

**Survey of State Laws
Governing the Corporate Practice of Dentistry**

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Introduction

For almost a century, virtually all states have prohibited corporations from practicing health care professions that require state licensure, such as medicine and dentistry. This has been termed the “corporate practice of medicine doctrine.” Specifically, state laws preclude business corporations from owning and operating dental offices and employing practitioners while the corporation collects some or all fees paid by patients. More generally, all states, even the few permitting corporate practice, outlaw any interference by unlicensed people or entities with dentists’ independent clinical judgment and patient care. This paper examines current law regarding the corporate practice of dentistry in the fifty states and the District of Columbia.

The prohibition of corporate practice arose from efforts by the American Medical Association to professionalize medicine and reached fruition in state licensing regimes enacted in the early twentieth century. See Michele Gustavson and Nick Taylor, *At Death’s Door – Idaho’s Corporate Practice of Medicine Doctrine*, 47 IDAHO L. REV. 479, 482-95 (2011) (reviewing history of doctrine). Courts then repeatedly upheld the state laws. See, e.g., *Semler v. Oregon State Bd. of Dental Examiners*, 294 U.S. 608, 611 (1935) (“That the state may regulate the practice of dentistry, prescribing the qualifications that are reasonably necessary, and to that end may require licenses and establish supervision by an administrative board, is not open to dispute... We have held that the state may deny to corporations the right to practice, insisting upon the personal obligation of individuals”); *U.S. v. American Med. Ass’n*, 110 F.2d 703, 714 (D.C. Cir. 1940) (“And so it has been held under varying conditions, speaking generally, that where a corporation operates a clinic or hospital, employs licensed physicians and surgeons to

treat patients, and itself receives the fee, the corporation is unlawfully engaged in the practice of medicine. This is true because it has been universally held that a corporation as such lacks the qualifications necessary for a license, and without a license, its activities become illegal”), *cert. denied*, 310 U.S. 644 (1940).

Courts and commentators have articulated two primary reasons for preventing business corporations from practicing medicine. First, only people can obtain the medical licenses needed to practice:

The rationale behind the doctrine is that a corporation cannot be licensed to practice medicine because only a human being can sustain the education, training, and character-screening which are prerequisites to receiving a professional license. Since a corporation cannot receive a medical license, it follows that a corporation cannot legally practice the profession.

Berlin v. Sarah Bush Lincoln Health Ctr., 688 N.E.2d 106, 110 (Ill. 1997). “The statutes could be completely avoided and rendered nugatory, if one or more persons, who failed to have the requisite learning to pass the examination, might nevertheless incorporate themselves formally into a corporation in whose name they could practice lawfully the profession which was forbidden to them as individuals. A corporation, as such, has neither education, nor skill, nor ethics. These are *sine qua non* to a learned profession.”

Isles Wellness Inc. v. Progressive Northern Ins. Co., 703 N.W.2d 513, 517-18 (Minn. 2005) (quoting *State v. Bailey Dental Co.*, 234 N.W. 260, 262 (Iowa 1931)).

Second, permitting business corporations to own and administer medical practices and employ doctors would threaten physicians’ bonds with patients and risk care motivated by profit rather than purely medical decision-making:

[T]he ban on corporate practice is intended to prevent interference with the physician-patient relationship by a corporation or other unlicensed person and to ensure that medical decisions are made by a licensed

physician... [T]he physician should not be forced to choose between the dictates of his or her “employer” and the best interests of the physician's patients. It is this potential for divided loyalties... that the bar against corporate practice is intended to prevent.

Steinsmith v. Med. Bd., 85 Cal. App. 4th 458, 462 (Cal. App. 2000) (ellipses in original, quoting 1996 Medical Board of California report).

As medical practice has evolved, states have approved certain exceptions to the corporate practice of medicine doctrine. Most notably, all states now permit professionals to form and practice in professional corporations:

Professionals traditionally practiced either as solo practitioners or in partnerships, but not as corporations because of ethical standards inconsistent with a corporate form of doing business. As a consequence, professionals were denied a wide variety of federal and state tax benefits available to others who could incorporate... [P]rofessional practitioners lobbied state legislatures nationwide to enact statutes that would permit professionals to organize in a modified corporate form that would be recognized as a corporation for tax purposes while leaving professional ethical standards intact.

Berrett v. Purser & Edwards, 876 P.2d 367, 372 (Utah 1994). Professional corporations differ from business corporations, however, because states restrict share ownership in professional corporations to licensed professionals or their entities, such as partnerships and limited liability companies. States also require some or all officers and directors to be licensed professionals and specify that only licensees can actually provide care. Courts have therefore “distinguished between professional corporations and traditional corporations. The role of a shareholder in a professional corporation is far more analogous to a partner in a partnership than it is to the shareholder of a general corporation.” *Trainor v. Apollo Metal Specialties, Inc.*, 318 F.3d 976, 986 (10th Cir. 2002) (quotation omitted). This paper includes an addendum listing every state’s professional corporation laws requiring shareholders, directors and officers to be licensed

and restricting professional practice to licensees rather than their entities.

Other recent and widely adopted exceptions to the prohibition on corporate practice include permitting employment of doctors and dentists by hospitals, HMOs, insurers, nonprofit and charitable entities, government providers, educational institutions, and companies and unions where doctors and dentists treat only employees or members and their families. This paper does not examine corporate practice by these entities.

Despite these exceptions and criticism from some commentators that the doctrine is now out of date, *see* Gustavson and Taylor, *supra*, the ban on corporate dental practice remains in force and is routinely applied to ordinary business corporations and for-profit clinics. For example, courts have recently voided contracts between dental management companies and dentists under the laws of several states because the arrangements gave the companies broad control over how the dentists cared for patients and effectively allowed the companies to practice dentistry without a license. *See, e.g., In re OCA, Inc.*, 552 F.3d 413, 422-423 (5th Cir. 2008) (Texas law); *OrthAlliance, Inc. v. McConnell*, 2010 WL 1344988 at ** 3-4 (D.S.C. 2010) (South Carolina law); *OCA, Inc. v. Hodges*, 615 F. Supp. 2d 477, 481 (E.D. La. 2009) (Pennsylvania law); *Amason v. OCA, Inc.*, 2009 WL 361070 at * 4 (E.D. La. 2009) (Alabama law); *Mason v. Orthodontic Ctrs. of Colorado, Inc.*, 516 F. Supp. 2d 1205, 1216-17 (D. Colo. 2007) (Colorado law); *Orthodontic Ctrs. of Illinois, Inc. v. Michaels*, 403 F. Supp. 2d 690, 695 (N.D. Ill. 2005) (Illinois law).

States accomplish the prohibition of dental practice by business corporations in different ways. Some have statutes expressly banning corporate practice. Some state laws specifically prohibit non-dentists from employing dentists. Some disallow fee-

sharing with unlicensed parties. Many states' dental codes define the practice of dentistry to include owning and operating a dental office, and since dentistry can only be practiced by licensees, the rule necessarily precludes corporations from ownership and operation. Some states have effectuated the prohibition through the common law or regulations promulgated by licensing authorities. Many states have various combinations of these different forms of prohibition. And many criminalize corporate practice specifically or as part of the larger criminal proscription of dental practice by anyone without a license. This paper does not address the civil liability, if any, of business corporations to patients or others for unlicensed practice.

Six states – Arizona, Mississippi, New Mexico, North Dakota, Ohio and Utah – permit practice by business corporations, some form of ownership by non-licensees, or corporate employment of dentists. Two states – Michigan and Nebraska – have no statutes or recent case law directly addressing corporate practice. Two others – Kentucky and Wisconsin – have conflicting or unclear statutory or common law regimes, making it difficult to determine their current limits on corporate practice. Iowa forbids corporate practice but may permit business corporations to employ dentists if they do not influence care or more generally practice dentistry. All of these states, however, prohibit corporate and non-licensee interference with dentists' independent performance and clinical judgment. As a result, a business corporation or unlicensed corporate manager who, for example, dictated use or avoidance of particular procedures or limited the length of time dentists can spend with individual patients would be violating these and every state's laws. All other states and the District of Columbia clearly prohibit corporate practice.

**The Corporate Practice of Dentistry in
Individual States and the District of Columbia**

Alabama

Corporations and other unlicensed persons and entities cannot employ dentists or own their offices or equipment in Alabama. ALA. CODE § 34-9-9(a). Alabama law expressly seeks to “prevent a non-dentist from influencing or otherwise interfering with the exercise of a dentist's independent professional judgment... [N]o person, other than a [licensed] dentist... shall enter into a relationship with a person licensed under this chapter pursuant to which the unlicensed person exercises control over the selection of a course of treatment for a patient, the procedures or materials to be used as a part of such course of treatment, or the manner in which such course of treatment is carried out by the licensee.” *Id.* § 34-9-9(c); *see also Amason v. OCA, Inc.*, 2009 WL 361070 at * 4 (E.D. La. 2009) (finding illegal partnership between dentist and management company under Alabama law based on company’s extensive control over dentist’s operation and sharing of profits). Dentists who enter into prohibited arrangements with corporations may be sanctioned. *Id.*, §§ 34-9-9(d), 34-9-18.

Alabama courts recognize that the corporate practice of dentistry is prohibited. “Obviously, no corporate entity, whether a professional corporation or otherwise, can presume to practice medicine or interfere with the relationship between caregiver and patient” in Alabama. *Ware v. Timmons*, 954 So.2d 545, 576 (Ala. 2006) (Harwood, dissenting); *accord Southeast Cancer Network, P.C. v. DCH Healthcare Auth., Inc.*, 869 So.2d 452, 457 n. 9 (Ala. 2003) (“Southeast, as a corporate person, may not receive staff privileges or practice medicine”).

Alaska

Alaska dentists may “practice in an association, partnership, corporation, or other lawful entity,” but only “with other dentists.” ALASKA STAT. § 08.36.365(1). Moreover, “exercis[ing] control over professional dental matters” constitutes the practice of dentistry and requires licensure, which is only open to “persons” with qualifications unobtainable by corporations. *Id.* §§ 08.36.100, 08.36.110, 08.36.360(7). Alaska’s Board of Dental Examiners has determined that such control occurs when one “determines, interprets, specifies, limits, prescribes, regulates, or otherwise controls by policy, lease, or other arrangement... the use of dental equipment or material” or “the selection of a course of treatment for the patient, the procedures, or materials to be used as part of the course of treatment and the manner in which the course of treatment is carried out by the dentist.” ALASKA ADMIN. CODE tit. 12, § 28.730. Lacking licensure, corporations are precluded from such activities.

Arizona

Arizona allows corporations to provide dental services as long as they register with the state board of dental examiners and services are provided by licensed dentists. ARIZ. REV. STAT. ANN. § 32-1213; *see also Midtown Med. Grp., Inc. v. State Farm Mut. Auto Ins. Co.*, 206 P.3d 790, 792-94 (Ariz. App. 2008, rev. denied) (state law permits operation of corporate-owned health care facilities where approved by state regulatory authorities). But only licensed professionals can actually practice dentistry; corporations are “merely organizational mechanism[s] that provide[] a recognized business form for those so licensed to practice their specified healing art.” *Midtown Med. Grp.*, 206 P.3d at 794-95. Non-professionals and corporations may not legally dictate or interfere with

patient care. *See id.* at 796-97 (“Our examination of Arizona licensing statutes for physicians and chiropractors also reveals nothing that specifically prohibits a doctor from being *employed* by (as contrasted with having the doctor's medical decisions being *influenced* by) a layperson or general corporation” (emphasis in original)); *see also State ex. rel. Bd. of Optometry v. Sears Roebuck & Co.*, 427 P.2d 126, 128 (Ariz. 1967) (corporation cannot “practice optometry through employing a licensed optometrist, or through entering into any type of arrangement with a licensed optometrist which subjects the optometrist to the corporation's direction and control”). Practices operating as professional corporations must feature 51% ownership by licensed dentists. ARIZ. REV. STAT. ANN. § 10-2220.

Arkansas

“It is unlawful for any corporation to practice dentistry or dental hygiene or to hold itself out as entitled to engage therein” in Arkansas. ARK. CODE ANN. § 17-82-104(c); *see also, e.g., Junkin v. N.E. Ark. Internal Med. Clinic, P.A.*, 42 S.W.3d 432, 438 (Ark. 2001) (citing medical corporation provisions, ARK CODE ANN. § 4-29-301 *et seq.*, as embodying corporate practice of medicine doctrine). It is also “unlawful for a dentist, whether in practice as owner, proprietor, manager, employee, or partner, to allow any person other than a dentist licensed by the board to: (A) Direct the dentist's practice; or (B) Direct, participate in, or affect the diagnosis or treatment of patients under the dentist's care.” *Id.* § 17-82-104(b). Violation of these provisions is a crime. *Id.* § 17-82-104(e).

California

Business corporations may not employ dentists in California. CAL BUS. & PROF.

CODE § 1625.1(a) (enumerating entities permitted to “employ licensees and dental assistants and charge for the professional services they render [that] shall not be deemed to be practicing dentistry”). Moreover, in California, “a person practices dentistry... who... [m]anages or conducts as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed.” *Id.* § 1625(e). Because licensure can only be obtained by appropriately qualified natural persons, *see id.* §§ 1629 – 1630, corporations may not own or manage a dental practice or for-profit clinic. Unlicensed practice is, in some circumstances, a criminal offense. *Id.* § 1701.1.

California courts likewise recognize that “[i]t is an established doctrine that a corporation may not engage in the practice of such professions as law, medicine or dentistry.” *Cal. Physicians Serv. v. Aoki Diabetes Research Inst.* 163 Cal. App. 4th 1506, 1514 (Cal. App. 2008, rev. denied) (quotation omitted). “Medicine may be practiced in a partnership or group of physicians, but corporations and other artificial legal entities have no professional rights, privileges, or powers, and a fictitious-name permit to operate a facility called a medical clinic can be issued only if the clinic is wholly owned by licensed physicians.” *Steinsmith v. Medical Board*, 85 Cal. App. 4th 458, 460-61 (Cal. App. 2000) (citations, quotations and ellipses deleted) (upholding sanction against physician employed by clinic owned by non-licensee for violating “requirement that medical practices be solely owned by California-licensed physicians”); *accord* CAL BUS. & PROF. CODE § 2400 (“Corporations and other artificial legal entities shall have no professional rights, privileges, or powers”). The California Medical Board has disciplined physicians for violations of the ban on the corporate practice of medicine:

The Action Report continued: “In the last several years, the board has initiated disciplinary action against physicians who allowed their licenses

to be ‘used’ by lay individuals or corporations. A physician can be disciplined for aiding and abetting unlicensed persons to practice medicine. This constitutes unprofessional conduct, which may result in the ultimate sanction: license revocation. In one particular case which resulted in discipline against a physician's license, the lay corporation (which was ostensibly a management company) owned and operated clinics. The physician contracted with the management company and obtained the fictitious name permits for the clinics. The physician saw patients and performed surgery at one of the clinics about once a week. The medical records were the property of the management company and not the physician. The management company paid the physician a set percentage of the patient fees. In other words, the management company was really practicing medicine without a license and the physician had aided and abetted that unlicensed practice of medicine.”

SteinSmith, 85 Cal. App. 4th at 462.

Colorado

In Colorado, “the practice of dentistry or dental hygiene in a corporate capacity is prohibited,” except for practice in professional corporations. COLO. REV. STAT. § 12-35-116(1). Nor may dentists practice “as a partner, agent, or employee of or in joint venture with any person who does not hold a license to practice dentistry... or... as an employee of or in joint venture with any partnership, association, or corporation.” *Id.* § 12-35-129(1)(h). Fee-sharing with non-dentists is also prohibited. *Id.* § 12-25-129(1)(v); *see also, e.g., Mason v. Orthodontic Ctrs. of Colorado, Inc.*, 516 F. Supp. 2d 1205, 1216-17 (D. Colo. 2007) (invalidating dentist’s contract with management company due to impermissible fee-sharing). Additionally, “[a] person shall be deemed to be practicing dentistry if such person... [i]s a proprietor of a place where dental operation, oral surgery, or dental diagnostic or therapeutic services are performed.” *Id.* § 12-35-113(1)(b). Because practice requires licensure – a credential unavailable to corporations – corporate ownership of a dental practice or lease of equipment to one constitutes unlicensed practice and is therefore criminal. *Id.* §§ 12-35-112, 12-35-117, 12-35-135(1); *see, e.g.,*

Mason, 516 F. Supp. 2d at 1217 (management company’s proprietorship of dental practice constitutes illegal unlicensed practice).

Courts have also noted the applicability of the corporate practice of medicine doctrine in Colorado. As the court observed in one recent decision: “The public policy considerations underlying the prohibition of the corporate practice of medicine are (1) lay control over professional judgment; (2) commercial exploitation of the medical practice; and (3) division of the physician's loyalty between patient and employer.” *Hall v. Frankel* 190 P.3d 852, 861 (Colo. App. 2008) (quotation omitted).

Connecticut

Connecticut law states: “No person, except a licensed and registered dentist, and no corporation, except a professional service corporation organized and existing under chapter 594a for the purpose of rendering professional dental services, and no institution shall own or operate a dental office, or an office, laboratory or operation or consultation room in which dental medicine, dental surgery or dental hygiene is carried on as a portion of its regular business.” CONN. GEN. STAT. § 20-122(a); *see also id* § 20-123(a). Only dentists can practice dentistry and advertise dental services. *Id.* § 20-123(b)(8). The bar on corporations practicing dentistry in Connecticut exists “to ensure that dentists retain ownership and control over the professional aspects of the practice in order to maintain a high standard of care.” *OCA v. Christie*, 415 F. Supp. 2d 115, 121 (D. Conn. 2006). As a spokesman for the state’s dental association explained:

If the current restrictions on ownership were removed, then non-dentists would be permitted to become owners of dental practices... They could, therefore, insist upon a voice in professional as well as managerial aspects of the practice. Since the non-dentist entrepreneur's prime concern would be the profit making interests of his shareholders, public assurances of a single standard of care could not be guaranteed. At times the interest of

non-dentist owners might conflict with professional standards of care.

Id. (quoting Conn. Joint Standing Comm. Hrgs., Gov't Admin. and Elections, Pt II, 1980 Sess., at 492).

Delaware

“A person shall be regarded as practicing dentistry who is a manager, proprietor, operator or conductor of a place for performing dental operations or who for a fee, salary or other reward paid, or to be paid either to himself or herself or to another person, performs or advertises to perform dental operations of any kind.” DEL. CODE. ANN. tit. 24, § 1101(11). Unable to attain licensure, *see id.* §§ 1122 – 1123 (qualifications for licensure and exam), corporations are therefore bared from owning or operating a dental operation. Unlicensed practice is a misdemeanor. *Id.* § 1134. Dentists are also prohibited from practicing in any entity “which actually limits or restricts the exercise and application of professional judgment... to the detriment of the dentist's or dental hygienist's patients.” *Id.* § 1128(2).

District of Columbia

“To be a manager, proprietor, operator, or conductor of a business or place where dental or dental-hygiene services are performed” is to practice dentistry in the District of Columbia. D.C. CODE § 3-1201.02(5)(J). Because a license is required to practice and corporations cannot obtain one, *id.* §§ 3-1205.01(a), 1205.03(a), they may not legally own, manage or operate a dental practice. Moreover, dentists can only practice under the legal name appearing on their licenses. *Id.* § 3-1205.13(a)(3).

Florida

Florida regulations governing dentists provide: “No corporation, lay body,

organization, or individual other than a licensed dentist or a professional corporation or limited liability company composed of dentists shall engage in the practice of dentistry through the means of engaging the services, upon a salary, commission, or other means of inducement, of any person licensed to practice dentistry in this state.” FLA. ADMIN.

CODE ANN. r. 64B5-17.013(1). The regulations also state:

No dentist shall enter into any agreement with a nondentist which directs, controls, or interferes with the dentist's clinical judgment, or which controls the use of any dental equipment or material while such is being used for the provision of dental services. Nor shall any dentist enter into an agreement which permits any entity which itself is not a licensed dentist to practice dentistry, or to offer dentistry services to the public through the licensed dentist. The clinical judgment of the licensed dentist must be exercised solely for the benefit of his/her patients, and shall be free from any compromising control, influences, obligations, or loyalties

Id., r. 64B5-17.013(2). Dentists may contract with non-dentists for “practice management services,” including assistance with staffing, administrative tasks, marketing, and “methods to increase productivity,” but these services cannot include the exercise of clinical judgment or other aspects of dental practice or amount to “*de facto* employment of a dentist by nondentist.” *Id.*, r. 64B5-17.013(4) – (6).

Florida’s statutes governing dental practice similarly proscribe the delegating of dental care to unauthorized persons or entities. FLA. STAT. §§ 466.001, 466.024. Nondentists may not “[d]irect, control, or interfere with a dentist's clinical judgment.” *Id.*, § 466.0285(1)(c) – (2); *see also, e.g., Rush v. City of St. Petersburg*, 205, So.2d 11, 14-15 (Fla. App. 1967) (upholding contract between city hospital and radiologist as compliant with ban on corporate practice of medicine because “[t]he record here contains no showing that either the hospital or the City directs Dr. Price as to methods used in diagnosing or treating patients”). Violation of this section is a felony, and contracts that

violate it are void. *Id.* §§ 466.0285(3) – (4).

Georgia

“Georgia has formally prohibited corporations from employing such licensed practitioners as orthodontists under a corporate practice of medicine, or dentistry, doctrine.” *Clower v. Orthalliance, Inc.*, 337 F. Supp.2d 1322, 1330 (N.D. Ga. 2004) (upholding management agreement because “the terms of the contract governing the relationship between the parties make it very clear that Defendant did not intend, and in fact did not, employ Plaintiffs to carry out its own corporate practice of orthodontics”); *see also In re OCA, Inc.*, 378 B.R. 493, 500-02 (Bankr. E.D. La. 2007) (finding no corporate practice because dentist maintained authority over treatment and control over business and funds). “[I]t is against the public policy for a business corporation to perform acts which constitute the practice of medicine.” *Sherrer v. Hale*, 285 S.E.2d 714, 717 (Ga. 1982); *accord Pearle Optical of Monroeville, Inc. v. Georgia State Bd. of Examiners*, 133 S.E.2d 374, 381 (Ga. 1963). It is a felony for a corporation to practice dentistry “under the protection of” the license of a dentist, and dentists can be disciplined for practicing as corporate employees. GA. CODE ANN. §§ 43-11-51, 43-11-47(a)(7)(a).

Hawaii

Hawaii has a sweeping rule barring dental practice by business corporations:

No corporation shall practice dentistry or engage therein, or hold itself out as being entitled to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentist or dental surgeon or equivalent title, or furnish dental advice for any compensation, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service, dentists, or dental surgeons, or solicit through itself, or its agents, officers, employees, directors, or trustees, dental patronage for any dentist or dental surgeon employed by any corporation.

HAW. REV. STAT. § 448.15. The bar does not apply to corporations “furnishing information or clerical services” to dentists who “assume[] full responsibility for the information and services.” *Id.* Corporations that violate the prohibition can be fined \$200-500 for each offense, with each day's violation considered a separate offense. *Id.* Moreover, dentists cannot “permit [an unlicensed] person or entity... to directly or indirectly own, direct, control, or interfere with the licensee's practice of dentistry.” *Id.* § 448.14.5(a). A non-dentist cannot interfere with a dentist’s clinical judgment; direct his practice; or select a course of treatment, the procedures or materials to be used, or the manner of treatment. *Id.* § 448-14.5(b). Violation of these provisions can result in criminal penalties and, for dentists, professional discipline. *Id.*, §§ 448-17, 448-21.

Idaho

Idaho dentists may not practice “in or under the name of, or as a member, representative, agent or employee of, or in connection with, any company, association, or corporation” other than a professional corporation. IDAHO CODE ANN. § 54-924(3). Violating this rule subjects dentists to penalties up to \$10,000 per violation and other sanctions, *id.*, and any “resident citizen” can seek to permanently enjoin violations. *Id.* § 54-933. Courts may void contracts transgressing these disciplinary rules. *See, e.g., Miller v. Haller*, 924 P.2d 607, 613-14 (Idaho 1996) (examining doctors’ referral arrangement for voidness, though finding contract legal).

Illinois

Illinois seeks “to ensure that each dentist... meets minimum requirements for safe practice without clinical interference by persons not licensed under this Act. It is the legislative intent that dental services be provided only in accordance with the provisions

of this Act and not be delegated to unlicensed persons.” 25 ILL. COMP. STAT. § 38.1. Dentists therefore may not be employed by non-dentists or permit “any person other than another dentist to direct, control, or interfere with [their] clinical judgment.” *Id.*; *see also id.* § 37. Illinois law also specifically proscribes the corporate practice of dentistry outside the setting of professional corporations:

No corporation shall practice dentistry or engage therein, or hold itself out as being entitled to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentist or dental surgeon or equivalent title, or furnish dental advice for any compensation, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service or dentists, or solicit through itself, or its agents, officers, employees, directors or trustees, dental patronage for any dentist employed by any corporation.

Id. § 44. Corporations may furnish “information or clerical services” and “non-clinical business services” to dentists. *Id.* Corporate employment of or interference with dentists is considered unlicensed practice and may be enjoined by any person who brings an action. *Id.* § 37. Violation of these provisions can result in fines and disciplinary proceedings. *Id.* § 23.

The state’s bar on the corporate practice of medicine, “firmly grounded in the public interest, has been upheld repeatedly by Illinois courts.” *Orthodontic Centers of Illinois, Inc. v. Michaels*, 403 F. Supp. 2d 690, 695 (N.D. Ill. 2005). In *Michaels*, the court voided an agreement between a corporation and orthodontists because the company shared the orthodontists’ revenue in exchange for management and other services and called itself “a partner in nationwide orthodontic practices and considered [its] revenues to be derived from direct service to patients.” *Id.* at 696-700.

Indiana

Indiana law “seeks to insulate dental practitioners from obtrusive influences so as

to preserve the traditional ethical precepts of the profession.” *Orthodontic Affiliates, P.C. v. OrthAlliance, Inc.*, 210 F. Supp. 2d 1054, 1059 (N.D. Ind. 2002). A person or entity commits the prohibited, unlicensed practice of dentistry in Indiana if he or it:

- (2) Directs and controls the treatment of patients within a place where dental services are performed...
- (10) Is the employer of a dentist who is hired to provide dental services.
- (11) Directs or controls the use of dental equipment or dental material while the equipment or material is being used to provide dental services...
- (12) Directs, controls, or interferes with a dentist's clinical judgment.
- (13) Exercises direction or control over a dentist through a written contract concerning the following areas of dental practice:
 - (A) The selection of a patient's course of treatment.
 - (B) Referrals of patients, except for requiring referrals to be within a specified provider network, subject to the exceptions under IC 27-13-36-5...
 - (E) The clinical content of advertising.
 - (F) Final decisions relating to the employment of dental office personnel.

IND. CODE § 25-14-1-23; *see also id.* § 25-14-1-1 (licensing requirement); *State ex rel. Indiana State Bd. of Dental Exam'rs v. Boston Sys. Dentists*, 19 N.E.2d 949, 950 (Ind. 1939) (company's employment of dentists, ownership of equipment and payment of operating expenses constituted illegal corporate practice of dentistry); 828 IND. ADMIN. CODE 1-1-15(8) – (9) (defining “dental incompetence or improper conduct of a dentist” to include “practicing or offering to practice beyond the scope permitted by law” and “permitting or delegating the performance of a procedure to one not qualified by education, training, or licensure to undertake [it]”). Anyone can sue to enjoin the

unlicensed practice of dentistry, which is a felony. IND. CODE §§ 25-14-1-14, 25-14-1-25(a)(1), 25-14-1-30. But providing business and management services and personnel to dentists is not unlicensed practice. See *Orthodontic Affiliates*, 210 F. Supp. 2d at 1059-60.

Iowa

Corporations may not practice dentistry in Iowa. See *State v. Bailey Dental Co.*, 234 N.W. 260, 262 (Iowa 1931) (corporation's employment of dentists, ownership of equipment and overall control constituted unlicensed practice; "Its unlicensed officials necessarily determine all its policies whether they be deemed professional or commercial"); accord *State v. Plymouth Optical Co.*, 211 N.W.2d 278, 282 (Iowa 1973). As an Iowa Attorney General's opinion summarized, "the common thread underlying the corporate practice prohibition is the vesting of improper dominion and control over the practice of a profession in a corporate entity. Where the corporation exerts undue dominion and control over the licensed professional, the corporation in essence becomes the 'practitioner,' which is not permitted under statute." 91-7-1 Op. Iowa Atty. Gen. 5 (July 12, 1991), available at <http://government.westlaw.com/iaag/>. Dentists in Iowa can be fined and disciplined for "[k]nowingly aiding, assisting, procuring, or advising a person to unlawfully practice dentistry." IOWA CODE § 153.34(12); see also *id.* §§ 153.17 (only licensed dentists may practice).

However, there is some Iowa authority for the proposition that a corporation may employ dentists as long as it refrains from dictating how they practice. See, e.g., *State v. Winnesheik Co-op Burial Ass'n*, 22 N.W.2d 800, 802 (Iowa 1946) ("There is no general rule that a corporation cannot own a business, the conduct of which requires licensed

operators. The rule is that a corporation cannot in general practice one of the learned professions”). “[T]he mere denomination as an ‘employee’ would be only [an] element[] of the entire picture which would be examined” to determine if a corporation broke the rule against professional practice by dictating dental care. 1992 Op. Iowa Atty. Gen. at 28.

Kansas

Kansas law declares that “no corporation shall practice, offer, or undertake to practice or hold itself out as practicing dentistry.” KAN. STAT. ANN. § 65-1425. A dentist may be sanctioned for “complicity in association with or allow[ing] the use of [his] name in conjunction with any person who is engaged in the illegal practice of dentistry.” *Id.* § 65-1436(a)(8).

Kansas’ common law acknowledges the prohibition of corporate medical practice. *See, e.g., Early Detection Ctr., Inc. v. Wilson*, 811 P.2d 860, 868 (Kan. 1991) (refusing to enforce contract providing for corporate practice: “Here, EDC, a general corporation, agreed to provide medical services to third parties by hiring licensed medical practitioners. A general corporation is prohibited from providing medical services or acting through licensed practitioners; therefore, there could be no contract between the general corporation and the third parties to perform the services”); *Braun v. Promise Regional Med. Ctr.-Hutchinson, Inc.*, 2011 WL 6304119 (D. Kan. 2011) (“Under Kansas law, professional corporations can provide medical services, general corporations cannot”).

Kentucky

Kentucky’s statute governing dental practice would seem to allow non-dentists to

employ dentists. KY. REV. STAT. ANN. § 313.080(1)(b) (“No person shall... [o]perate, offer to operate, or represent or advertise the operation of a dental practice of any type unless licensed by *or employing individuals licensed by* the board” (emphasis added)). At the same time, well-established Kentucky case law disallows the corporate practice of professions. *See Am. Ins. Ass’n v. Ky. Bar Ass’n*, 917 S.W.2d 568, 570 (Ky. 1996) (referring to “long-standing Kentucky case law which proscribes a corporation from being licensed to practice a learned profession”). As an early Kentucky decision explained:

Thus, there is scarcely any judicial dissent from the proposition that a corporation cannot lawfully engage in the practice of law or of medicine. And the great weight of authority is that neither a corporation nor any other unlicensed person or entity may engage, through licensed employees, in the practice of medicine or surgery, dentistry, or any of the limited healing arts... Dentists are deemed to be within the terms of a statute authorizing suspension or revocation of their licenses for unprofessional conduct by accepting employment and practicing under the direction of corporations.

Kendall v. Beiling, 175 S.W.2d 489, 493, 495 (Ky. App. 1943) (quotations and citations omitted) (upholding suspension of optometrist for abetting corporate practice).

It is therefore difficult to discern the limits on corporate dental practice in Kentucky. At a minimum, corporations are likely prohibited from attempting to dictate or influence dentists’ clinical practice. KY. REV. STAT. ANN. § 313.010(11) (defining “dentistry”). Unlicensed practice is a misdemeanor. *Id.* § 313.070(1) – (2).

Louisiana

Louisiana has several provisions effectively precluding the corporate practice of dentistry. Dentists are barred from “procuring, inducing, aiding, or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry or to possess an

ownership interest of any kind in a dental practice,” though they may contract with companies to manage their practices. LA. REV. STAT. ANN. § 37:776(10). A dentist may not form “[p]rofessional connection or association with, or lend[] his name to, another for the illegal practice of dentistry by another.” *Id.*, § 37:776(13); *c.f. Prater v. Porter*, 737 So.2d 102, 105-06 (La. App. 1999) (company did not employ doctors in malpractice case where it lacked control “over how the physicians performed their professional medical services”). Louisiana law also prohibits “[d]ivision of fees or other remuneration or consideration with any person not licensed to practice dentistry in Louisiana.” *Id.* § 37:776(9)(a); *see also In re Shiplov*, 945 So.2d 52, 58-60 (La. App. 2006) (upholding discipline of dentist for sharing fees with non-licensee who, in exchange for fees, granted use of facility and equipment and covered expenses).

Louisiana case law endorses the principle that corporations cannot practice licensed professions. *See, e.g., W. Baton Rouge Parish School Bd., Inc. v. T.R. Ray, Inc.*, 367 S.W.2d 332, 334 (La. 1979) (“it was legally impossible for [architecture company to have become licensed] because a licensee must pass an examination and possess certain moral, legal and educational qualifications. Consequently, the agreement between the corporation and the board was a contract to perform architectural services unlawfully without a certificate of registration and license”).

Maine

“A corporation may not practice, offer or undertake to practice or hold itself out as practicing dentistry” in Maine. ME REV. STAT. ANN. tit. 32, § 1081(4). Because the statute expressly permits dentists to work as employees of other dentists and governmental and nonprofit entities, employment by business corporations is presumably

excluded as unlawful corporate practice. *Id.* Maine also prohibits “[p]ractic[ing] dentistry under the name of a corporation, company, association, parlor or trade name,” *id.* § 1092(1)(D), and precludes dentists from “enter[ing] into arrangements with a person who is not licensed to practice dentistry” regarding “dental equipment or material or a dental office.” *Id.* § 1081(3)(c). The unlicensed practice of dentistry is a crime in Maine, and only individuals may become licensed. *Id.* §§ 1062-A, 1082, 1092(1)(A); *see also, e.g., In re Longworth*, 222 A.2d 561, 563 (Me. 1966) (referring to “the improper practice of the profession of law by a corporation”). Likewise, Maine dental regulations proscribe the delegation of dental practice to others. 02-313 ME. CODE R. § 9II(N).

Maryland

Maryland squarely prohibits the corporate practice of dentistry: “Except as otherwise provided by [Maryland] law, a licensed dentist may not practice dentistry: (1) Under a name other than the name of the licensee; (2) As a business entity; or (3) Under the name of a business entity.” MD. CODE ANN., HEALTH OCCUPATIONS § 4-603(a); *see also Backus v. Cty. Bd. of Appeals for Montgomery Cty.*, 166 A.2d 241, 242-43 (Md. 1960) (Maryland statute prohibits dentists from practicing as entity; “state laws generally forbid the practice of medicine or dentistry by a corporation or other entity through licensed employees”).

Massachusetts

Massachusetts expressly prohibits business corporations from operating dental practices:

No corporation hereinafter formed or organized shall conduct a dental office and no person shall conduct a dental office under any name other than that of the dentist actually owning the practice. The provisions of statute shall not apply to a professional corporation organized to practice

dentistry under chapter one hundred and fifty-six A.

MASS. GEN LAWS Ch. 112, § 49; *see also* *McMurdo v. Getter*, 10 N.E.2d 139, 368 (Mass. 1937) (upholding prohibition on corporate practice of optometry). Violation of this provision is a misdemeanor. *Id.* § 52.

Michigan

Michigan has no provision expressly prohibiting the corporate practice of dentistry, though a previous law barring dentists from sharing fees with non-dentists was construed to effect the prohibition. *See Toole v. Michigan State Bd. of Dentistry*, 11 N.W.2d 229, 231 (Mich. 1943). Michigan does preclude a dentist from negligently delegating and permitting a license to be used by any unauthorized person. MICH. COMP. LAWS § 333.16221(a), (c)(ii). Unlicensed practice is a felony in Michigan. *Id.* § 333.16294. Case law has suggested a corporation is legally unable to practice medicine. *See Craig ex rel. Craig v. Oakwood Hosp.*, 684 N.W.2d 296, 313-20 (Mich. 2004) (business corporation precluded from buying into medical practice because shareholders of business corporation were not physicians); *Blue Cross and Blue Shield of Mich. v. Demlow*, 270 N.W.2d 845, 867 (Mich. 1978) (noting laws enabling managed health care plans “were intended to resolve legal challenges that prepaid health care corporations engage in the illegal practice of medicine”).

Minnesota

“[W]ith limited exceptions, the corporate practice of medicine doctrine exists in Minnesota.” *Isles Wellness Inc. v. Progressive Northern Ins. Co.*, 703 N.W.2d 513, 524 (Minn. 2005). The state has outlawed the corporate practice of dentistry by statute:

It is unlawful for any person to: enable an unlicensed person to practice dentistry; to practice or attempt to practice dentistry without a license; [or]

to practice dentistry under the name of a corporation or company... No corporation shall practice dentistry or engage in it, or hold itself out as being entitled to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentists or dental surgeons or equivalent title. No corporation shall furnish dental advice, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service, dentists, or dental surgeons, or solicit, through itself, or its agents, officers, employees, directors or trustees, dental patronage for any dentist or dental surgeon.

MINN. STAT. § 150A.11(1). Violation of this provision is a misdemeanor. *Id.* § 150A.12.

Furthermore, “[n]o decision entailing the exercise of professional judgment may be delegated or assigned to anyone who is not a professional licensed to practice the professional services involved in the decision.” *Id.*, § 319B.09(2)(c).

Mississippi

Mississippi conditionally permits dentists to practice in or as employees of business corporations:

After due consideration, it is the policy of [the Mississippi State Board of Dental Examiners] not to concern itself with the form or type of business arrangements entered into by a licensee, provided certain prerequisites are met, to-wit...

2. The method and manner of patient treatment and the means by which patients are treated are left to the sole and absolute discretion of the licensed dentist. The provision of dental services and the exercise of sound dental judgment at all times shall be exercised solely at the discretion of the licensed dentist, and he/she shall not be subject to any influence, direct or indirect, to the contrary.
3. The manner of billing and the amount of fees and expenses charged a patient for dental services rendered shall be left solely to the discretion of the licensed dentist.

Miss. State Bd. of Dental Exam’rs R. No. 55 (March 8, 1996), *available at* www.dentalboard.ms.gov/msbde.nsf/webpages/laws_regsadopted.

The Mississippi Dental Practice Act also makes it unlawful to “practice dentistry

under, or use the name of any company, association or corporation or business name or any name except [the licensee's] own in a manner which is in violation of section 73-9-61, or to operate, manage or be employed in any room, rooms or office where dental work is done or contracted for, and that is operated under the name of any company, association, trade name or corporation in a manner which is in violation of section 73-9-61.” MISS. CODE ANN. § 73-9-39. Section 73-9-61, in turn, prohibits “[d]elegating professional responsibilities to a person who is not qualified by training, experience or licensure to perform them,” as well as “[p]racticing deceit or other fraud upon the public,” “[p]racticing dentistry or dental hygiene under a false or assumed name,” and deceptive advertising. *Id.* § 73-9-61(1)(i), (l). These provisions therefore bar corporate employment of dentists if it is deceptively concealed and if dentists do not exercise independent professional judgment but instead delegate it to, *e.g.*, unlicensed corporate management. The illegal practice of dentistry is a misdemeanor. *Id.*, § 73-9-57.

Missouri

Missouri’s code specifically outlaws the practice of dentistry by business corporations. MO. REV. STAT. § 332.081(2); *see also* 79-79 Op. Mo. Atty. Gen. (July 31, 1979), *available at* <http://ago.mo.gov/opinions/1979/79-79.htm> (non-licensee cannot own interest in corporation organized to engage in dental practice and business corporation cannot lawfully be established to practice dentistry). In addition, the law states: “A dentist shall not enter into a contract that allows a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment.” *Id.* § 332.081(4).

Montana

A person practices dentistry in Montana if she “is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed.” MONT. CODE ANN. § 37-4-101(2)(b). Thus, since licenses may not be obtained by corporations, *id.* § 37-4-301 (license qualifications), it is unlicensed dental practice for a corporation to own, manage or operate a dental clinic. Practicing dentistry without a license is a misdemeanor. *Id.* § 37-4-327(1).

Nebraska

Nebraska statutes do not address the corporate practice of dentistry but do provide that “[n]o person shall coerce or attempt to coerce a licensed dentist to practice dentistry in any manner contrary to the standards of acceptable and prevailing practice of the dental profession.” NEB. REV. STAT. § 38-1128(2). Dentists must practice and advertise under their own names. *Id.* § 38-1129. “Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so” is unlawful. *Id.* § 38-178(10). An early decision predating some aspects of the current licensing regime suggests that corporations may employ licensed professionals. *See Tarry v. Johnston*, 208 N.W. 615, 618 (Neb. 1926) (“The owners of hospitals and sanitariums may legally employ physicians and surgeons to perform professional services therein”).

Nevada

Business corporations cannot own or operate dental practices in Nevada; only certain nonprofit or federally affiliated entities can. NEV. REV. STAT. §§ 631.215(f), 631.3454(1). A licensed dentist must remain responsible for treatment even when these

nonprofits provide care. *Id.*, § 631.3452. An unlicensed person “is guilty of the illegal practice of dentistry” and commits a crime if he or she “owns or controls a dental practice, shares in the fees received by a dentist or controls or attempts to control the services offered by a dentist.” *Id.* §§ 631.395(10), 631.400(1) – (2). Furthermore, the following constitutes “unprofessional conduct” for a dentist in Nevada:

2. Associating with or lending his or her name to any person engaged in the illegal practice of dentistry or associating with any person, firm or corporation holding himself, herself or itself out in any manner contrary to the provisions of this chapter.
3. Associating with or being employed by a person not licensed pursuant to this chapter if that person exercises control over the services offered by the dentist, owns all or part of the dentist's practice or receives or shares the fees received by the dentist [except in case of family ownership after a dentist's death].

Id., § 631.3465. Violation of these provisions is a misdemeanor or, if repeated, a felony.

Id. § 631.400(3).

New Hampshire

New Hampshire law defines owning, maintaining, operating or managing a “dental business” as the practice of dentistry. N.H. REV. STAT. ANN. §§ 317-A:20(I)(b). In New Hampshire, as everywhere, practicing dentistry requires a license. *Id.* § 317-A:7. Dental practice by unlicensed “person[s],” apparently including corporations as persons other than “natural persons,” constitutes a felony. *Id.* § 317-A:33 (“Except as otherwise provided, any person who shall practice or attempt to practice dentistry or dental hygiene in this state without a license... shall be guilty of a misdemeanor if a natural person *or guilty of a felony if any other person*” (emphasis added)). Hence, corporate ownership or operation of a dental business is criminal in New Hampshire. *See also, e.g., In re New Hampshire Disabilities Rights Ctr., Inc.*, 541 A.2d 208, 212 (N.H. 1988) (“when a

corporation's employees, acting within the scope of their authority, provide legal services to the corporation's clients or customers, the corporation practices law. This is a crime unless the corporation is a professional legal corporation conforming both to RSA chapter 294-A and to the rules of this court, *see* RSA 294-A:20, or unless it is a non-profit corporation conforming to RSA 292:1-a”).

New Jersey

New Jersey law directly prohibits the corporate practice of dentistry:

No corporation shall practice or continue to practice, offer or undertake to practice, or hold itself out as practicing dentistry. No person shall practice or continue to practice dentistry as an officer, agent or employee of any corporation, or under the name of any corporation... Every person or corporation, violating any of the foregoing provisions of this section shall be subject to a penalty of three hundred dollars for the first offense and six hundred dollars for the second and each subsequent offense.

N.J. STAT. ANN. § 45:6-12. New Jersey does permit “industrial or corporate” dental clinics, but New Jersey Board of Dentistry rules limit these to nonprofit entities administered by corporations and unions for the benefit of their employees and members and their families. *Id.*, §§ 45:6-15.1 – 15.12; N.J. ADMIN. CODE § 13:30-4.1. As the New Jersey Supreme Court observed: “N.J.S.A. 45:6-12 prohibits the corporate practice of dentistry. Presumably, the Professional Service Corporation Act, when read in conjunction with N.J.S.A. 45:6-12, which was passed prior to the Professional Service Corporation Act, means that only professional corporations, not regular business corporations, can perform professional dental services.” *Limongelli v. N.J. State Bd. of Dentistry*, 645 A.2d 677, 684 (N.J. 1993). However dentists configure their practices, “they retain responsibility for the quality of care and the appropriateness of their professional judgments.” N.J. ADMIN. CODE § 13:30-8.13(b).

New Mexico

New Mexico permits non-dentist individuals and corporations to employ dentists and provide dental services if they “apply to the [New Mexico Board of Dental Health Care] for the proper license and [] adhere to the requirements, re-licensure criteria and fees as established by the rules of the board.” N.M. STAT. ANN. § 61-5A-5.1. Corporations lacking this licensure cannot employ dentists. *Id.* § 61-5A-5(G). Moreover, the Board’s rules setting forth “responsibilit[ies] of non-dentist owner[s]” provide: “no person other than a New Mexico licensed dentist shall have direct control or interfere with the dentist’s or dental hygienist’s clinical judgment.” N.M. CODE R. § N 16.5.9.8(L). The rules also limit non-dentist owners who applied for licenses after March 6, 2005 to the ownership or operation of two facilities. *Id.* § 16.5.9.8(H).

New York

The unauthorized practice of dentistry is a felony in New York, NY EDUC. LAW §§ 6512(1), 6602, and state courts have held that business corporations commit unlicensed practice by employing dentists or doctors or sharing their fees. *See Empire Magnetic Imaging, Inc. v. Comprehensive Care of N.Y., P.C.*, 705 N.Y.S.2d 652, 655-56 (N.Y. App. Div. 2000) (Krausman, J., concurring and dissenting) (fee-sharing prohibited); *Accident Claims Determination Corp. v. Durst*, 638 N.Y.S.2d 69 (N.Y. App. Div. 1996) (plaintiff corporation and principals “engaged in the illegal practice of medicine, in contravention of Education Law § 6512(1), by brokering medical services, in that they selected and hired doctors to conduct medical examinations without obtaining the appropriate agency licenses, and then split the fees with those physicians. Plaintiffs’ performance of the medical examinations was therefore illegal, and their claims arising

from those actions are not enforceable”); *United Calendar Mfg. Corp. v. Huang*, 463 N.Y.S.2d 497, 499-500 (2 Dept. 1983) (corporation acted illegally by employing dentists and doctors and providing medical services). One federal court noted last year: “Indeed, New York’s licensing requirements were enacted to prohibit the ‘corporate practice of medicine’ that could result in the conduct alleged here, *i.e.*, fraudulent practices such as billing for treatments that were not provided or were medically unnecessary.” *Allstate Ins. Co. v. Rozenberg*, 771 F. Supp. 2d 254, 264 (E.D.N.Y. 2011) (quotation omitted).

North Carolina

In North Carolina, a person or entity that “[o]wns, manages, supervises, controls or conducts, either himself or by and through another person or other persons, any enterprise wherein” dental procedures are performed is practicing dentistry, which requires licensure. N.C. GEN. STAT. § 90-29(a), (b)(11). Because only statutorily qualified “person[s]” may become licensed, *id.*, this provision effectively precludes the corporate practice of dentistry. *See* Op. N.C. Atty. Gen. (September 3, 1999), *available at* [www.ncdoj.gov/about-DOJ/legal-services/legal-opinions/opinions/dental-care-and-business-services-\(1\).aspx](http://www.ncdoj.gov/about-DOJ/legal-services/legal-opinions/opinions/dental-care-and-business-services-(1).aspx) (“It is unlawful for a non-dentist to own, manage, supervise, control or conduct an enterprise which is engaged in the practice of dentistry. N.C. Gen. Stat. 90-29(b)(11)”). Fee-sharing is also prohibited. *See id.* (“when the business entity shares in the dentist’s profits... [it] becomes a participant in the practice rather than a provider of services to the practice and runs afoul of the prohibition against non-dentists engaging in the practice of dentistry”). “[C]ontrol over or input into the clinical practice of the dental practice or its dentists” and hiring or firing personnel evince impermissible corporate practice; “[a]ny clauses which... affect the professional decision-making of a

dental practice are problematic.” *Id.* Unlicensed practice is a misdemeanor and may be enjoined on any citizen’s complaint. N.C. GEN. STAT. § 90-40, 90-40.1(a). One North Carolina court recently upheld rules precluding corporate dental practice. *See Affordable Care Inc. v. N.C. St. Bd. of Dental Exam’rs*, 571 S.E.2d 52, 537-38 (N.C. App. 2002).

North Dakota

Non-dentists in North Dakota may own up to 49% of a dental practice. N.D. CENT. CODE § 43-28-25(3). While § 43-28-25(3) provides that “any person” without a dental license may acquire such ownership, the allowance presumably also extends to corporations. “Board-approved medical clinics,” along with hospitals and public health facilities, may own more than 49% of a dental practice, but neither the statute nor dental board regulations defines the term “Board-approved medical clinics” or “medical clinics.” Nonetheless, the “practice of dentistry” requires licensure, *id.* § 43-28-01, 43-28-10, and since only licensed individuals may provide patient care, non-dentist interference with or control over clinical decision-making would constitute unlicensed practice. *See, e.g., Hsu v. Marian Manor Apartments, Inc.*, 2006 WL 6240108 (N.D. Dist. Ct. 2006) (employment of doctors by unlicensed person constitutes unlicensed medical practice); *aff’d*, 743 N.W.2d 672 (N.D. 2007); *State Bd. of Architecture v. Kirkham, Michael & Assoc., Inc.*, 179 N.W.2d 409, 412 (N.D. 1970) (corporation lacked statutory qualifications and qualities necessary for architecture license and so could not practice).

Ohio

Ohio permits dentists and other professionals to practice through and be employed by business corporations. OHIO REV. CODE ANN. § 1701.03(B); *see also id.* § 4715.18

(dentists may practice under name of corporation for profit that includes his name). While corporations may employ dentists, the entities cannot themselves practice dentistry. *See Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth*, 913 N.E.2d 939, 943 (Ohio 2009). Rather, as in all states, eligibility for dental licensure requires personal characteristics not possessed by corporations. OHIO REV. CODE ANN. § 4715.10.

Oklahoma

Oklahoma's State Dental Act considers "[o]wning, maintaining, or operating an office or offices by holding a financial interest in same for the practice of dentistry" to be the practice of dentistry itself. OKLA. STAT. tit. 59, § 328.19(A)(18). Unable to achieve licensure, *see id.* §§ 328.21 (license requirements), corporations therefore may not practice dentistry by owning, maintaining or operating a for-profit dental clinic. Unlicensed practice is a crime. *Id.* § 328.49(B)(1)(a). Moreover, "[a]llowing any corporation, organization, group, person, or other legal entity, except another dentist or a professional entity... to direct, control, or interfere with the dentist's clinical judgment" can be the basis for professional discipline. *Id.* § 328.32(34).

Oregon

"Only a person licensed as a dentist by the Oregon Board of Dentistry may own, operate, conduct or maintain a dental practice, office or clinic in this state." OR. REV. STAT. § 679.020(2). There are exceptions for nonprofit, educational and other entities, but not business corporations. *Id.* § 679.020(3). The prohibition does not cover ownership of assets such as "real property, furnishings, equipment and inventory;" "[e]mploying or contracting for the services of personnel other than licensed dentists;" or [m]anagement of the business aspects of a dental office or clinic that do not include the

clinical practice of dentistry.” *Id.* § 679.020(6). Violation of § 679.020 is a felony. *Id.*, § 679.991(1). Thus, “a dentist cannot be an employee of a lay person, including a lay corporation.” 2001-1 Op. Or. Atty. Gen. 2 (September 21, 2001), *available at* <http://www.doj.state.or.us/agoffice/agopinions/op2001-1.pdf>. “Only a natural person licensed by the board may engage in the clinical practice of dentistry.” *Id.* at 5. As the Oregon Supreme Court held decades ago:

Where the right to practice a profession is conditioned upon pursuit of a course of specialized training, the acquiring of a diploma, the passing of an examination, and the furnishing of a certificate of good moral character, it is obvious that a corporation cannot comply with such requirements...

The prohibition of the practice of optometry by unlicensed persons would be rendered ineffective if corporations were permitted to furnish optometrical services through salaried employees who are licensed optometrists.

State ex rel Sisemore v. Standard Optical Co. of Ore. 188 P.2d 309, 310-11 (Or. 1947).

While the court has loosened the rule discussed in *Sisemore* as to some professions, it remains with regard to dentistry. *See* 2001-1 Op. Or. Atty. Gen. at 9-10; *see also* OR. REV. STAT. § 58.375(1) (permitting non-licensee minority ownership of medical corporation). Atypically, Oregon has no provision expressly requiring shareholders of professional corporations (other than medical corporations) to be licensees, *see id.*, Ch. 58 *et seq.*, a specific provision dictates that the dentistry licensing laws supersede professional corporation laws. *Id.* § 58.369.

Pennsylvania

“Pennsylvania common law generally prohibits the corporate practice of medical professions.” *OCA, Inc. v. Hodges*, 615 F. Supp. 2d 477, 481 (E.D. La. 2009) (citing *Neill v. Gimbel Bros.*, 199 A. 178 (Pa.1938)); *see also* *Schoffstall v. Nationwide Mut. Ins.*

Co., 2002 WL 31951309 at * 33 (Pa. Comm. Pleas 2002) (“Thus, it is clear that the [Pennsylvania] Supreme Court believed that when a corporation employed a professional, the professional's allegiance would always favor their employer's interests to the detriment of the interests of the client of the professional;” but distinguishing lawyer employees of insurance company), *aff'd*, 844 A.2d 1297 (Pa. Super. 2003, app. denied). Non-dentists therefore may not own interests in professional corporations or partnerships composed of dentists. *See Hodges*, 615 F. Supp. 2d at 482-87; *see also Apollon v. OCA, Inc.*, 592 F. Supp. 2d 906, 911-14 (E.D. La. 2008); *Healthguard of Lancaster, Inc. v. Gartenberg*, 2002 WL 32107627 at * 2 n. 1 (E.D. Pa. 2002) (“Under Pennsylvania law, only a person licensed to practice medicine can own a corporation which practices medicine”). Unlicensed practice and aiding and abetting it are more generally prohibited and in some cases criminal. 63 PA. CONS. STAT. §§ 123.1(a)(7), 129; *see also State Dental Council and Examining Bd. v. Pollock*, 318 A.2d 910, 916 and n. 6 (Pa. 1974). “[A]ll procedures involving professional judgment and skill... are nondelegable” to non-dentists. *Pollock*, 318 A.2d. at 917.

Rhode Island

“Any person is practicing dentistry” in Rhode Island if she “[o]wns, leases, maintains, operates a dental business in any office or other room or rooms where dental operations are performed, or directly or indirectly is manager, proprietor or conductor of this business.” R.I. GEN LAWS § 5-31.1-1(16)(i)(A)(II). Because only requisitely qualified individuals are eligible for licensure, *id.*, § 5-31.1-6, corporations may not own or operate for-profit dental businesses. *See, e.g., In re Rhode Island Bar Ass'n*, 263 A.2d 692, 694-95 (R.I. 1970) (“Absent express statutory authority, the so-called ‘learned

professions' have not been permitted to practice in the corporate form. Prior to the enactment of the professional service corporation law, the practice of law by a corporation was expressly prohibited in Rhode Island"). Rhode Island punishes unlicensed practice as a felony. R.I. GEN LAWS § 5-31.1-35. It also prohibits non-dentists in "management service organization[s] [from] to interfer[ing] with the professional judgment of the dentist in the practice." *Id.* § 5-31.1-10(29).

South Carolina

"South Carolina has a common law prohibition against the corporate practice of medicine." *Baird v. Charleston Cty.*, 511 S.E.2d 69, 78 (S.C. 1999); *see also Brown v. OCA, Inc.*, 2008 WL 4758622 at * 3 (E.D. La. 2008). In an early decision on the subject, the South Carolina Supreme Court explained:

If such a course were sanctioned the logical result would be that corporations and business partnerships might practice law, medicine, dentistry or any other profession by the simple expedient of employing licensed agents. And if this were permitted professional standards would be practically destroyed, and professions requiring special training would be commercialized, to the public detriment.

Ezell v. Ritholz, 198 S.E. 419, 424 (S.C. 1938). The prohibition has been held to apply to dentistry and to preclude corporate practice. *See OrthAlliance, Inc. v. McConnell*, 2010 WL 1344988 at ** 3-4 (D.S.C. 2010) (rejecting arguments that dentistry exempt from prohibition); *Brown*, 2008 WL 4758622 at * 3. "If the corporation and professional have an employer/employee relationship, the corporation is unlawfully engaged in the practice of that profession." *Brown*, 2008 WL 4758622 at * 3 (citing South Carolina Attorney General's Opinion). Other factors include fee-sharing and whether the corporation determines the practice's policies. *Id.* South Carolina regulations disallow splitting fees with non-dentists. *See McConnell*, 2010 WL 1344988 at * 4. Statutory law also dictates

that only dentists “may exercise control over: (1) the selection of a course of treatment of a patient, the procedures or materials to be used as part of the course of treatment, or the manner in which the course of treatment is carried out by the licensee.” S.C. CODE ANN. § 40-15-135(B).

South Dakota

A “manager, proprietor, operator, or conductor of a place where dental operations are performed” is deemed to be practicing dentistry in South Dakota. S.D. CODIFIED LAWS § 36-6A-32(A)(2). Unlicensed practice is a misdemeanor. *Id.*, § 36-6A-28. As a result, corporations that wish to own or operate dental practices require licensure – credentialing off limits to entities. *Id.*, 36-6A-48; *see also Kelley v. Duling Enter., Inc.*, 172 N.W.2d 727, 737 (S.D. 1969) (“A corporation cannot engage in the practice of a learned profession in South Dakota”). In addition:

Only a dentist licensed or otherwise permitted to practice under this chapter may carry on the profession of dentistry in [South Dakota].
Dentists have the exclusive responsibility for:

- (1) The diagnosis of conditions within the human oral cavity and its adjacent tissues and structures;
- (2) The treatment plan of a dental patient;
- (3) The prescribing of drugs which are administered to patients in the practice of dentistry; [and]
- (4) The overall quality of patient care which is rendered or performed in the practice of dentistry, regardless of whether the care is rendered personally by a dentist or dental auxiliary;

S.D. CODIFIED LAWS § 36-6A-31.

Tennessee

Tennessee’s statute governing the practice of dentistry provides:

- (a) Except where dental services are regularly made available to employees by their employer or where dental services are being provided by an official agency of the state government or any subdivision, any nonprofit organization or hospital, it is unlawful:
 - (1) For any licensed dentist to practice dentistry as an employee of any person or other entity not engaged primarily in the practice of dentistry; or
 - (2) For an owner of an active dental practice to be other than a dentist duly licensed to practice in this state.

TENN. CODE ANN. § 63-5-121; *see also LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 776-77 (Tenn. 2000) (corporate practice of medicine doctrine applies in Tennessee); 94-009 Op. Tenn. Atty. Gen. 4 (Jan. 28, 1994) (business corporations may not employ physicians). Further, operating “a place where dental operations or dental services are performed” is defined as the practice of dentistry, which requires licensure. *Id.* §§ 63-5-107(a), 63-5-108(b)(15). Unlicensed practice is a misdemeanor, *id.*, § 63-5-128(a), while violating § 63-5-121 can result in civil penalties. *Id.*, § 63-5-124(a)(2).

Texas

A person practices dentistry under the Texas Dental Practices Act if he “owns, maintains, or operates an office or place of business in which the person employs or engages under any type of contract another person to practice dentistry,” or “controls, influences, attempts to control or influence, or otherwise interferes” with a dentist’s independent professional judgment. TEX. OCC. CODE ANN. § 251.003(a)(4), (9); *see also id.* § 258.001 (dentists may not delegate dental care to unlicensed persons). Because licensure may only be secured by qualified individuals and is required for practice, *see id.* §§ 256.001 – 256.002, corporate ownership or operation of, or control over or interference with, a dental practice is prohibited. Unlicensed practice is a felony, *id.* §

264.151(a), and a dentist must not permit himself or his practice “to be used or made use of, directly or indirectly, or in any manner whatsoever, so as to create or tend to create the opportunity for the unauthorized or unlawful practice of dentistry by any person, firm, or corporation.” 22 TEX. ADMIN. CODE § 108.1(4).

Improper control or influence over or interference with a dentist’s practice includes placing time or other limits on procedures or treatment, prescribing supplies or equipment, interfering with diagnosis, encouraging improper overtreatment or undertreatment, and other steps. *Id.* § 108.70(b). Agreements covering non-clinical matters such as leases of space or equipment, the provision of advertising, collection services, and others are permitted. *Id.* § 108.70(c). “Employment agreements which specify that the dentist shall continue to have the right to use [his] independent professional judgment” are also permitted, *see id.*, but given the bar on unlicensed entities employing dentists, this subsection presumably permits employment by other dentists only.

“Texas courts have held that when a corporation employs a licensed physician to treat patients and itself receives the fee, the corporation is unlawfully engaged in the practice of medicine.” *Garcia v. Texas St. Bd. of Med. Exam’rs*, 384 F. Supp. 434, 437, 438-39 (W.D. Tex. 1974) (three-judge court) (upholding bar on corporate employment of physicians: “The Texas legislature seeks to preserve the vitally important doctor-patient relationship, and prevent possible abuses resulting from lay person control of a corporation employing licensed physicians on a salaried basis”), *aff’d*, 421 U.S. 995 (1975). This “longstanding tradition in Texas preventing unlicensed individuals or corporations (other than professional corporations in the relevant profession) from in

substance owning a controlling equity interest in the practice of a licensed learned health professional” was recently reaffirmed by the Fifth Circuit, which invalidated a management company’s contract with dentists because it amounted to the illegal corporate practice of dentistry. *In re OCA, Inc.*, 552 F.3d 413, 422-423 (5th Cir. 2008).

Utah

Utah permits dental practice through the mechanism of a business corporation. UTAH CODE ANN. § 58-69-804(1). However, “[r]egardless of the form in which a licensee engages in the practice of dentistry, the licensee may not permit another person who is not licensed in Utah as a dentist and is not otherwise competent to engage in the practice of dentistry to direct, or in any other way participate in, or interfere in the licensee's practice of dentistry.” *Id.*, § 58-69-804(2). “[D]irecting or interfering with a licensed dentist's judgment and competent practice of dentistry” is a felony. *Id.*, § 58-69-501(3), § 58-69-503(1).

Vermont

Vermont law precludes dental practice by business corporations and other unlicensed people or entities. A person is “practicing dentistry” in Vermont if he “owns, leases, maintains, or operates a dental business in any office or other room or rooms where dental operations are performed, or directly or indirectly is manager, proprietor, or conductor of the same.” VT. STAT. ANN. tit. 26, §§ 721(a)(2), 723(c). Thus, as in other states, corporate ownership or operation of a dental business is prohibited in Vermont in light of the entities’ inability to obtain licenses. *Id.* § 801 (qualifications for license). Unlicensed practice is a crime. *Id.*, § 723(c), tit. 3, § 127(c).

Virginia

“No corporation shall be formed or foreign corporation domesticated in the Commonwealth [of Virginia] for the purpose of practicing dentistry other than a professional corporation.” VA. CODE ANN. § 54.1-2717(A). It is also “unlawful for any dentist to practice his profession in a commercial or mercantile establishment” – a term defined to mean “a business enterprise engaged in the selling of commodities or services unrelated to the practice of dentistry or the other healing arts.” *Id.* § 54.1-2716. The Virginia Supreme Court has also recently confirmed that business corporations may not legally practice medicine or obtain licensure, which is only open to individuals. *See Parikh v. Family Care Ctr., Inc.*, 641 S.E.2d 98, 101 and n. 3 (Va. 2007).

Washington

“Washington law prohibits the corporate practice of dentistry and other learned professions that affect the public health and welfare, such as law, medicine, and optometry.” *OCA, Inc. v. Hassel*, 389 BR 469, 474 (E.D. La. 2008) (citing Washington cases). “No corporation shall practice dentistry or shall solicit through itself, or its agents, officers or employees, directors or trustees, dental patronage for any dentists or dental surgeons employed by any corporation.” WASH. REV. CODE § 18.32.675(1). Violation of this section is a misdemeanor. *Id.* § 18.32.675(2). One who “owns, maintains or operates an office for the practice of dentistry” also practices. *Id.* § 18.32.020. Consequently, “a corporation that owns a business that provides dental or other professional services outright and employs licensed professionals is clearly engaged in the unlawful corporate practice of dentistry.” *Hassel*, 389 BR at 476. Furthermore:

In situations in which a corporation does not own a dental practice outright or does not formally employ dentists, courts look past the nominal

characterization of the relationship to the purpose and effect of the agreement to determine whether the corporation engages in the *de facto* practice of dentistry as defined by the statute. They consider whether the relationship between a licensed professional and a corporate entity is, in effect, a partnership or arrangement in which the corporation is so entangled with the affairs of the practice that it effectively maintains or operates a dental practice...

In cases in which the non-dentist or corporation had the power to influence the operation of the practice even though it did not own the practice or employ the dentist, Washington courts have found that the non-dentist entity effectively operated or maintained the practice.

Id. (citing Washington cases). In *Hassel*, a management company's "business relationships with the orthodontists were ones in which [it] controlled significant aspects of the orthodontic practices, shared in their profits, and played an active role in their operations," therefore violating Washington law. *Id.* at 478-79.

West Virginia

With the exception of the state, hospitals, and certain nonprofit entities, "only a dentist may own a dental practice in the state [of West Virginia]." W.Va. Bd. of Dental Exam. R. § 5-6-6, *available at* www.wvdentalboard.org/5-06%202009.pdf. Dentists may form and practice in "dental corporations," but shareholders must be dentists and the Board of Dental Examiners must issue a certificate of authorization to the corporation. W.VA. CODE § 30-4-28(b) – (c); W. Va. Bd. of Dental Exam. R. § 5-6-3. In addition, "[t]he practice of dentistry includes... [c]oordinating dental services to meet the oral health needs of the patient," and practice is limited to licensees. *Id.* §§ 30-4-15(1), 30-4-24. As a result, an unlicensed business corporation could not legally coordinate dental services offered to patients.

Wisconsin

Wisconsin law may permit non-dentists to employ dentists as long as patient care is unaffected:

No contract of employment entered into between a dentist and any other party under which the dentist renders dental services may require the dentist to act in a manner which violates the professional standards for dentistry set forth in this chapter. Nothing in this subsection limits the ability of the other party to control the operation of the dental practice in a manner in accordance with the professional standards for dentistry set forth in this chapter.

Wis. STAT. § 447.06(1). Whether “any other party” refers only to licensed dentists, who unquestionably can employ other dentists in professional corporations or other arrangements, or also includes non-licensees is unclear. No other statute, regulation or case law otherwise addresses corporate dental practice. Unlicensed dental practice is prohibited. *Id.* § 447.03(1).

Wyoming

“[A]ny person is deemed to be practicing dentistry [in Wyoming]... [w]ho is a manager, proprietor, operator or a conductor of a place where dental operations, oral surgery or dental services are performed.” WYO. STAT. ANN. § 33-15-114(a)(ii). A “proprietor,” in turn, is one who employs dentists or provides material or equipment needed to manage a practice. *Id.* § 33-15-128. Because practicing dentistry requires licensure, which is available only to certain natural persons, *id.* §§ 33-15-108, 33-15-124, a corporation may not serve as manager, proprietor, operator or conductor of a dental practice. However, Wyoming’s general corporate law may conflict with its dentistry laws. *See id.* § 17-3-102 (corporations may “offer professional services or practice a profession... by and through the person or persons of its... licensed employees”). In that

event, presumably the more specific laws governing dentistry would control. Unlicensed practice is a crime. *Id.* § 33-15-124.

Wyoming courts have also recognized that unlicensed corporations may not interfere with the provision of medical care. *See, e.g., Wyo. St. Bd. of Exam'rs of Optometry v. Pearle Vision Ctr.*, 767 P.2d 969, 979 (Wyo. 1989) (corporation not deemed to be practicing optometry given lack of evidence “the arrangement permitted the corporation to exercise control over the optometrist in his optometric practice”).

Addendum:

Professional Corporation Laws Limiting Ownership to Licensed Professionals and Requiring Services to be Provided by Licensees*

Alabama:	ALA. CODE §§ 10A-4-1.03, 10A-4-3.01, 10A-4-3.06, 10A-4-2.04.
Alaska:	ALASKA ADMIN. CODE tit. 12, §§ 10-45-030, 10.45.050, 10.45.060.
Arkansas:	ARK. CODE ANN. § 4-29-406.
California:	CAL. BUS. & PROF. CODE § 1805; CAL. CORP. CODE §§ 13401.5, 13405(a), 13406(a).
Colorado:	COLO. REV. STAT. § 12-36-134.
Connecticut:	CONN. GEN. STAT. § 33-182d, 33-182g.
Delaware:	DEL. CODE ANN. tit. 8, §§ 605 – 607.
DC:	D.C. CODE §§ 29-505(a), 29-508(b).
Florida:	FLA. STAT. §§ 621.006, 621.009.
Georgia:	GA. CODE ANN. §§ 14-7-4, 14-7-5(a).
Hawaii:	HAW. REV. STAT. §§ 415A-9, 415A-6, 415A-14.
Idaho:	IDAHO CODE ANN. §§ 30-1308, 30-1315.
Illinois:	10 ILL. COMP. STAT. 7, 11, 15.
Indiana:	IND. CODE §§ 23-1.5-2-4, 23-1.5-2-5, 23-1.5-3-1(a).
Iowa:	IOWA CODE § 496C.7, 496C.10, 496C.16.
Kansas:	KAN. STAT. ANN §§ 17-2712, 17-2713.
Kentucky:	KY. REV. STAT. ANN. §§ 274.017(1), 274.027(1), 274.045.
Louisiana:	LA. REV. STAT. ANN. §§ 12.982, 12:985.
Maine:	ME. REV. STAT. ANN. tit. 13, §§ 734(1), 741(1) (shareholders may include non-licensees approved by licensing authority as qualified), 751.
Maryland:	MD. CODE ANN., CORP. AND ASS'N §§ 5-105, 5-109(a), 5-117(a).
Massachusetts:	MASS. GEN LAWS Ch. 156A, §§ 5, 9, 10.
Michigan:	MICH. COMP. LAWS §§ 450.4904, 450.4905.
Minnesota:	MINN. STAT. §§ 319B.02(19), 319B.07, 319B.09.
Missouri:	MO. REV. STAT. §§ 356.081, 356.091, 356.111.
Montana:	MONT. CODE ANN. §§ 35-4-207, 35-4-301.
Nebraska:	NEB. REV. STAT. § 21-2208.
Nevada:	NEV. REV. STAT. § 89.070(1), 89.230.
New Hampshire:	N.H. REV. STAT. ANN. §§ 294-A:5, 294-A:8, 294-A:20.
New Jersey:	N.J. STAT. ANN. §§ 14A:17-6, 14A:17-7, 14A:17-10(a).
New York:	NY BUS. CORP. LAW §§ 1504, 1507(a), 1508(a).
North Carolina:	N.C. GEN. STAT. §§ 55B-4(2) – (3), 55B-6., 55B-8.

* Because Arizona, Mississippi, New Mexico, North Dakota, Ohio, and Utah permit full or partial ownership of dental practices by business corporations, their professional corporation laws are not considered.

Oklahoma:	OKLA. STAT. tit. 18, §§ 809, 810, 811, 814.
Oregon:	OR. REV. STAT. § 58.156(1).
Pennsylvania:	15 PA. CONS. STAT. §§ 2923(a), 2924(a).
Rhode Island:	R.I. GEN LAWS §§ 7-5.1-3(a), 7-5.1-6A.
South Carolina:	S.C. CODE ANN. §§ 33-19-130, 33-19-200, 33-19-300.
South Dakota:	S.D. CODIFIED LAWS § 47-12-3.
Tennessee:	TENN. CODE ANN §§ 48-101-607, 48-101-610(a)(2), 48-101-618.
Texas:	TEX. BUS. ORGS. CODE ANN. §§ 301.006(b), 301.007(b).
Vermont:	VT. STAT. ANN., tit. 11, §§ 823, 830(a), 840.
Virginia:	VA. CODE ANN. §§ 13.1-544, 13.1-546, 13.1-553(B).
Washington:	WASH. REV. CODE §§ 18.100.060(1), 18.100.060(2), 18.100.065, 18.100.090.
West Virginia:	W.VA. CODE §§ 30-4-28(b), (c); W.Va. Bd. of Dental Exam. R. § 5-6-3.
Wisconsin:	WIS. STAT. §§ 180.1903(1), 180.1911(1).
Wyoming:	WYO. STAT. ANN. §§ 17-3-101, 17-3-102.

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