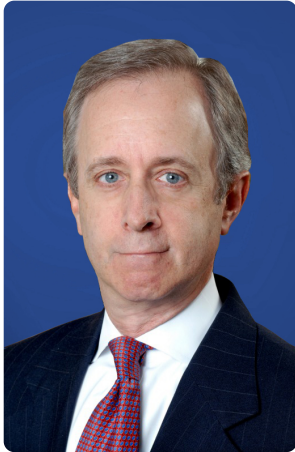


Physician's Money Digest – Discount Websites a Bad Deal for Doctors

FEATURED ATTORNEY



Michael S. Kelton

Of Counsel

Discount, coupon and other “deal” websites such as Groupon, Living Social, Yipit, Bloomspot and Amazon Local have attracted tremendous interest among doctors, dentists, podiatrists, chiropractors and other health care professionals looking to market themselves on the internet in order to generate business.

In 2010 alone Groupon, the largest of these type of websites, had 9 million paying subscribers, and at present there are tens of millions of people utilizing these websites every year to purchase everything from physicians’ services to popcorn. With the ever-increasing popularity of these “deal” websites, it is no wonder that physicians and other health care practitioners have turned to them as a powerful marketing tool.

All health care professionals look to take advantage of the newest and best methods of attracting new patients and increasing profitability. However, physicians, dentists, podiatrists, chiropractors and other health care professionals must exercise extreme caution when considering entering into any agreement with these marketing websites.

Many of the contracts being offered by these types of websites violate fee-splitting prohibitions and other laws, and *may be illegal for the health care professional*. A *New York Law Journal* article from January 2012, a [blog post](#) from 2011, and an article from the Sun Sentinel Florida newspaper in 2011 all addressed the potential dangers of entering into these types of agreements.

Until recently New York had not taken any formal position with regard to these types of marketing websites. However, recently, the writers of this article received formal correspondence from the New York State Department of Health, Office of Professional Medical Conduct (OPMC) advising that marketing agreements our client had entered into with Living Social were considered to be in violation of New York law.

The contracts our clients entered into involved Living Social marketing cosmetic facial procedures for our clients for a flat fee, part of which was to be retained by Living Social, and the remainder of which was to be paid to our clients. Our clients agreed to provide the services upon presentation by the purchaser of a downloaded coupon within a specified time period. This arrangement appears to be the standard agreement that “deal” websites enter into with participating health care practitioners.

In their correspondence, OPMC took a position as follows:

“The Office of Professional Medical Conduct has reviewed the promotional postings your clients [REDACTED] made to potential patients through Living Social, as well as the contracts defining their relationship with that entity. Please be advised that the business arrangement is legally impermissible for a New York licensed physician and must be terminated.” (Emphasis added)

The business relationship entered into with Living Social is prohibited by New York laws including but not limited to those:

- Defining as misconduct, the sharing of professional fees: New York Education Law §6530(19) and §6531;
- Defining as misconduct the soliciting, giving, and/or receiving of referral fees: New York Education Law §6530(18);
- Prohibiting the entering into agreements with a medical referral service business: New York Public Health Law §4501.

To the best of these authors’ knowledge this is the first time New York’s OPMC has expressed a formal opinion with regard to the legality of marketing agreements entered into with “deal” websites. Not only did OPMC refer to the traditional prohibition against physician/non-physician fee-splitting, it also invoked what is commonly known as the “Stark Law” (physician self-referral laws).

After reviewing numerous contracts that our physician clients have entered into with these deal websites, it is our belief that these marketing agreements violate numerous state and federal laws regulating the conduct of physicians, and expose physicians and other health care practitioners to possible administrative (licensing) and criminal penalties.

Health care professionals should exercise extreme caution and consult with knowledgeable counsel prior to signing any marketing agreement with a “deal” website.

Michael S. Kelton, Esq. is a partner in the New York law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Einiger, LLP, where he is the director of the firm’s Medical Malpractice Defense and Medical License Defense Departments. For more information about Mr. Kelton or the topic discussed in this article you may contact Mr. Kelton at Mkelton@abramslaw.com.

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara & Einiger, LLP provides legal services for the health care industry throughout New York, New Jersey and Connecticut. To learn more about the firm and its practice areas please visit [our site](#).

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