

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1620

Chapter 390, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

CORPORATE PRACTICE OF MEDICINE

EFFECTIVE DATE: 7/27/97

Passed by the House April 19, 1997
Yeas 92 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 15, 1997
Yeas 40 Nays 0

BRAD OWEN
President of the Senate

Approved May 15, 1997, with the
exception of sections 1, 2, 6 and 7,
which are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1620** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 15, 1997 - 4:40 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1620

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Dyer, Zellinsky, Cody, Skinner, Backlund and Sherstad)

Read first time 02/25/97.

1 AN ACT Relating to abrogating the corporate practice of medicine
2 doctrine; amending RCW 18.100.040, 18.100.050, and 25.04.720;
3 reenacting and amending RCW 25.15.045; creating new sections; and
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 ****NEW SECTION. Sec. 1. The legislature finds that the corporate***
7 ***practice of medicine doctrine, as most recently articulated in the case***
8 ***of Morelli v. Ehsan, is an impediment to innovative practice***
9 ***arrangements necessary for the health care reform process to move***
10 ***forward as to physicians licensed pursuant to chapter 18.71 RCW and***
11 ***osteopathic physicians licensed pursuant to chapter 18.57 RCW. The***
12 ***doctrine restricts, at a minimum, who can employ physicians, who can***
13 ***own a physician practice office, and who can derive profits from***
14 ***physician practice. The legislature intends to abrogate the doctrine***
15 ***as to all those elements and as to any other elements of the doctrine***
16 ***as recognized by the courts in the past, currently, or in the future.***
17 ****Sec. 1 was vetoed. See message at end of chapter.***

1 *Sec. 2. RCW 18.100.040 and 1969 c 122 s 4 are each amended to
2 read as follows:

3 (1) This chapter shall not apply to any individuals or groups of
4 individuals within this state who prior to the passage of this chapter
5 were permitted to organize a corporation and perform personal services
6 to the public by means of a corporation, and this chapter shall not
7 apply to any corporation organized by such individual or group of
8 individuals prior to the passage of this chapter: PROVIDED, That any
9 such individual or group of individuals or any such corporation may
10 bring themselves and such corporation within the provisions of this
11 chapter by amending the articles of incorporation in such a manner so
12 as to be consistent with all the provisions of this chapter and by
13 affirmatively stating in the amended articles of incorporation that the
14 shareholders have elected to bring the corporation within the
15 provisions of this chapter.

16 (2) The corporate practice of medicine doctrine as it applies to
17 health care practitioners, other than dentists and veterinarians
18 licensed pursuant to chapters 18.32 and 18.92 RCW respectively, is
19 hereby abrogated in whole, although nothing in this section is meant to
20 affect the ethical obligations of health care practitioners. This
21 abrogation shall not be construed to authorize anyone to require health
22 care practitioners to violate federal, state, or local law. In
23 construing this abrogation, courts shall not apply rules of legislative
24 interpretation that result in narrowly construing this abrogation
25 because it is in derogation of common law.

26 (3) Except for dentists and veterinarians licensed pursuant to
27 chapters 18.32 and 18.92 RCW respectively, any person, including a
28 health care practitioner, may use any otherwise lawful type of business
29 organization to provide health care professional services. Health care
30 practitioners may elect to use the professional form of a business
31 organization to provide professional services as otherwise permitted by
32 law.

33 (4) A professional corporation, professional limited liability
34 company, or professional limited liability partnership may convert to
35 a business corporation, limited liability company, or limited liability
36 partnership by so amending its articles of incorporation, certificate
37 of formation, or other basic business organization document as the case
38 may be and filing the amendment with the state.

39 *Sec. 2 was vetoed. See message at end of chapter.

1 **Sec. 3.** RCW 18.100.050 and 1996 c 22 s 1 are each amended to read
2 as follows:

3 (1) An individual or group of individuals duly licensed or
4 otherwise legally authorized to render the same professional services
5 within this state may organize and become a shareholder or shareholders
6 of a professional corporation for pecuniary profit under the provisions
7 of Title 23B RCW for the purpose of rendering professional service.
8 One or more of the legally authorized individuals shall be the
9 incorporators of the professional corporation.

10 (2) Notwithstanding any other provision of this chapter, registered
11 architects and registered engineers may own stock in and render their
12 individual professional services through one professional service
13 corporation.

14 (3) Licensed health care professionals, providing services to
15 enrolled participants either directly or through arrangements with a
16 health maintenance organization registered under chapter 48.46 RCW or
17 federally qualified health maintenance organization, may own stock in
18 and render their individual professional services through one
19 professional service corporation.

20 (4) Professionals may organize a nonprofit nonstock corporation
21 under this chapter and chapter 24.03 RCW to provide professional
22 services, and the provisions of this chapter relating to stock and
23 referring to Title 23B RCW shall not apply to any such corporation.

24 (5)(a) Notwithstanding any other provision of this chapter, health
25 care professionals who are licensed or certified pursuant to chapters
26 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53,
27 18.55, 18.57, 18.57A, 18.64, 18.71, 18.71A, 18.79, 18.83, 18.89,
28 18.108, and 18.138 RCW may own stock in and render their individual
29 professional services through one professional service corporation and
30 are to be considered, for the purpose of forming a professional service
31 corporation, as rendering the "same specific professional services" or
32 "same professional services" or similar terms.

33 (b) (~~Notwithstanding any other provision of this chapter, health~~
34 ~~care professionals who are licensed pursuant to chapters 18.57 and~~
35 ~~18.71 RCW may own stock in and render their individual professional~~
36 ~~services through one professional service corporation and are to be~~
37 ~~considered, for the purpose of forming a professional service~~
38 ~~corporation, as rendering the "same specific professional services" or~~
39 ~~"same professional services" or similar terms.~~

1 (e)) Formation of a professional service corporation under this
2 subsection does not restrict the application of the uniform
3 disciplinary act under chapter 18.130 RCW, or applicable health care
4 professional statutes under Title 18 RCW, including but not limited to
5 restrictions on persons practicing a health profession without being
6 appropriately credentialed and persons practicing beyond the scope of
7 their credential.

8 **Sec. 4.** RCW 25.15.045 and 1996 c 231 s 7 and 1996 c 22 s 2 are
9 each reenacted and amended to read as follows:

10 (1) A person or group of persons licensed or otherwise legally
11 authorized to render professional services within this state may
12 organize and become a member or members of a professional limited
13 liability company under the provisions of this chapter for the purposes
14 of rendering professional service. A "professional limited liability
15 company" is subject to all the provisions of chapter 18.100 RCW that
16 apply to a professional corporation, and its managers, members, agents,
17 and employees shall be subject to all the provisions of chapter 18.100
18 RCW that apply to the directors, officers, shareholders, agents, or
19 employees of a professional corporation, except as provided otherwise
20 in this section. Nothing in this section prohibits a person duly
21 licensed or otherwise legally authorized to render professional
22 services in any jurisdiction other than this state from becoming a
23 member of a professional limited liability company organized for the
24 purpose of rendering the same professional services. Nothing in this
25 section prohibits a professional limited liability company from
26 rendering professional services outside this state through individuals
27 who are not duly licensed or otherwise legally authorized to render
28 such professional services within this state. Notwithstanding RCW
29 18.100.065, persons engaged in a profession and otherwise meeting the
30 requirements of this chapter may operate under this chapter as a
31 professional limited liability company so long as each member
32 personally engaged in the practice of the profession in this state is
33 duly licensed or otherwise legally authorized to practice the
34 profession in this state and:

35 (a) At least one manager of the company is duly licensed or
36 otherwise legally authorized to practice the profession in this state;
37 or

1 (b) Each member in charge of an office of the company in this state
2 is duly licensed or otherwise legally authorized to practice the
3 profession in this state.

4 (2) If the company's members are required to be licensed to
5 practice such profession, and the company fails to maintain for itself
6 and for its members practicing in this state a policy of professional
7 liability insurance, bond, or other evidence of financial
8 responsibility of a kind designated by rule by the state insurance
9 commissioner and in the amount of at least one million dollars or a
10 greater amount as the state insurance commissioner may establish by
11 rule for a licensed profession or for any specialty within a
12 profession, taking into account the nature and size of the business,
13 then the company's members are personally liable to the extent that,
14 had the insurance, bond, or other evidence of responsibility been
15 maintained, it would have covered the liability in question.

16 (3) For purposes of applying the provisions of chapter 18.100 RCW
17 to a professional limited liability company, the terms "director" or
18 "officer" means manager, "shareholder" means member, "corporation"
19 means professional limited liability company, "articles of
20 incorporation" means certificate of formation, "shares" or "capital
21 stock" means a limited liability company interest, "incorporator" means
22 the person who executes the certificate of formation, and "bylaws"
23 means the limited liability company agreement.

24 (4) The name of a professional limited liability company must
25 contain either the words "Professional Limited Liability Company," or
26 the words "Professional Limited Liability" and the abbreviation "Co.,"
27 or the abbreviation "P.L.L.C." or "PLLC" provided that the name of a
28 professional limited liability company organized to render dental
29 services shall contain the full names or surnames of all members and no
30 other word than "chartered" or the words "professional services" or the
31 abbreviation "P.L.L.C." or "PLLC."

32 (5) Subject to the provisions in article VII of this chapter, the
33 following may be a member of a professional limited liability company
34 and may be the transferee of the interest of an ineligible person or
35 deceased member of the professional limited liability company:

36 (a) A professional corporation, if its shareholders, directors, and
37 its officers other than the secretary and the treasurer, are licensed
38 or otherwise legally authorized to render the same specific

1 professional services as the professional limited liability company;
2 and

3 (b) Another professional limited liability company, if the managers
4 and members of both professional limited liability companies are
5 licensed or otherwise legally authorized to render the same specific
6 professional services.

7 (6)(a) Notwithstanding any other provision of this chapter, health
8 care professionals who are licensed or certified pursuant to chapters
9 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53,
10 18.55, 18.57, 18.57A, 18.64, 18.71, 18.71A, 18.79, 18.83, 18.89,
11 18.108, and 18.138 RCW may own membership interests in and render their
12 individual professional services through one limited liability company
13 and are to be considered, for the purpose of forming a limited
14 liability company, as rendering the "same specific professional
15 services" or "same professional services" or similar terms.

16 ~~(b) ((Notwithstanding any other provision of this chapter, health
17 care professionals who are licensed pursuant to chapters 18.57 and
18 18.71 RCW may own membership interests in and render their individual
19 professional services through one limited liability company and are to
20 be considered, for the purpose of forming a limited liability company,
21 as rendering the "same specific professional services" or "same
22 professional services" or similar terms.~~

23 (e)) Formation of a limited liability company under this
24 subsection does not restrict the application of the uniform
25 disciplinary act under chapter 18.130 RCW, or any applicable health
26 care professional statutes under Title 18 RCW, including but not
27 limited to restrictions on persons practicing a health profession
28 without being appropriately credentialed and persons practicing beyond
29 the scope of their credential.

30 **Sec. 5.** RCW 25.04.720 and 1996 c 231 s 4 are each amended to read
31 as follows:

32 (1) A person or group of persons licensed or otherwise legally
33 authorized to render professional services, as defined in RCW
34 18.100.030, within this state may organize and become a member or
35 members of a limited liability partnership under the provisions of this
36 chapter for the purposes of rendering professional service. Nothing in
37 this section prohibits a person duly licensed or otherwise legally
38 authorized to render professional services in any jurisdiction other

1 than this state from becoming a member of a limited liability
2 partnership organized for the purpose of rendering the same
3 professional services. Nothing in this section prohibits a limited
4 liability partnership from rendering professional services outside this
5 state through individuals who are not duly licensed or otherwise
6 legally authorized to render such professional services within this
7 state.

8 (2)(a) Notwithstanding any other provision of this chapter, health
9 care professionals who are licensed or certified pursuant to chapters
10 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53,
11 18.55, 18.57, 18.57A, 18.64, 18.71, 18.71A, 18.79, 18.83, 18.89,
12 18.108, and 18.138 RCW may join and render their individual
13 professional services through one limited liability partnership and are
14 to be considered, for the purpose of forming a limited liability
15 partnership, as rendering the "same specific professional services" or
16 "same professional services" or similar terms.

17 ~~(b) ((Notwithstanding any other provision of this chapter, health
18 care professionals who are licensed pursuant to chapters 18.57 and
19 18.71 RCW may join and render their individual professional services
20 through one limited liability partnership and are to be considered, for
21 the purpose of forming a limited liability partnership, as rendering
22 the "same specific professional services" or "same professional
23 services" or similar terms.~~

24 (e)) Formation of a limited liability partnership under this
25 subsection does not restrict the application of the uniform
26 disciplinary act under chapter 18.130 RCW, or any applicable health
27 care professional statutes under Title 18 RCW, including but not
28 limited to restrictions on persons practicing a health profession
29 without being appropriately credentialed and persons practicing beyond
30 the scope of their credential.

31 ****NEW SECTION. Sec. 6. This act applies retroactively to January***
32 ***1, 1997.***

33 ****Sec. 6 was vetoed. See message at end of chapter.***

34 ****NEW SECTION. Sec. 7. This act is necessary for the immediate***
35 ***preservation of the public peace, health, or safety, or support of the***
36 ***state government and its existing public institutions, and takes effect***
37 ***immediately.***

1 *Sec. 7 was vetoed. See message at end of chapter.

Passed the House April 19, 1997.

Passed the Senate April 15, 1997.

Approved by the Governor May 15, 1997, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 15, 1997.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 1, 2,
3 6 and 7, Substitute House Bill No. 1620 entitled:

4 "AN ACT Relating to abrogating the corporate practice of medicine
5 doctrine;"

6 Sections 1 and 2 of Substitute House Bill No. 1620 would have
7 abrogated the corporate practice of medicine doctrine, as most recently
8 articulated in Morelli v. Ehsan, 110 Wn.2d 555, 756 P.2d 129 (1988), on
9 the basis that the doctrine is an impediment to the development of
10 health care reform.

11 The corporate practice of medicine doctrine states that a
12 corporation cannot engage in the practice of a learned profession
13 through licensed employees unless legislatively authorized. (Morelli
14 at 561) In essence, the doctrine prevents non-doctors from being
15 shareholders in corporations, partners in partnerships, or members of
16 limited liability companies formed to practice medicine.

17 While I completely agree that the law should not inhibit the
18 development of corporations and other entities to enhance business
19 opportunities in the medical field, abrogation of the doctrine could
20 have unintended consequences. Abrogation would make it far easier for
21 unscrupulous individuals to engage in insurance fraud, a growing
22 problem in this state and nationally.

23 I urge insurance companies and other interested parties work with
24 the legislature to develop legislation that would adequately address
25 the problems the corporate practice of medicine doctrine is designed to
26 prevent, yet also make Washington law more accommodating to modern
27 forms of medical business entities.

28 Sections 6 and 7 would make the bill effective retroactively, to
29 January 1, 1997. Retroactive application of this bill is unnecessary.

30 For these reasons, I have vetoed sections 1, 2, 6 and 7 of
31 Substitute House Bill No. 1620.

32 With the exception of sections 1, 2, 6 and 7, Substitute House Bill
33 No. 1620 is approved."