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An ownership battle in fast-growing MRI business

By [Jay Greene](#)



Larry Peplin for Crain's

Richard Chesbrough, M.D., a retired radiologist who is a consultant in the case against Oakland MRI and Christine Derdarian, attorney for Michigan Radiological Society.

- Radiologists association wants enforcement
 - MRI center owners say their businesses are legal
 - Lawsuit is awaiting appeals ruling
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The Michigan Radiological Society case against for-profit Oakland MRI and business owner Susan Swider is all about bringing attention to the state of Michigan's lack of enforcement of its corporate practice of medicine laws and shutting down an allegedly improperly incorporated medical business, according to the lawsuit filed last year against the Troy-based imaging center in Oakland County Circuit Court.

Based on a variety of state statutes, the corporate practice of medicine doctrine was conceived to limit ownership of medical facilities to licensed physicians or legitimate nonprofit entities, according legal experts. There are exceptions for nonprofit hospitals and both nonprofit and for-profit nursing homes.

Last Dec. 15, Judge Daniel O'Brien of Oakland County Circuit Court ruled in favor of Oakland MRI. He said the for-profit imaging center is allowed to operate as a limited liability company and offer diagnostic imaging while owned and managed by a nonphysician. He also found that Swider is not required to be a licensed physician to own the MRI center.

Now, the case is before the Michigan Court of Appeals. A hearing could be held this fall or early next year, said attorneys for Oakland MRI and the Michigan Radiological Society.

But O'Brien's ruling flies in the face of the opinions of many health care legal and medical experts, many of whom told Crain's laws exist to prohibit the practice of lay businesspeople owning for-profit medical facilities. These same experts say such laws are widely flouted nationwide.

"If you are a lay, for-profit corporation, you cannot employ physicians to furnish medical services," said Mark Kopson, chair of the health care practice at Plunkett Cooney in Bloomfield Hills. "The public policy behind the prohibition against the corporate practice of medicine is to prevent profit motives of for-profit corporations from affecting how medical care is delivered."

Kopson said the appeals court could either rule that the corporate practice of medicine doctrine does not prohibit lay ownership when licensed physicians provide the actual medical services, which would be "a de facto acknowledgment of changes in the health care industry over the past 40 years," or it could uphold the doctrine.

But the court also could "effectively side-step the entire issue by affirming the trial court's ruling that the plaintiff lacked standing to challenge the defendant's operations," he said.

In its Jan. 4 appeal, the Michigan Radiological Society, through its attorney Christine Derdarian, said: "The trial court failed to reference the correct statutes and erred in its conclusion, an interpretation that resulted in a clear abuse of discretion."

Even if ultimately unsuccessful on appeal, the Oakland MRI case opens a window on an unevenly applied law and businesspeople who own and manage for-profit medical facilities that range from diagnostic imaging centers, cosmetic surgery centers and spas, dental offices and urgent care centers.

Experts say there could be as many as 500 such medical businesses in Michigan in operation.

Although the Michigan State Medical Society does not advocate limits on physician scope of practice for any medical specialty, the MSMS in 2016 issued a statement demanding Michigan enforce the laws for nonphysicians who own medical clinics and employ physicians or advanced practice nurses.

A decision in favor of the radiologists could spur massive regulatory and enforcement changes in Michigan and possibly the nation, legal experts said.

State laws and past attorney general opinions appear clearly to prohibit the state from issuing corporate documents for limited liability companies operated by businesspeople for the purposes of providing medical services under the state public health code, several legal experts told Crain's.

But attorney Chris Cataldo disagrees. Cataldo, of Jaffe Raitt Heuer & Weiss P.C. in Southfield, represents Oakland MRI and business owner Swider, a gemologist by training.

Cataldo said Swider formed the medical imaging center according to state laws.

"The court ruled with us," Cataldo said. "The statutes are crystal clear on corporate practice, and we are right. If they don't like it, they should be talking with the Legislature seeking to change state law or taking it up with the CON Commission, not with my client."

Cataldo also said the state of Michigan granted Oakland MRI a certificate of need license for its center 10 years ago. He said owner Swider doesn't practice medicine. She hires and contracts with radiologists who read and diagnose the imaging scans.

"My client is not a physician, but she applied for a CON 10 years ago, and the CON statute allows for nonphysicians to own various types of medical equipment. ... We have fully complied with all the laws in the state of Michigan."

But Derdarian said CON applications do not make ownership a part of their criteria for granting requests for covered services. "It determines whether there is a market need, do they have proper equipment and the location for the service," said Derdarian.

"This is a nationwide problem. The CON Commission and the state bureau of corporations are aware of the problem," she said. "There are cracks in the system in granting CON permits and corporations. They need to be fixed."

Cataldo said state corporate practice of medicine laws address only companies formed as professional corporations. He said Oakland MRI was organized as a limited liability corporation, so it is not covered under the law.

But Derdarian said the state allowed Oakland MRI to be organized under the wrong state statute. She said medical facilities are required to be incorporated and organized as professional corporations.

Cataldo said he believes part of the reason for the lawsuit by the radiologists is to shut down MRI centers not owned by physicians to limit competition that cuts into their business.

But Richard Chesbrough, M.D., a retired radiologist who is a consultant in the case against Oakland MRI, said lay business ownership of imaging centers sometimes leads to cases of Medicare and Medicaid fraud.

"There has been an explosion of insurance fraud — resulting in some of the highest auto insurance rates in the country," Chesbrough said. "Because the illegal centers are owned by the very attorneys, chiropractors and business associates that make their money via fraudulent claims."

As several federal medical fraud prosecutions have disclosed, Chesbrough said, elaborate kickback schemes have encouraged fraudulent patient referrals within a tight network of co-conspirators.

"Legitimate imaging centers (hospital or doctor owned) are not part of this network, nor would they be willing to get involved with illegal kick-back schemes," Chesbrough said. "In the case of doctors, they would be risking their license to practice medicine."

Cataldo said there have never been any allegations that Oakland MRI has done anything improper or illegal when it comes to care.

"If they have a problem like that, they are going about it in the wrong way," he said. "Preventing fraud is legitimate, but don't go about filing spurious claims and using wrong statutes."

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