

DEPARTMENT OF PROFESSIONAL REGULATION  
Department  
BOARD OF MEDICINE

IN RE: THE PETITION FOR  
DECLARATORY STATEMENT OF:

CORAL WAY HEALTH PROVIDER  
ASSOCIATES, INC., MID MIAMI  
SERVICES GROUP and

FERNANDO VILLACIAN, M.D.

Petitioners.  
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FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT

THIS MATTER came before the Board of Medicine pursuant to Section 120.565, Florida Statutes, and Rule 21M-18.003 and Rule Chapter 28-4, Florida Administrative Code, on October 9, 1988, in Tampa, Florida, for the purpose of considering the Petition for Declaratory Statement filed by the Petitioners, CORAL WAY HEALTH

PROVIDER ASSOCIATES, INC. (hereinafter "CORAL WAY") and MID MIAMI SERVICES GROUP (hereinafter "MID MIAMI").

FERNANDO VILLACIAN, M.D., (hereinafter "DR. VILLACIAN"), was joined as a Petitioner in this cause on October 9, 1988, pursuant to the Motions of Petitioners. Having considered the Petition, the Motion for Leave To Amend Petition for Declaratory Statement by adding additional Petitioner and Motion For Leave To Intervene, as well as all supporting documentation, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions:

FINDINGS OF FACTS

1. CORAL WAY is a Florida corporation located at 11890 Bird Road, Suite 306, Miami, Florida 33175. CORAL WAY is owned by no less than 12 medical doctors licensed pursuant to Chapter 458, Florida Statutes. None of the doctors individually owns more than 10% of MID MIAMI. CORAL WAY has been organized, in part, for the purpose of purchasing, on a volume basis, the use of sophisticated diagnostic equipment, together with the technical, administrative, and medical professional personnel necessary to perform sophisticated diagnostic services.

2. MID MIAMI is a Florida joint venture entity that operates a sophisticated diagnostic center at 2975 Coral Way, Miami, Florida 33145, known as Miami Diagnostic Imaging Center and has at its disposal several under-utilized diagnostic facilities as well as related technical, administrative, and medical professional personnel. MID MIAMI has an independent contractor arrangement with a group of radiologists, licensed as medical doctors pursuant to Chapter 458, Florida Statutes.

3. The shareholders of CORAL WAY will each initially invest a sum of \$1,000 and, in addition, personally guarantee a portion of the corporate obligations of CORAL WAY equal to their individual shareholder ownership interest; however, this personal liability shall not exceed \$5,000.00 per shareholder. CORAL WAY desires to make certain sophisticated diagnostic services

available to patients referred to CORAL WAY by medical doctors in the community, including, but not limited to, the shareholders of CORAL WAY.


4. CORAL WAY intends to enter into a "Facility and Equipment Use Agreement" (hereinafter the "Agreement") with MID MIAMI in substantially the same form as Exhibit "A" attached to and incorporated in the Petition for Declaratory Statement. The said Agreement provides that CORAL WAY must pay a minimum of \$52,500.00 per month to MID MIAMI and for such minimum payments will be entitled to \$52,500.00 per month worth of technical and professional diagnostic services and equipment use based upon the usual and customary rates charged by MID MIAMI. CORAL WAY will be able to purchase such diagnostic services, including equipment and medical, administrative, and technical services for a discounted rate after the first \$52,500.00 per month.

5. CORAL WAY will most likely realize profits if it is able to purchase and utilize diagnostic services in an efficient and economic manner. These profits will be passed on to its shareholders as dividends, in accordance with the respective ownership interests of the shareholders.

6. There will be no requirement that CORAL WAY refer any patient, or a minimum number of patients, to MID MIAMI or that the shareholders of CORAL WAY refer patients to CORAL WAY or MID MIAMI.

7. The equipment owned by MID MIAMI includes, but is not limited to, a CT scanner, a magnetic resonance imaging device, diagnostic ultra sound, nuclear medicine diagnostic equipment, and sophisticated x-ray systems.

8. The usual and customary rates charged to CORAL WAY for the first \$52,500.00 worth of services will be commercially reasonable in light of smaller charges in the community. Furthermore, the discounted rates for services in excess of \$52,500.00 per month will also be commercially reasonable in



to secure such discounted rates.

9. DR. VILLACTIAN is licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes, and is a shareholder of CORAL WAY and holds less than 10% of the shares of CORAL WAY.

10. Mr. Mariano de Socarraz, a managing employee of MID MIAMI, provided testimony at the meeting of the Board on October 9, 1988, when this matter was considered.

11. The Board finds from its review of the Petition, Motions and documents filed in this cause, as well as the testimony of Mr. de Socarraz, that the commercial arrangement presented for review by the Petition for Declaratory Statement is intended to facilitate the purchase of expensive and under utilized diagnostic and related services by CORAL WAY on a volume basis and thus enable CORAL WAY to realize a profit through the efficient sale of the diagnostic resources and related services.

12. The Petition was noticed by the Board in the September 30, 1988, Florida Administrative Weekly (Vol.14, No.39, Pg.3730).

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.565, Florida Statutes, and Rule 21M-18.003 and Rule Chapter 28-4, Florida Administrative Code.

2. The Board may exercise its jurisdiction in this matter as to an individual petitioner only if the individual petitioner possesses standing as a party who will be substantially affected by possible action of the Board under the statutes referred to in the Petition for Declaratory Statement, which statutes are as follows:

- a) Section 458.331(1)(f), Fla. Stat., (1987) which provides:  
Paying and receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement, in any form whatsoever with a physician.

including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consultation services.

b) Section 458.331(1)(gg), Fla. Stat., (1987) which in part provides: Referring any patient, for health care goods or services, to a partnership, firm, corporation, or other business entity in which the physician or the physician's employer has an equity interest of 10 percent or more unless, prior to such referral the physician notifies the patient of his financial interest and of the patient's right to obtain such goods or services at the location of the patient's choice. . . .

3. Based upon the specific facts asserted by the Petitioners in this cause, the Board finds that only DR. VILLACIAN possesses standing to seek the declaratory statement requested and, therefore, this Declaratory Statement is responsive only to the questions posed by DR. VILLACIAN.

4. Based upon the specific facts asserted by DR. VILLACIAN, the commercial arrangement at issue in this cause does constitute an illegal kickback or split-fee arrangement as prohibited by Section 458.331(1)(i), Florida Statutes, (1987), to the extent that CORAL WAY is required to purchase a large volume of resources at an undiscounted rate before qualifying for discounted prices. Since the purchase of a large volume of resources is necessarily tied to patient referrals, it constitutes an illegal kick-back. CORAL WAY is exclusively owned by practicing medical doctors who are expected to refer patients to CORAL WAY for services under the Agreement; the medical doctors are subject to Chapter 458, Florida Statutes. Therefore, it is concluded that the proposed arrangement between CORAL WAY and MID MIAMI constitutes an illegal kick-back arrangement pursuant to Section 458.331(1)(i), Florida Statutes, (1987), with respect to DR. VILLACIAN so long as the pricing structure

provides for cost savings to CORAL WAY only if CORAL WAY purchases a substantial minimum amount of services at undiscounted rates before realizing such cost savings.

5. DR. VILLACIAN owns less than 10% of the total ownership interest of CORAL WAY; therefore, he need not provide the notice required by Section 458.331(1)(gg), Florida Statutes, (1987), to patients whom he may refer to CORAL WAY or MID MIAMI for diagnostic services.

6. The Board further concludes that based upon the specific facts asserted by the Petitioner, DR. VILLACIAN, it does not appear that DR. VILLACIAN's ownership interest in CORAL WAY, in light of the proposed arrangement with MID MIAMI, constitutes a violation of Section 458.331(1)(i), Florida Statutes, (1987) except as to the defect noted at paragraph 4 with respect to discounts. Specifically, the return on DR. VILLACIAN's investment, as a shareholder, will be solely through his participation in the profits of the corporation based upon the number of shares owned by him as an investor. The return on the investment will not depend in any way on the number of referrals made by DR. VILLACIAN to the entity. Since the return on DR. VILLACIAN's investment is based solely on the investment and is not in any way based upon referrals to or from CORAL WAY or MID MIAMI, the Board finds that aspect of the arrangement is not in violation of Section 458.331(1)(i), Florida Statutes, (1987).

7. This Declaratory Statement responds only to the questions asked in light of the facts presented and interprets only the statutory provisions cited by DR. VILLACIAN.

WHEREFORE, it is ORDERED AND ADJUDGED:

1. That CORAL WAY HEALTH PROVIDER ASSOCIATES, INC., and MID MIAMI SERVICES lack standing to seek the Declaratory Statement requested by them.

2. That FERNANDO VILLACIAN, M.D., possesses standing to seek the Declaratory Statement requested by him with respect to the applicability of Section 458.331(1)(i) and Section 458.331(1)(gg), Florida Statutes (1987).

3. That FERNANDO VILLACIAN, M.D., need not provide the disclosure required by Section 458.331(1)(gg), Florida Statutes, (1987) to patients whom he may refer to CORAL WAY or MID MIAMI because FERNANDO VILLACIAN, M.D., owns less than 10% of the total ownership interest of CORAL WAY.

4. That the commercial arrangement referred to in the Petition for Declaratory Statement constitutes a violation of Section 458.331(1)(i), Florida Statutes, (1987), to the extent that it requires CORAL WAY to purchase a minimum amount of diagnostic and related resources at usual and customary rates before realizing a savings due to volume purchases.

DONE AND ORDERED this 12<sup>th</sup> day of June, 1989.

BOARD OF MEDICINE

Emilio D. Echevarria  
EMILIO D. ECHEVARRIA, M.D.  
Chairman