Washington Ambulatory Surgery Center Association
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Lee v. Thaheld/Lee-01, LLC: Washington Court Finds Health Care Management Services Agreement Illegal

Emily R. Studebaker
WASCA Legal Counsel
Garvey Schubert Barer
1191 Second Avenue,
Suite 1800
Seattle, WA 98101
Direct 206.816.1417
Mobile 206.406.2729
estudebaker@gsblaw.com

In a recent unpublished opinion, the Washington Court of Appeals held that a management agreement between a dentist and a consulting service company was illegal in its entirety and unenforceable as a matter of law because it violated Washington's prohibition on the corporate practice of dentistry.[1] This decision emphasizes the importance of properly structuring management agreements, not only for dentists, but for other health care professionals as well.

Dr. Choong-hyun Lee, a licensed Washington dentist, and Thaheld/Lee-01, LLC, a consulting service company, entered into a management agreement for the purpose of allowing Dr. Lee to focus on practicing dentistry, while the service company managed "the day-to-day administration of the non-dental aspects" of his practice. Johann Thaheld, who was the sole member and owner of Thaheld/Lee-01, LLC, was not a dentist.

In its decision, the court explained that, under Washington law, corporations may not own, operate or maintain dental practices. RCW 18.32.675(1) specifies:

> No corporation shall practice dentistry or shall solicit through itself, or its agent, officers, employees, directors or trustees, dental patronage for any dentists or dental surgeon employed by any corporation: PROVIDED . . . [that this prohibition shall not] apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when such dentist assumes full responsibility for such information and services.

Under RCW 18.32.020(3), any person who "owns, maintains or operates an office for the practice of dentistry" is engaged in the practice of dentistry. Accordingly, a contract that gives a non-dentist the power to influence a dental practice's operations and share in its profits is illegal.

In *Lee v. Thaheld/Lee-01, LLC*, the court noted that the prohibition "extends to most other learned professions that affect public health and welfare, such as…medicine …." Like the prohibition against the corporate practice of dentistry, the prohibition against the corporate practice of medicine disallows a non-physician or a corporation that is not owned and controlled by a physician from interfering with the professional judgment of a physician. It prohibits those non-physicians or corporations from employing physicians to practice medicine and also restricts the types of management agreements physicians can enter into with such non-physicians and corporations.

In determining whether an illegal business relationship exists, courts consider: (1) the extent to which the corporation exercises control over the practice's operations and (2) the nature of the payment scheme between the practice and the corporation.

In Lee the court found that several aspects of the business relationship gave the service company the power to exercise significant control over Dr. Lee's practice. Among others, the court noted the following:

- The service agreement created a two-member policy board consisting of Dr. Lee and Thaheld. A majority vote was required for all decisions. Therefore, Thaheld's vote was necessary to decide on matters such capital improvements and expansion, marketing and advertising, establishing and maintaining contractual relationships with other providers and third-party payors, setting patient fees and collection policies, patient concerns and claims, workplace health and safety, strategic planning, and approving or disapproving any merger with or acquisition of another dental practice.
- The service company had the power to negotiate and enter into contracts with third parties it determined were reasonably necessary and appropriate for Dr. Lee's provision of dental care. Dr. Lee was required to execute these contracts at the service company's behest.
- Dr. Lee was required to sign all leases and intellectual property over to the service company.
- For an initial term of the service agreement, Dr. Lee could not voluntarily terminate his employment without finding a replacement dentist.
- Thaheld had the power to terminate the service agreement, which, if exercised, required Dr. Lee to sell the practice and give the service company 50 percent of the net proceeds.

The court found that the service agreement gave Thaheld a substantial beneficial interest in Dr. Lee's practice. The agreement provided for the service company to be paid an annual service fee equal to the highest paid dentist's salary or $120,000, whichever was greater. In addition, the service company was to receive a formula-based monthly performance fee from 10 percent up to 50 percent of the practice's profits, along with a bonus of one-half the practices' net profits.

The court acknowledged that Thaheld was not involved in the delivery of dental services, but said that "Washington law is clear that noninvolvement in the delivery of professional services is not determinative." The court found the above aspects of the agreement resulted in Thaheld being substantially in control of Dr. Lee's practice, even if he was not practicing hand-in-mouth dentistry.

In light of the decision in *Lee v. Thaheld/Lee-01, LLC*, health care providers should review their consulting service agreements to ensure those agreements are legal and enforceable. ■

[1] *Lee v. Thaheld/Lee-01, LLC*, Wash. Ct. App. No. 68417-5-1/3 (unpublished, March 10, 2014).