



# The State Bar of California

## Task Force on Access Through Innovation of Legal Services – Subcommittee on Alternative Business Structures / Multi-Disciplinary Practices

### Comments to Subcommittee Reports for the January 18 Meeting

To: Subcommittee on Alternative Business Structures/Multi-Disciplinary Practices  
From: Prof. Kevin Mohr  
Date: January 15, 2019  
Re: ATILS - ABS/MDP Subcommittee - Comments

I have some brief comments/questions on the memoranda prepared by Mark Tuft and Bridget Gramme of the ABS/MDP subcommittee.

First, Mark points out that it is uncertain whether the State Bar has primary enforcement responsibility for nonlawyers providing legal services or legal advice (e.g., paralegals, legal document preparers and unlawful detainer assistants and immigration consultants), but that it might become involved if UPL is the primary issue. Further, regulatory demands will likely increase further in the event the Task Force settles on recommendations involving MDP or some other ABS entities.

1. I note the recent [2019 State Bar Preliminary Budget and Five Year Forecast](#) presented to the Bar's Board of Trustees that suggests a \$100 annual bar dues increase in 2020 for active lawyers to cover shortfalls. In light of that report and a recent article that the Bar would be submitting a request to the Legislature along these lines, should we be asking whether the Bar would have the resources to broaden its enforcement profile?
2. More important, I think, is to resolve to what extent this Task Force should consider such budget issues. I believe we can all agree that access to justice is a critical issue for our legal system. Should our study of possible solutions focus only on alternatives to the traditional lawyer service model without regard to the potential costs (including costs of regulation) involved, or should we take the costs into consideration in arriving at our recommendations?

Second, Bridget's preliminary research on MDPs identifies an area of law in which MDPs might increase access to justice: elder law. In this area, it is proposed that benefits might accrue from collaboration between elder law lawyers and other gerontological professionals. However, it appears that most of the recent articles I've come across on MDPs concern the inroads the "Big Four" accounting firms are making in the legal services market. I'm not sure these kinds of MDPs are focused on the delivering legal services or advice to the kinds of clients for whom our Task Force is charged with seeking alternative solutions. I haven't been able to do much research in this area, but I have some questions that perhaps we should explore.

1. In the UK and Australia, where MDPs are permitted, have elder lawyers actually formed MDPs with other gerontological professionals to better serve their clients?
2. What advantages are there to income-sharing MDPs over simply including such professionals as salaried employees in law firms, with some profit-sharing (as is permitted under Cal. Rule of Prof. Conduct ("CRPC") 5.4)?

3. Is profit-sharing between doctors and non-physician medical professionals (nurses, physician assistants, medical techs, etc.) permitted here in the U.S.? If yes, to what extent have privately-owned medical groups taken advantage of such opportunities, if at all?

Third, with respect to regulation of non-lawyer legal service providers, should the Task Force explore the possibility of a set of rules, similar to the CRPCs, to regulate MDPs or simply consider specific amendments to the CRPCs that might facilitate the implementation of MDPs?

1. Because MDPs would necessarily include lawyers, perhaps the latter approach would be favored.
2. In addition, should the Task Force consider the concept "law firm" or "MDP firm" discipline, i.e., provide for discipline of the entity rather than regulating the entity through the discipline of its individual members. Such discipline is provided for under the New York and New Jersey Rules of Professional Conduct, though the rules have seldom been used.