

Groupon Deals Equal to Fee Splitting, Experts Say

By Tracy L. Drumm

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Partnerships between medical practices and third party "deal-of-the-day" organizations such as Groupon, when based on compensation-per-lead, is fee-splitting which is a violation of law in many jurisdictions, according to legal experts contacted by PSP.

Michael Sacopulos, general counsel for Medical Justice, Terre Haute, Ind, summed up the current situation with these deal sites, saying, "Technology has simply out-paced antiquated laws and regulations."

Although still in its infancy, the breakthrough "deal of the day" industry is projected to exceed \$6 billion in sales by 2015 (according to eMarketer). Groupon representatives report that laser hair removal specials and facials are among their top performing promotions nationwide. What does this mean for the medical field, which is not supposed to be offering these deals in the first place?

It is increasingly evident that a "Groupon" deal with a licensed medical professional is currently a regulatory violation. As an industry, plastic surgery practices and medical spas are facing a new frontier of merchant-to-consumer interaction that wasn't a consideration when regulations were put in place. Partnerships with deal sites are far from the classic fee-splitting situation the laws were made for, but it seems they are ultimately a violation.

Jeffrey Segal, MD, JD, and Sacopulos shed more light into the situation and offer a glimmer of hope for those seeking change to the laws. "The Oregon Board of Chiropractic Examiners appears to be the first out of the gate to tackle the issue," they explained in a recent article. "At a recent meeting, they formed a committee to draft language bringing their fee-splitting policy into the Internet age. Such language, if adopted, would narrowly allow doctor participation in Groupon-like programs without opening the floodgates for other practices which abuse the doctor-patient relationship for personal financial gain."

Some say the violation of state medical regulations places focus on bigger picture issues, reflecting a need for laws to be adjusted to reflect modern advances. "This is a good business model that should be allowed, but transition to getting there may be rough," Sacopulos explains.

Recognizing that many practices throughout the US have already partnered with deal sites, "If you have already run a promotion, stopping the treatments of those who have purchased isn't the answer, as you would be swapping one set of legal issues for another," Sacopulos adds. "Practices have most likely entered a contractual agreement with the [deal] site and its customers."

He suggests the fair thing is to honor the deal and give the best possible service, and to let the dust settle before doing anything else.

Moving forward, "If in doubt don't do it," Sacopulos advises. "Until antiquated regulations are brought up-to-date to match modern day invention, it seems unfortunately the door needs to stay closed on group buying from a third party vendor."

His best advice for adopting new methods of marketing is, "Until the letter of the law matches up with the advancements in ecommerce, consult your health care attorney before trying something new."

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