



California Society of Dermatology & Dermatologic Surgery

**Posted: March 18, 2010**

**SB 726 (Ashburn) Health care districts:  
Rural hospitals: employment of physicians and surgeons.  
An Analysis**

Last week, CalDerm wrote to all members of the California State Assembly urging them to OPPOSE Senator Ashburn's Senate Bill 726 (which expands the ability of hospitals in the state to directly employ physicians). The full state Assembly may be asked to vote on the measure in the coming weeks or days. Subsequently, CalDerm and some of its members received alerts from other state and national organizations urging dermatologists to write letters of opposition. We have been contacted by some CalDerm members asking for clarification of some aspects of claims made in these alerts. To this end, please find the following Q and A:

**Q1: What is the Corporate Bar?**

**A1:** California's bar against the "corporate practice of medicine" (CPM) derives from federal laws requiring that individuals must be licensed to practice medicine. In some states, including California, judicial decisions dating back to the 1930's have interpreted these laws to preclude hospitals, with some exceptions such as teaching institutions and community clinics, from employing physicians for the purpose of practicing medicine. According to the Office of Inspector General, the rationale for this prohibition is based on the potential for conflict between a physician's loyalty to the patient and the financial interests of the corporation that would employ the physician.

**Q2: Is California's Legislature the only one considering easing restrictions on the CPM bar?**

**A2:** Only five states: California; Colorado; Iowa; Ohio; and, Texas, prohibit hospitals from employing physicians. Even in these states, as in California, certain types of hospitals and providers are exempt from the CPM bar. In practice, states with CPM bars, including California, permit professional service or medical corporations to practice medicine, but only if controlled by physicians.

**Q3: How could the CPM bar affect Dermatologists and our patients?**

**A3:** California has witnessed an unprecedented growth in "medi-spas" in which physician medical directors illegally abrogate their duties to non-physician, unsupervised providers. CalDerm continues to work at a variety of

levels to curtail this dangerous practice. However, some have expressed concern that, were the CPM bar to be eased in California, such practices (non-physicians running medi-spas that place patients at risk) could become more widespread. It should be noted, however, that SB 726 will only have the effect of limiting the CPM bar in some settings. It does not eliminate the CPM bar altogether, as some organizations have suggested.

**Q4: What problem is the bill trying to fix?**

**A4:** Proponents of the bill say that it is necessary because California's rural communities and inner-cities continue to be medically underserved (as measured by a ratio of population to proximate physicians). A 2001 survey conducted by the University of California, San Francisco found that the rural portions of the state, including the Inland Empire and Sierra Nevada regions had at least 30% fewer physicians per capita than the rest of the state.

Proponents of the bill argue that cost sharing advantages for insurance premiums, facilities, billing, and other employed-physician perks, would provide incentives for doctors to locate in areas where they would not normally be inclined to practice medicine. According to the author, "artificially" increasing salaries in order to encourage doctors to serve in these regions is not a viable solution.

**Q5: So should CalDerm Oppose SB 726 or not?**

**A5:** CalDerm has adopted an Oppose position on SB 726 but should seek to accomplish its objectives while respecting the bill's access objectives. In short, CalDerm should seek to maintain (or increase) protections for patients in medi-spas while permitting rural and inner-city communities to seek reasonable solutions to access problems.

**Q6: How could both of these goals be achieved?**

**A6:** While the exceptions to CPM bar in SB 726 are too broad, the approach (limited exceptions where needed most) is probably preferable to other approaches (such as doing away with the CPM bar altogether). Provisions of the bill which eliminate reasonable restrictions in the previous pilot should be reexamined in light of the author's stated goals. In the meantime, the CMA, CalDerm and a coalition of medical and other organizations currently opposing the bill must hold fast.

For more information, please go to:

[http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0701-0750/sb\\_726\\_bill\\_20090820\\_amended\\_asm\\_v95.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0701-0750/sb_726_bill_20090820_amended_asm_v95.pdf)