one sign of a monopoly is reduced output and reduced quality of care and of the medical "product." And, note that this quality reduction both affects the medical professionals who have their pay cut, their hours extended and often, their jobs terminated – and affects the patients.



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Meanwhile, by HCA's frank admission, HCA has made over Mission Hospital Asheville into an extraordinary profit-extracting vehicle. By the numbers, HCA Mission is the most profitable of all HCA's hospitals when corrected for size. Mission Asheville sits second only to Methodist Hospital in Texas for net patient revenue, even though Mission Asheville had less than half as many discharges.

According to an opinion by the Attorney General in North Carolina in 1955, "A private corporation is prohibited from practicing medicine, and employment by a corporation of a physician or surgeon to treat the ill in order that the corporation may profit therefrom is prohibited by the laws of North Carolina."

Here though, HCA is a for-profit corporation which employs both physicians and non-physician practitioners directly, and contracts many of its staffing services out to private-equity owned staffing firms, most importantly, TeamHealth. Likewise, Duke-Lifepoint, operating in Western North Carolina and owned in-full by the private equity firm Apollo Global Management, similarly contracts physician staffing services to the Blackstone-owned TeamHealth.

TeamHealth is particularly well-known for suing poor patients and garnishing their wages until being shamed by investigative journalists. In 2020, Propublica published an expose on TeamHealth explaining how "rich investors, not doctors profit from marking up ER bills", while in 2019, the New York Times exposed the dark money organization "Doctor Patient Unity", which was opposing implementation of the No Surprises Act was funded by TeamHealth and another private equity owned staffing firm, Envision.

For background, Envision (also known as Emcare) and TeamHealth are numbers one and two respectively in size as medical staffing firms. By being both for-profit and private equity owned, entities like TeamHealth have a stronger profit motive even than other entities, and that has been reflected in the company's frank willingness to be in litigation, and be on the wrong end of investigative reporting. Most recently, TeamHealth has been sued in the Eastern District of Tennessee for overcharging not only patients but also, self-funded insurance plans and commercial insurers. And, TeamHealth has also been sued for False Claim Act violations and was even sued by its own doctors for lack of pay.

In 2012, the 60-minutes episode "The Cost of Admission" exposed how a joint venture between the now-defunct Health Management Associates (HMA), analogous to HCA, and EmCare (now Envision and analogous to TeamHealth) "relentlessly pressured its doctors to admit more and more patients -- regardless of medical need - - in order to increase revenues.", defrauding Medicare of millions. (HMA paid over \$260 million to resolve false billing and kickback allegations in 2018). An analogous dynamic now exists between TeamHealth and HCA, only with different metrics and mechanisms. According to sources within HCA's version of Mission, TeamHealth has most recently, since contracting with HCA in 2020, eliminated the requirement for an admitting physician, physician assistant, or nurse practitioner to speak with an inpatient physician prior to admitting a patient from the emergency department, encouraging non medically necessary admissions, thereby increasing costs, and occupying critical beds for patients needing transfer to a tertiary center from outlying hospitals.



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Thus in February 2022 it was revealed that a new report from the Service Employees International Union analyzed national Medicare data and found that hospitals run by HCA had an emergency department admission rate in 2019 that was substantially higher than the national average. Likewise in November 2020, the National Nurses United union released a report finding that “[o]f the 100 hospitals with the highest charges relative to their costs, for-profit corporations own or operate 95 of them. All of the top 100 hospitals are owned by hospital systems, as opposed to being independently operated community hospitals. The top system is HCA Healthcare, which owns 53 of these hospitals, including the hospital with the highest charge-to-cost ratio in the U.S.”

In its investigation of the wrongful termination of emergency physician Ray Brovont at an HCA hospital, NBC News recently exposed how physicians who raise concerns about profit motives harming patients are silenced. It also exposed the mechanism by which private equity owned staffing firms bypass CPOM laws. The report revealed that one physician, Dr. Gregory Byrne, had been a “paper owner” for up to 300 emergency practices tied to Envision or EmCare. NBC estimates that over 40% of emergency departments are staffed by corporate entities in this indirect, misleading manner. In this paper owner scheme, the corporation strips the physician-owner of control of the corporation through a stock transfer restriction agreement, making it appear that a physician owns the group while the corporation retains all practical control including finances.

TeamHealth is the same or worse. As alleged in the very recently filed Second Amended Complaint filed in the LMRMA case, the TeamHealth organization has “made the fraud more difficult to discover by splitting up TeamHealth’s numerous individual physicians and other medical providers staffing hospitals across the nation into over 100 ostensibly separate and independent local practice entities. Each of these local practice groups is seemingly disconnected from the others and they go by many different names, none called TeamHealth.” TeamHealth uses this misleading corporate LLC scheme to avoid it being obvious that a given medical bill comes from TeamHealth. That fact makes detecting the over-billing fraud more difficult. The weight of the claims against TeamHealth in this regard are indicated by the fact that the federal judge in the United Healthcare case recently denied a motion to dismiss the civil RICO claim alleged in that case. As you know, the courts are generally only receptive to RICO claims when there really is evidence of an unethical and unlawful scheme.

While extremely pronounced in Western North Carolina, this is a national issue. The issue is reaching a critical mass in terms of evolving scholarly and academic review and commentary, increasing agency and regulatory interest and concern, and a rising tide of civil litigation. Note that contrary to what the companies’ powerful lobbying arm suggests, this is not simply something being ginned up by the plaintiffs’ bar. The track record of agency enforcement against HCA, for example, speaks for itself, including the “largest health care fraud case in U.S. history.” The present and past False Claims Act litigation is driven by company insiders and whistle-blowers from within the industry itself. An ongoing lawsuit launched by the American Academy of Emergency Medicine - Physician Group in California is alleging the illegal corporate practice of medicine by Envision. Physicians and patients need urgent help from the people’s attorney. The federal court there has recently denied Envision’s motion to dismiss. Meanwhile, the litigation between TeamHealth and the country’s largest insurance company, United Healthcare, has reached such a boiling point that the companies’ have each issued or promoted voluminous media on that front.



With regard to HCA in Western North Carolina, again, it is important to note that the challenges to HCA's monopolistic and quality-harming conduct do not amount to an attack on the industry as a whole. To the contrary, other industry players such as AdventHealth and Novant appear to have welcomed the opportunity presented by the antitrust litigation to press their cases for why competition should be re-introduced into Western NC. In early June, the Buncombe County Board voted to support that initiative. In this factual and legal climate, however, more work is needed. Physicians and patients need urgent help from the people's attorney. And the time is right.

We humbly submit to you that what was once a noble profession of medicine is in danger of being decimated by the current drastic changes that are occurring in the industry called healthcare. This has resulted in a public health crisis compounded by the COVID-19 pandemic and has led to a rampant monopoly and private equity driven extraction of monies from those pockets of North Carolina that are currently worst hit by the corporate practice of medicine. Restoring this profession and protecting patients from corporate interests will take bold and necessary actions. Your Office thus for better or for worse stands at an inflection point in the healthcare industry. HCA and TeamHealth have to date exploited lax enforcement of the laws designed to restrain this situation. But the problem has united those on all sides of the political spectrum, because there are not only progressive public policy concerns in play, but also, the integrity of a free-market, competitive, capitalist economy. The general public likes and appreciates the contributions of our local healthcare workers, and conscientious doctors and nurses. It is a sad fact of reality when many of the best doctors have severed ties with or been forced out of the HCA/TeamHealth enterprise in Western NC, and when the nurses have been forced to unionize. Numerous physicians and non-physician practitioners have now spoken out publicly in the media about what has happened. The legal tools are there to level the healthcare playing field and the ongoing drain to the cultural, social and economic value of Western NC being caused by the one-two punch of the HCA takeover coupled with the Team Health involvement. Restoring the profession of medicine, and protecting patients from corporate interests will take bold and necessary actions. We thank you for your consideration and are happy to assist in ongoing efforts to protect the public.

Take Medicine Back is a Public Benefit Company founded in June of 2021 by a practicing emergency physician, charged with "producing a public benefit by operating in a responsible and ethical manner by imparting education and advocacy to the public regarding the corporate takeover of modern medicine..." We believe that this has resulted in the financial exploitation of patients, an ongoing loss of the profession of medicine, and the erosion of trust and a therapeutic relationship between patients and physicians.

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