

[Case Brief] AAEM-PG v. Envision Healthcare: Corporate Practice of Medicine Challenges Private Equity Acquisition in Health Care

As private equity (PE) investment in healthcare draws [scrutiny](#) from [advocates](#) and [regulators](#), one lawsuit has been in the spotlight as a potentially important precedent-setter, particularly regarding its corporate practice of medicine (CPOM) claims: [American Academy of Emergency Medicine Physician Group \(AAEM-PG\) v. Envision Healthcare](#). The Independent Emergency Physicians Consortium called this case a “momentous event” that could signal an inflection point in the increasing corporatization of medicine.^[1] However, proceedings have been on pause since May 2023, when the defendant filed for bankruptcy, and it is unclear if and when the case will resume. Despite the uncertainty, *Envision* is a valuable case study on how Unfair Competition Law and corporate practice of medicine doctrine may be used to counteract some of the concerning impacts of PE’s influence in medicine.

Corporate Practice of Medicine Doctrine and the “Friendly PC” Model

CPOM laws vary widely by state but generally prohibit corporations from practicing medicine or employing physicians.^[2] The doctrine has several public policy justifications: prevent commercialization of medical practice,

maintain independence of physician decision-making, and protect the integrity of the physician-patient relationship.^[3] California has one of the most robust prohibitions on CPOM, though it makes exceptions for certain kinds of corporations, including professional medical corporations (PCs).^[4] PCs are corporate entities formed by a physician or physicians for the practice of medicine. In California, shareholders of a PC must be licensed practitioners.^[5]

AAEM-PG's CPOM claims could have a significant impact on PE's involvement in healthcare because the suit takes aim at a business model that PE firms often employ to duck CPOM laws: the so-called "friendly PC." In this model, a PE firm owns the management services organization (MSO) that contracts with a PC. MSOs are organizations that provide business and administrative support to physician groups while leaving clinical decision-making to providers. In the friendly PC model, PE firms install a physician or physicians as shareholders of the PC. PE firms then require restrictive agreements between the MSOs they own and the "friendly" PCs they work with. Through these contracts, PE firms can wield substantial control over the PC without violating CPOM by employing physicians.

AAEM-PG Allegation: Envisions Business Practices Violate California's Ban on the CPOM

On December 20, 2021, AAEM-PG [sued](#) both Envision Physician Services and Envision Healthcare Corporation. The American Academy of Emergency Medicine Physician Group (AAEM-PG) is a subsidiary of the American Academy of Emergency Medicine (AAEM), a physician professional society, and provides business and administrative services to physician groups. Both plaintiff AAEM-PG and defendant Envision Physician Services are MSOs,

while defendant Envision Healthcare Corporation is a national hospital-based physician staffing company and healthcare service provider. Both Envision entities are subsidiaries of Envision Healthcare Holdings, which has been owned by KKR, a large PE firm, since 2018.

In its complaint, AAEM-PG asks the court to declare that Envision's misuse of the friendly PC model is illegal under California's CPOM statutes, Business & Professions Code sections 2400 and 2502.^[6] AAEM-PG's complaint alleges that PE-owned Envision creates "straw" PCs or installs Envision executives in existing PCs, while using its MSO contracts with those groups to exert direct control over the provision of medical care.^[7] These contracts create a relationship by which medical groups can operate as "a mere front through which Envision carries out its business and have no separate identity from Envision."^[8]

Specifically, AAEM-PG alleges that Envision exercises control over medical billing, scheduling, working conditions, and compensation, as well as hiring, discipline, and termination of clinicians.^[9] AAEM-PG also claims that Envision engages in clinical oversight by establishing best practices and controls for quality of care that interfere with physicians' own medical judgements.^[10] Significantly, Medical Board of California (MBC) guidance provides that unlicensed practice is found where a corporate entity makes decisions regarding hiring and scheduling for clinicians, controls billing and coding, and establishes performance metrics.^[11]

Additionally, AAEM-PG seeks injunctive relief (court-mandated restraint) on Envision's violations of Unfair Competition Law (UCL). Specifically, AAEM-PG claims that Envision violates the UCL by: (1) paying emergency departments for exclusive contracts, (2) utilizing restrictive covenants in its physician

contracts, and (3) falsely marketing itself as a lawful physician group.^[12] Relatedly, AAEM-PG seeks a declaration that Envision's restrictive covenants are void and that the consideration it offers in exchange for exclusive contracts constitutes illegal kickbacks.^[13] AAEM-PG alleges that these practices have the effect of restraining competition and increasing prices for patients.^[14]

Envision's Response and Motion to Dismiss

On March 4, 2022, Envision filed a motion to dismiss. It argued that, because the suit involves matters of public policy that the legislature has assigned to the MBC—such as what constitutes unlicensed practice of medicine—the MBC is the proper authority to determine the suit's CPOM claims. Additionally, Envision defended its structure by arguing that physicians oversee all medical services provided at Envision-affiliated institutions, while Envision Physician Services, the Envision MSO, operates exclusively in the area of “non-medical business services designed to streamline the business aspects” of medical practice.^[15]

The district court judge denied Envision's motion to dismiss on May 27, 2022. The judge rejected Envision's argument that the MBC should oversee AAEM-PG's claims, saying that although the MBC may have expertise on CPOM issues, the detailed allegations around Envision's multi-billion dollar corporate structure and unfair business practices are far beyond the MBC's purview.^[16] Additionally, the judge noted that MBC does not have exclusive jurisdiction over unauthorized practice of medicine, and cited multiple cases where California courts have decided CPOM-related claims.^[17] Furthermore, the court found that AAEM-PG sufficiently

stated claims under both California's Unfair Competition Law and CPOM. In reaching its conclusion, the court cited the MBC's guidance on what constitutes CPOM, cited above.[\[18\]](#)

Envision files for Bankruptcy

Although the case was scheduled for trial in January 2024, Envision has thrown a new wrench in the works. On May 15, 2023, Envision voluntarily filed for bankruptcy under chapter 11 of the U.S. Bankruptcy Code, which allows the debtor to retain control of its business while seeking reorganization. On the same day, Envision announced that it had entered into a Restructuring Support Agreement with investors who represent over 60% of the company's \$7.7 billion debt. In a [press release](#), Envision blamed its failure in part on implementation of the No Surprises Act, which went into effect in 2022 and protects patients from surprise billing practices. Economist Eileen Appelbaum, whose research informed Congress's development of the Act, called surprise billing Envision's "secret sauce"; without it, Appelbaum said, Envision could no longer hope to pay its debts.[\[19\]](#)

On May 16, Envision's lawyers filed a suggestion of bankruptcy with the court in *AAEM-PG v. Envision*.[\[20\]](#) Under section 362(a) of the Bankruptcy Code, filing for bankruptcy imposes an automatic stay, or pause, on judicial proceedings against the debtor. In response, AAEM-PG made it clear in a [statement on their website](#) that they intend to continue the fight. The statement stresses that AAEM-PG's focus is not financial gain but public policy; the lawsuit requests only declaratory and injunctive relief rather than monetary relief. AAEM-PG also argues that Envision's bankruptcy declaration only underscores the risks of corporate

management of healthcare.^[21] Notably, another KKR-backed health care company, GenesisCare, filed for bankruptcy just two weeks after Envision.^[22]

On June 1, 2023, AAEM-PG filed a Motion for Relief from the Automatic Stay with the bankruptcy court to request that the suit continues. However, the bankruptcy court judge denied the motion on July 13, and AAEM-PG did not appeal the decision within the requisite time period. As a result, AAEM-PG must comply with the automatic stay. At this point, it is uncertain how Envision's bankruptcy and restructuring will impact the case.

Significance of the case

Although California has particularly strict CPOM laws, a positive outcome for AAEM-PG could have far-reaching implications for CPOM enforcement. Regardless of the outcome from Envision's bankruptcy filing and the resulting stay, the suit may inspire litigation in other states with robust CPOM regulations—including Texas, New York, North Carolina, Washington, Colorado, and Iowa. And because PE firms rely so heavily on the friendly PC model to pursue medical practice acquisitions across state lines, PE-owned healthcare organizations across the country may see impacts. Stay tuned as the Source continues to watch this case and provide updates.

^[1] Robert McNamara, *AAEMPG vs Envision*, Independent Emergency Physicians Consortium (Feb. 10, 2022), <https://iepc.org/articles/aaempg-vs-envision>.

[2] Erin C. Fuse Brown, Mark Hall, *Private Equity and the Corporatization of Health Care*, 76 Stan. L. Rev. ____ (forthcoming 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4373557.

[3] American Medical Association, *Issue Brief: Corporate Practice of Medicine* (2015), <https://www.ama-assn.org/media/7661/download>.

[4] *The Corporate Practice of Medicine in a Changing Healthcare Environment*, Cal. Research Bureau (April 2016), <https://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/CRB%202016%20CPM%20Report.pdf>.

[5] Pacific Health Law Group, *Forming a Professional Medical Corporation* <https://pacifichealthlaw.com/forming-a-professional-corporation/medical/>.

[6] Complaint at 16, Am. Acad. of Emergency Med. Physician Grp., Inc. v. Envision Healthcare Corp., No. 3:22-cv- 00421-CRB (N.D. Cal. Jan. 1, 2022).

[7] Order Denying Motion to Dismiss at 6.

[8] Order Denying Motion to Dismiss at 7.

[9] Complaint, *supra* note 5, at 8-9.

[10] *Id.* at 9.

[11] Medical Board of California, *Information Pertaining to the Practice of Medicine*, <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information/>.

[\[12\]](#) Complaint, *supra* note 5, at 12-13.

[\[13\]](#) *Id.* at 14.

[\[14\]](#) *Id.* at 11.

[\[15\]](#) Defendants' Motion to Dismiss at 26, American Academy of Emergency Physician Group, Inc. v. Envision Healthcare Corporation, et al., No. 3:22-cv-00421-AGT (N.D. Cal. Feb. 18, 2022).

[\[16\]](#) *Id.* at 13.

[\[17\]](#) *Id.* at 17.

[\[18\]](#) *Id.* at 4-5.

[\[19\]](#) Michael DePeau-Wilson, *No Surprises Act Ruined 'Secret Sauce' of Envision, Expert Says*, MedPage Today (June 16, 2023), <https://www.medpagetoday.com/special-reports/exclusives/105068>.

[\[21\]](#) American Academy of Emergency Medicine, *Envision Lawsuit: Lawsuit Updates* (May 15, 2023) <https://www.aaem.org/envision-lawsuit/>.

[\[22\]](#) Renee Hickman and Rick Archer, *Another KKR-Backed Health Care Co. Files For Ch. 11*, Law360 (June 1, 2023), <https://www.law360.com/articles/1683515/another-kr-backed-health-care-co-files-for-ch-11>.