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When Does Private Equity Ownership of Physician Practices Violate "First, Do No Harm"?

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Abstract

One driver of the corporatization of medicine has been private equity (PE) firms' acquisition of physician practices. This article describes when PE firms' investments in or ownership of physicians' practices undermine health service delivery operations and patients' outcomes to the point of violating *primum non nocere*, a key ethical requirement for physicians to prioritize harm avoidance in practice. This article then suggests how to balance the interests of health care as a commercial enterprise with health care as a critical human right.

Avoiding Harm

A foundational ethical value in modern medicine—"first, do no harm"—is attributed to the modern Hippocratic Oath, a variant of which is sworn by most American medical school graduates.[1] But this guiding principle is being violated in ways never imagined, as private equity (PE) firms buy up physician practices and put profits ahead of patients.[2] Research by Kannan et al and Borsa et al has shown that, as PE acquisitions grow, prices increase and patients suffer from lower-quality care.[3,4] To understand this ethical dilemma, we begin by explaining the evolution of corporate practice of medicine (CPOM) laws and their role in the regulation of medical practice. We then discuss what PE is, how it operates and changes the practice of medicine, and new laws that are being proposed to strengthen the CPOM. We end by discussing how laws need to protect physicians' autonomy to ensure provision of the best services for patients.

Legal Evolution

During the early 1900s, courts and physicians began to place restrictions on who controlled the operation of hospitals.[5] Physicians determined treatment plans, diagnoses, and relationships with patients. However, if the practice was owned by a corporation, these factors could be decided or heavily influenced by the corporate owners. Over time, the CPOM doctrine was introduced to prevent business interests from superseding patient interests. To ensure that corporations' financial interests align with their ethical obligations to patients and doctors, the CPOM doctrine holds that corporations cannot practice medicine or employ physicians to provide professional medical services.[6] This doctrine protects physicians' autonomy in exercising their clinical judgment. Most states have a CPOM law that prohibits nonphysician entities from

practicing medicine or employing physicians.[6] However, CPOM laws differ by state. Seventeen states have no CPOM laws, twelve have laws with exceptions for all nonprofit corporations, eleven have laws with exceptions for specific types of nonprofits, and eleven have laws with no exceptions.[7] This variation allows state governments to address the individual needs of the state and apply policies that align with their political priorities. For example, in California, nonprofit corporations can hire clinicians as long as they do not charge patients for their services,[8,9] and in Arizona, nonprofit organizations can provide medical services only through physicians who have been licensed to practice in the state.[10] In Nevada, nonprofits that are organized as medical groups can employ physicians,[11] and in North Carolina, charitable organizations are exempt from the CPOM.[12] With the increasing number of PE acquisitions in health care, these laws play an even greater role in protecting patients and physicians.

Private Equity Growth

PE firms operate as partnerships, wherein fund managers raise money from institutional and wealthy investors to purchase hospitals, physician practices, and nursing homes and contribute only a small portion of the fund's total assets themselves.[13] The majority of the funds used for acquisitions come from large investment banks in the form of debt with the acquired entities' assets being placed as collateral.[14] PE funds typically follow a "2-and-20" fee model, charging an annual management fee of 2% of the invested money and taking 20% of the profits.[15] These funds usually have a lifespan of 10 years from soliciting to returning results on investment, during which they acquire, manage, and sell companies, usually within 3 to 5 years, to enhance their value through restructuring, capital investment, and management expertise.[15]

The PE business model in health care changes how entities operate, which can lead to several kinds of harm. To boost profitability, acquired entities typically undertake cost-cutting measures that can adversely affect the quality of care, such as replacing highly qualified workers with lower-paid staff and reducing operational costs.[16] By cutting costs and billing for more care, the firm seeks to increase the profits that it makes for its shareholders. PE managers might place intense pressure on physicians "to perform more profitable procedures or to shift the business focus from a less profitable practice to a more profitable practice."[15] As employees, physicians have limited say in these decisions. Market conditions in health care that incentivize PE firms to enter include continued growth in health care spending and the need for practices to have capital in order to expand and stay competitive in a rapidly consolidating market. PE firms also produce financial harm by engaging in consolidation strategies to dominate markets, thereby increasing their pricing power and leveraging acquired companies for further growth.[3,15] These practices can lead to increased market concentration, higher prices, and potentially lower quality of care.[3] Despite their potential for harmful impacts, many PE acquisitions escape antitrust scrutiny due to existing reporting thresholds and regulatory gaps,[17] making effective oversight challenging.

PE's influence on health care has notably surged over the past decade, with firms acquiring 5779 physician practices in 307 metropolitan areas between 2012 and 2021.[18] In about one-third of US metropolitan areas in 2021, PE firms held over 30% market share in at least 1 specialty.[15,18] Physicians selling their practices reap monetary rewards. Typically, the payout is in the millions, depending on the specialty. Physician sellers can retain a share in profits of PE firms, although they lose influence over time.[19] This option is attractive to senior physicians, especially those looking to retire.

Strengthening Regulation

With increasing PE acquisitions in health care, the US government, at both the federal and the state level, is attempting to increase scrutiny of these transactions. On the federal level, Senators Sheldon Whitehouse and Chuck Grassley launched an inquiry into PE in health care,[20] and Senator Edward Markey introduced the Health Over Wealth Act to regulate investor-owned health care activities.[21] The Federal Trade Commission (FTC) has also taken action by suing United States Anesthesia Partners for alleged antitrust violations,[22] thereby highlighting the risks of financialization in the health sector. Meanwhile, a joint inquiry into PE control of health care involving the FTC, Department of Justice, and Department of Health and Human Services further underscores this growing scrutiny.[23]

Additionally, recent state legislative efforts emphasize the growing need to regulate the consolidation of health care systems and the influence of PE and corporate entities on medical practices. Oregon's HB 4130,[24] to be reintroduced in the 2025 cycle, prohibits individuals from holding positions in both a medical corporation and a management services organization with which it has a contract. Oregon is 1 of 2 states so far that has proposed new CPOM legislation targeting the "friendly professional" corporation model. Importantly, it is the only bill that would allow the blocking of a PE transaction by a state agency.[25] Massachusetts also focuses on the friendly physician model but does so through transaction oversight and limiting real estate agreements between PE firms and health care entities.[26] In New York State, Article 45-A has been in effect since August 1, 2023.[27] It requires health care entities to notify the Department of Health about significant transactions, thereby enhancing transparency and public oversight.

These legislative measures collectively highlight the range of concerns regarding the CPOM doctrine and the push for profits over patient care that can result when PE purchases a physician practice.

Corporate Clinicians?

PE ownership, with its prioritization of profit, challenges physicians' dual goals of doing what is best for the patient and for the profitability of the practice. In PE-owned practices, the PE firm has control of finances, billing, management, and operations, which can conflict with the principle of "do no harm." For example, the push for profits might include incentives for doctors to overtreat patients, suggest more profitable treatments, or perhaps shorten the visit times with patients to increase volume. CPOM laws are intended to give physicians more control of the practice, especially treatment decisions and patient care plans.

What does that mean for health care as a commercial enterprise? To consistently ensure patient protection, laws need to protect the autonomy of physicians over the push of PE firms to maximize profits. Since most stakeholders are focused on their own interests, there is a need for government regulation to strengthen the autonomy of physicians while also allowing the practice to make profits. We conclude that PE firms present a great challenge to the practice of medicine and the ethical responsibility of physicians to do no harm. We suggest that physicians use clinical guidelines and their best judgment regardless of who owns the practice. However, they should be especially mindful when the practice is owned by a PE firm. Physicians can mitigate the influence of PE ownership through professional organizations such as the American Medical Association or their county medical societies. Moreover, when physicians consider selling their practice, PE is not the only option; physicians might consider alternative

business arrangements, such as selling their practice to a nonprofit hospital, health system, or other physician-owned organization that is generally more concerned with the health and well-being of patients.

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