

# Understanding the Debate Over Multidisciplinary Practice (MDP)

The Virginia State Bar and The Virginia Bar Association Joint Commission on Multidisciplinary Practice (MDP) unanimously adopted ten recommendations that would permit lawyers to practice law in what are called MDPs—multidisciplinary practice entities. The joint commission said that its recommendations will maximize consumer and lawyer choice while preserving the legal profession's critical "core values" of independence, loyalty and confidentiality.

The debate over MDPs does not involve nonlawyers practicing law. Nonlawyers will continue to be prohibited from practicing law. Instead, the joint commission's recommendations would permit lawyers in certain situations to share their fees with nonlawyers, and practice law in institutions that are partially or wholly owned by nonlawyers.

**Changing Nature of Professionals.** In recent years, the lines have blurred between professionals such as lawyers, financial advisors, consultants, stockbrokers, estate planners, accountants, etc. Other professions are increasingly performing tasks that lawyers once exclusively performed. This trend has been exacerbated by the near impossibility of precisely defining the meaning of "practicing law."

This convergence has impeded vigorous enforcement of the "unauthorized practice of law" (UPL) criminal statutes and rules. The joint commission did not view strict UPL enforcement as a viable option.

**Current MDP-Type Developments.** As part of these trends, lawyers are increasingly helping their clients obtain non-legal services by arranging referral networks with other professionals, hiring other service providers as part of the law firm staff or as independent contractors, starting firm-owned ancillary businesses and other methods.

Another accelerating trend is that of lawyers practicing law in institutions that are owned, controlled or managed by nonlawyers. They include in-house lawyers, staff counsel for liability insurance companies, counsel for legal services organizations, labor union and public interest group lawyers and government lawyers. The absence of consumer complaints about these lawyers' behavior suggests that lawyers can preserve their independence, loyalty and confidentiality while reporting to nonlawyers.

**MDPs in Other Jurisdictions.** As a result of many European accounting firms' acquisitions of European law firms, the ABA established a special commission to study MDPs in the United States. Although the ABA ultimately rejected any changes in the Model Rules that would allow MDPs, most states are now studying the MDP issue. So far, several state commissions have adopted a pro-MDP approach. However, the task forces in many states have either rejected MDPs outright or have approved MDPs only if controlled by lawyers. Very few states have taken final action.

**The Virginia Joint Commission.** The Virginia Joint Commission began its work early last year, and has met monthly since August, 2000. The joint commission studied the issues, met with many groups and conducted a limited survey of Virginia's lawyers. The joint commission operated with the presumption that consumers and lawyers should be given the greatest possible freedom to obtain and deliver legal services as long as the profession's core values are preserved.

**Consumer Demand for MDPs.** The joint commission said that several facts point in the direction of consumer demand for obtaining multiple professional services from a single entity: the ABA commission's findings; the joint commission's meetings with public interest groups and others; the growth of ethically permitted MDP

arrangements and the increased provision of services by non-lawyers that were once exclusively provided by lawyers.

**Protecting the "Core Values."** The joint commission concluded that lawyers sharing their fees with nonlawyers, or working for entities wholly or jointly owned by nonlawyers, can maintain the core values of independence, loyalty and confidentiality.

First, lawyers currently working in institutions owned or managed by nonlawyers (mentioned above) have maintained their independence. The paucity of consumer complaints speaks to their success. Second, lawyers' duty of loyalty can be maintained by insisting that lawyers in MDPs consider all of the MDP's clients as the lawyer's clients for conflicts of interest purposes. Third, the duty of confidentiality can be satisfied by requiring that lawyers explain to all of their clients (in writing) the different confidentiality duties that apply to the client's communications with nonlawyers in the MDPs. The joint commission said that lawyers practicing in MDPs will have to take special precaution in performing intake functions, so that the initial communications with MDP clients will be protected by the attorney-client privilege (to be followed, where appropriate, by non-privileged communications between the clients and non-lawyers in the MDPs).

**Appropriate MDP Forms.** The joint commission considered four particular issues about the appropriate form of MDPs. First, like all of the other state commissions that have taken a pro-MDP position, the joint commission believes that all MDP owners should be active participants in the MDP, thus prohibiting passive investment in or public ownership of MDPs. This means that lawyers will not be able to practice law while employed by publicly owned banks or retail stores such as Wal-Mart. The joint commission recommends that disbarred/suspended lawyers not be allowed to have any ownership of an entity in which lawyers practice law. Second, the joint commission stated that requiring MDPs to register with the state would create an unnecessary bureaucracy and inappropriately involve the Supreme Court in corporate government. Third, as tempting as it is to require that MDPs be majority-owned by lawyers, the joint commission concluded that such a requirement would restrict consumer and lawyer choice without a showing that the restriction is necessary to preserve the core values. Fourth, the joint commission found that specifying that MDPs can be owned only by certain licensed professionals would generate a dispute about the selection of the professionals, ignore the market's role in deciding which combination of professionals is appropriate and be inconsistent with the best approach focusing on the individual lawyer's compliance with ethics duties (especially the core values) regardless of where the lawyer practices law.

At its meeting in October 2001, in Wintergreen, Virginia, the Virginia State Bar Council had an opportunity, for the first time, to review and discuss the *Joint Commission's Report and Recommendations*. The views expressed by members of council regarding MDP were diverse, ranging from enthusiastic support to vehement opposition. Other members were undecided and want more information. Some grudgingly accepted MDP as inevitable, but not necessarily desirable.

The council will study and discuss the Joint Commission's Report and Recommendations at its next meeting in February 2002. The full report and recommendations of the Joint Commission can be found on the Internet at the Virginia State Bar's Web site. The address is [www.vsb.org/mdp/report\\_100101.html](http://www.vsb.org/mdp/report_100101.html). When the council will be called upon to act on the commission's report and approve or disapprove the joint commission's recommendations has not yet been identified.

**For more information on the work of the Joint Commission on MDPs or on the next meeting, call James McCauley at (804) 775-0565.**