Case No. B315264 (Lead Case)
(Consolidated with Case No. B315268)

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION THREE

The People of the State of California, ex rel. Allstate Insurance Company, et al.,
Plaintiffs and Appellants,

v.

Discovery Radiology Physicians, P.C. and Sattar Mirtabatabaeee aka Sattar Mir,
Defendants and Respondents,

OneSource Medical Diagnostics, LLC, et al.,
Defendants and Respondents.

Appeal from the Los Angeles Superior Court

Case Nos. 20STCV45151 and 20STCV42672

Honorable William F. Fahey

AMICUS CURIAE BRIEF OF THE COALITION AGAINST INSURANCE FRAUD IN SUPPORT OF PLAINTIFFS AND APPELLANTS

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COURT OF APPEAL SECOND **APPELLATE DISTRICT, DIVISION** THREE

COURT OF APPEAL CASE NUMBER: B315264 (Lead); B315268

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SUPERIOR COURT CASE NUMBER: 20STCV45151; 20STCV42672

APPELLANT/ PETITIONER: People ex. rel. Allstate Ins. Co., et al.

RESPONDENT/ REAL PARTY IN INTEREST: Discovery Radiology Physicians, P.C., et al.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party (*name*): The Coalition Against Insurance Fraud

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest *(Explain):*
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 13, 2023

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(TYPE OR PRINT NAME)

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(SIGNATURE OF APPELLANT OR ATTORNEY)

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AMICUS CURIAE BRIEF

I. STATEMENT OF FACTS

The Coalition Against Insurance Fraud (the "Coalition") hereby adopts and incorporates by reference the Statement of Facts from the Opening Brief of Appellants.

II. SUMMARY OF ARGUMENT

Through its July 19, 2021 order, the superior court sustained Respondents' demurrers without leave to amend, finding Appellants' theory that Respondents were fraudulently engaged in the unlawful corporate practice of medicine (*i.e.*, had engaged in "structural fraud") failed as a matter of law. Although there are numerous issues before the Court in this appeal, this *amicus curiae* brief speaks only to (1) what constitutes the unlawful corporate practice of medicine and the policy rationale behind such prohibition, and (2) how "structural fraud," which can include violating the ban on the corporate practice of medicine and lay ownership and control of medical practices, is a viable theory of fraud under the California Insurance Frauds Prevention Act (Ins. Code Sec. 1871.7 *et seq*.) ("IFPA").

In holding that Appellants' theory of "structural fraud" failed as a matter of law, the superior court relied on two premises, both of which are legally incorrect. First, the superior court found that Respondents were not engaged in the unlawful corporate practice of medicine because Appellants failed to argue the magnetic resonance imaging ("MRIs") at issue were either not performed, not medically necessary, or not interpreted by unqualified radiologists. Relatedly, the superior court determined that only those who had medical licenses were directly involved in patient treatment, and thus Respondents did not engage in the unlawful corporate practice of medicine. The superior court's view of unlawful corporate practice was too narrow, and is in direct contradiction to a wealth of authority. Indeed, it is well-established that individuals are unlawfully engaged in the corporate practice of medicine even where medically necessary services are ultimately provided by licensed medical professionals. This occurs when non-licensed individuals (*i.e.*, "lay individuals") exercise control or authority over a medical practice, which can (directly or indirectly) affect patient medical care. This can include, but is not limited to, decisions about what medical services are rendered, which physicians

render those services, what medical equipment is used in connection with providing those services, and how the medical services are billed.

Second, the superior court categorically found that unlawfully violating the prohibition against the corporate practice of medicine cannot, as a matter of law, constitute a violation of the IFPA, absent some additional showing (*e.g.,* that services were not actually performed). This finding runs headlong into significant appellate authority, as well as the policies that underlie the IFPA. Thus, on this issue, the superior court should be reversed.

III. ARGUMENT

A. The Superior Court Misapplied the Corporate Practice of Medicine Doctrine

1. Overview of the Prohibition Against the Corporate Practice of Medicine

California has established a comprehensive legal framework to ensure medical services are rendered—and influenced—only by individuals who are duly licensed to practice those professions. For that reason, California laws safeguard against unlicensed individuals employing and overseeing those who are themselves legally authorized to provide medical

services. These foundational rules for the practice of medicine are found in the Business and Professions Code, which prohibit any person from practicing "any system or mode of treating the sick or afflicted" without "a valid, unrevoked, or unsuspended certificate," and state that "[c]orporations and other artificial legal entities shall have no professional rights, privileges, or powers." (Cal. Bus. & Prof. Code §§ 2040, 2052.) These same rules in turn criminalize both the unauthorized practice of medicine and those who aid, abet, or conspire with others to engage in the unauthorized practice of medicine. (Cal. Bus. & Prof. Code § 2052, subds. (a)-(b).) Therefore, as a general rule, corporations cannot engage in the practice of medicine.

Nonetheless, the Corporations Code provides an exception to the prohibition against the corporate practice of medicine. Simply, the Corporations Code permits the corporate practice of medicine so long as (1) the corporation is incorporated as a professional medical corporation and (2) owned exclusively by physicians or a specific combination of physicians and certain types of licensed non-physician health professionals. (*See* Cal. Corp. Code § 13401.5, subd. (b); *see also* Cal. Bus. & Prof. Code § 2406.)

Violations of the corporate practice of medicine doctrine can occur in a variety of ways, and are not limited to instances where a lay person is directly treating patients. Indeed, the Medical Board of California has enumerated numerous actions that constitute the unlawful practice of medicine. (*See* Information Pertaining to the Practice of Medicine: Corporate Practice of Medicine <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information/> [as of October 19, 2022].) According to the Medical Board of California, which is comprised of experts in this field who oversee the proper licensure and practice of medicine in the State, licensed physicians must control the "[s]election, hiring/firing (as it relates to clinical competency or proficiency) of physicians, allied health staff and medical assistants," "[d]ecisions regarding coding and billing procedures for patient care services," "the selection of medical equipment and medical supplies for the medical practice," "the parameters under which [a] physician will enter into contractual relationships with third-party payers," "how many patients a physician must see in a given period of time or how many hours a physician must work," and "referrals to, or consultations with, another physician/specialist." (*Ibid.*) Such decisions "cannot be

delegated to an unlicensed person, including (for example) management service organizations." (*Ibid.*) Once control is ceded to a lay individual of these various tasks, the unlawful practice of medicine has occurred. (*Ibid.*)

Overwhelming authority supports the clear views of the Medical Board of California. For instance, in *People v. Super. Ct. (Cardillo)* (2013) 218 Cal.App.4th 492, the superior court dismissed an action against individuals criminally charged with the unlawful practice of medicine. This Court reversed, holding that lay person defendants engaged in the unlawful practice of medicine when "they controlled the operations of the clinics by employing licensed physicians to issue recommendations for medical marijuana, setting the physicians' hours, soliciting and scheduling patients, collecting fees from the patients, and paying the physicians a percentage of those fees." (*Id.* at p. 498.) Additionally, this Court found that "[t]he fact that neither [lay defendant] actually examined any patients or prescribed medical marijuana to them does not absolve them of criminal liability for practicing medicine without a license." (*Ibid.*) Indeed, it is well-established that lay individuals and general corporations cannot contract with licensed physicians to circumvent the rules

regarding the lawful practice of medicine. (*See, e.g., People v. Cole* (2006) 38 Cal. 4th 964, 970 ["The ban on the corporate practice of medicine generally precludes for-profit corporations—other than licensed medical corporations—from providing medical care through either salaried employees or independent contractors."]; *Steinsmith v. Med. Board of Cal.* (2000) 85 Cal.App.4th 458, 463 [licensed physician who worked at clinic owned by two unlicensed individuals was unlawful]; 65 Ops. Cal. Atty. Gen. 223 (1982) [general business corporation is prohibited from utilizing physicians to treat patients even though physicians were independent contractors and not employees]; 54 Ops. Cal. Atty. Gen. 126 (1971) [nonprofit hospital may not employ physicians to provide medical services].) Therefore, what constitutes the unlawful corporate practice of medicine is broadly understood.

2. The Policy Behind, and Application of, the Ban on the Corporate Practice of Medicine

The policy behind the corporate practice of medicine ban is clear and has been succinctly explained by the California Attorney General:

> [F]irst, that the presence of a corporate entity is incongruous in the workings of a professional

> regulatory licensing scheme which is based on personal qualification, responsibility and sanction, and second that the interposition of a lay commercial entity between the professional and his/her patients would give rise to divided loyalties on the part of the professional and would destroy the professional relationship into which it was cast.

65 Ops. Cal. Atty. Gen. 223 (1982). This reasoning has long been affirmed by courts, including the California Supreme Court, which has recognized that one of the issues with the corporate practice of medicine is that the "evils of divided loyalty and impaired confidence would seem to be equally present." (*People ex rel. State Bd. of Med. Examiners v. Pac. Health Corp*. (1938) 12 Cal. 2d 156, 159–160.) These "evils" are "thought to be created when a corporation solicits medical business from the general public and turns it over to a special group of doctors, who are thus under lay control." (*Conrad v. Med. Bd. of Cal.* (1996) 48 Cal.App.4th 1038, 1042.) As the Court of Appeal explained, "it is clearly declared unlawful for a corporation to indirectly practice any of said professions for profit by engaging professional men to perform professional services for those with whom the corporation contracts to furnish such services." (*Pac. Emps. Ins. Co. v. Carpenter* (1935) 10 Cal.App.2d 592, 595.) "In other words, … [medical] professions are not open to commercial exploitation

as it is said to be against public policy to permit a 'middleman' to intervene for profit in establishing the professional relationships between the members of said professions and the members of the public." (*Ibid.*; *see also Cardillo*, 218 Cal.App.4th at p. 497 ["If [the licensed professional] owed their first allegiance to their employer, the corporation, ... then they owed but a secondary and divided loyalty to the patient. This was denounced as not within the intendments of the law and practice."])

Therefore, the policy behind the ban on the corporate practice of medicine is not merely to prohibit *actual* interference with a physician's medical judgment or patient care. Rather, the intent of prohibiting the corporate practice of medicine is to outlaw any kind of "relationship" that creates even a *risk* of non-licensed individuals and entities exercising control or authority over a medical practice, or influencing a physician's care of patients. (*Cole*, *supra*, 38 Cal. 4th 964.; *see also* Pamela Martin et al., Cal. Rsch. Bureau, The Corporate Practice of Medicine in a Changing Healthcare Environment, 2 (Apr. 2016) ["The corporate practice of medicine ban has historically prevented a corporation from practicing medicine, which includes the employment of physicians. The ban has been enshrined in California law since

the early twentieth century in order to prevent the conflict between the professional standards and obligations of medical professionals and the profit motive of the corporate employer."].) As such, even in cases where all medical decisions are made by "competent physicians," who contract with a non-professional corporation, the corporate practice of medicine prohibition is violated. (*Pacific Health Corp*., *supra*, 12 Cal. 2d at p. 158; *see also ibid.* ["the policy of the law" prohibiting the corporate practice of medicine is improperly "circumvented" where a non-professional corporation delegates all medical decisions to a physician]; *Painless Parker v. Board of Dental Exam*. (1932) 216 Cal. 285, 296 [a corporate structure where lay individuals or entities only control the "business side" of a medical practice, while licensed individuals perform all "medical" aspects, is still unlawful and against public policy].) Indeed, "the mere ownership" of a non-professional corporation that contracts with physicians, who make all medical decisions, is a violation of the corporate practice of medicine doctrine. (11 Ops. Cal. Atty. Gen. 236 (1948); *see also* Information Pertaining to the Practice of Medicine: Corporate Practice of Medicine <https://www.mbc.ca.gov/Licensing/Physicians-and-

Surgeons/Practice-Information/> [as of October 19, 2022] ["non-physician exercising controls over a physician's medical practice, even where physicians own and operate the business" constitutes the unlawful corporate practice of medicine].) Such a structure "has a tendency to debase the [medical] profession, is not in the interests of the safety, health and welfare of the public, and therefore is contrary to public policy." (11 Ops. Cal. Atty. Gen. 236.)

With these policy considerations in mind, California courts have repeatedly held that any lay person or corporation who exercises (or could exercise) undue influence over a professional's medical practice is engaged in the unlawful practice of medicine. Notably, how the physician and corporation label their relationship is not controlling. As the California Supreme Court stated, "we need not quibble here over the use of terms as it is immaterial whether the appointed practitioners are termed employees, agents or appointees of the petitioner." (*Pacific Health Corp.*, *supra*, 12 Cal. 2d at p. 159.) Rather, what matters is the substance of the relationship, and the control exerted by lay individuals or corporations. (*Ibid.*) Thus, it is irrelevant that a party labels itself as a "management services organization" or

"MSO," if it is actually controlling aspects of a medical practice. (*Ibid.*; *see also* Information Pertaining to the Practice of Medicine: Corporate Practice of Medicine <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information/> [as of October 19, 2022] [explaining that MSOs can violate the corporate practice of medicine doctrine by exercising control over certain specific prohibited areas].) Nor is an entity absolved if it is organized as a professional corporation that, on paper, is owned by physicians, if those physicians are mere figureheads and the entity is actually operated and controlled by lay individuals. (*See, e.g., People ex rel. Monterey Mushrooms, Inc. v. Thompson* (2006) 136 Cal.App.4th 24.) Therefore, in analyzing the issue of unlawful corporate practice of medicine, courts must look beyond the labels and examine the substance of a physicians' relationships, which often requires deep factual exploration. (*Ibid.*) And resolving these factual issues on a demurrer would be inappropriate. (*Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881 [trial court erred in making factual determinations for purposes of ruling on demurrer].)

The policy behind the prohibition on the corporate practice of medicine also means that purported "business" or

"administrative" decisions cannot be easily separated from "medical" decisions. As such, if a lay person or corporation controls such a decision that impacts (or could impact) the medical practice, it is engaged in the unlawful practice of medicine. This point was made in *Steinsmith v. Med. Bd. of Cal.* (2000) 85 Cal.App.4th 458. There, the California Court of Appeal considered whether two lay owners of a medical clinic who only performed "business affairs" of the company engaged in the unlicensed practice of medicine. (*Id.* at p. 465.) In reversing the trial court's decision, the appellate court expressly rejected the trial court's assumption that lay owners who only manage a clinic do not practice medicine. (*Ibid.*) *Steinsmith* found that "[t]he law does not assume to divide the practice" of medicine into a business side and a medical side. (*Ibid.* [relying on the California Supreme Court decision in *Painless Parker, supra,* 216 Cal. 285].) Indeed, the business side of a practice "may extend into the domain" of the medical side of a practice "in respects that would make such a division impractical if not impossible." (*Ibid.*)

The reason that it is impossible, and thus improper, to try to separate the "business side" of a medical practice from the "medical side" is intuitive and has been explained by the

California Supreme Court. (*Painless Parker, supra,* 216 Cal. 285.) In *Painless Parker*, the Court was asked whether a non-professional corporation that employed a dentist violated the corporate practice of medicine doctrine, where the corporation handed the "business side" and the dentist handled all medical decisions. (*Id.* at p. 298.) The California Supreme Court rejected the arguments by the dentist-appellant:

> If the contention of appellant be sound, then the proprietor of the business may be guilty of gross misconduct in its management and violate all standards which a licensed dentist would be required to respect and stand immune from any regulatory supervision whatsoever. His employee, the licensed dentist, would also be immune from discipline upon the ground that he was but a mere employee and was not responsible for his employer's misconduct, whether the employer be a corporation or a natural person. On grounds of public policy such a condition could not be countenanced.

(*Ibid.*)

An attempt to divide the "business side" of a medical practice from the "medical side" was also addressed in *Marik v. Super. Ct.* (1987) 191 Cal.App.3d 1136. There, the Court of Appeal found that the appointment of a lay person as a provisional director of a professional corporation was improper. In so holding, *Marik* held that "[i]n a professional corporation, it

is not always possible to divide the 'business' side of the corporation from the part which renders professional services; [t]he subject is treated as a whole." (*Id.* at p. 1140.) By way of example, "the prospective purchase of a piece of radiological equipment could be impacted by business considerations (cost, gross billings to be generated, space and employee needs), medical considerations (type of equipment needed, scope of practice, skill levels required by operators of the equipment, medical ethics), or by an amalgam of factors emanating from both business and medical areas." (*Id.* at p. 1140 n.4; *see also* 83 Ops. Cal. Atty. Gen. 170 (2000) ["The selection of a radiology site with appropriate equipment and operational personnel best suited for the performance of a diagnostic radiology study of a patient's particular physical disorder, as well as the selection of a qualified radiologist to view and interpret the films, would involve the exercise of professional judgment and evaluation as part of the practice of medicine."].) In short, there are numerous variables that impact whether a decision is a "business decision" or a "medical decision," and it is often impossible to separate a supposed business decision from a decision that affects the practice of medicine.

Marik also explained that "[t]he interfacing of these variables [*i.e.*, the variables that make a decision a business decision versus a medical decision] may also require medical training, experience, and judgment." (191 Cal.App.3d at p. 1140 n.4) In other words, not only will the "business side" of a practice routinely impact the actual practice of medicine, it takes a licensed physician to determine which decisions will impact the practice of medicine and which will not. Thus, if a lay individual is making the threshold decision of what constitutes a purely "business decision" for a medical practice, that individual is unlawfully engaged in the practice of medicine. (*Ibid.*)

Importantly, and contrary to what some Respondents argued in their brief (*see* Resp. Br. (Oct. 31, 2022) at pp. 29-30), licensed medical professionals *can be* liable for violating the ban on the corporate practice of medicine. (Cal. Bus. & Prof. Code § 2052(b) [making it a crime for any person to aid, abet, or conspire with another to engage in the unauthorized practice of medicine].) For example, in *Conrad*, the Medical Board of California argued that a hospital *and nine physicians* violated the corporate practice of medicine doctrine by entering into an unlawful contract. (*Conrad, supra,* 48 Cal.App.4th at p. 1040.)

The trial court granted summary judgment in favor of the Medical Board, and the Court of Appeal affirmed. (*Id.* at p. 1052.) Similarly, in *Painless Parker*, the California Supreme Court found a licensed dentist was liable for violating the corporate practice of medicine doctrine for aiding and abetting the unlicensed practice of dentistry. (*Painless Parker, supra,* 216 Cal. 285.) This same reasoning was applied in *Steinsmith*, where a physician was found liable under the corporate practice of medicine doctrine for working at a clinic he knew was operated by lay individuals. (*Steinsmith, supra,* 85 Cal.App.4th 458.) Indeed, these cases are the natural conclusion of the extensive framework restricting the corporate practice of medicine, just as the Medical Board of California continues to advise today. (*See* Information Pertaining to the Practice of Medicine: Corporate Practice of Medicine <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information/> [as of October 19, 2022] [physicians would violate the corporate practice of medicine doctrine where "non-physician exercising controls over a physician's medical practice, even where physicians own and operate the business"].) Therefore, liability under the corporate

practice of medicine doctrine is not limited to unlicensed individuals.

3. The Superior Court's View of the Unlawful Corporate Practice of Medicine Was Improperly Narrow

In evaluating the sufficiency of Appellants' complaint, the superior court relied on two principles that are absent from, and contrary to, established case law. First, the superior court found that Appellants' theory "of 'structural fraud'" failed because they "make[] *no* claim here that: (1) MRIs were not administered; (2) MRIs were not medically necessary or (3) qualified radiologists did not read the MRIs." (AA3637.)[1] That is, the superior court found a person cannot violate the corporate practice of medicine doctrine unless there are some additional issues with the medical services provided. Not so. In fact, the overwhelming majority of cases that pertain to the corporate practice of medicine make no mention of such ancillary issues with the medical services provided like the lower court did here. (*See, e.g., Cole*, *supra*, 38

[1] It is unclear exactly to what the superior court was referencing when it discussed "structural fraud," if not the unlawful corporate practice of medicine. Indeed, from the context of its order, it appears that "structural fraud" is synonymous with the unlawful corporate practice of medicine in the superior court's view.

Cal. 4th 964; *Steinsmith, supra,* 85 Cal.App.4th 458; *Pacific Health Corp.*, *supra*, 12 Cal. 2d 156; *Conrad, supra,* 48 Cal.App.4th 1038; *Pac. Emps. Ins. Co., supra,* 10 Cal.App.2d 592.) Instead, these cases focus on the extent to which lay individuals control—either directly or indirectly—the medical practices or their operations. Thus, the superior court added a requirement to cases involving corporate practice of medicine that has never before existed and should not exist.

To support its view of the corporate practice of medicine, the superior court relied on two IFPA cases—*Monterey Mushrooms, supra,* 136 Cal.App.4th 24 and *People ex rel. Allstate Ins. Co. v. Suh* (2019) 37 Cal.App.5th 253. But neither of these cases supports changing the doctrine of the unlawful corporate practice of medicine.[2]

In *Monterey Mushrooms*, lay individuals "set up sham corporations, with medical doctors as ostensible owners, that presented to the public as full-service medical clinics." (136 Cal.App.4th at p. 28.) To be sure, there were allegations that certain treatments were unnecessary, but that did not impact the

[2] Both *Monterey Mushrooms* and *Suh* are discussed in greater detail in Section III(B), *infra.*

Court of Appeal's analysis on the issue of the improper control of the medical practice or the corporate practice of medicine. On the contrary, the *Monterey Mushrooms* Court viewed them as separate theories of fraud. (*Id.* at pp. 36-37.) This is evident in the Court's discussion of liability for the lay individuals, who argued they were not liable because they had no role in performing unnecessary treatments. (*Ibid.*) In response, the Court of Appeal reasoned that the lay individuals "ignore the allegations" because "[t]his case was not merely about the submission of false or excessive treatment claims regarding specific employees; it embraced an entire scheme" that involved the lay individuals "set[ting] up illegal corporate medical practices." (*Id.* at p. 36.) In other words, the corporate practice of medicine theory did not rely on any allegation about the necessity of medical treatment, as the superior court here suggests.

Suh, which pertains to the unauthorized practice of law, also does not support the superior court's decision. (37 Cal.App.5th at pp. 255-256.) There, lay individuals owned and operated law firms, but paid attorneys a monthly fee to use their names and state bar numbers to present insurance claims. (*Ibid.*) On appeal, the lay defendants argued they could not be

held liable because there was "[n]o evidence" there was any other issue with the insurance claims or that they were otherwise fraudulent; "[t]here was no allegation of staged accidents, nor any claim that injuries were inflated or that treatment was not provided." (*Id.* at p. 259.) This Court found that defendants read the "statutes too narrowly," and that defendants were engaged in the unauthorized practice of law—and thus insurance fraud—simply by owning and managing law firms that presented insurance claims. (*Id.* at p. 260.) Therefore, both *Monterey Mushrooms* and *Suh* (as well as the other cases cited herein) establish that an individual can be engaged in the unlawful corporate practice of medicine even when there is no distinct issue with patient care. The superior court's ruling to the contrary is thus incorrect.

The second problematic principle on which the superior court relied is that a person cannot be engaged in the unlawful corporate practice of medicine if he merely "picked the sites and the MRI machines, selected the radiologists[,] and handled the finances, including billing and collection," which the superior court deemed as "non-medical elements." (AA3637.) Relying on

this faulty premise, the superior court concluded "[t]his structure is not unlawful." (*Ibid.*)

There are two fatal flaws in the superior court's reasoning. First, there is vast authority that makes clear picking the location of a medical practice, choosing the equipment used, and selecting or hiring the physicians who perform the tests, are all exclusively within the province of a licensed physician, as such decisions impact the practice of medicine. (*See* Section III(A)(1) *supra*.) In *Marik*, for example, the Court of Appeal said that the business side of a corporation cannot be divided from the part which renders professional services. Thus, "the prospective purchase of a piece of radiological equipment could be impacted by business considerations …, medical considerations …, or by an amalgam of factors emanating from both business and medical areas." (191 Cal.App.3d at p. 1140 n.4.) The California Attorney General has issued a similar opinion: "The selection of a radiology site with appropriate equipment and operational personnel best suited for the performance of a diagnostic radiology study of a patient's particular physical disorder, as well as the selection of a qualified radiologist to view and interpret the films, would involve the exercise of professional judgment and

evaluation as part of the practice of medicine." 83 Ops. Cal. Atty. Gen. 170 (2000). And, the Medical Board of California has issued similar proclamations, stating that if the "[s]election, hiring/firing … of physicians, allied health staff and medical assistants" or "the selection of medical equipment and medical supplies for the medical practice" are performed by a lay person, that person is unlawfully engaged in the corporate practice of medicine. (*See* Information Pertaining to the Practice of Medicine: Corporate Practice of Medicine <https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Practice-Information/> [as of October 19, 2022].) Therefore, the very actions the superior court labeled as "non-medical elements" are understood as being tasks that must be performed by a physician. (AA3637.) Indeed, the superior court's reasoning falls prey to the thinking that the "business side" of a practice can be separated from the "medical side," which has been repeatedly reject by the courts as against public policy and a violation of the corporate practice of medicine doctrine. (*See, e.g., Painless Parker, supra,* 216 Cal. 285; *Marik, supra,* 191 Cal.App.3d at p. 1140 n.4; *Steinsmith, supra,* 85 Cal.App.4th 458.)

The second flaw in the superior court's reasoning is that it ignores *who* is determining whether a decision is "non-medical." The Court of Appeal in *Marik* discussed the significance of this consideration. (191 Cal.App.3d at p. 1140 n.4.) There, after explaining that the selection of radiological equipment may have business considerations, medical considerations, or both, the *Marik* Court went on to state that the threshold analysis of whether a decision has medical implications "may also require medical training, experience, and judgment." (*Ibid.*) Thus, such decisions cannot be left to an unlicensed lay person, but rather must be made by a licensed physician to determine whether a particular decision impacts their practice of medicine. (*Ibid.*) Leaving such decision-making to a lay person would itself be a violation of the ban on the corporate practice of medicine. (*Ibid.*)

Here, if a lay person is deciding whether a task is "non-medical," there likely are violations of the corporate practice of medicine doctrine. (*Marik*, 191 Cal.App.3d at p. 1140 n.4.) But the superior court failed to analyze *who* was determining whether a particular decision affects the practice of medicine. And such analysis would have required a deep evaluation of factual issues, which would have been inappropriate at the

pleading stage. (*Ion Equip. Corp., supra,* 110 Cal.App.3d at p. 881.)

Instead of conducting this appropriate analysis, the superior court relied on *Epic Med. Mgmt., LLC v. Paquette* (2015) 244 Cal.App.4th 504, without explanation. (AA3637.) *Epic* has little to do with the present issue. In *Epic*, an MSO sued a doctor for unpaid management fees. (*Epic, supra,* 244 Cal.App.4th at pp. 507-08.) The matter went to arbitration, and the arbitrator found in favor of the MSO. (*Ibid.*) The physician appealed, arguing he should not be required to pay those management fees because his agreement with the MSO purportedly violated the corporate practice of medicine doctrine and was therefore unenforceable. (*Id.* at pp. 512-513.) Because arbitration awards are only reviewable in narrow circumstances, the Court of Appeal found the arbitrator's award was not reviewable to determine the legality of the contract between the physician and the MSO. (*Ibid.*)

As an alternative reason for affirmance, the Court of Appeal also ruled that as a factual matter, based on the extensive record created in the underlying arbitration, the agreement did not violate the corporate practice of medicine doctrine. (*Epic,*

supra, 244 Cal.App.4th at p. 514.) But this conclusion was only reached after careful evaluation of the facts, which are dissimilar to those alleged here. (*Ibid.*)

In *Epic*, the *physician* hired an MSO to perform "non-medical management services." (244 Cal.App.4th at p. 507.) Therefore, the threshold decision of which matters were medical and which were "non-medical" was made by the physician himself.[3] (*Ibid.*) Moreover, the record, which had been developed through discovery and an arbitration proceeding, demonstrated the physician maintained control over decisions that could impact his medical practice in any way. (*Id.* at p. 508.) For example, the MSO leased the physician office space and equipment that the *physician* "deemed reasonably necessary and appropriate." (*Ibid.*) And although the MSO provided the physician with "non-physician personnel," "the physician was responsible for training and supervising" those personnel. (*Id.* at 508 n.1.) As this discussion makes clear, the facts of *Epic* are drastically different from the situation presented in this case—where it must be accepted as alleged that (1) the lay person is making the initial

[3] This was unlike the proposed arrangement in *Marik*, where a lay person would have been determining which decisions were "medical" and which were not. (191 Cal.App.3d at p. 1140 n.4.)

decision of *what* constitutes a "non-medical" decision and (2) is unilaterally choosing the site of certain tests, the equipment with which patients are tested, and the physicians that evaluate the patients. Therefore, this Court should put little weight on the *Epic* decision.

In short, the superior court took too narrow a view as to what constitutes the unlawful corporate practice of medicine. Thus, the superior court should be reversed on this ground.

B. The Superior Court Incorrectly Held that a Violation of the Corporate Practice of Medicine Doctrine Cannot Be a Violation of the IFPA

The superior court also held that an individual fraudulently engaged in the unlawful corporate practice of medicine cannot be held liable for a violation of the IFPA, absent some additional showing (*e.g.*, that the services provided were unnecessary). (AA3637.) The basis for this holding, according to the superior court, was that the unlawful corporate practice of medicine "is meant to protect patients, not health care plans." (*Ibid.*) But the superior court's holding, and reasoning, runs contrary to the broad purpose of the IFPA and clear appellate authority.

The IFPA's purpose is to "more effectively investigate and discover insurance frauds [and] halt fraudulent activities" because "[a]utomobile insurance fraud is the biggest and fastest growing segment of insurance fraud and contributes substantially to the high cost of automobile insurance." (Ins. Code § 1871, subds. (a)-(b).) And "[p]revention of automobile insurance fraud will significantly reduce … automobile insurance premiums." (*Id.*, subd. (c); *see also id.* § 1871, subds. (d)-(h) (workers' compensation and health care fraud is also combatted by the IFPA).

"To assist in the fight against insurance fraud, the IFPA contains a *qui tam* provision empowering interested persons to file lawsuits on behalf of the government against perpetrators of insurance fraud." (*People ex rel. State Farm Mut. Auto. Ins. Co. v. Rubin* (2021) 72 Cal.App.5th 753, 762.) Like any *qui tam* provision, the IFPA allows individuals or entities (known as relators) to file suit "for the person and for the State of California" and "in the name of the state." (Ins. Code § 1871.7, subd. (e)(5); *see also People ex rel. Strathmann v. Acacia Rsch. Corp.* (2012) 210 Cal.App.4th 487, 491-92 [the IFPA "allows a private person to sue as a private attorney general to recover

damages or penalties, all or part of which will be paid to the government"].) Indeed, the addition of Insurance Code section 1871.7 was intended to "authorize *and encourage* insurers to bring fraud actions." (*People ex rel. Allstate Ins. Co. v. Weitzman* (2003) 107 Cal.App.4th 534, 546.) In passing Section 1871.7, the Legislature envisioned relators "working with law enforcement agencies" to prevent and address fraud. (*Ibid.*) Simply put, "[t]he Legislature recognized that this approach benefits insurers, insureds, and government agencies without unnecessarily burdening public resources." (*Id.* at pp. 546-47.) Thus, relators are given the power "to correct injuries to the ***entire community of consumers***." (Cal. Bill Analysis, S.B. 706 Assem. (June 28, 2005) [emphasis added].) That is, relators are entrusted to fulfill the IFPA's purpose to "effectively investigate and discover insurance frauds [and] halt fraudulent activities" across auto, workers' compensation, and health care insurance. (Ins. Code § 1871, subd. (a)-(h).)

To further provide a benefit to the State, the IFPA contains a bounty provision, which divides the proceeds of an IFPA action between the relator and the State. (Ins. Code § 1871.7, subd. (e)-(g).) The "bounty advances the public purpose and benefit by

encouraging private qui tam actions," incentivizing insurers and "individual citizens to come forward with information uniquely in their possession and to thus aid the Government in [ferreting] out fraud." (*Strathmann*, *supra*, 210 Cal.App.4th at p. 502.)

In order to effectuate its purpose, the IFPA broadly defines what constitutes insurance fraud. (*State ex rel. Wilson v. Super. Ct.* (2014) 227 Cal.App.4th 579, 604.) Specifically, the IFPA enumerates the actions considered fraudulent in Insurance Code section 1871.7, subdivisions (a) and (b). Subdivision (a) prohibits procuring patients through running, capping, steering, and providing kickbacks. (*See* Cal. Ins. Code § 1871.7, subd. (a).) Subdivision (b), though, is much more encompassing, and establishes violations of Penal Code sections 549, 550, and 551 as predicate acts. Those Penal Code sections—especially Section 550—prohibit *inter alia* knowingly preparing and presenting, or causing or allowing to be presented, a false or fraudulent claim or writing, as well as "the knowing concealment or failure to disclose material information." (*Wilson*, *supra*, 227 Cal.App.4th at p. 600; *see also* Cal. Penal Code § 550(a)(1), (a)(5), (b)(3).)

Because the IFPA, and Penal Code section 550, use the word "fraudulent" in defining prohibited conduct, it has been left

to the courts to decide what "fraudulent" means in this context. Consistent with the IFPA's purpose, courts have unanimously found the meaning of "fraudulent" to be broad. As this Court has held, "[a] claim is 'fraudulent' if it is characterized by deceit, dishonesty, or trickery, perpetrated to gain some unfair or dishonest advantage." (*Wilson*, *supra*, 227 Cal.App.4th at p. 600.) Therefore, "fraudulent" claims or writings are not limited to those "that contain express misstatements of fact." (*Ibid.*) And, "in construing" the IFPA, "the objective sought to be achieved and the evil sought to be prevented by the statute are of prime consideration." (*Ibid.*) With this in mind, it is established that a claim or writing is fraudulent if it is "characterized ***in any way*** by deceit." (*Ibid.* [emphasis added].)

Since the definition of "fraudulent" is broad in the context of the Penal Code and thus the IFPA, courts have found that there are "countless forms that [insurance] fraud and deceit may take." (*Wilson, supra,* 227 Cal.App.4th at p. 604.) Indeed, this *amicus curiae* is not aware of **any** case where a California appellate court has rejected a relator's theory of fraud as a matter of law as the superior court did here. On the contrary, California courts have expressly recognized a host of fraud schemes that do

not involve an affirmative misrepresentation. (*See, e.g., Wilson, supra,* 227 Cal.App.4th 579 [insurance fraud occurred when parties engaged in kickback scheme in violation of California Business and Professions Code]; *People v. Singh* (1995) 37 Cal.App.4th 1343, 1369-70 [defendant committed insurance fraud by performing medically unnecessary diagnostic tests]; *People v. Zanoletti*, 173 Cal.App.4th 547 (2009) [affirming insurance fraud convictions resulting from capping scheme].) In accordance with these principles, another recognized insurance fraud scheme is what the superior court referred to as "structural fraud." (AA3637.) Although structural fraud itself can take many forms, the idea behind many structural fraud cases is the same: an entity appears to be lawfully owned, operated, or controlled, but in reality is not, and is preparing and presenting, or causing or allowing to be presented, insurance claims and writings. Structural fraud can occur, for example, when a lawfully owned MSO begins to venture into the practice of medicine unlawfully. It could also occur when a professional corporation, which is purportedly owned entirely by licensed physicians, is actually being operated by lay individuals. There are two appellate decisions that concern "structural fraud" in the IFPA context

specifically—*Monterey Mushrooms* and *Suh*—which are discussed above, but only briefly mentioned in the superior court's July 19, 2021 order. (AA3637.)

In *Monterey Mushrooms*, lay individuals set up a series of corporations that the Court of Appeal found to be operating "[c]ontrary to laws governing the structure of medical corporations and medical practice." (*Monterey Mushrooms, supra,* 136 Cal.App.4th at p. 27.) Specifically, the lay individuals established two professional corporations, both of which were purportedly owned entirely by licensed physicians and appeared to have proper medical directors. (*Ibid.*) Additionally, the lay individuals established an MSO, which they owned and operated, and which acted as an MSO for the two professional corporations. (*Ibid.*) Through this MSO, the evidence at trial established the lay individuals controlled the professional corporations and "siphon[ed] off the profits" earned by the professional corporations. (*Ibid.*) After a trial where they were found to have violated the IFPA, the lay individuals appealed. On appeal, the lay individuals argued that they "should have been dismissed as defendants because they had not treated any of the patients who were identified in the complaint." (*Id.* at p. 36.) The Court of

Appeal found that, by making this argument, the lay individuals "ignore the allegations" because the "case was not merely about the submission of false or excessive treatment claims regarding specific employees; it embraced an entire scheme" that "helped defraud [the insurer], the workers' compensation system, and the public." (*Ibid.*) Indeed, the Court of Appeal also noted the lay individuals deceived the Secretary of State by portraying the entities as professional corporations and medical clinics, when they were actually lay owned. (*Id.* at p. 36.) Therefore, based on their unlawful corporate practice of medicine, the Court of Appeal affirmed the verdict that the lay individuals violated the IFPA.

Suh is similar to *Monterey Mushroom*. In *Suh*, lay individuals established law firms and "paid several individual attorneys a monthly fee of $3,000 to use their names and state bar numbers." (*Suh*, *supra*, 37 Cal.App.5th at p. 255.) Through these law firms, the lay individuals presented insurance claims on behalf of the firms' clients. (*Ibid.*) At trial, the relator successfully argued the insurance claims "were false or fraudulent [] based ***solely*** on the testimony that the claims submitted to it were submitted by a [*sic*] 'sham law firms.'" (*Id.* at p. 259 [emphasis added].) That is, "[n]o evidence was

presented that the claims were 'false or fraudulent' *in any other* regard" and "[t]here was no allegation of staged accidents, nor any claim that injuries were inflated or that treatment was not provided." (*Ibid.* [emphasis added].) After a verdict in favor of the relator, the lay individuals appealed, arguing the relator's theory—the unauthorized practice of law—could not alone support a violation of the IFPA. (*Ibid.*) Contrary to what some Respondents' argue (*see* Resp. Br. (Nov. 16, 2022) at pp. 34-35), *Suh* found that the unauthorized practice of law *alone* could constitute a violation of the IFPA. (*Suh*, *supra*, 37 Cal.App.5th at p. 260.) Relying on the broad definition of "fraudulent" under California law discussed above, the Court of Appeal affirmed, holding that the lay individuals "perpetrated a deceitful insurance scheme designed to acquire insurance proceeds illegally for personal gain." (*Ibid.*)

Therefore, both *Monterey Mushrooms* and *Suh* stand for the proposition that "structural fraud" *alone* is sufficient to support an IFPA action.[4] Despite this, as discussed above, the superior

[4] Here, it is notable that Allstate's theory is not based on structural fraud alone. Rather, Allstate alleges that Respondents engaged in an unlawful kickback scheme. (AA820-23, AA828-30, AA2240.)

court found Appellants' "structural fraud" theory failed because they made "no claim" that "(1) the MRIs were not administered; (2) MRIs were not medically necessary or (3) qualified radiologists did not read the MRIs." (AA3637.) Confusingly, in its order, the superior court seemed to imply that *Monterey Mushrooms* and *Suh* both required (or at least had present) fraud that was unrelated to the unlawful structure and operation of the purported professional entities at issue. (*Ibid.*) Although other fraud theories were certainly present in *Monterey Mushrooms*, the Court of Appeal made clear that the unauthorized practice of medicine was independently sufficient to support the relator's IFPA cause of action. (*Monterey Mushrooms, supra,* 136 Cal.App.4th at p. 36.) And, with respect to *Suh*, the only fraud theory presented to the jury was the unauthorized practice of law. (*Suh*, *supra*, 37 Cal.App.5th at p. 259.) Thus, the superior court was incorrect regarding its interpretation of the case law, as well as the facts of the cases upon which it based its decision. From its misunderstanding of law, the superior court took the unprecedented step of finding that an entire theory of liability—which had been affirmatively recognized by the Court of Appeal

on multiple occasions—was no longer viable. The superior court should be reversed.

In defending the superior court's decision, some Respondents argue the "IFPA enumerates specific prohibited acts" found in "California Penal Code §§ 549-551" but "by its terms does not prohibit [the corporate practice of medicine]" and "does not incorporate any of the [] provisions" of the relevant sections of the California Business & Professions Code. (Resp. Br. (Nov. 16, 2022) at pp. 35-36.) It is true that the only other statutes expressly enumerated in the IFPA are found in California Penal Code Section 549 through 551. (Ins. Code § 1871.7 subd. (b).) But that is of no moment. Courts are clear that a person who prepares or presents insurance claims or writings in violation of *other* statutes (including the Business & Professions Code) with fraudulent intent can violate California Penal Code Section 550. Indeed, as discussed extensively above, what constitutes a "fraudulent" claim under the IFPA is broadly construed. As a result, Courts frequently look to violations of *other* statutes to determine whether a person violated, for instance, Penal Code Section 550. For example, in *Suh*, this Court found that two lay individuals unlawfully engaged in the

practice of law had violated the IFPA by presenting claims to an insurer. (*Suh*, *supra*, 37 Cal.App.5th at pp. 259-61.) In coming to that conclusion, *Suh* relied on the California Code of Regulations, which states "only attorneys, family members, adjusters, or other persons authorized by law may represent insureds." (*Id.* at p. 260.) Likewise, this Court in *Wilson* found that engaging in an illegal kickback scheme was "in violation of Business and Professions Code section 650 (and undoubtedly other provisions of law)." (*Wilson, supra,* 227 Cal.App.4th at p. 610). Notably, Penal Code Section 550 does not expressly address illegal kickback arrangements. Despite this, *Wilson* found the kickback scheme violated Penal Code Section 550, and thus the IFPA. (*Ibid*.) In other words, the claims at issue in *Wilson* were considered to be "fraudulent" under Penal Code Section 550 *because* they violated Business & Professions Code Section 650. (*Ibid*.) Therefore, because "fraud" is broadly understood under Penal Code Section 550, conduct that violates other statutes frequently means the conduct is actionable under the IFPA. And, an unlawful medical practice preparing and presenting insurance claims is clearly prohibited by the IFPA. (*See Monterey Mushrooms, supra,* 136 Cal.App.4th 24.)

The superior court made a final point based on a claimed reliance on *California Physicians' Serv. v. Aoki Diabetes Rsch. Inst.* (2008) 163 Cal.App.4th 1506 ("*Aoki*") that "the ban on the corporate practice of medicine is meant to protect patients, not health care plans," further implying that a corporate practice of medicine theory fails as a matter of law. (AA3637.) But the superior court's reliance on *Aoki* was misplaced.

As an initial matter, *Aoki* concerned the enforceability of a contract between Blue Shield (a health care service plan) and a nonprofit, whereby the nonprofit agreed to provide certain treatment to Blue Shield insureds. (*Aoki*, *supra*, 163 Cal.App.4th at p. 1512.) For over a decade, the nonprofit provided the contracted services to Blue Shield insureds, until Blue Shield stopped reimbursing for the services. (*Ibid.*) After the nonprofit threatened to file a lawsuit seeking reimbursement, Blue Shield filed a declaratory relief action in which it sought to invalidate its contract with the nonprofit and avoid payment. (*Id.* at pp. 1512-1513.) Because the *Aoki* Court found that the nonprofit was engaged in the unlawful corporate practice of medicine, the crux of its decision concerned whether equitable principles should be applied to find nonetheless that the contract was enforceable

against Blue Shield. (*Id.* at pp. 1514-1517.) *Aoki* concluded that Blue Shield "would be unjustly enriched if it were allowed to retain the benefit of services bestowed on its subscribers without compensating" the nonprofit. (*Id.* at p. 1517.) In reaching this conclusion, *Aoki* explained that the "ban on the corporate practice of medicine is meant to protect patients, not health care service plans." (*Ibid.*) However, this statement was clearly made in the context of determining whether to employ principles of equity to enforce the terms of a contract that was legally infirm. (*Ibid.*)

There is no indication *Aoki* in any way undercuts the "structural fraud" principles of *Monterey Mushrooms* or *Suh*, or that claims or writings presented on behalf of entities that fraudulently conduct themselves in violation of the ban on the corporate practice of medicine could not be considered to be "characterized" by "deceit, dishonesty, or trickery." (*Wilson*, *supra*, 227 Cal.App.4th at p. 600.) Indeed, at no point in *Aoki* is the IFPA, *Monterey Mushrooms* (which was decided two years prior), Penal Code section 550, or fraud ever discussed. (*Aoki*, *supra*, 163 Cal.App.4th at p. 1512.) Thus, this Court should take *Aoki* for what it is: a contract enforcement case that turned on

principles of equity given the unique facts and circumstances of that particular case.

Furthermore, *Aoki* is not cited in **any** IFPA case, thereby demonstrating its irrelevance to the issues at hand. *Aoki*'s omission is particularly noteworthy in *Suh*, a "structural fraud" case decided 11 years *after Aoki* that concerned the unauthorized practice of law, in which there was no dispute that the insurance claims were otherwise valid (*i.e.*, the claimants were involved in legitimate accidents, received only medically necessary treatment, etc.). (*Suh*, *supra*, 37 Cal.App.5th at p. 259.) This omission is understandable because what happens *after* a fraudulent claim is presented to an insurer is irrelevant in the IFPA context; an insurer need not prove it paid the claim, relied on the false representation, or was damaged in any way. (See, e.g., *People ex rel. GEICO v. Cruz* (2016) 244 Cal.App.4th 1184, 1199 [the IFPA "does not require that a fraudulent claimant's scheme be successful to establish her liability; she need only knowingly present a false claim with the intent to defraud"]; *People ex rel. Alzayat v. Hebb* (2017) 18 Cal.App.5th 801, 831 ["As a true qui tam provision, Insurance Code section 1871.7 does not mandate that the relator has suffered his or her own injury."];

People ex rel. TIG Ins. Co. v. Culpepper, (9th Cir. 2018) 720 F. App'x 884, 885 ["Relator's [IFPA] claim therefore arises from [defendant's] allegedly fraudulent presentation of his claim for insurance benefits, not from the settlement of that claim…. Even if no settlement had ever been reached, a [IFPA] suit … may still be available so long as the relator has discovered the presentation of a fraudulent claim."].) Therefore, payment of a claim, and the right to receive such payment, is not relevant in an IFPA case.

Moreover, the corporate practice of medicine and the unauthorized practice of law present similar policy concerns. The corporate practice of medicine was instituted primarily to protect the *patient*, while the unauthorized practice of law was instituted primarily to protect the *client*. (*Gerhard v. Stephens* (1968) 68 Cal.2d 864, 918 [the unauthorized practice of law is intended to protect individuals from being represented by "persons who are not qualified to practice the profession"].) Thus, in the context of transactions, normally only the patient or client can present a challenge to the corporate practice of medicine or the unauthorized practice of law, respectively. This was precisely the reasoning of *Aoki*. (163 Cal.App.4th at p. 1517 ["the ban on the

corporate practice of medicine is meant to protect patients, not health care plans"].) It was also the reasoning in *Gerhard*, where the California Supreme Court found that only the client using an unlicensed attorney can challenge a transaction on that basis. (68 Cal.2d. at pp. 916-919.) Of course, these principles have nothing to do with fraud or the IFPA, which is why it is absent from any discussion in the *Suh* opinion. Indeed, even though the unauthorized practice of law is not intended to protect third-party insurers (but meant to protect clients), *Suh* affirmed that claims presented to such insurers by a "sham law firm" were fraudulent. (*Suh*, *supra*, 37 Cal.App.5th at p. 259.) Of course, the IFPA is an anti-fraud statute and is meant to protect "the ***entire community of consumers.***" (Cal. Bill Analysis, S.B. 706 Assem. (June 28, 2005) [emphasis added].) A natural consequence of this is that the "clients" in *Suh* and "patients" in *Monterey Mushrooms* were protected against prohibited representation or medical care, respectively. Therefore, this Court should reject the superior court's use of a single out-of-context quotation from *Aoki* to support its otherwise flawed holding. Instead, this Court should examine IFPA authority as a whole, which undeniably demonstrates a theory premised on

"structural fraud," like violating the corporate practice of medicine doctrine, is a sufficient basis for an IFPA cause of action.

IV. CONCLUSION

This Court should reverse the superior court's narrow interpretation of the unlawful corporate practice of medicine and the scope of the IFPA. The superior court's interpretations are inconsistent with the authority regarding the unlawful corporate practice of medicine and the IFPA, as well as the express purposes of the IFPA.

Dated: February 13, 2023

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204, subdivision (c), I hereby certify that this brief contains 8,355 words, not including the tables of contents and authorities, the caption page, the signature block, this Certification page, or the Proof of Service.

Dated: February 13, 2023

/s/ Ryan M. Fawaz
Ryan M. Fawaz

PROOF OF SERVICE

STATE OF CALIFORNIA, ORANGE COUNTY

I am employed in Orange County, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 Spectrum Center Drive, Suite 1050, Irvine, CA 92618.

On **February 13, 2023,** I served the foregoing document described as: ***AMICUS CURIAE* BRIEF OF THE COALITION AGAINST INSURANCE FRAUD IN SUPPORT OF PLAINTIFFS AND APPELLANTS** on the parties in this action by serving:

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Executed on **February 13, 2023**, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Ryan M. Fawaz
Ryan M. Fawaz

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in Los Angeles County, State of California. I am over the age of 18 and not a party to the within action; my business address is 2029 Century Park East, Suite 2600 Los Angeles, California 90067.

On **February 13, 2023,** I served the foregoing document described as: ***AMICUS CURIAE* BRIEF OF THE COALITION AGAINST INSURANCE FRAUD IN SUPPORT OF PLAINTIFFS AND APPELLANTS** on:

Office of the Clerk
Attn: Honorable William F. Fahey
Stanley Mosk Courthouse, Dept. 69
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Lora E. Anderson
Lora E. Anderson