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A New Era of Compliance Standards for California DSOs and MSOs After the *Aspen Dental* Settlement

Key Takeaways From the Attorney General's Significant CPOD Guidance

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The California Attorney General's recent settlement with Aspen Dental Management, Inc. represents one of the most significant corporate practice of dentistry (CPOD) guidance since *Painless Parker v. Board of Dental Examiners, 216 Cal. 285, 14 P.2d 67 (1932)*.

The settlement establishes the most detailed compliance framework to date for Dental Support Organizations (DSOs) and Management Services Organizations (MSOs) operating in California, imposing extensive restrictions across financial, operational, and marketing practices, coupled with a 36-month independent monitorship.

Although not a binding precedent, and while several provisions exceed statutory authority, the settlement provides a detailed roadmap of how the Attorney General (AG) interprets existing CPOD principles under California's Unfair Competition Law, False Advertising Law, and the California Dental Practice Act.

Organizations should reassess their California operations now through a privileged, attorney-directed review—recognizing that the settlement's specific terms reflect a negotiated enforcement posture rather than codified legal mandates.

Key Takeaways

- **Management Fee Structures:** Revenue- and profit-based management fees may receive heightened regulatory scrutiny notwithstanding Business and Professions Code section 650(b), which expressly authorizes certain percentage-based compensation arrangements.
- **Operational Control:** The settlement reinforces the importance of maintaining clear separation between administrative support functions performed by the DSO/MSO and professional judgment exercised

exclusively by licensed practitioners. Contracts, policies, board minutes, and operational practices should consistently document that licensed dentists retain ultimate authority over all professional matters.

- **Employee Compensation:** Incentive compensation tied to practice revenue, treatment acceptance, or product sales presents increased enforcement risk and should be carefully reviewed.
- **Advertising Oversight:** Practice owners should exercise meaningful review and approval authority over marketing materials, pricing disclosures, testimonials, financing promotions, and representations regarding insurance participation. Organizations should maintain written records of owner approvals to demonstrate compliance.
- **Real Estate and Financing:** Lease structures, financing arrangements, capitalization practices, and ownership documentation should be reviewed to evaluate whether they could be characterized as evidence of impermissible corporate control.
- **Risk-Based Compliance:** Organizations should adopt a risk-based compliance strategy that distinguishes between:

    1. existing statutory requirements;
    2. prudent risk-mitigation measures; and
    3. settlement-only provisions that exceed current law and may be subject to challenge.

Background

California's Corporate Practice of Dentistry Prohibition

California has long prohibited the corporate practice of dentistry through the Dental Practice Act, judicial decisions interpreting the corporate practice doctrine, the prohibition on fee splitting in California Business and Professions Code section 650, and statutory amendments recently enacted by Senate Bill 351.

Together, these authorities seek to preserve the independent professional judgment of licensed dentists by preventing non-licensees from exercising undue influence over clinical decision-making.

Senate Bill 351 significantly expanded California's statutory regulation of DSO and MSO relationships by expressly addressing management agreements, ownership requirements, contracting authority, employment relationships, advertising, patient records, and clinical autonomy. The *Aspen Dental* settlement should be viewed as the AG's attempt to operationalize several SB 351 themes—while, in multiple respects, extending beyond the statute's express requirements and introducing obligations not grounded in existing law.

The Aspen Dental Case Allegations

- Aspen Dental, a private equity-owned dental support organization, commenced business in California in 2019 and has since opened numerous offices serving tens of thousands of patients.

- The AG alleged that Aspen Dental exceeded its administrative support role by unlawfully directing the practice, ownership, and management of dentistry in California.
- The complaint asserted causes of action under the UCL (Business and Professions Code section 17200) and the FAL (Business and Professions Code section 17500), premised on alleged violations of the CPOD prohibition. The complaint primarily focused on the issues noted below.

Alleged Illegal Corporate Practice of Dentistry via a Non-Practicing "Straw" Owner

Aspen Dental allegedly selected, purchased, staffed, and advertised its dental offices without clearly identifying an independent dentist-owner. The complaint highlighted that the initial dentist-owner of Aspen Dental's California clinics—although licensed in the state—did not actively practice in any California clinic, lived outside California, and was married to an executive of Aspen Dental.

Alleged Unlawful Exercise of Total Operational Control Over Clinical Facilities

Aspen Dental allegedly designed, built out, and furnished offices, and selected, purchased, and installed all dental equipment.

Alleged Unlawful Financial Quotas and Incentives that Compromised Clinical Objectivity

Aspen Dental implemented incentive programs—including $50 - $100 payments to hygienists for clear aligner sales, and $200 per sale of its proprietary clear aligner brand—that encouraged clinical staff to sell particular products and services.

Alleged Deceptive Marketing Practices Involving Misleading Testimonials, Vague Pricing, and False Insurance Claims

Aspen Dental's advertisements contained misleading testimonials, ambiguous pricing language, and false representations about insurance acceptance.

Key Injunctive Terms: A Compliance Blueprint for DSOs and MSOs

The stipulated judgment introduces a comprehensive set of operational compliance provisions specifically applicable to DSOs and MSOs. To provide practical context, the chart below compares traditional industry

practices against the specific obligations Aspen Dental accepted.

Importantly, the "*Aspen Dental* Settlement" column does not codify existing California law; rather, it outlines the tailored operational framework Aspen voluntarily agreed to implement as part of its negotiated resolution with the AG.

Comparison: Traditional DSO/MSO Models vs. *Aspen Dental* Settlement Expectations

Operational Area	High Risk DSO/MSO Practice	*Aspen Dental* Settlement Cor Settlement)
Management Fees	Percentage-of-revenue or profit-sharing models.	Fixed fees or cost-plus structu
Operational Control	Centralized control over scheduling, staffing, and clinical hours.	Owner controls scheduling a logistics. (Section 8.3)
Hiring & Compensation	DSO/MSO determines staffing and sets staff pay and bonuses.	DSO may provide market dat compensation. (Section 8.4)
Clinical Incentives	Performance bonuses for staff based on sales or services.	No incentives based on sales
Real Property	DSO/MSO holds leases for practice locations.	Practice owner holds the leas required prior to opening. (Se
Financing	Working capital loans without market terms.	Shortfall-only loans with mar
Clinical Autonomy	Corporate influence on clinical decisions.	Clinical discretion is reserved
Advertising	Centralized marketing with corporate branding.	Owner review and veto rights

Why This Settlement Matters for All DSOs and MSOs in California

The Attorney General Has Opened a New Enforcement Front

Historically, CPOD enforcement in California has been fragmented across Dental Board licensing actions, the Dental Practice Act, and private litigation. This settlement signals that the AG may now view large-footprint DSO management models as unfair competition issues in and of themselves, opening a separate and potentially more powerful enforcement track.

By leveraging the UCL and FAL, the AG can pursue broad injunctive relief and civil penalties without being constrained by the Dental Board's narrower, focused jurisdiction under the Dental Practice Act.

The Settlement Provides Unprecedented Guidance on the Boundaries of Permissible Control

Because California's CPOD doctrine offers scant guidance on when management-fee structures, employment controls, and real estate arrangements cross the line into impermissible control, this settlement provides a useful framework for clarification.

The injunctive terms implicitly articulate the AG's view of the boundary between lawful non-clinical management support and unlawful interference with clinical practice. For DSOs and MSOs, that specificity offers a concrete, though informal, compliance benchmark.

The Settlement's Limited Legal Weight

While the settlement provides important directional guidance, dental organizations must recognize several critical limitations regarding its legal weight, statutory foundation, and enforceability against third parties:

Non Precedential Nature: A Single Case Stipulation, Not Industry Wide Law

The settlement is a stipulated judgment in a single case. It does not bind other parties, create enforceable law, or establish formal regulations. Other MSOs/DSOs are not legally required to adopt its terms absent a separate enforcement action.

Statutory Contradiction: Prohibiting What § 650(b) Explicitly Permits

Several of the settlement's terms lack statutory support—and in at least one instance, directly contradict current law. For example, the prohibition on revenue-based service fees flatly conflicts with Business and Professions Code § 650(b), which expressly permits percentage-based compensation arrangements.

This prohibition reflects the Attorney General's negotiated enforcement posture, not a reinterpretation of § 650(b), and may be subject to challenge if relied upon as a basis for enforcement against third parties.

Extra Legal Provisions: Requirements Lacking Foundation in California's Dental Laws

The real property restrictions (requiring assignment mechanisms before operations begin), the loan prohibitions (restricting advances to shortfall-only scenarios), and the detailed treatment-plan requirements have no foundation in SB 351, the Dental Practice Act, or existing CPOD case law.

These provisions represent aspirational enforcement positions rather than established legal requirements and should be evaluated as risk-mitigation options rather than mandatory compliance obligations.

The New Frontier of Fee-Splitting Scrutiny: Incentives, Advances, and the Appearance of Control

The settlement's prohibition on management fees and staff incentives tied to practice revenue or profit may accelerate the dental industry's shift away from percentage-of-collections models toward flat, cost-plus, or defined-service fee arrangements.

Although this provision arguably exceeds the literal scope of California Business and Professions Code § 650(b) (which addresses fee-splitting), it aligns with the statute's underlying policy: preventing compensation structures that incentivize over-treatment or coercive sales pressure.

Additionally, the settlement restricts Aspen Dental's ability to provide loans or advances to practice owners—a staple of DSO professional corporation financing models. That restriction signals that the Attorney General views routine or below-market capitalization arrangements as potential evidence of improper control over clinical decision-making.

The Rising Price of Settlement: Real-Time Monitoring and Expanded Compliance Exposure

The 36-month independent monitor—with unfettered access to documents and personnel—signals that the Attorney General may now condition settlements on ongoing, real-time visibility into a DSO's/MSO's internal operations, departing from the traditional reliance on injunctive language and after-the-fact enforcement.

This structural oversight marks a significant escalation from traditional, complaint-driven enforcement by the licensing board. As a result, organizations should anticipate that third-party monitoring may become a standard term in future settlements and consent decrees, substantially raising both compliance costs and operational exposure.

Comprehensive Compliance Roadmap for Dental MSOs, DSOs, Practice Owners, and Healthcare Investors

Organizations should avoid treating the *Aspen Dental* settlement as requiring immediate restructuring of every aspect of their business model. Instead, the settlement should be viewed as an opportunity to conduct a comprehensive, attorney-directed evaluation of governance, contractual arrangements, operational practices, compensation methodologies, financing structures, and compliance controls.

Organizations should also recognize that regulators frequently evaluate the cumulative effect of multiple operational practices rather than any single contractual provision. The following compliance roadmap prioritizes recommended actions according to both legal risk and operational urgency.

Foundational Compliance Step (Precedes All Compliance Tiers Below)

Privileged Self-Audit

Organizations should retain competent healthcare counsel to conduct an attorney-directed, privileged self-audit of all current DSO/MSO agreements, operational practices, and advertising workflows against the settlement's injunctive terms, with particular emphasis on fee structures, compensation plans, advertising compliance, and operational control as the highest-risk categories, and should then use the audit findings to guide the tiered compliance implementation steps outlined below.

TIER 1: Immediate Priority *(Complete Within 30–60 Days)*

These actions address the core allegations in the Aspen complaint and carry the highest risk of UCL/FAL enforcement, civil penalties, and injunctive relief.

Fee Structures

Organizations should begin by auditing all existing management services agreements (MSAs) for any fee tied to practice revenue, collections, or profit. Where percentage-based compensation continues to be utilized pursuant to Business and Professions Code section 650(b), they should document the legal basis supporting the arrangement, maintain contemporaneous fair-market-value analyses where appropriate, and periodically reassess the structure in light of evolving enforcement trends.

For those considering a transition to fixed-fee or cost-plus models, careful evaluation of operational, financial, tax, and contractual implications is essential. Lastly, they should confirm that any product or lab pricing to

practices is governed by a current written fee schedule and that practice owners retain the contractual right to source products and lab services independently.

Compensation and Incentives

Organizations should review all internal compensation plans for MSO/DSO employees to confirm that no component is tied to practice-level sales or revenue absent a documented, fair market value-based justification.

They must also eliminate or restructure any incentive payments—whether direct or reimbursed—to practice staff that is tied to sales, revenue, or profit, including bonuses for clear aligner sales or proprietary product referrals, as such structures present significant enforcement risk under the settlement's framework.

Advertising and Marketing

Organizations should audit advertising review and pre-approval workflows to confirm they grant practice owners veto rights over all advertisements and require prior written approval for quarterly marketing and promotional initiatives.

They should also simultaneously confirm that all ad templates include clear ownership-disclosure language identifying the individual licensed owner, exact pricing, and full offer terms, financing disclosures, testimonial disclosures, and parity between English and non-English versions.

They should retain comprehensive records of owner approvals for all advertising campaigns to demonstrate ongoing compliance.

Operational and Staffing Control

Organizations should reassess the degree of control exercised over clinical staff scheduling, location assignment, hiring, performance reviews, and compensation setting, and then reallocate final decision-making authority on these matters to practice owners or their designees, with MSO/DSO involvement limited strictly to administrative and logistical support.

This reallocation should be documented through clear written policies and contractual amendments to ensure both transparency and enforceability.

TIER 2: High-Impact Structural Changes *(Complete Within 90–120 Days)*

These actions require contractual renegotiation, lease amendments, or financing restructuring. They present significant enforcement exposure but are less likely to trigger immediate action than Tier 1 items.

Real Estate

Organizations should confirm that the MSO/DSO does not directly hold title or a long-term leasehold interest in practice locations without an assignment mechanism to a licensed owner in place before the practice opens or is marketed; however, because this specific requirement lacks statutory grounding, organizations should evaluate it as a risk mitigation measure rather than a legal obligation.

They should document any retained financial guaranty separately from operational control and preserve a clear paper trail demonstrating that guaranty rights do not translate into clinical control. Finally, for existing DSO-held leases, organizations should collaborate with counsel to establish assignment or sublease mechanisms that transfer possessory rights to licensed owners.

Financing Practices

Organizations should review all loan, advance, or working-capital arrangements with practice owners for proper documentation, clearly defined purpose (distinguishing shortfall-only funding from general capitalization), and appropriate interest terms, while also benchmarking interest rates against a floor consistent with the Prime Rate or another defined minimum rate after confirming the applicable legal and contractual framework.

They should restructure routine capitalization loans to comply with the settlement's shortfall-only expectation or, alternatively, document compelling business justifications for any broader lending practices that deviate from that standard.

Hiring and Compensation Delegation

Organizations should formally delegate final hiring and compensation-setting authority to practice owners and amend all relevant employment agreements to reflect that the DSO/MSO provides only market data and administrative support, with all final employment decisions affecting clinical staff resting exclusively with the licensed owner.

Restrictive Covenants

Organizations should review all clinician and practice owner agreements for non-compete, non-solicitation, and non-communication clauses, carefully distinguishing between restraints on patient communication generally—which are disfavored—and permissible restraints on active solicitation or diversion of patients to a competing organization, and then revise any overly broad clauses to align with California's strict standards on professional mobility and patient choice.

Termination and Transition Mechanics

Organizations should replace any “surrender” provisions requiring departing practice owners to give up office space or equipment with a structured post-termination option process that includes a defined mechanism for lease assumption or landlord consent, as well as a fair-market-value equipment purchase right, thereby ensuring an orderly transition that respects the departing owner’s interests while avoiding the coercive effects of forced forfeiture.

TIER 3: Ongoing Compliance and Housekeeping *(Complete Within 6 Months)*

These actions involve internal policy updates, documentation, and regulatory registrations. While important for holistic compliance, they pose the lowest immediate enforcement risk.

Clinical Training and Communications

Organizations should ensure that all clinical training content is clearly labeled as optional and strictly segregated from mandatory compliance training (such as OSHA, HIPAA, harassment, and other legally required topics), while also implementing protocols that limit communications regarding specific patient treatment or billing to complaint-response, injury-response, or scheduling purposes unless the practice owner directs otherwise.

Signage and Branding

Organizations should confirm that practice-level signage identifying the individual owner is prominently displayed at both exterior and interior locations as required for continued use of any DSO/MSO trademark or trade dress and should document full compliance through photographs and written certifications to create a verifiable record of adherence.

Regulatory Registration

Organizations should evaluate whether their centralized call-center or scheduling functions could be characterized as a Dental Group Advertising and Referral Service under Business and Professions Code § 650.2, assess their registration obligations accordingly, and complete any required filings to ensure full regulatory compliance.

Ongoing Monitoring

Organizations should maintain a proactive compliance posture by:

- Tracking Attorney General press releases, Dental Board disciplinary actions, and new legislation affecting DSO/MSO regulation;

- Conducting an annual privileged review of DSO/MSO agreements, compensation structures, and advertising practices to ensure continued alignment with evolving enforcement postures; and
- Staying current on any legal challenges to the *Aspen Dental* settlement provisions, as successful challenges may materially alter compliance requirements.

Conclusion

DSOs, MSOs, and dental practice owners should immediately reassess their California operations, as the *Aspen Dental* settlement provides an important enforcement roadmap identifying the operational characteristics most likely to trigger scrutiny under existing laws, such as the Unfair Competition Law and the Dental Practice Act.

While not binding precedent, the settlement signals that regulators may increasingly evaluate compliance based on the totality of an organization's operational relationships—including management fees, workflows, and clinical influence—rather than just isolated contract language.

To navigate California's evolving corporate practice landscape while preserving operational flexibility and transactional value, organizations should proactively evaluate these issues, document the independent exercise of professional judgment by licensed owners, and implement appropriate compliance enhancements'.

We Are Here to Help

If you have questions regarding the Aspen Dental settlement, California's CPOD doctrine, DSO or MSO structuring, healthcare transactions, or the potential implications of these developments for your organization, **please contact Michael Dowell or your regular Hinshaw legal counsel.**

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