WHAT LAWYERS COULD LEARN FROM THE CORPORATE PRACTICE OF MEDICINE

Melissa D. Mortazavi*

ABSTRACT

Proponents of the United States' domestic experiments in non-lawyer ownership (NLO) of legal practice justify them in terms of increasing "access to justice." But what if opening ownership of legal practice to investment capital only exacerbates market failures (leading to further consolidation and increased costs to clients), while also compromising professional autonomy and fiduciary duty? The legal profession must be clear-eyed about who are the real winners and losers of such a shift and avoid being blinded by wishful thinking. Prominent legal scholars have repeatedly touted NLO as a solution to the access to justice crisis. However, there is scant evidence from real world to indicate whether NLO is even a partial remedy, let alone a panacea. This Article examines the corporatization of medical practice and the experiences of doctors to better understand potential pitfalls for the legal profession. It does so with a particular eye towards two questions: Who are the beneficiaries of received efficiencies or profits and what legal oversight might be effective in curbing harms to the public? This inquiry reveals that, thus far, there are no clear discernable benefits of NLO to the poor and indigent. To the extent that these systems indicate benefits, they appear to run to lawyers themselves in opening new capital fundraising opportunities and potentially to clients the middle class. Further, examination of the medical context reveals that reliance on state regulation and statutory law has been ineffective at safeguarding professional ethics concerns from the market pressures linked to increased market attention. The Article concludes that influx of non-

* Second Century Presidential Professor of Law, University of Oklahoma College of Law. Sincere gratitude to the participants of the Tenth International Legal Ethics Conference and the participants of the Washington University New Frontiers in Attorney Regulation Symposium for their invaluable comments and offers of resources and edits. A particular thanks to Roger Michalski and to Robert Linz for his invaluable research assistance.

lawyer capital is likely to increase the risk of consolidation of services which could impact negatively client access and contribute to professional autonomy disenfranchisement. Corporate ownership of legal practices is a space where risk is high and rewards, particularly in terms of access to justice, are unclear at best.

TABLE OF CONTENTS

INTRODUCTION

"Access to justice" is the white whale of the American legal system.[1]

1. When scholars, policymakers, courts, and the bar speak of "access to justice," they are largely referring to increasing access to the courts and the legal system for those who cannot assert their basic legal rights. It is access for these parties that non-lawyer ownership (NLO) should be judged against, if justified in such terms. "Access to justice" indicates more than concern about middle-class cost savings or the quality, utility, or value billing of legal work. The "crisis" references non-access: Entire communities and populations of people in America who are unable to bring legal claims at all, and who never actualize relief under a full and fair disposition of their legal rights. *See* STATE JUST. INST. & NAT'L CTR. FOR STATE CTS., CIVIL JUSTICE INITIATIVE: THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS vi (2015), https://www. ncsc.org/__data/assets/pdf_file/0020/13376/civiljustice- report-2015.pdf [https://perma.cc/U2BB-637S] ("The cost and delays of civil litigation greatly outpace the

Illusive, tinged in the mythical, for many it is a lifelong obsession—perpetually obscured and out of reach; the desire to reach it is palpable, urgent, and even desperate. For decades, academics have sung (and now court and bar associations are listening to) a siren's song: The barriers to the public lie in the ossified rules lawyers have placed on legal practice to serve themselves. The narrative is that selfish lawyers, holding on to their monopoly with concern only for their pocketbooks, are thwarting the mission of justice for all.[2] Allow non-lawyers to own legal practices![3] Surely non-lawyer ownership (NLO) will lead to a flotilla of better-equipped, more innovative vessels that will undoubtably slay this formidable beast! But why would the new boat owners, not indoctrinated into Ahab's crew, share his same monomaniacal obsession? Indeed, much of Ahab's crew is sick of this seemingly insurmountable and demoralizing quest! What if all these boats, left to the rich open seas, have no interest in the white whale? Perhaps they would rather pillage and plunder, overfish profitable tuna, run cushy luxury cruises, and deep sea drill?

The legal academy, bench, and to a lesser extent, various bar associations are fixated primarily on NLO as a means to increase access to justice.[4] Metaphors aside: American advocates for NLO seem unwilling to

---

monetary value of most cases filed in state courts, effectively denying access to justice for most litigants and undermining the legitimacy of the courts as a fair and effective forum to resolve disputes."). In 2023, Associate Attorney General Vanita Gupta highlighted that, "the World Justice Project released its annual ranking of countries on their compliance with various measures of the rule of law, including the accessibility and affordability of civil justice. Of 142 countries, the United States is 115th. Among the 46 wealthiest countries, the United States ranks 46th—let that sink in: we rank last on accessibility and affordability of civil justice. This means a lack of access to basic civil legal needs involving issues like housing and evictions, employment, or public benefits." Jesse Bernstein, *A Call to Action: Global Momentum on Access to Justice Drives Progress in the United States*, OFF. FOR ACCESS TO JUST., U.S. DEP'T OF JUST. (Dec. 20, 2023), https://www.justice.gov/atj/blog/call-action-global-momentum-access-justice-drives-progress-united-states [https://perma.cc/FHC5-NA3U]; *see also* STATE JUST. INST. & NAT'L CTR. FOR STATE CTS., CIVIL JUSTICE INITIATIVE: THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS 31 (2015), https://www. ncsc.org/__data/assets/pdf_file/0020/13376/civiljustice- report-2015.pdf [https://perma.cc/U2BB-637S] (estimating that in three-quarters of state civil cases, at least one party is unrepresented).

2. *See, e.g.*, Ralph Baxter, *Dereliction of Duty: State-Bar Inaction in Response to America's Access-to-Justice Crisis*, 132 YALE L.J. F. 228, 234 (2022) (arguing that "more than a century under these rules [ABA Model Rule 5.4] has led to the crisis of justice we face today").

3. MODEL RULES OF PRO. CONDUCT r. 5.4 (4)(b) (AM. BAR ASS'N 1983) ("A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.").

4. *See* Gillian K. Hadfield & Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 HASTINGS L.J. 1191, 1212 (2016) (discussing NLO as means to increase access to justice). Placing faith in markets to do the work, the Utah Supreme

acknowledge that in opening up the highly lucrative legal services market, interested third parties will likely be aggressively profit-driven and preoccupied with profit maximization—and clients with money—not access to justice.[5] It is only natural for investors to seek ventures that maximize economic growth of their assets. Therefore, rather than increasing access for the have-nots, it is more likely that NLO will serve the pecuniary interests of lawyers themselves (seeking investment capital) and their business partners (seeking capital generally).

This is a critical moment in time for the bar to carefully consider the real-world implications of NLO. The once entirely academic question of whether lawyers should exclusively own law practices is a lived reality in multiple United States jurisdictions.[6] The Utah Supreme Court led the way

---

Court declared, "we will never volunteer ourselves across the access-to-justice divide and that what is needed is market-based, far-reaching reform focused on opening up the legal market to new providers, business models, and service options." *Utah Supreme Court Standing Order 15*, UTAH SUP. CT. 2 (2020), https://legacy.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2020/08/FINAL-Utah-Supreme-Court-Standing-Order-No.-15.pdf [perma.cc/94RV-8ZSZ] (citing multiple studies that indicate over eighty percent of civil legal problems in various jurisdictions remain unfiled or unresolved).

5. I want to caution the reader not to fall into the trap of conflating changes to NLO, which is about who employs lawyers and owns legal practices, with other attempts to unbundle or liberalize the legal services market through reform of the unauthorized practice of law (UPL) rules. *See, e.g.*, Rebecca L. Sandefur & Lucy Ricca, *Outside the Box: How States Are Increasing Access to Justice Through Evidence-Based Regulation of the Practice of Law*, 108 JUDICATURE 58, 62–63 (2024) (failing to disaggregate access to justice benefits for UPL reform from NLO liberalization). UPL reform typically advocates for the creation of non-lawyer positions that provide specific limited representation to clients on certain, often relatively routine, matters. *See, e.g.*, Bruce A. Green, *Civil Justice at the Crossroads: Should Courts Authorize Nonlawyers to Practice Law?*, 75 STAN. L. REV. ONLINE 104, 115 (2023) (arguing in favor of easing UPL rules "to let certified paralegals, social workers, and other nonlawyers train to do legal work that they can capably do. That would be a welcome and long-overdue course correction."); Deborah K. Rhode, *Access to Justice: An Agenda for Legal Education and Research*, 62 J. LEGAL EDUC. 531, 541 (2013) (advocating for non-lawyers with specific competencies to have targeted limited ability practice); Gillian K. Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Markets*, 60 STAN. L. REV. 1689, 1709–11 (2008) (noting non-lawyer providers' ability to meet certain legal needs). While both opening ownership of legal practice up to non-lawyers and recrafting the boundaries of the UPL challenge a pure monopoly on legal services by lawyers, they are not the same. The bar may decide to relinquish aspects of legal services to other qualified parties in specific contexts and still retain ownership exclusivity over legal practices where lawyers work (however that practice comes to be defined). In the future, the question could arise in the situation where non-lawyers can practice some limited form of law, whether those parties should be allowed to procure ownership interests over lawyers. This Article does not interrogate this, currently hypothetical question, but flags it as a future point of consideration.

6. The idea of NLO and/or alternative business structures has been raised and rejected with some regularity in the recent history of the legal profession. *See* Jayne R. Reardon, *Alternative Business Structures: Good for the Public, Good for the Lawyers*, 7 ST. MARY'S J. LEGAL MAL. & ETHICS 304,

with a quiet upheaval as the first jurisdiction in 1991 to revise their rules and allow NLO.[7] The Utah Supreme Court currently allows such experiments on a case-by-case basis. In doing so, the court stated that its singular animating purpose behind creating a regulatory "sandbox" for alternative business structures (ABS) was to address "the access-to-justice crisis across the globe, the United States, and Utah [that] has reached the breaking point."[8] The court elaborated, "[t]he overarching goal of this reform is to improve access to justice. With this goal firmly in mind, the Innovation Office will be guided by a single regulatory objective: To ensure consumers have access to a well-developed, high-quality, innovative, affordable, and competitive market for legal services."[9] When Arizona became the first (and currently only) state to fully set aside their equivalent of the American Bar Association (ABA) Model Rule of Professional Conduct (Model Rule) 5.4, and blanket liberalize the legal services market, Arizona Supreme Court Chief Justice Robert Brutinel also emphasized access to justice goals stating:

> The Court's goal is to improve access to justice and to encourage innovation in the delivery of legal services. The work of the task force adopted by the Court will make it possible for more people to access affordable legal services and for more individuals and families to get legal advice and help. These new rules will promote business innovation

309–313 (2017) (summarizing history of NLO discussion). Currently, Arizona, the District of Columbia, and Utah also allow some form of NLO. *See* Lyle Moran, *Arizona Approves Nonlawyer Ownership, Nonlawyer Licensees in Access-to-Justice Reforms*, ABA J. (Aug. 28, 2020, 2:20 PM), https://www.abajournal.com/web/article/arizona-approves-alternative-business-structures-as-part-of-access-to-justice-reforms [https://perma.cc/T7R6-TYE6]; *Utah Supreme Court Standing Order 15*, *supra* note 4, at 3 (declaring Utah's change to a sandbox program).

7. Washington, D.C. has allowed a limited form of joint ownership of law firms since 1991, but this beltway leniency never sparked a nationwide trend. *See generally Joseph A. Corsmeier, Washington D.C. Bar Considers Relaxing Bar Rules Related to Non-Lawyer Law Firm Ownership and Fee Splitting*, LAW. ETHICS ALERT (Jan. 31, 2020, 10:33 PM), https://jcorsmeier.wordpress.com/2020/01/31/washington-d-c-bar-considers-relaxing-bar-rules-related-to-non-lawyer-law-firm-ownership-and-fee-splitting/ [https://perma.cc/U52N-ZUGT] (recounting Washington, D.C.'s history with NLO and then-pending considerations that would further ease such rules).

8. *See Utah Supreme Court Standing Order 15*, *supra* note 4, at 1 (defining access to justice as "the ability of citizens to meaningfully access solutions to their justice problems, which includes access to legal information, advice, and resources, as well as access to the courts" and placing the United States last out of developed nations for access to justice (internal citation omitted)).

9. *See id.* at 7 (emphasis omitted).

in providing legal services at affordable prices.[10]

The promise of new corporate structures that place more data scientists, analytics wonks, accounting experts, and software development technicians at the helm of legal practices is also part of this access to justice lore.[11] This narrative banks on such parties being risk-takers who will infuse legal practice with fresh approaches to practice challenges. This, in turn, is viewed as having positive trickle-down impacts on access issues.[12]

In the United States, this access to justice rhetoric is ubiquitous in discussions of NLO despite the fact there are no clear indications such a shift will necessarily favor the disenfranchised.[13] Lofty access rhetoric lies in contrast to the frank economic opportunism that infuses discussion of similar reforms internationally. For example, in a pending lawsuit before the European Court of Justice, lawyers and their investment partners are actively suing to set aside analogous limitations on NLO in Germany as violating European laws regarding the free movement of capital.[14] The record of international jurisdictions embracing NLO (in England, Wales,

10. *See* News Release, Aaron Nash, Admin. Off. of the Cts., Ariz. Sup. Ct., Arizona Supreme Court Makes Generational Advance in Access to Justice (Aug. 27, 2020), https://www.azcourts.gov/Portals/201/Press%20Releases/2020Releases/082720RulesAgenda.pdf [https://perma.cc/6MQ2-ET8T].

11. NLO has long been justified as a means of diversifying talent and experience in places that offer legal services. *See* Stephen Gillers, *A Profession, If You Can Keep It: How Information Technology and Fading Borders Are Reshaping the Law Marketplace and What We Should Do About It*, 63 HASTINGS L.J. 953, 1010 (2012) (arguing NLO empowers firms to attract other types of talent). Some argue that these leaders will spur new ideas and innovation that will increase access to justice over time. Kenneth R. Cunningham et al., *Arizona Non-Lawyer Ownership in Law Firms & Implications for Accounting Firms*, BLOOMBERG L. (Nov. 2020), https://www.bloomberglaw.com/external/document/XA9M2V18000000/corporate-compliance-professional-perspective-arizona-non-lawyer [https://perma.cc/V638-74B4].

12. *See* Cunningham et al., *supra* note 11.

13. *See* Nuno Garoupa & Milan Markovic, *Deregulation and the Lawyers' Cartel*, 43 U. PA. J. INT'L L. 935, 936 (2022) ("Deregulation alone is insufficient and may in fact exacerbate existing market failures."); Nick Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 GEO. J. LEGAL ETHICS 1, 6 (2016) (analyzing existing data out of the United Kingdom (UK) and commonwealth countries and concluding that "although non-lawyer ownership has spurred new business models as predicted by its advocates, it is unlikely these innovations will significantly increase access in most legal sectors").

14. *See* Nicole Yong, *Advocate General at the European Court of Justice Considers German Rules on Third-Party Ownership of Law Firms*, INT'L CONF. LEGAL REGULS. (July 11, 2024), https://iclr.net/news/advocate-general-at-the-european-court-of-justice-considers-german-rules-on-third-party-ownership-of-law-firms/ [https://perma.cc/Q57L-FWU7] (reporting that this case centers on interpreting Article 15 of the Services Directive (2006/123/EC) which is about the free movement of capital and investment).

and Australia) indicates no marked increase in access to justice to the poor or disenfranchised, despite hopes and projections of such.[15] While multiple other European jurisdictions may set aside bans to NLO in the immediate future, they do so to encourage economic growth and innovation in the legal sector, not with the promise to increase access to justice.[16] These contemporaneous experiences indicate it is most likely NLO will ultimately benefit the economic interests of lawyers and investor third parties, leading to market growth and potentially an influx of capital, but will not necessarily increase access or lower costs to those who are truly most in need.[17]

To avoid duplicity or unintended consequences, American lawyers must ask themselves: When the dust settles and the NLO revolution has occurred, will people previously unseen in the legal system have more of an ability to vindicate their legal rights? Or will the bar merely have anointed a new ruling class, even more devoid of any professional obligations to the public? NLO has the potential to significantly alter how lawyers practice and meet their complicated ethical obligations to clients, courts, rule of law, and the public at large. NLO could attract enormous amounts of capital that could bend and stretch the fabric of our existing justice system. Does investor ownership of professional legal services actually positively increase the access, affordability, or quality of representation?

Luckily, lawyers need not consider these questions in a vacuum. Domestically, the United States has witnessed perhaps the greatest modern experiment in corporate ownership of professional enterprises: The modern iteration of medical practice is in the country's domestic healthcare system. Through this experience, the legal profession has the opportunity to observe what happens to a professional practice when subject to massive capital influx and the presence of external investment interest. Four decades into

15. *See* LEGAL SERVS. BD., THE STATE OF LEGAL SERVICES 2020: A REFLECTION ON TEN YEARS OF REGULATION 21 (2020), https://legalservicesboard.org.uk/wp-content/uploads/2020/11/The-State-of-Legal-Services-Narrative-Volume_Final.pdf [https://perma.cc/5AQD-NRSZ] ("[T]he general feeling among stakeholders is that the scale of the access challenge is at least as great today, if not greater, than when the Legal Services Act came into force.").

16. *See infra* Part II.A (discussing pending litigation and reform proposals in Germany and Norway).

17. In fact, early scholarship examining these systems in the UK noted market advantages to law firms, not access to justice inroads. *See, e.g.*, Anthony E. Davis, *Regulation of the Legal Profession in the United States and the Future of Global Law Practice*, 11 PRO. LAW. 1, 9 (2009) ("the ability of law firms in London to structure arrangements and ventures with non-lawyers will give those firms individually, and the English legal profession collectively, a hitherto unimaginable competitive advantage.").

the corporatization of modern medicine, the American public finds healthcare more expensive, access more consolidated and geographically limited, patient satisfaction ambivalent (at best), and doctors with less professional control and autonomy to tailor care to meet their patients' needs.[18]

This Article takes these insights to unpack various questions: What can the legal profession learn from experiences to structure NLO in a way that maximizes benefits to the public good and ensures NLO does not become another vehicle for the haves to get farther ahead, and the have-nots to languish behind? Moreover, if the goal really is increased access to justice, we must interrogate if this is really the way forward. If the problem we are really trying to address is that lawyers in small and medium practice need investment capital to modernize, it seems likely that there are better ways the bar can address this problem without compromising on the lawyer-client relationship.

This Article seeks to spark clear-eyed discussions about goals and potential beneficiaries of NLO before setting aside longstanding rules and practices on little more than hopeful wishes. Too often experiments in innovation have promised a trickle-down effect of miraculous answers to age old struggles—but they have frequently come with significant negative impacts, only understood too late to create effective structural safeguards.[19] As stewards of our legal system, and by extension our civil system of governance, lawyers owe the public, in application of our solemn fiduciary

18. *See* Diogo Cunha Ferreira et al., *Patient Satisfaction with Healthcare Services and the Techniques Used for its Assessment: A Systematic Literature Review and a Bibliometric Analysis*, 11 HEALTHCARE 639, at 2 (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10001171/pdf/healthcare-11-00639.pdf [https://perma.cc/TSK9-HBAA] (in discussing a comprehensive review of research on patient satisfaction, researchers conclude that, "[d]espite the high number of studies regarding this topic, the results are inconclusive and differ across each document.").

19. It is unclear whether some of these world-changing shifts could be structurally safeguarded, but consider the following examples: The internet was intended to democratize information and level the global playing field; it now has become a tool of global manipulation—distorting confidence in the presence of fact or truth, acting as an anointer of the billionaire tech-elites, and is often used to exploit vulnerable populations. *See What Stanford Research Reveals About Disinformation and How to Address It*, STAN. REP. (Apr. 13, 2022), https://news.stanford.edu/stories/2022/04/know-disinformation-address [https://perma.cc/555Q-AP5B] (discussing the "weaponization" of the internet to engage in deleterious misinformation)**.** Social media was created to widen and deepen human connections—we now know it to be a key driver in increased anxiety, depression, and suicide, particularly in adolescents. *See* Ujala Zubair et al., *Link Between Excessive Social Media Use and Psychiatric Disorders*, 85 ANNALS OF MED. & SURGERY 875, 876–78 (2023) (drawing a direct connection between increased social media use and higher levels of a variety of mental health issues).

duty, a rigorous interrogation of all information before putting this work up to the highest bidder. This Article is the first to import insights from the corporate ownership of medical practice in the United States to the NLO discussion, in the hopes that this cautionary tale will allow the legal profession to tailor changes to meet the laudable goal of rendering legal access more accessible to those who need it most.[20]

As such, this Article proceeds in three parts. Part I sets the stage, laying out the applicable rules and ethical justifications prohibiting NLO, as well as explaining NLO status in Europe and the United States. In Part II, the Article proceeds to consider domestic experiences with private ownership of medical practices in the United States with a particular eye towards impacts on professional autonomy and patient care. By examining this experience, while United States jurisdictions are relatively early in their experiments with NLO, the Article seeks to anticipate pitfalls and maximize the public good potential of any such shifts. Part III continues by cautioning against any move to NLO without clear goals and a specific set of self-regulatory structures. Then, the Article concludes with setting forth suggestions on how to optimize any liberalization in this space to favor public service goals that support increased access to justice and safeguard lawyer's ability to meet their varied and complex fiduciary duties.

I. PROFESSIONAL INDEPENDENCE AND OWNING LEGAL SERVICES

Marrying the privilege of exclusive practice to meaningful accountability and societal obligations is the balance upon which the legal workplace functions. However, few rules actually acknowledge how the institutional structure of legal employment ultimately facilitates or undermines the actualization of ethical obligations or seek to use that realization to modify how lawyers work.[21] The exception to that general

20. The best client-based arguments in favor of NLO are not access to justice ones but those that make the case that the middle class is currently underserved and this would increase their access. Commentors argue that alternative business structures (ABS) could create more jobs connecting lawyers and other professionals to these clients/customers. *See* James M. McCauley, *The Future of the Practice of Law: Can Alternative Business Structures for the Legal Profession Improve Access to Legal Services?*, 51 U. RICH. L. REV. 53, 55–59 (2017).

21. Some rules explicitly take into account work structure and transactional pressures. *See* MODEL RULES OF PRO. CONDUCT r. 1.8(f) (AM. BAR ASS'N 1983) (discussing how the payment of fees

norm is ABA Model Rule 5.4, which restricts ownership of legal practices to lawyers.[22] This rule embraces an institutional understanding of lawyering which concedes in the harsh real-world of actual employment, who your boss is will impact the content of your work. Reserving legal practices to ownership by lawyers is buttressed by two presumptions: (1) lawyers will not behave as any other business person would (they will not be purely profit driven but will follow their fiduciary duties and ethical obligations because they understand what lawyers do/should do) and, relatedly, (2) those fiduciary duties and ethical commitments, particularly the exercise of independent judgment, are of value and ought to be protected.

ABA Model Rule 5.4 enumerates the traditional consensus thinking (or at least received wisdom) in the American Legal Profession regarding the "Professional Independence of a Lawyer."[23] It begins in subsection (a) which lays out a general prohibition on sharing legal fees with non-lawyers, noting limited exceptions for the death of a lawyer, the transfer of a law practice, payment of benefits to non-lawyer employees, and work with non-profits.[24] The Rule then goes on to state, point blank, that, "[a] lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law."[25] The Comments of the Rule justify these as "traditional limitations" of fee sharing in service of preserving "professional independence of judgment."[26] Before Arizona set

---

does not transfer fiduciary duty from the client to the fee-payor); MODEL RULES OF PRO. CONDUCT r. 1.5(c) (discussing how contingency fee structures may not be used in certain types of representations and require additional protections for the client, including a writing signed by the client, to be valid); MODEL RULES OF PRO. CONDUCT r. 1.16 (AM. BAR ASS'N 1983) (explicitly allowing lawyers to refuse legal work and therefore avoid being compelled into a role-differentiated practice).

22. MODEL RULES OF PRO. CONDUCT r. 5.4 (AM. BAR ASS'N 1983). This is not to say that there are not other places where the ABA Model Rules reflect a real-world sensibility seeking to institutionally alter the structure of day-to-day practice. *See, e.g.*, MODEL RULES OF PRO. CONDUCT r. 5.5 (AM. BAR ASS'N 1983) (discussing the various forms of the UPL).

23. MODEL RULES OF PRO. CONDUCT r. 5.4(a) (AM. BAR ASS'N 1983) (titled "Professional Independence of a Lawyer"). Scholars have noted that "nonlawyer ownership of firms and multi-disciplinary practice were prohibited in order to preserve lawyers' independence and ability to act in the public interest." Russell G. Pearce & Pam Jenoff, *Nothing New Under the Sun: How the Legal Profession's Twenty-First Century Challenges Resemble Those of the Turn of the Twentieth Century*, 40 FORDHAM URB. L.J. 481, 492 (2012).

24. MODEL RULES OF PRO. CONDUCT r. 5.4(a) (AM. BAR ASS'N 1983).

25. MODEL RULES OF PRO. CONDUCT r. 5.4(b) (AM. BAR ASS'N 1983) ("A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.").

26. MODEL RULES OF PRO. CONDUCT r. 5.4 cmt. 1 (AM. BAR ASS'N 1983) ("The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment.").

aside the Rule in 2021, all fifty states had adopted some form of ABA Model Rule 5.4's prohibition against fee-sharing and non-lawyer ownership of legal practices.[27] These rules seek to limit the risks of lawyers compromising their fiduciary duties to outside interests, while safeguarding independence and a high quality of service.

But what is the value of professional independence to lawyers, clients, and the rule of law? Scholars have long sought to unpack its centrality and meaning. At its core, professional independence seeks to protect a conception of the unique role lawyers play in American society to, "hold[] a position of independence, between the wealthy and the people, prepared to curb the excesses of either."[28] Some scholars highlight that professional independence is best understood as a buffer between the power of the state as wielded through political actors and individuals impacted by law.[29] Indeed, the 1908 ABA Canon of Professional Ethics concludes its Model Oath with a pledge to "never reject from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice."[30] The origins of protections for professional independence are inherently intertwined with a cognizance of the corruptibility of lawyering ideals by concerns over material gain or access to power.

In his seminal 1988 article, *The Independence of Lawyers*, Professor Robert Gordon sets forth a taxonomy for understanding professional independence which includes corporate self-regulation, controls over the conditions of work, and political independence.[31] The first category is the

27. *Alphabetical List of Jurisdictions Adopting Model Rules*, AM. BAR ASS'N, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/ [https://perma.cc/GM3V-V2BR] (updated Mar. 28, 2018) (listing all states but California as adopting the Model Rules as written, until recent departures by Utah and Arizona with Rule 5.4). Note, in addition to rules of professional conduct, some statutory law also impedes the ability of non-lawyers to own legal practices. *See, e.g.*, 17 C.F.R. § 210.2–01(c)(4)(ix) (2012) (a provision of Sarbanes Oxley preventing accounting firms from providing legal services to their audit clients).

28. *See* LOUIS D. BRANDEIS, *The Opportunity in the Law*, *in* BUSINESS—A PROFESSION 313 (1914). Perhaps it is reflection of the abdication of arbitrating this balance that has led to the current moment when parties legitimately can ask: Will a lawyer wielding power over legal practice really be any less business/profit-minded than a corporate venture business person?

29. *See* Evan A. Davis, *The Meaning of Professional Independence*, 103 COLUM. L. REV. 1281, 1281 (2003).

30. COMM. ON CODE OF PRO. ETHICS, FINAL REPORT OF THE COMMITTEE OF PROFESSIONAL ETHICS 585 (1908).

31. *See* Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 6–19 (1988).

ability of the bar to regulate its own practices.[32] This type of ability could be compromised by NLO if it accelerates public skepticism of law being able to effectively curtail misconduct directly and create strong accountability and incentive structures. The second category of professional independence that Professor Gordon identifies concerns the day-to-day work of lawyers, the freedom to make choices about the work structure of legal representation,— specifically, which cases and clients to take on—time allocations between types of clients (pro-bono and not), how to staff cases, and what approaches to use in any given representation.[33]

Political independence is the concept that there is social value to lawyer autonomy going beyond the lawyer themselves or any single client, acting as a "balancing wheel" within society.[34] Political independence manifests in various ways: taking on undesirable clients to counter the power of the state, resisting any dominance by a single powerful group in a democracy, or championing rule of law against powers both economic and political. One might view this as overly idealistic. However, even if one abandons that there is a "public interest," and embraces only rent-seeking public choice theory or pure law and economics market capitalism, these understandings for legal institutions still require rules. It "turns out that it is very difficult to manage without some notion that lawyers must be committed to helping to maintain the legal framework."[35]

At its core, professional independence protections are justified to the extent (1) the job of lawyers requires discretion and judgment and (2) lawyers behave differently than people (i.e., are motivated by more than profit maximization or pecuniary gain). As legal practice in modernity veers in some contexts towards a more business-like and profit-driven model, arguments that a professional lawyer's autonomy has fiduciary value hold less sway, particularly when balanced against the promise of increasing access to justice. Encroachment upon and the weakening of professional autonomy for lawyers in their practice is not new—rather, the last hundred plus years have seen a steady progression away from practice structures that realistically support the ability of lawyers to make independent decisions.[36]

32. Gordon notes that "[t]hese freedoms are usually analyzed as part of a social bargain: they are public privileges awarded in exchange for public benefits." *Id.* at 6.

33. *Id.* at 7–8.

34. *Id.* at 19.

35. *Id.* at 17.

36. *See* Pearce & Jenoff, *supra* note 23, at 483–486 (describing the migration of the legal

This most obviously takes the form of lawyers working in at-will pyramid hierarchical employment structures that pit an individual lawyer's natural self-preservation instincts (heightened in their early professional years by likely large educational debt loads) against their fidelity to professional obligations.[37] All of this is exacerbated by the prevalence of billable hour models and non-lockstep "partnerships" whose eat-what-you-kill structures discourage lesser "partners" from having a truly equal voice in firm management.

This begs the reevaluation of the costs of lawyer exclusive ownership of legal practices versus the benefits. Is a lawyer's monopoly over legal work protective of ethical duties to client and court, law and legality? Or is it merely a self-serving tool that drives up the cost of legal services, unnecessarily excluding swaths of people from vindicating their legal rights? Even so, up until now, the person or persons at the top of these work structures were, by trade and training, lawyers. The logic behind ABA Model Rule 5.4 is that all decisionmakers in a law firm personally stand to jeopardize their own careers if they flew too fast and loose with ethical obligations.[38] So, unlike other businesses leaders, who can evaluate ethics risks in pure monetary cost-benefit terms, a lawyer heading a law firm cannot decide to "buy" an ethics infraction, even if monetarily advantageous, without risking their own livelihood into perpetuity. This is not so of a business CEO who may, in a law and economic style calculus, "reasonably" decide that a legal infraction is worth the economic cost if the financial benefit to the company is great enough.

A. Reference Point: A Glimpse at Non-Lawyer Ownership of Law Firms Internationally

A full treatment of the varied ways in which NLO is and has been explored internationally is best left to a full and complete treatment within its own devoted work. This discussion, however, would be remiss not to (at

profession over time away from civic ideals of professionalism towards more business driven models of practice).

37. *See* Melissa Mortazavi, *Lawyers, Not Widgets: Why Private-Sector Attorneys Must Unionize to Save the Legal Profession*, 96 MINN. L. REV. 1482, 1521 (2012) (discussing economic pressures on associates in large law firm structures).

38. MODEL RULES OF PRO. CONDUCT r. 5.1 (AM. BAR ASS'N 2020) (making clear the supervisors can be individually responsible for misconduct of other lawyers and within a law firm).

minimum) provide the reader with some common points of reference.[39] Australia was the first to open legal practice to NLO, with their first forays as early as the mid-1990s.[40] In 2007, the United Kingdom passed legislation that allowed England and Wales to engage in NLO of firms.[41] While the stated purposes of this act includes the public interest and access to justice, once implemented it has been most successful in making inroads on goals relating to competition and consumer choice in the United Kingdom market.[42] Gains here appear to include high consumer confidence and a current rate of over 10% of law firms in England and Wales with non-lawyer owners.[43] Information from United Kingdom and Australia, who have allowed NLO's for over a decade, indicates liberalization of the market does not necessarily lead to cheaper legal services or provide legal services to those who have gone without.[44] Rather, studies of ownership liberalization

39. For a clear, well-organized, and near comprehensive overview of major international forays into this space through 2017, see Louise Lark Hill, *Alternative Business Structures for Lawyers and Law Firms: A View from the Global Legal Services Market*, 18 OR. REV. INT'L L. 135, 183 (2017).

40. *See* STEVE MARK ET AL., OFF. OF LEG. SERVS. COMM'NR., PRESERVING THE ETHICS AND INTEGRITY OF THE LEGAL PROFESSION IN AN EVOLVING MARKET: A COMPARATIVE REGULATORY RESPONSE 16 (2010); Susan Fortney & Tahlia Gordon, *Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation*, 10 U. ST. THOMAS L.J. 152, 156–157 (2012) (history of Australia's development in the area of NLO and ABS, with 2001 and 2004 marking the largest leaps and opening up legal practice to being able to be publicly traded on the stock exchange).

41. *See* Legal Services Act 2007, c. 29, § 1 (UK). It is important to note that these acts did not extend to Scotland. However, Scotland subsequently adopted similar acts, with the key difference that ABS were forced to limit NLO to a minority stake of forty-nine percent or less. *See Access to Justice: Legal Services: Alternative Business Structures*, SCOTTISH GOV'T, https://www.gov.scot/policies/access-to-justice/alternative-business-structures/ [https://perma.cc/MD6M-5ES6]; John Flood, *Will There Be Fallout from Clementi? The Repercussions for the Legal Profession After the Legal Services Act 2007*, 2012 MICH. ST. L. REV. 537, 539 (2012) (discussing the reaction to the Legal Services Act of 2007 in Scotland).

42. *See* Legal Services Act 2007, c. 29, § 1 (UK) (listing regulatory objectives as "(a) protecting and promoting the public interest; (b) supporting the constitutional principle of the rule of law; (c) improving access to justice; (d) protecting and promoting the interests of consumers; (e) promoting competition in the provision of services within subsection (2); (f) encouraging an independent, strong, diverse and effective legal profession; (g) increasing public understanding of the citizen's legal rights and duties; (h) promoting and maintaining adherence to the professional principles; (i) promoting the prevention and detection of economic crime."); *see* Flood, *supra* note 41, at 542–543 (describing the various reports leading up to the adoption of the Legal Services Act).

43. *See* Sandefur & Ricca, *supra* note 5, at 58 (reporting an eighty-four percent consumer approval rate); Idin Sabahipour, *Non-Lawyers Could Own Law Firms Soon*, LITTLELAW (June 20, 2024), https://littlelaw.co.uk/p/nonlawyers-law-firms-soon [perma.cc/4WHV-M73S] (noting nearly twelve percent of law firms have non-lawyer ownership).

44. Garoupa & Markovic, *supra* note 13, at 972 ("The U.K. legal market of today differs from that of a decade ago and features a greater variety of providers. However, there is little evidence that the

in legal services in these locales reveal ambivalence at best about how such changes increase access—at worst, studies indicate the possibility of the opposite.[45] The experiences from these jurisdictions indicate growth in capital generation and investment, more innovation in business forms, and an increased ability to extract profit from legal services.[46] Regulatory emphasis in these jurisdictions is on curbing anti-competitive behavior, encouraging new business forms, and on consumer rights—not increasing access to justice to underserved or disenfranchised populations.[47]

Several additional European countries may open up legal practice to NLO in the near future. Currently pending before the Court of Justice of the European Union (CJEU) is the case of Daniel Halmer, a Berlin-based lawyer, who is challenging Germany's longstanding limitations on NLO of legal practice.[48] In 2002, the Munich Bar Association revoked the license of Mr. Halmer's law firm after he sold a fifty-one percent share of the practice to an Austrian investor.[49] Mr. Halmer challenged the Bar's ruling, arguing that maintaining exclusivity in lawyer ownership impermissibly interferes with the EU's stated rights surrounding corporate freedom and other free

---

[Legal Service Act] has fundamentally altered the provision of legal services to clients at either the high or low ends of the market.").

45. *See* LEGAL SERVS. BD., *supra* note 15, at 45 ("[T]he general feeling among stakeholders is that the scale of the access challenge is at least as great today, if not greater, than when the Legal Services Act came into force."); Memorandum from Jasminka Kalajdzic of the Ontario Trial Law.'s Ass'n to Linda Langston, *re* ABS Research 1 (Dec. 1, 2014) (observing, "there is no empirical data to support the argument that NLO has improved access to justice in either [the UK or Australia]"), https://otlablog.com/wp-content/uploads/2015/01/Dr-Kalajdzic-Study-on-NLO.pdf [https://perma.cc/678Z-2JAJ].

46. LEGAL SERVS. BD, *supra* note 15, at 17, 45 ("[W]hile there is evidence that ABS are more innovative than traditional firms, investors perceive legal services as a 'sleepy' market and the sorts of multi-disciplinary practices that the architects of the Legal Services Act reforms envisaged have not materialised [sic] as much as expected.").

47. *See* Russell G. Pearce et al., *A Taxonomy of Lawyer Regulation: How Contrasting Theories of Regulation Explain the Divergent Regulatory Regimes in Australia, England/Wales, and North America*, 16 LEGAL ETHICS 258, 278–81 (2014).

48. Court of Justice of the European Union, E.C.J., Case C-295/23, Halmer Rechtsanwaltsgesellschaft v. Rechtsanwaltskammer München et al., ECLI:EU:C:2024:581 (2024) [hereinafter Case of Halmer]. Note that unlike American UPL, German rules do already currently allow certain "professional" non-lawyers to own stakes in law firms. *See* Bundesrechtsanwaltsordnung [BRAO] [The Federal Lawyers' Act], Aug. 1, 2022, BUNDESGESETZBLATT [BGBI] [FEDERAL LAW GAZETTE] at III, § 59(c)–(e). These include tax advisors, accountants, medical doctors, psychologists, and architects among others. *Id.*

49. *Id.* The German Federal Lawyers' Act, much like ABA Model Rule 5.4, bars third party investment in legal practices. *See* Bundesrechtsanwaltsordnung [BRAO] [The Federal Lawyers' Act], Aug. 1, 2022, BUNDESGESETZBLATT [BGBI] [FEDERAL LAW GAZETTE] at III, § 59(c)–(e).

market protections.[50] Mr. Halmer asserted publicly that professional practice must change because, "[t]his is about the ability of small or medium-sized law firms to invest in the technology they need to provide consumer law services."[51] He went on to discuss the scale of investment needed to launch a law tech business, stating "[w]e invested €5m in the software we needed to set up our business. Under the traditional law firm model, that is too expensive for most firms. There is a younger generation of lawyers in Germany who appreciate that the rules around ownership need to be reformed. If we are successful, it will jump start innovation within the legal sector right across the EU."[52] Here, the benefit is to lawyers and their ability to attract investors to start new types of companies, particularly tech-oriented ones.[53] However, there is concern other market actors and lawyers themselves are being impermissibly limited in their ability to engage in commerce and that they need to be free to meet emerging consumer desires for new tech-oriented products in the legal space.[54]

This economic rationale also animates discourse in multiple other European jurisdictions (such as the Netherlands and Norway) that are also considering opening law practice up to third party ownership. The countries cite benefits including "a positive impact on competition because of the increase in capital, such as new skills from non-lawyers and innovation."[55]

---

50. *See* John Malpas, *ECJ to Review German Law Banning Outside Investment in Law Firms*, GLOB. LEGAL POST (Apr. 26, 2023), https://www.globallegalpost.com/news/ecj-to-review-german-law-banning-outside-investment-in-law-firms-1635912632 [https://perma.cc/S66Q-4GHQ].

51. *See id.*

52. *Id.*

53. *Id.* (quoting Alison Hook, co-founder of a German consultancy firm: "It has been clear for a while that technology is shifting attitudes in Germany to external finance in law firms.").

54. A preliminary opinion by Advocate General, Manuel Campos Sánchez-Bordona, does not uphold the German limitations on NLO because he says any valid limitations placed by member states on legal practice must be internally consistent and uphold the public interest limitations upon which they are based. *See generally* Opinion of Advocate General Campos Sanchez-Bordona, Court of Justice of the European Union, E.J.C., Case C-295/23, Halmer Rechtsanwaltsgesellschaft v. Rechtsanwaltskammer München et al., ECLI:EU:C:2024:581 (2024), https://curia.europa.eu/juris/document/document.jsf?text=&docid=287901&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=14241540 [https://perma.cc/UJU3-CSY]. This is based on existing EU law which makes clear that any such exclusions must be implemented in a systematic and coherent way. *Id.*

55. Henrik Ballebye Okholm et al., *Analysis of Changes in Norwegian Lawyer Regulation*, COPENHAGEN ECONS. (2019), https://copenhageneconomics.com/publication/analysis-of-changes-in-norwegian-lawyer-regulation/ [perma.cc/C9TH-Z2E3]; Peter Morton, *Netherlands and Denmark Both Considering Changes to Non-lawyer Ownership Rules*, INT'L CONF. OF LEGAL REGULS., (Jan. 20, 2021), https://iclr.net/news/netherlands-and-denmark-both-considering-changes-to-non-lawyer-ownership-rules/ [https://perma.cc/6DSK-LAQ3] (noting that the creation of a five-year Sandbox, allowing non-

European experiences indicate that the anticipated economic beneficiaries of NLO are likely to be lawyers (who can raise investment capital to support expensive technology driven practice conversions), investors, and certain consumers who can afford legal services.

B. The Wild West: Stateside Experiments

The last five years have seen increased interest by state courts to open legal practice to new people and technologies.[56] In some jurisdictions, like Washington and Arizona, this has taken the form of allowing non-lawyers to be able to practice law in certain contexts.[57] In August 2020, the Utah Supreme Court voted unanimously to create a pilot legal regulatory "Sandbox" that would license and oversee new forms of legal providers and services.[58] These new forms can include non-lawyer fee sharing and ownership models as well as the option to apply to engage in practice previously defined at unauthorized practice of law (UPL).[59] The Sandbox is overseen by Utah's Office of Legal Services Innovation (Innovation Office), which operates under the direct auspices of the Utah Supreme Court. The Innovation Office evaluates entrants, issues licenses to these pilot legal services providers, and oversees their operation to ensure consumers are protected from harm. On April 30, 2021, the Utah Supreme Court voted unanimously to extend the Sandbox program from five to seven

lawyers ownership of legal practice in the Netherlands, was a response to "[the] pressure on [Netherlands Bar Association] to amend rules in order to improve market conditions.").

56. Previously only Washington, D.C. entertained relaxing NLO ownership rules, which it did in 1991. *Corsmeier*, *supra note 7.*

57. *Legal Paraprofessionals Program*, ARIZ. JUD. BRANCH, https://www.azcourts.gov/cld/Legal-Paraprofessional [https://perma.cc/4N46-NVT7] (discussing the parameters of the Arizona Legal Paraprofessional Program); Dan Kittay, *An Inside Look at Limited Practice for Nonlawyers in Washington and Other States*, ABA BAR LEADER J., Sept.–Oct. 2013 (discussing Washington state's Limited License Legal Technician Board). I consider these jurisdictions distinct from those which grant limited practice licenses to lawyers in training, noting the distinct educational goals for lawyers as the core function but not addressing access to justice concerns. *See Licensed Legal Internship*, OKLA. BAR ASS'N, https://www.okbar.org/lli//_[https://perma.cc/KKX4-XTFZ] ("The Licensed Legal Internship Program was established by the Oklahoma Supreme Court to allow law students and recent graduates the opportunity to obtain courtroom experience under the supervision of a licensed attorney.").

58. *Utah Supreme Court Standing Order 15*, *supra* note 4, at 1.

59. *See id.* at 3 (noting that, "individuals and entities may be approved to offer nontraditional legal services to the public through nontraditional providers or traditional providers using novel approaches and means, including options not permitted by the Rules of Professional Conduct and other applicable rules.").

years to allow more time to observe the impact of the regulatory reforms.[60] In a two-page order in August of 2020, Arizona followed suit but leap-frogged the regulatory Sandbox and became the first state in the United States to remove the general ban on NLO of law firms in its entirety by repealing the Arizona version of ABA Model Rule 5.4, while continuing traditional limitations on the UPL.[61] The order became effective on January 1, 2021.[62] Arizona Courts have delegated enforcement of these programs to their state bar.[63]

Early experiences in these jurisdictions show that easing traditional restrictions on NLO and UPL does increase innovation with new types of business models and services. What it does not show is that NLO will increase access to justice. Early studies indicate a mix of entrants into these legal service spaces, with the vast majority of these entities either providing new financing to existing legal practices or targeting companies and consumers with market power.[64] To the extent these entities are reaching an "access to justice," contingent of people who are poor or indigent, early experiences indicate it is UPL reform which is at play in Utah, not NLO (implemented in both Arizona and Utah), that is driving increasing access for low-income and underprivileged populations.[65] When surveyed, those

60. *See* News Release, Admin Off. of the Cts., State of Utah Jud. Council, Utah Supreme Court to Extend Regulatory Sandbox to Seven Years (Apr. 30. 2021), https://utahinnovationoffice.org/wp-content/uploads/2024/01/Sandbox-Extension-PR-4-21.pdf [https://perma.cc/8C38-ELVF].

61. *See* Bob Ambrogi, *Arizona is First State to Eliminate Ban on Nonlawyer Ownership of Law Firms*, LAWSITES (Aug. 31, 2020), https://www.lawnext.com/2020/08/arizona-is-first-state-to-eliminate-ban-on-nonlawyer-ownership-of-law-firms.html [https://perma.cc/R99M-G7TE]; Order Amending the Arizona Rules of the Supreme Court and the Arizona Rules of Evidence, *In re* Restyle and Amend. Rule 31, No. R-20-0034 (Ariz. 2020) [hereinafter Arizona Order]; SUP. CT. STATE OF ARIZ., TASK FORCE ON THE DELIVERY OF LEGAL SERVICES: REPORT AND RECOMMENDATIONS 10–14 (2019), https://www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf?ver=2019-10-07-084849-750 [perma.cc/2BCG-8SME].

62. *See* ARIZ. R. SUP. CT. 46(a)–(c) (effective Jan. 1, 2021).

63. Arizona Order, *supra* note 61.

64. DAVID FREEMAN ENGSTROM ET AL., STAN. L. SCH., LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 5–6 (2022), https://law.stanford.edu/wp-content/uploads/2022/09/SLS-CLP-Regulatory-Reform-REPORTExecSum-9.26.pdf [https://perma.cc/HP45-RN3L] (noting thirty-five percent of these new entities as traditional law firms adding non-lawyer partners or external investment, another thirty-five percent as NLO's targeting companies and middle-income consumers, another eighteen percent seeking to connect lawyers to potential client and services, and the remainder as businesses engaged in direct legal services by non-lawyers).

65. *Id.* at 49 ("Reforms permitting access to outside capital alone (ABS-only), while likely to result in increases in diversification and innovation within the market serving corporations, small businesses, and the middle class, may be less likely to yield providers that serve low income and indigent people.").

who took part in these experiments and created NLOs noted their motivation for participating in NLO as entirely market-driven and unrelated to access to justice.[66]

II. NOT WHAT THE DR. ORDERED: THE CORPORATE PRACTICE OF MEDICINE

In relation to NLO, lawyers have an opportunity to look at what private or corporate ownership can do to a professional setting by considering how corporate ownership of medical practices has changed the practice of medicine. According to those who study medicine and work in the field, the impact of corporate investment into healthcare has fundamentally altered the treatment landscape, particularly the relationship between doctors and their patients and the availability of doctors for patient care. The last four decades have seen an unprecedented shift in the medical field. Today, nearly three of four physicians work in corporate medical practices or hospital systems, as opposed to independent practices, which made up the vast majority of practices as recently as the 1980s.[67]

A. Why Compare to Doctors?

The parallels between the legal and medical professions are significant and make for a strong point of comparison. Both are service professions that seek to provide expert care to a party in need. In the case of the doctor, this care is medical and is administered to the physical person of their patient, whereas the lawyer uses their expertise to care for the legal rights of their clients (these may, very materially, implicate their physical person—including their freedom, physical well-being, and location). Both professions require loyalty to the patient/client above personal or material gain. What iconic medical ethicist Kenneth J. Arrow wrote about doctors in 1963 holds equally true for lawyers, "[a]dvice . . . is supposed to be

66. *Id.* at 43–44 (reporting NLO business noted the following as their reasons for moving to an NLO structure: hire/retain employees, access to capital, investment in tech or partnership with tech, give nonlawyers the opportunity to hire lawyers to practice law in their own business, and expand marketing).

67. Fred de Sam Lazaro & Simeon Lancaster, *PBS News Hour: Doctors Unionize as Healthcare Services Are Consolidated into Corporate Systems*, PBS (Jan. 1. 2024, 6:35 PM), https://www.pbs.org/newshour/show/doctors-unionize-as-healthcare-services-are-consolidated-into-corporate-systems [https://perma.cc/8K55-7UE4].

completely divorced from self-interest. . . . It is at least claimed that treatment is dictated by the objective needs of the case."[68] However, Arrow also qualifies that "the ethical compulsion is surely not as absolute in fact as it is in theory."[69] Both professions also recognize the importance of administering this care regardless of moral blameworthiness: A doctor will stop the bleeding of a gunshot wound of a criminal, just as a lawyer will safeguard the same criminal's legal rights to be treated fairly, humanely, and with dignity regardless of his or her underlying criminal or moral culpability. Ultimately, following the rule of law, like following the Hippocratic Oath, is an absolute charge and not modified by the character of parties involved (or the money exchanged).

While there are undeniable affinities between the professional charges of doctors and lawyers, this Article would be remiss not to note the primary difference between medical and legal practices: the presence of a behemoth insurance market. It is possible (even likely) that while opening legal service to NLO will attract investors, it will not be on the same scale of medicine's private fund investment—largely because law lacks a Medicaid equivalent. Historians of the role of capital markets in health care link the availability of insurance money to parties that previously had no market value (through Medicare/Medicaid programs) to the interest of large scale capital investment and financing.[70] However, this highlights how unlikely it is NLO will favor low-income or indigent clients. Without a Medicaid type legal services program or a civil Gideon, the poor and indigent populations of America are an even less relevant market in terms of capital interest or investment than they are in the medical context. As such, it is exceedingly unlikely that corporate investment will support building out services that will target those who fall in the typical access to justice gap. Without a market driven incentive to devise programs for this demographic, investors in the legal services market are unlikely to commit resources to these spaces (unless compelled to by an external, non-market force or incentive).

68. Kenneth J. Arrow, *Uncertainty and the Welfare Economics of Medical Care*, 53 AM. ECON. REV. 941, 949–950 (1963).

69. *Id.* at 950.

70. J.B. Silvers, *The Role of Capital Markets in Restructuring Health Care*, *in* UNCERTAIN TIMES: KENNETH ARROW AND THE CHANGING ECONOMICS OF HEALTH CARE 156 (Peter J. Hammer et al. eds., 2003).

B. Legal Interventions in Corporate Medicine

One might be tempted to think the current state of medicine is the product of a lack of interest by lawmakers or policymakers to be active in this space. But this is not so. Since the early twentieth century, lawmakers have been attempting to limit these negative policy implications by developing the Corporate Practice of Medicine (CPOM) doctrine which seeks to limit or control non-physician ownership of medical practices.[71] There are currently no federal level laws overseeing CPOM.[72] Therefore, CPOM is a patchwork of various state laws and regulations, as well caselaw, attorney general opinions, and actions by state licensing boards.[73] Most states have some form of CPOM, which technically bars corporations from employing a physician to provide medical services or from practicing medicine directly.[74]

However, nearly all states with CPOM laws also have significant exceptions that allow physicians to be employed by certain types of entities.[75] The most common and least disruptive of CPOM's stated goals is the formation of professional corporations or other entities solely owned by physicians.[76] Some states modify this structure to allow a minority ownership to be held by other health professionals (such as optometrists and registered nurses) as long as the remaining and majority share rests with physicians.[77] As such, professional corporations can deliver clinical services

71. *Corporate Practice of Medicine: Overview*, PRAC. L. HEALTH CARE (2024), https://us.practicallaw.thomsonreuters.com/w-038-4401 [https://perma.cc/GZ5F-FWHN].

72. The absence of federal law has led to the American Medical Association to discuss advocation for the adoption of one. Maureen Tkacik, *The AMA Debates a Federal Ban on Corporate Medicine*, AM. PROSPECT (Nov. 13, 2023), https://prospect.org/health/2023-11-13-ama-debates-federal-ban-corporate-medicine/.

73. For example, Illinois's Supreme Court articulated a CPOM doctrine first, with the state legislature later codifying it. *See* Berlin v. Sarah Bush Lincoln Health Ctr., 688 N.E.2d 106, 113–114 (Ill. 1997).

74. *The Corporate Practice of Medicine 50-State Guide*, PERMIT (Nov. 20, 2023), https://www.permithealth.com/post/the-corporate-practice-of-medicine-50-state-guide#:~:text=CPOM%20laws%20are%20regulations%20that,)%2C%20and%20other%20business%20entities [https://perma.cc/T44X-6NDR] (outlining in brief the state of CPMD laws in all fifty states and noting that all but eleven have current laws in effect).

75. *See Issue Brief: Corporate Practice of Medicine*, AM. MED. ASS'N (2015), https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/premium/arc/corporate-practice-of-medicine-issue-brief_1.pdf [https://perma.cc/S9JV-PUM8].

76. *See, e.g.*, N.Y. BUS. CORP. LAW § 1503 (McKinney 2024).

77. *See, e.g.*, CAL. CORP. CODE § 13401.5 (West 2023); COLO. REV. STAT. ANN. § 12-36-

if the majority is owned by state licensed physicians, even in strong CPOM states. Other states allow for the formation of professional corporations organizing by physicians that provide many types of health services.[78] Many jurisdictions recognize an exception to the rule for doctors employed by hospitals, although some make the distinction between for-profit versus non-profit hospitals.[79] Others have exemptions for schools, prisons, or state institutions.[80]

Litigation surrounding medical practices can use CPOM laws to police the practices of management companies and protect physician autonomy.[81] If a violation of CPOM laws is found, the company would be engaged in the unlicensed practice of medicine. However, an interdisciplinary study conducted by joint efforts from the National Health Lawyers Association and the American Academy of Healthcare Attorneys (NHLA/AAHA) concluded that CPOM had "little practical effect" in curtailing the negative impacts of corporate employment structures on medical practice.[82] Explanations for this are varied: Some attributed ineffectiveness to underenforcement of CPOM while others noted management service organizations (MSO) allow corporate interests to work around restrictions.[83]

The NHLA/AAHA also considered (in medical context) whether the corporate form of the practice as non-profit versus for-profit ought to change the way the CPOM is applied. The majority of the expert panel concluded that the for-profit/non-profit nature of the organization should not control application of the doctrine since non-profits still have

134(1)(d) (West 2024) (allowing non-physicians who are licensed by the state medical board to hold a minority ownership interest in a physician professional corporation).

78. *See* 7 R.I. GEN. LAWS ANN. § 7-5.1-3(b)(1) (West 2024).

79. Judith Parker, *Corporate Practice of Medicine: Last Stand or Final Downfall?*, 29 J. HEALTH HOSP. L. 160, 161–163 (1996).

80. *See, e.g.*, Albany Med. Coll. v. McShane, 489 N.E.2d 1278, 1279 (N.Y. 1985) (New York permitting medical schools to employ practicing physicians); 22 TEX. ADMIN. CODE ANN. § 177.17(b)(20)–(23) (West 2024) (exempting prisons, non-profit medical schools, and school districts from CPOM restrictions); N.J. ADMIN. CODE § 13:35-6.16(f)(4) (allowing licensed insurers to employ physicians).

81. *See* Am. Acad. of Emergency Med. Physician Grp., Inc. v. Envisions Healthcare Corp., No. 22-cv-00421-CRB, 2022 WL 20237950, at *10 (N.D. Cal. May 27, 2022) (surviving a motion to dismiss because allegations would amount to violations of CPOM limitations).

82. NHLA/AAHA, PATIENT CARE AND PROFESSIONAL RESPONSIBILITY: IMPACT OF THE CORPORATE PRACTICE OF MEDICINE DOCTRINE AND RELATED LAWS AND REGULATIONS 36 (1997) (expert panel concluding in 1998 that Corporate Practice of Medicine Bar was "ineffectual in preventing inappropriate economic pressure on physician medical judgment").

83. *Id.* at 32–33.

subsidiaries to answer to—be they foundations, corporate boards, or otherwise.[84] Indeed over time, increased pressure from capital markets to maintain profitability have obscured distinctions between the for-profit and non-profit medical sector.[85]

Even in jurisdictions with active CPOM prohibitions, parties can structure their corporate entities to navigate around the CPOM limitations through creating a "Friendly PC" or "captive PC" model. This approach creates a structured management agreement between a business corporation (not headed by a physician) and a professional corporation (headed by a physician).[86] Then the business corporation steps in and oversees everything from work space, to equipment, to nonprofessional staff (some state laws will even allow the business corporation to lease out to the physician professional or licensed staff that they employ).[87]

A Friendly PC is supposed to have a particular management structure to avoid running afoul of the states CPOM requirements. The California Medical Board, for example, provides instructing guidance such as responsibility for patient care (including decisions regarding treatment options), physician workload, and the policy that doctors must determine diagnostic tests and referrals.[88] In addition, California law also requires that only a licensed physician can control medical records, hire or fire health staff, set contractual relations with a third party payer (insurance), make coding and billing decisions, and approve medical equipment and supplies.[89] In some locales, an entity may also appoint a physician to be the legal owner of the MSO with strict restrictions on non-competes, non-disclosures, and restrictive stock-transfer agreements.[90] CPOM also does not appear to impede the development of managed care arrangement which flourish in states that have strict CPOM.[91]

84. *Id.* at 33.

85. *See* Silvers, *supra* note 70, at 159 (noting that "the greatest impact of the recent decades of capital financing may be a narrowing of the fundamental differences between for-profit and not-for-profit institutions.").

86. *See Corporate Practice of Medicine: Overview*, *supra* note 71.

87. *See id.*

88. *Physicians and Surgeons: Information Pertaining to the Practice of Medicine*, MED. BD. OF CAL., https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information/ [https://perma.cc/QKA7-KMXE] (see "Corporate Practice of Medicine" tab).

89. *Id.*

90. *See* Jane M. Zhu et al., *A Doctrine in Name Only — Strengthening Prohibitions Against the Corporate Practice of Medicine*, 389 NEW ENG. J. MED. 965, 967 (2023).

91. NHLA/AAHA, *supra* note 82, at 30 (however, noted that the presence of such laws here

Another wrinkle lies in the space of malpractice liability: when patients are hurt—who pays? In the medical context, cases are split on when a patient may sue the corporate owners of a medical practice. A Texas statute allows consumers to sue health plans for adverse medical actions failing to meet a standard of ordinary care stemming from plan policies (which are set by the corporate entity, not specific physicians making decisions).[92] However, the question of how far corporate liability should run and how much fairly lies on physicians, given their limited autonomy is an issue that places not only patients, but physicians themselves in legally vulnerable positions. Health plans are rendering medical decisions but then not fully sharing in the responsibility when those decisions lead to deleterious medical consequences.[93]

Ultimately, CPOM legal experiments in the medical field, while varied and cumbersome, have yet to prove effective at curtailing the negative externalities of non-doctor ownership on the quality of medical practice.

C. Does the Corporate Practice of Medicine Benefit the Public or Increase Quality or Access?

The corporate practice of medicine faces numerous challenges. Current research identifies three areas of concern in corporate medicine: (1) increased healthcare costs, (2) impacts to patient care due to pressure to reduce staffing, and (3) demoralization of physicians—including burnout and moral conflicts.[94] The struggle in the corporate practice setting is how to balance doctor's ethical obligations with corporate goals. These are often in tension. [95]

"provide[] some protection against excessive corporate control").

92. TEX. CIV. PRAC. & REM. CODE ANN. § 88.002(a) (West 2023); *see also* Corp. Health Ins. Inc. v. Texas Dep't of Ins., 12 F. Supp. 2d 597, 602 (S.D. Tex. 1998) (while this statute was challenged as impermissibly interfering with Employee Retirement Income Security Act (ERISA), this case upheld the right of a patient to sue a Health Maintenance Organization (HMO) for damages that resulted from negligence).

93. The expert group concluded that they felt that when a physician's recommendation is overruled by an HMO, the HMO should be liable. NHLA/AAHA, *supra* note 82, at 39.

94. Zhu et al., *supra* note 90, at 966.

95. This tension is exacerbated by the insurance system. *See* Michael L. Millenson & Mervin Shalowitz, *Moral Hazard vs. Real Hazard: Quality of Care Post-Arrow*, *in* UNCERTAIN TIMES: KENNETH ARROW AND THE CHANGING ECONOMICS OF HEALTH 202 (Peter J. Hammer et al. eds., 2003) (noting that, "[t]he product-formerly-known-as-insurance has taken on the revolutionary role of not just providing access to care, but of shaping the content of that care through financial incentives to providers

Corporate ownership does not appear to have delivered cost efficiencies to patients—in fact, emerging data indicates that medical costs have gone up with the influx of investment capital.[96] In the medical context, private equity investment into the corporate ownership of medical practices, particularly hospitals, has led to large scale market consolidation and the concentration of the health care industry. "The capital market is dominated by an economic perspective, which leaves little room for broader measures of welfare. . . . [t]he fact is that when profits falter and investments fail, the investors who provided funds can force management changes, mergers, or even liquidation as they attempt to meet their fiduciary duty. This discipline can be harsh indeed and certainly can restructure the landscape."[97]

The presence of investment capital in this field has also undermined competition by pushing individual doctors and smaller non-consolidated practices to the wayside. This has lessened availability and physical access points. According to the New England Journal of Medicine, nearly three-quarters of all physicians are now employees, not owners, in their practice and one-half of all physicians practice in a hospital or corporate practice.[98] In some markets, private equity firms own more than thirty percent of a local market.[99] Not only has corporate consolidation of healthcare failed to make services cheaper, it has led to closures in rural communities, of small local medical practices, and of pharmacies.[100] This has also drastically disadvantaged patients who find themselves blindsided at the receiving end of surprise billing practices that yield extremely high out of network fees.[101]

---

and to patients.").

96. David Wainer, *You Can Thank Private Equity for That Enormous Doctor's Bill*, WALL ST. J. (May 30, 2024, 5:30 AM), https://www.wsj.com/health/healthcare/you-can-thank-private-equity-for-that-enormous-doctors-bill-3a2fc90b [https://perma.cc/FM8J-CHZU].

97. Silvers, *supra* note 70, at 159.

98. Zhu et al., *supra* note 90, at 965.

99. *Id.*

100. *See* Brown University School of Public Health, *Erin Fuse Brown Testifies Before the United States Senate*, YOUTUBE (June 24, 2024), https://www.youtube.com/watch?v=ZsZhv9XCHQ4 [perma.cc/Z6BT-UBN8] (noting that ninety percent of hospitals in the United States are consolidated and that the use of a diversified medical system with small practices renders existing players as "too big to fail"); Eileen Appelbaum & Rosemary Batt, *Private Equity Buyouts in Healthcare: Who Wins, Who Loses?* 5 (Ctr. for Econ. & Pol'y Rsch., Working Paper No. 118, 2020), https://cepr.net/wp-content/uploads/2020/03/WP_118-Appelbaum-and-Batt.pdf [https://perma.cc/Y66A-A8KS] (noting consolidation as a core impact of private equity investment).

101. *See* John E. McDonough, *Termites in the House of Health Care*, THE MILBANK Q. (Nov. 14, 2022), https://www.milbank.org/quarterly/opinions/termites-in-the-house-of-health-care/ [perma.cc/27SH-Q2GP]; Zack Cooper et al., *Surprise! Out-of-Network Billing for Emergency Care in*

Recent evidence indicates that private equity investment has led to substantial increased cost to patients across practice areas.[102]

At its core, the discussion of corporate ownership of professional medical practice is always thematically linked to an inherent tension between needing to safeguard a base level of ethics service against maximizing the quantity of revenue (which is what a corporation, particular one that answers to investors, is designed to do).[103] Interwoven in all of these discussions are age-old economic claims (raised in the legal services context as well)—that more competition in the medical market between doctor-owned practices and investor-owners medical plans could lead to better pricing for consumers.[104] However, lived history in the medical space indicates otherwise. There is no indication that non-professional ownership of practice leads to more competition or better circumstances for patients/clients.[105] Current research and reporting indicates that the rise of investor led health plans and corporate investment in healthcare generally has increased patient costs, not accessibility. [106] In fact, in some instances, these management tactics have actively targeted and harmed the most vulnerable patient populations.[107]

Doctors are increasingly concerned about the interference of corporate

the United States, 128 J. POL. ECON. 3626, 3634 (2020).

102. *See* RICHARD M. SCHEFFLER ET AL., MONETIZING MEDICINE: PRIVATE EQUITY AND COMPETITION IN PHYSICIAN PRACTICE MARKETS 6–7 (2023) (noting that in eight of ten practice areas examined there were statistically significant price increases, some as high as sixteen percent).

103. *See* Appelbaum & Batt, *supra* note 100, at 7–8 (noting that investment entities do not carry with them the same professional ethical obligations that doctors themselves do).

104. *See* NHLA/AAHA, *supra* note 82, at 28; Ronald J. Glasser, *The Doctor Is Not In: On the Managed Failure of Managed Health Care*, HARPER'S MAG., Mar. 1998, at 35.

105. *See* Reed Abelson & Margot Sanger-Katz, *Who Employs Your Doctor? Increasingly, a Private Equity Firm*, N.Y. TIMES (July 10, 2023), https://www.nytimes.com/2023/07/10/upshot/private-equity-doctors-offices.html?searchResultPosition=1 [https://perma.cc/NT3C-2PEL].

106. *See* Erin C. Fuse Brown & Mark A. Hall, *Private Equity and the Corporatization of Health Care*, 76 STAN. L. REV. 527, 527 (2024) (noting the particular dangers of private equity investment include that, "[t]he drive for quick revenue generation threatens to increase costs, lower health care quality, and contribute to physician burnout and moral distress." Further, "[t]hese harms stem from market consolidation, overutilization and upcoding, constraints on physicians' clinical autonomy, and compromises in patient care. Policymakers attempting to counter these threats can barely keep up. Like a cloud of locusts, private equity moves so quickly that by the time lawmakers become aware of the problem and researchers study the effects, private equity has moved on to other investment targets."); Wainer, *supra* note 96.

107. *See* Wendi C. Thomas et al., *This Doctors Group is Owned by a Private Equity Firm and Repeatedly Sued the Poor Until We Called Them*, PROPUBLICA (Nov. 27, 2019, 1:00 PM), https://www.propublica.org/article/this-doctors-group-is-owned-by-a-private-equity-firm-and-repeatedly-sued-the-poor-until-we-called-them [https://perma.cc/QER7-9TLX].

structures with medical practice.[108] Recent years have seen high profile cases involving groups of physicians attempting to use legal action and administrative structures to reassert doctor professional independence and protect their patients in the corporate practice context.[109] Corporate ownership of healthcare practices has so fundamentally altered the landscape of medical practice that recent years have even seen physicians successfully unionize to protect their professional commitments to patients and improve employment conditions.[110] Traditionally, doctors unionizing would likely have been viewed as preposterous, as the National Labor Relations Act (NLRA) expressly disqualifies managerial employees from the class of workers who qualify for union-based protection.[111] How could a doctor possibly demonstrate that they had neither the autonomy nor power of a managerial employee or supervisor when working in their professional capacity? The far-flung scenario was met in 2023, however, when a group of four-hundred physician providers employed by the non-profit Allina Health System voted overwhelmingly to unionize and was successfully certified by the NLRB—citing ongoing understaffing, poor patient facing-policies, and consequential negative impacts on patients.[112]

108. Members of the American Medical Association acknowledged in a proposed resolution, "that the corporate practice of medicine: (1) has the potential to erode the patient-physician relationship; and (2) may create a conflict of interest between profit and best practices in residency and fellowship training." Vicki Norton, *Corporate Practice of Medicine Prohibition*, AM. MED. ASS'N PRIV. PRAC. PHYSICIAN SECTION (Sept. 25, 2023), https://www.ama-assn.org/system/files/i23-ppps-resolution-1.pdf [https://perma.cc/2XQH-NES4].

109. *See* Norton, *supra* note 108.

110. *See* Lazaro & Lancaster, *supra* note 67 (interviewee Paul Clark, from Pennsylvania State University notes, "[t]hings have to be pretty bad, I would argue, when physicians do try to organize, because this has never remotely been a part of their professional culture.").

111. The National Labor Relations Act does not cover supervisors or "managerial employees." Rockspring Dev., Inc., 353 N.L.R.B. 1041, 1043 (2009). "Managerial employees" are those "who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy." *Id.*

112. *See* Noam Scheiber, *Doctors Unionize at Big Health Care System*, N.Y. TIMES (Oct. 13, 2023), https://www.nytimes.com/2023/10/13/business/economy/doctors-union.html [https://perma.cc/MTE4-CWKX] (relaying that physicians who organized felt a direct impact on their professional independence. "'We feel like we're not able to advocate for our patients,' said Dr. Matt Hoffman."). The most controversial of these policies, the practice of cutting off necessary medical care to those with medical debt, was discontinued largely in response to investigative reporting and related public outcry. *See* Sarah Kliff & Jessica Silver-Greenberg, *This Nonprofit Health System Cuts Off Patients with Medical Debt*, N.Y. TIMES (June 1, 2023), https://www.nytimes.com/2023/06/01/business/allina-health-hospital-debt.html [https://perma.cc/B2CH-R8CJ]; Michelle Wiley, *Allina to Pause Controversial Practices for People with Medical Debt*, MPR NEWS (June 9, 2023, 2:42 PM),

Even where CPOM laws appear on paper to be robust, independent enforcement is rare. While California is one of the jurisdictions with the strongest CPOM laws, explicitly barring interference with decision-making process for physicians, the most effective action in this space has only come in response to litigation.[113] In recent years, doctors have attempted to use CPOM laws to protect their ability to practice and serve their patients by filing a lawsuit. In February 2022, the American Academy of Emergency Medicine Physician Group filed a lawsuit seeking declaratory and injunctive relief against Envision Healthcare Corporation and Envision Physician Services LLC, alleging multiple violations of CPOM.[114] While the case never reached an adjudication, the healthcare giant withdrew from all operations in the state of California in July 2024 pursuant to private settlement.[115] This has caused some commentators to call for increased vigilance in management compliance with CPOM laws.[116]

The costs and benefits of corporate medical practice provide a useful peek into what a future for NLO could look like. The benefits of large corporate ownership include greater investment into infrastructure and financial stability, a lucrative private sector healthcare market, potential increases in operational efficiency and capacity, and the ability to implement new payments structures or engage in large scale public-health initiatives more expeditiously. The concerns of the system center on cost to

https://www.mprnews.org/story/2023/06/09/allina-to-pause-controversial-practices-for-people-with-medical-debt [https://perma.cc/KRZ4-8FK5] (noting suspension of this policy in 2023).

113. *See* Thomas et al., *supra* note 107; Lazaro & Lancaster, *supra* note 67.

114. *See* First Amended Complaint at 4, Am. Acad. of Emergency Med. Physician Grp., Inc. v. Envisions Healthcare Corp., No.: 3:22-cv-00421 (N.D. Cal Feb. 18, 2022) (noting in paragraph 13, "[t]he primary objective of the Corporate Practice bar is to prevent the intrusion of commercial influence on the practice of medicine.").

115. *See* Press Release, David Millistein, Am. Acad. of Emergency Med., Update: AAEM-PG Lawsuit Against Envision Healthcare (July 24, 2024), https://www.aaemphysiciangroup.com/wp-content/uploads/sites/4/2024/07/Update_AAEM-PG-Lawsuit-Against-Envision-Healthcare.pdf [https://perma.cc/9CLT-CND4].

116. Shalyn Watkins et al., *Friendly PC Model Survives in California After Envision Healthcare Litigation Settlement*, HOLLAND & KNIGHT (Aug. 12, 2024), https://www.hklaw.com/en/insights/publications/2024/08/friendly-pc-model-survives-in-california-after-envision-healthcare-lit [https://perma.cc/AZ3X-U2NF] (noting that, "this case serves as another reminder of the importance of adopting a culture of compliance and that parties can challenge management arrangements if they are perceived to interfere with clinical decision-making and professional judgment. The California Medical Board's guidance draws a clear line that continues to be enforced. Friendly physician arrangements must be carefully structured to ensure clinical decision-making, particularly for the hiring and firing of professional staff, remains with the friendly physician.").

patients and impact on patient's services and doctor autonomy: interference with clinical operations, management and staffing, negotiations with insurers, and billing and coding of patient care.[117] These structures are important because they ultimately change how physicians care for patients.

III. OWNING LEGAL PRACTICE: A WAY FORWARD

A. Ensure that Lawyers are Protecting Fiduciary Rather than Pecuniary Interests

There is a salient critique that today's lawyers behave no differently than any other business person. Distinctions regarding lawyer ownership and NLOs only make sense to the extent this is not the case. Indeed, professional monopolies can only be justified to the extent that they serve greater societal interests than those of the lawyer themselves.[118] It is exceedingly important that if the bar is to continue to retain exclusive ownership over its own practices that attorneys do not behave the way any standard business person or entity would. The goal of legal practice it is to serve clients and the justice system well.

To focus on these goals, however, there are specific actions state bar associations can take to undercut the business-first mindset creep. First, all law firms, but particularly those that are NLOs, must create employment structures that are stable to support lawyer ethical practice.[119] No lawyer should be employed at will. In an NLO, employment decisions should be controlled by an internal review committee comprised only of lawyers. Bar associations should ban any non-lockstep systems of partnership compensation. Any indication of an "eat what you kill" compensation structure indicates an unprofessional emphasis on profit and a predatory and reductionist view of clients and their needs (even corporate clients are

117. *See* Zhu et al., *supra* note 90, at 966.

118. Mike Saks, *A Review of Theories of Professions, Organizations and Society: The Case for Neo-Weberianism, Neo-Institutionalism and Eclecticism*, 3 J. PROS. & ORG. 1, 3 (2016) (explaining that special economic liberties are allowed in professions in "exchange for employing in a non-exploitative way esoteric knowledge of great importance to society").

119. Melissa Mortazavi, *Institutional Independence: Lawyers and the Administrative State*, 87 FORDHAM L. REV.

1937, 1961 (2019) (noting "if one wants to preserve the professional independence of lawyers, then employment pressure is a real concern to be reckoned with.").

deserving of lawyers sublimation of self-interest). Billing structures should be reevaluated to remove motivations to "churn" bills to meet arbitrary caps. It is time for lawyers to create a work environment that reminds themselves—the profession of law is one where a lawyer can "do good and do well," but that does not mean becoming extraordinarily wealthy. Doing well financially is not the goal, it is a byproduct of a strong practice.[120] If run well, a law practice should be something that no one wants to invest in purely for pecuniary gain—it is, by definition, a mission-driven enterprise.

B. Regulatory Role by Bar Associations

Even if a state bar allows NLO in some form, it need not be unmitigated. Generally jurisdictions that have allowed NLO have oversight bodies.[121] The medical context has shown that relying on external statutory protections to safeguard professional duties is largely ineffectual. Instead, it is essential that the bar take an active and vigilant role in direct oversight.[122] Regulatory oversight could require certain public service aspects should that be the goal of the NLO licensing program. In these contexts, vigorous oversight by members of the bar should be required for licenses, and regular recertification or accreditation processes may minimize drift and maximize compliance.

Moreover, forays into NLO in Arizona and Utah may provide some early insights into how to regulate effectively. Most significantly—structurally, both Utah and Arizona's choose to regulate on the entity level rather than the individual party level.[123] Both jurisdictions also review

120. *See* Gordon, *supra* note 31, at 13; Ted Schneyer, *Professional Discipline for Law Firms?*, 77 CORNELL L. REV. 1, 3–4 (1991) (advocating for law-firm level entity discipline).

121. *See Under New Management*, THE PRACTICE, Jan–Feb 2021, https://clp.law.harvard.edu/knowledge-hub/magazine/issues/perspectives-on-legal-regulation/under-new-management/ [https://perma.cc/8Q63-WGB3] (discussing Australia's regulatory structure with particular focus on New South Wales and the Legal Professor Act of 2004); *Who We Are and What We Do*, SOLICS. REG. AUTH., http://www.sra.org.uk/consumers/what-sra-about.page#sra-and-approved-regulators [https://perma.cc/M5HP-LYAA] (setting out the UK's regulatory structure); *SRA Authorisation of Firm Rules*, SOLICS. REG. AUTH., https://www.sra.org.uk/solicitors/standards-regulations/authorisation-firms-rules/ [https://perma.cc/249V-UDCL] (discussion of UK's regulatory structure).

122. ABA Model Rule 5.4(c) is a useful starting point for the baseline goals of such a regulation, "[a] lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services." MODEL RULES OF PRO. CONDUCT r. 5.4(c) (AM. BAR ASS'N 2024).

123. *See Utah Supreme Court Standing Order 15*, *supra* note 4; Arizona Order, *supra* note 61.

applications of businesses on a case-by-case basis, allowing close and individualized assessments of risks and benefits.[124] This is a welcome revelation, a long time coming.[125] This Article aligns with previous scholars who have noted that entity level regulation is a necessary and effective way to motivate the creation of institutional structures that will meaningfully support professional compliance with ethical requirements. It should be adopted broadly in all legal practice settings.

CONCLUSION

Unlike pending European actions—in the United States, proponents rarely if ever champion NLO as a matter of corporate rights. Rather, jurisdictions in the United States' rhetoric resounds squarely in non-economic and social good terms where public consideration of NLO is paired with an indictment of a failure to address access to justice concerns. American discussions of NLO have been coupled with the promise of a path towards a more perfect justice system that vests the have-nots with a voice. But while it may be true that lawyers "will never volunteer ourselves across the access-to-justice divide,"[126] there is scant evidence that NLO will be the solution to the access to justice concerns so many yearn for. If anything, early experiments indicate that while there is money to be had in the NLO space, it is the easing of UPL rules that truly broadens the class of people who have access to legal services.

This Article concludes that it is critical the legal profession acknowledge that many other powerful interests stand to gain by opening up this market and that it is not a natural and necessary conclusion that market liberalization will lead to cost savings for low-income clients,

124. *Id.*

125. Professor Ted Schneyer was the first to call for firm level discipline, noting "a law firm's organization, policies, and operating procedures constitute an 'ethical infrastructure' that cuts across particular lawyers and tasks. Large law firms are typically complex organizations. Consequently, their infrastructures may have at least as much to do with causing and avoiding unjustified harm as do the individual values and practice skills of their lawyers." Schneyer, *supra* note 120, at 10. Moreover, other scholars have picked up and developed this mantle further. *See, e.g.*, Elizabeth Chambliss & David B. Wilkins, *A New Framework for Law Firm Discipline*, 16 GEO. J. LEGAL ETHICS 335, 336 (2003) (proposing an alternative regulatory framework for its execution).

126. *See Utah Supreme Court Standing Order 15*, *supra* note 4 (citing multiple studies that indicated over eighty percent of civil legal problems in various jurisdictions remain unfiled or unresolved).

increase equity in our society, or improve the quality of services. If the goal of NLO is actually to increase access to justice, early experiments into these structures and comparative looks at the medical profession do not indicate that those most in need will be significant beneficiaries from these efforts. The legal profession can learn from the experiences of doctors and in doing so, attempt to navigate around the pitfalls of corporate medical practice, which has virtually obliterated the independent medical practice in a matter of a few decades. Loss of autonomy is not theoretical for the medical profession, it is real. Employment coercion and institutional norms that pressure doctors away from professional best practices is just business as usual.

Even if NLO experiments do move forward for the purposes of allowing lawyers to raise capital or have more legal services options for the middle class, then it will still be critical that lawyers proactively self-regulate in these emerging spaces. One conclusion from the medical context is clear: Statutory law does not effectively safeguard professional obligations and duties to patients (in our case, clients). Relying on statutory oversight rather than self-regulatory structures to safeguard professional autonomy has no history of success. CPOM, while pervasive on paper, is largely absent in protecting the doctor-patient relationship and professional autonomy in practice. Informed by the experiences of the medical profession, if NLO moves forward, the legal profession is on notice to create robust regulatory structures that preserve the agency necessary for lawyers to serve their various constituencies: clients, the rule of law, and the public.