

MEMORANDUM

To: CMA Government Relations
From: CMA Legal Counsel
Date: September 20, 2011
RE: Employment of Allied Health Professionals by Medical Corporations

This memorandum addresses the issue of whether a medical corporation is limited to employing licensed persons listed under section 13401.5 of the California Corporations Code. In the past year, this issue has been addressed by a Legislative Counsel opinion and a memorandum from the Department of Consumer Affairs (DCA) legal counsel in the context of whether the statute authorizes the employment of physical therapists by a medical corporation. Although both the Legislative Counsel and the DCA concluded that only the licensees listed in Corporations Code section 13401.5 may be professional employees of a medical corporation, a closer look at the purpose of the statute and its legislative history shows that the law has always been about who can have an ownership interest in, and exercise control over, professional corporations and was never intended to limit the type of licensees that can be employed by them.

BACKGROUND

A "professional corporation" is defined as a "corporation organized under the General Corporation Law... that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5[.]"¹ Section 13401.5 enumerate fourteen separate types of professional corporations that provide health care services, then lists the licensed health professionals outside of the designated professional corporation who can be "shareholders, officers, directors, directors or professional employees" of the professional corporation as long as they do not control the corporation. The statute states, in relevant part:

Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

¹ Corporations Code §13401(b).

- (a) Medical corporation.
 - (1) Licensed doctors of podiatric medicine.
 - (2) Licensed psychologists.
 - (3) Registered nurses.
 - (4) Licensed optometrists.
 - (5) Licensed marriage and family therapists.
 - (6) Licensed clinical social workers.
 - (7) Licensed physician assistants.
 - (8) Licensed chiropractors.
 - (9) Licensed acupuncturists.
 - (10) Naturopathic doctors.

Under the statute, a listed professional who is not licensed to practice under the profession for which the designated corporation is created can own shares in the corporation while at the same time provide professional services through the corporation as long as they do not own more than forty nine (49) percent of the total number of shares or exceed the number of licensees which are professionals of the designated corporation. The statute specifies that even though a licensed professional is not licensed to practice in the profession for which the corporation is created (e.g., a nurse and a medical corporation) the licensed professional can still have ownership interest in the designated corporation as long as he/she does not have excessive control. For instance, the listed non-physician professionals above can have some control over a medical corporation through ownership of and employment as long as they do not own the majority of the shares or outnumber the physician owners. The reference to employment in the statute is designed to confirm that non-physician practitioners who have an ownership interest can also provide their professional services as employees of the corporation. It is not intended to limit persons who are authorized to be employed to only those professionals enumerated in the statute. Accordingly, and based upon the genesis of professional corporation statutes, this statute has been long interpreted to define who can have a controlling interest in professional corporations and serve in positions of authority, rather than who can be employed by them.

Notwithstanding this longstanding reading of the statute, the Legislative Counsel and DCA recently opined that this statute also controls who can and cannot be employed by the professional corporations. According to their reading of the statute, only health professionals who are listed in the statute can be employed by the designated professional

corporation. Specifically, the Legislative Counsel opinion and DCA memorandum concluded that because physical therapists are not one of the licensed health professionals listed under section 13401.5(a), they cannot be employees of a medical corporation and that physical therapists providing physical therapy services as an employee of a medical corporation are subject to disciplinary action by the Physical Therapy Board of California (PTBC).²

Based on the Legislative Counsel opinion and the DCA memorandum, on July 20, 2011, the PTBC sent 155 letters to physical therapists who were the subjects of complaints regarding allegedly unlawful employment arrangements with a general or medical corporation. The letter states that should the physical therapist find that he/she is in an unlawful employment arrangement, to notify the PTBC by September 1, 2011 of their compliance plan. If a physical therapist is unlawfully employed and does not respond with a plan of compliance, this will constitute cause of an enforcement action by the PTBC.³ The PTBC issued a follow-up letter on August 25, 2011 informing licensees that it had adopted a motion to suspend enforcement of all pending cases related to alleged violations of the Moscone Knox Professional Corporations Act until the Legislature has had an opportunity to take appropriate legislative action on the issue, but still reserved the right to act should it become necessary.⁴

DISCUSSION

An examination of the legislative history of the relevant statutes demonstrates that the statute was intended to define who could have a controlling interest in professional corporations and serve in positions of authority, rather than who can be employed by them. ***The employment language was designed to confirm that non-physician professionals who have an ownership interest can also provide professional services through the corporations.*** It allowed various licensed professions who traditionally practiced together in the health care arena to continue to work efficiently in a collaborative manner under a jointly-owned business entity, while enjoying the tax benefits of a corporation. However, there is no indication in the legislative history that employment would be confined to the named classes of professionals who were authorized to serve as shareholders, directors and officers.

Both the Legislative Counsel opinion and DCA memorandum look to the plain reading of the language of the statute to conclude that section 13401.5 limits the listed professional corporations to employing only those professionals listed within the subdivision that applies to them. However, where statutory interpretation creates anomalous or absurd results, the courts will not follow the plain meaning of the statute

² Legislative Counsel Bureau Opinion No. 1021592 (September 29, 2010); Department of Consumer Affairs, Legal Affairs Memorandum "Employment of Physical Therapists By A Professional Corporation" (February 28, 2011).

³ See Physical Therapy Board of California website at www.ptbc.ca.gov/laws_regs/corporations.shtml.

⁴ Letter from PTBC Interim Executive Officer Rebecca Marco to licensees (August 25, 2011).

and look to the legislative history to ascertain and carry out the intent of the Legislature. The general principles of statutory construction are outlined as follows:

[T]he fundamental goal of statutory interpretation is to ascertain and carry out the intent of the Legislature. To determine legislative intent, a court begins with the words of the statute, because they generally provide the most reliable indicator of legislative intent. ... If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs. However, the court will not follow the plain meaning of the statute if to do so would inevitably frustrate the manifest purposes of the legislation as a whole or lead to absurd results. On the contrary, [t]o the extent that uncertainty remains in interpreting statutory language, consideration should be given to the consequences that will flow from a particular interpretation, and both legislative history and the 'wider historical circumstances' of the enactment may be considered. Further, ambiguities are not interpreted in the defendant's favor if such an interpretation would provide an absurd result, or a result inconsistent with apparent legislative intent.

People v. Moore, 118 Cal. App. 4th 74, 77-78, 12 Cal. Rptr. 3d 649, 652-653 (2004) (internal quotations and citations omitted).

A. The Statutory Interpretation of the Legislative Counsel Opinion and DCA Memorandum Leads to Anomalous and Absurd Results.

Adoption of the Legislative Counsel and DCA's interpretation that Section 13401.5 limits the listed professional corporations from employing any licensed professional other than those listed in the applicable subdivision would lead to the following inconsistencies and absurdities.

1. A Medical Corporation Would Be Authorized To Provide Physical Therapy Services Through Physician Employees But Not Through Physical Therapist Employees.

A medical corporation can provide a full range of health care services due to the unrestricted licenses of its physicians. In fact, "a physician is authorized to practice physical therapy as part of his medical practice." *PM&R Associates v. Workers' Comp. Appeals Board*, 80 Cal. App. 4th 357, 366 (2000). A physician's practice "is not limited to any particular part of the body" and "is the practitioner most likely to adequately appraise all of the patient's injuries." *Reuter v. Superior Court*, 93 Cal.App.3d 332, 338 (1979) (citing 3 Ops.Cal.Atty.Gen. 313). It would not make sense that under the Legislative Counsel and DCA interpretation, medical corporations would not be able to provide physical therapy services through a licensed physical therapist or other health related services through unlisted allied health professional employees but would be able to provide them through physician employees.

2. Physician Sole Proprietorships and Partnerships Would Be Authorized To Employ Physical Therapists While Medical Corporations Would Not.

Physician sole proprietorships and partnerships are not prohibited from employing physical therapists or any other unlisted allied health professional. Section 13401.5 is meant to give physicians the ability to practice to the fullest extent in the corporation form and there is nothing to support a legislative intent to provide lesser employment rights to medical corporations than those afforded to physician sole practitioners and partnerships.

Additionally, there is no suggestion that medical corporations cannot retain members of unlisted allied health professional categories to provide services as independent contractors, rather than as employees. There appears to be no good reasons as to why one type of relationship is allowed over another.⁵

3. Lay Corporations Would Be Allowed To Employ Unlisted Allied Health Care Practitioners While Medical Corporations Would Not.

The Legislative Counsel and DCA interpretation of section 13401.5 not only affects physical therapist employees of medical corporations but has a wide ranging effect on all unlisted allied health care practitioners. Medical corporations have a long history of openly employing health care practitioners from allied health professional categories that do not appear on the list (e.g. vocational nurses, psychiatric technicians, dieticians, physical therapists, occupational therapists and licensed midwives). Prior to the Legislative Counsel's opinion, this right has never been questioned and historically, such allied health professionals can be employed by lay corporations. It would be nonsensical for a general corporation owned by untrained laypersons to have greater employment rights over such allied health professionals than medical corporations owned by licensed physicians.

The PTBC acknowledged this absurdity when it voted to rescind its 1990 resolution that determined that the offering of a physical therapy services by a corporation was not prohibited by the Physical Therapy Practice Act. Historically, licensed physical therapists have been allowed to conduct physical therapy services

⁵ The APTA and the California Physical Therapy Association (CPTA) have argued that allowing medical corporations to employ physical therapists drive up health care costs by encouraging "referral for profit" and enable kickbacks to physicians. Not only is this policy argument irrelevant for purposes of interpreting the statute, it is nonsensical. Federal and California laws prohibiting kickbacks and self-referrals currently apply to all physicians regardless of their business relationships with physical therapists or any other allied health professional. *See* Business & Professions Code § 650; Labor Code § 139.3. There is no kickback problem specific to physical therapists or any other allied health professional that stem solely from their employment in a medical corporation. Furthermore, concerns about kickbacks and prohibitions against self-referral apply equally to the various categories of professionals that are listed as being able to serve as shareholders, directors, officers, or employees of medical corporations. There is no reason to treat physical therapists or any other unlisted allied health professional differently in this regard from the classes that are on the list.

through a general corporation. On December 14, 1990, the PTBC⁶ issued a resolution stating that a general corporation could offer physical therapy services through its licensed physical therapist employees. As a result, general corporations, in many cases owned by unlicensed laypersons, were formed to practice physical therapy through licensed physical therapists. These corporations have been continuously engaged in providing physical therapy services for decades. Since professional corporations are a subset of a general corporation, it was widely assumed that a professional corporation could practice physical therapy through licensed physical therapists. This led to a number of medical corporations employing physical therapists to provide physical therapy services. Many of these practices have also been engaged in providing physical therapy services for decades with no objection from the PTBC until recently.

Following the issuance of the Legislative Counsel opinion,⁷ and at the urging of the American Physical Therapy Association (APTA), the PTBC voted to rescind the 1990 resolution on November 3, 2010 based on APTA's allegation that the 1990 resolution was an underground regulation.⁸ Assuming *arguendo* that the APTA is correct in that the 1990 resolution is an underground regulation, in changing its long-standing interpretation of the law governing the employment of physical therapists by medical corporations, the PTBC has merely replaced one underground regulation for another.

B. The Statutory Interpretation Of The Legislative Counsel Opinion and DCA Memorandum Ignores The Legislative History Demonstrating That The Legislative Intent Focused On Dictating Which Professional Can Have Controlling Interests, Not On Restricting Employment Of The Listed Allied Health Professionals.

Despite the Legislative Counsel and DCA's interpretation of section 13401.5, the legislative history reveals that the focus of section 13401.5 has always been on who can have an ownership interest in, and exercise control over professional corporations, rather than on who can be employed by them. If the language of the statute is ambiguous or uncertain, or when a statutory interpretation based on the plain language of the statute lead to absurd results as it does here, legislative history and "wider historical circumstances" of the enactment should be considered. *People v. Moore*, 118 Cal. App. 4th at 77-78. Here, the legislative history of section 13401.5 reveals no evidence of legislative intent to prohibit the listed professional corporations from employing individuals outside of the designated licensed professionals. ***Rather, the legislative***

⁶ The PTBC was then known as the Physical Therapy Examining Committee.

⁷ The Legislative Counsel Opinion was sought by Assemblyman Pedro Nava in response to an inquiry by the American Physical Therapy Association (APTA).

⁸ Under Government Code §11340.5, it is illegal for a state agency to enact any "regulation" unless it has adopted that regulation through the APA rulemaking procedures. A "regulation" includes any rule or standard of general application to "implement, interpret or make specific" the law administered by the agency. Government Code §11342.600.

history indicates that the statutory language regarding employment was included only to ensure that licensed persons who were allowed to have a minority share or interest in a professional corporation could still render their services through that corporation even if they did not hold the same license as the corporation.

1. The Original Legislation Was Based on Model Law That Did Not Contemplate the Health Care Arena Where Different Health Professionals Worked Together To Provide Services (S.B. 53).

The Moscone-Knox Professional Corporation Act (Act) and its defining statute, section 13401, was originally enacted in 1968.⁹ Since enactment, it has been amended 24 times. The amendments most relevant to this issue took place between 1968 and 1980 when the statute took its present form, and since then, the amendments focused on adding new types of health care professional corporations and licensed individuals who can have ownership or controlling interests in professional corporations.

The original Act was based on model law that was conceived to apply to a full range of unrelated professions. In fact, most of the commentary in California regarding the enactment of the original legislation related to the legal profession and how licensed attorneys could render legal services through a corporate form so long as compensation was shared only among attorneys, and shareholders were limited to attorneys.¹⁰ This original law was limited to professional corporations comprised of attorneys, physicians, and dentists.

Because the Act applied to unrelated professions (i.e., dentists, lawyers, and physicians), it explicitly provided that only persons having the same license as the corporation could serve as shareholders, officers, directors, or employees.¹¹ The language reflected the Act's intent that the designated professions of law, medicine and dentistry remain totally separate from one another and that these *unrelated* professions not join together to provide services under a single corporate entity. The primary concern was that, without this restrictive language, law corporations, for example, may employ physicians to provide medical services and medical corporations may employ attorneys to provide legal services. This was significant at the time because it was contemplated that other unrelated professions, like architecture and accounting would be added to the statute. The intent of the restrictive language regarding ownership, control and employment was to prevent these unrelated professions from having ownership interests in each other or otherwise provide entirely unrelated services through the other profession's designated professional corporation. Nothing more was contemplated by this provision. The legislative history shows that in enacting the statute, there was no consideration of the dynamics that soon developed within the health care arena, where

⁹ S.B. 53 (1968 Stat. Ch. 1375).

¹⁰ American Bar Association Committee on Professional Ethics, Opinion 303.

¹¹ Corporations Code §§13405 and 13401(c) (1968).

licensed health professionals from different categories traditionally worked together to provide services to the public in a collaborative fashion within a single jointly-owned business entity.

2. The 1977 Amendment That Allowed Psychiatrists and Psychologists To Jointly Own Professional Corporations Was About Joint Ownership Interests, Not Employment (S.B. 629).

The Legislature first addressed the issue concerning licensees from different professions who traditionally worked together to practice in a jointly owned corporation in 1977. Following the addition of chiropractic professional corporations in 1970,¹² the California Psychological Association introduced legislation in 1977 to allow psychologists and psychiatrists who traditionally practiced together collaboratively under a single business model to own shares in each other's professional corporations, so long as the outside professionals remained in the minority both in interest and numbers. This allowed a psychologist to become a shareholder, officer or director and render professional services through a medical corporation and a psychiatrist to do the same through a psychological corporation.¹³

The commentary on the 1977 legislation focused on the ability of a licensed health professional in one category to hold a minority ownership position in and render services as part of a professional corporation from another category. It dealt with the division of ownership among different licensees from two related professions that traditionally practiced together so that they could continue to provide services under joint ownership in a professional corporation.¹⁴ No mention was made of employment relationships in isolation from the joint ownership issue. Indeed, the employment question focused only on allowing psychiatrist owners of a psychological corporation to provide professional services through a psychological corporation and psychologist owners of a medical corporation to provide professional services through a medical corporation. This is the focus of future amendments to this provision—language about employment and the provision of professional services through the medical corporation is subordinate to the issues of ownership and control. It simply acknowledges that an allied health professional who can be a shareholder, director, or officer may also provide professional services under the corporate entity.

3. The 1979 Amendment Allowed Registered Nurses To Have Ownership Interests In Medical Corporations Was About Joint Ownership Interests, Not Employment (A.B. 1112).

¹² 1970 Stat. Ch. 1110.

¹³ Corporations Code §13401(c) (1977).

¹⁴ See Enrolled Bill Memorandum to Governor (September 27, 1977) (The bill "would allow psychologists to own shares in and practice under the name of a medical corporation and allow physicians and surgeons to own shares in and practice under the name of a psychological corporation").

In 1979, the statute was amended to allow registered nurses to have ownership interests in medical corporations, as long as the shares and numbers of registered nurses and clinical psychologists did not exceed those of physicians.¹⁵ The original language of the statute that only licensees from the same category as the professional corporation could serve as an "officer, director, shareholder or employee" was retained but made specific exceptions for psychologists and registered nurses.

The legislative history shows that the bill intended for nurses who already worked collaboratively with physicians as their employees be able to participate in a corporate business arrangement in which they shared a proprietary interest. The sponsor of this legislation acknowledged that prior to this amendment, physicians and nurse practitioners provided collaborative professional services as an owner/employer with the nurse as the employee, but this bill "intended to provide one business form under which the physician and registered nurse can share proprietorship."¹⁶ There was no suggestion that the bill was introduced to allow medical corporations to employ registered nurses. Indeed, the legislative history shows that medical corporations had already been doing so. Again, the concern was with shareholder and owner issues, not with who can be employed by the medical corporation.

4. Section 13401.5 Was Added To Address The Ownership Of Corporations By Various Health Professionals That Traditionally Practiced Collaboratively And Not The Employment Of These Professionals (A.B. 2885).

By 1980, a variety of licensed health professionals sought to be among those allowed to form professional corporations. A.B. 2885 added podiatrists, speech therapists and audiologists to the list of professionals that could form corporations. Additionally, in recognition of various health professionals that traditionally practiced collaboratively, the bill amended section 13401 to define a professional corporation as "a corporation...that is engaged in rendering professional services in a single profession, except as authorized in Section 13401.5" and added section 13401.5. The new section 13401.5 named categories of professionals who could serve as "shareholders, officers, directors or professional employees" of the listed professional corporations. The legislative record shows that the focus of the statute, once again, was on ownership interest. The new section, 13401.5, listed professional corporations that allowed minority ownership interests to practitioners outside the designated profession and listed the categories of outside professionals who could have such interests.

The legislative history notes the addition of the podiatrists, speech therapists, and audiologists to the categories of health professionals allowed to incorporate and serve as minority shareholders in professional corporations outside their profession. Employment

¹⁵ Corporations Code §13401(c) (1979).

¹⁶ Letter from Assembly Member Moorehead to Governor Brown (August 29, 1979).

is mentioned in a few places, but only with respect the ability of practitioners to obtain favorable tax treatment from professional corporations by virtue of their employment status. There is no discussion or even a mention of an intent to restrict employment by the enumerated professional corporations to those categories of professionals enumerated in the statute.¹⁷ Employment, again, is seen as an adjunct and relevant only as to the professional's role as a shareholder, director, or officer.

5. Since Its Enactment, The Legislative History On Amendments To Section 13401.5 Focused On Ownership and Management Status of Outside Licensed Professionals.

Since 1980, section 13401.5 has been amended to allow other health care professionals to form professional corporations and to add various licensed health care professionals to the list of authorized licensees that may be "shareholders, officers, directors, or professional employees" of the designated professional corporations. The legislative history of the bills amending the statute focused primarily on issues of who may have ownership and controlling interests in these professional corporations. When employment is mentioned, it was mentioned in conjunction with shareholder and ownership status, or merely referred to the statutory language. There is no independent discussion of employment and nothing in the legislative record suggests that this statute or the subsequent amendments intended to define an exclusive list of individuals who can be employed by the listed professional corporations.

In 1981, A.B. 845 added nursing corporations to the list of professional corporations and podiatrists and optometrists to the list of authorized professionals under medical corporations. Psychologists, nurses, optometrists and podiatrists were also added to the list of authorized professionals under podiatric and psychological corporations. The legislative history on the addition of these licensees focused on their new status as shareholders, not on their new status as employees.¹⁸

Two separate bills amended the statute in 1982. First, A.B. 2701 added marriage, family and child counseling corporations and clinical social worker corporations and

¹⁷ In fact, the legislative history includes a letter from the Permanente Medical Group to the California Podiatry Association noting that podiatrists have worked as salaries employees of the Permanente Medical Group and asked the Association to support changes in the law that would allow podiatrists to be partners in medical partnerships and shareholders in medical corporations. Since the Permanente Medical Group already employed podiatrists, there was no concern about the ability of medical partnerships or corporations to employ podiatrists. Letter to California Podiatric Association from Chief of the Department of Podiatry for Kaiser Permanente Medical Center (March 8, 1979).

¹⁸ See A.B. 845 Legislative Counsel's Digest (March 9, 1981) ("[T]his bill would allow...optometrists to be shareholders in a medical corporation..."); Report of Hearing of Assembly Subcommittee on Health Personnel, p. 2 (April 22, 1981) (This bill would allow "the professional mix of health professionals to expand in other professional corporations, such as optometrists to be shareholders of medical corporations...[and] would allow the different professions to collaborate in a corporate structure").

added marriage, family and child counselors¹⁹ and clinical social workers to the list of authorized licensees of medical, psychological, and nursing corporations.²⁰ A.B. 2346 added physician assistants corporations and added physician assistants to the list of authorized licensees for medical and nursing corporations.²¹ The summaries of these bills focused on the new status of marriage, family and child counselors, clinical social workers, and physician assistants as shareholders, not as employees.²² Although employment was mentioned as a part of the statutory language or in conjunction with shareholding, such references implied only that those who served as shareholders can also be employees and made no indication that employment was limited to the listed authorized licensees.²³ Further, despite discussion on the shareholder, officer, and director status of the authorized licensees, there was no follow up on the employment language in the broader discussion of the bills.

A.B. 2824 added optometric corporations in 1988²⁴ and the legislative history of the bill again focused on shareholder status.²⁵ In 1990, A.B. 3324 added chiropractic corporations and added licensed chiropractors to the authorized list of medical, podiatric, psychological, nursing, marriage and family therapy, clinical social worker, physician

¹⁹ A subsequent amendment substituted "marriage and family therapists" for "marriage, family, and child counselors." S.B. 2026 (2002 Stat. Ch.1013).

²⁰ A.B. 2701 (1982 Stat. Ch.1315).

²¹ A.B.2346 (1982 Stat. Ch. 1304).

²² *See* Report from Senate Committee on Judiciary re A.B. 2701, p.2 (May 17, 1982) (This bill "would also allow those counselors and clinical social workers to be shareholders in medical corporations"); AB 2346 Legislative Counsel's Digest (January 6, 1982) ("This bill allows physicians' assistants to be shareholders in a medical corporation"); Report from Senate Republican Caucus (July 21, 1982) ("[T]his bill merely expands the classes of licensed health professionals who may incorporate or own stock under the professional corporations law").

²³ *See* Digest from the Assembly Office of Research (August 30, 1982) (summaries did include statutory language that stated that the statute allowed "specified professionals to own shares in, or be employed by, the specified corporations"); Letter from California Nurses Association to Assembly Member Jean Moorhead (May 26, 1982) (letter from the California Nurses Association referenced employment, stating that the bill would allow "registered nurses and physicians' assistants to hold shares and be employed by the professional corporations of each other").

²⁴ A.B. 2824 (1988 Stat. Ch. 507).

²⁵ *See* Report of Hearing of Assembly Committee on Health (March 8, 1988) ("Presently, only optometrists may be shareholders of optometric professional corporations ... this unfairly limits the shareholder membership[...] ... Many optometrists participate as minority shareholders in medical, podiatric, psychological or nursing corporations, but conversely these same licensed professionals could not be minority shareholders in a professional optometric corporation").

assistants, and optometric corporations.²⁶ A statement in support of the bill by the California Chiropractic Association focused on minority shareholder and management interests and made no mention of employment.²⁷

S.B. 1279 added acupuncture corporations in 1994²⁸ and four years later A.B. 2120 added acupuncturists to the list of authorized licensees for medical, podiatric, psychological, nursing, marriage and family therapy, clinical social worker, physician assistants, and optometric corporations.²⁹ The legislative record for A.B. 2120 emphasized the shareholder/management status, and did not directly address employment beyond quoting the statutory language.³⁰ The record also included letters from acupuncturists and interested stakeholders that emphasized ownership and management and stated that the purpose of the legislation was to correct the previous law establishing acupuncturist corporations, which inadvertently failed to add acupuncturists to the list of professional corporations in Section 13401.5.³¹

The latest relevant amendment to the statute occurred in 2003 with S.B. 908, which provided for the licensing of naturopathic doctors.³² This bill amended many

²⁶ A.B. 3324 (1990 Stat Ch. 1691).

²⁷ See Statement in Support of A.B. 3324 by the California Chiropractic Association (March 29, 1980) ("Under the current law, medical doctors, podiatrists, ... can own a minority interest in each other's professional corporations and as such can serve as officers and directors thereof[.] ... Currently, the law does not permit chiropractors from holding such ownership interest[.] ... This legislation would correct this inequity by permitting ... licentiates who so desire to allow chiropractors to own a minority interest in such licentiates' professional corporations and/or serve as an officer or director of such corporations").

²⁸ S.B. 1279 (1994 Stat. Ch. 815).

²⁹ A.B. 2120 (1998 Stat. Ch. 175).

³⁰ See Report of Hearing of Assembly Committee on Health, p. 1 (May 5, 1998) ("[T]he purpose of this bill is to allow licensed acupuncturists to become part owners of specified corporations[.] ... [A]cupuncturists are finding themselves at a disadvantage regarding co-ownership of health care corporations[.] ... [T]his bill would remedy [the situation]...by allowing mutual ownership possibilities to acupuncturists").

³¹ Comments from Assembly Republican Bill Analysis re A.B. 2120; see also Letter from Cheryl Warnke, owner of Silver Sage Acupunture, to Assemblyman Martin Gallegos (May 1, 1998) ("[The] bill would allow licensed acupuncturists the right to partake in the ownership and management of medical corporations"); Letter from the Council of Acupuncture and Oriental Medicine Associations to Chairman Martin Gallegos (April 29, 1998) (A.B. 2120 simply provides that licensed acupuncturist may participate in the licensed provider corporations listed above"); Letter from California Association of Acupuncture and Oriental Medicine to Martin Gallegos (April 30, 1998) ("Licensed acupuncturists are finding themselves disadvantaged regarding co-ownership of healthcare corporations"); Letter from the California Society for Oriental Medicine to Assemblyman Martin Gallegos (April 30, 1998) (This bill would allow Licensed Acupuncturists the right to become part of the ownership and management of Medical Corporations").

³² S.B. 908 (2003 Stat. Ch. 485).

statutes, including section 13401.5 where it added naturopathic corporations and added naturopathic doctors as authorized licensees to medical, podiatric, psychological, nursing, marriage and family therapy, clinical social worker, physician assistants, optometric and chiropractic corporations. Significantly, it added physical therapists to the list of authorized licensees under a naturopathic doctor corporation.³³ This was the first and only category to include physical therapists as an authorized licensee. However, the more than 1,000 pages of legislative history contain no discussion on naturopathic doctor corporations or any mention on which licensees can be employed by them. Despite the Legislative Counsel and DCA's reliance on the inclusion of physical therapists under naturopathic doctor corporations, there is nothing in the legislative history of any intent to add physical therapists to the list of authorized licensees in order to differentiate the employment status of physical therapists by naturopathic corporations from the other listed professional corporations including medical corporations. Rather, the inclusion of physical therapists was a casual add-on when drafting the bill to include all allied health professionals that traditionally practiced collaboratively with naturopathic doctors.

CONCLUSION

The Legislative Counsel and DCA's recent interpretation would lead to absurd and anomalous results that are not supported by the statute's legislative history. The Legislative Counsel and DCA's interpretation of section 13401.5 does not comport with the legislative intent behind the statute to provide licensed professionals outside of the professional corporations' designated profession with minority proprietary and management interests. To hold that the statute prohibits professional corporations from employing any licensed employees not specifically listed under the statute not only affects physical therapists, but a variety of allied health professionals licensed under California law that have traditionally collaborated to provide health care services that are also not listed in the statute. This would unnecessarily force various allied health care professionals who have been providing services for decades through these professional corporations to terminate their employment or seek alternative business arrangements. Such an interpretation would not be in the best interest of the health care profession or consumers.

³³ Corporations Code §13401.5(m)(7).