

By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY STATEMENT

EMERGENCY MEDICAL ASSOCIATES OF NEW
JERSEY, P.A.

FINAL ORDER

This matter came before the Board of Medicine (hereinafter the "Board") on June 7, 2003, in Miami, Florida, for consideration of the referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was published on April 11, 2003, in the Vol. 29, No. 15, in the *Florida Administrative Weekly*.

The petition filed by EMERGENCY MEDICAL ASSOCIATES OF NEW JERSEY, P.A. inquired as to whether it may provide emergency medical services in Florida as foreign corporation as long as the services provided were performed by individuals licensed to practice medicine in Florida.

FINDINGS OF FACTS

1. The Petitioner, EMERGENCY MEDICAL ASSOCIATES OF NEW JERSEY, P.A., is professional services corporation established under the laws of the State of New Jersey.
2. The Petitioner provides 24 hour emergency department coverage at more than ten acute care hospitals in New Jersey.
3. The Petitioner intends to apply to the Florida Secretary of State for a certificate of authority to conduct business in Florida as a foreign corporation under a fictitious name and employ a number of physicians, all licensed in the State of Florida, to work as emergency physicians in hospitals throughout Florida.

4. The terms of employment for all of Petitioner's physicians working in Florida would prohibit the Petitioner from requiring its employee physicians to do anything that is contrary to Florida law or to deviate from the standard of care in the communities in which they practice.

CONCLUSIONS OF LAW

5. The Board of Medicine has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

6. Its is axiomatic that a physician licensed to practice medicine in the State of Florida is legally entitled to practice medicine in Florida. The question in point, however, is whether such a physician may practice in Florida when employed by a foreign corporation authorized to conduct business in Florida by the Florida Secretary of State.

7. While Section 458.327(1)(a), Florida Statutes, does prohibit practicing medicine in Florida without a Florida license, its does not, nor does any other provision of Florida law, prohibit a Florida licensed physician employed by a corporation from practicing in Florida under such an arrangement. *In Re: The Petition for Declaratory Statement of: John W. Lister, M.D.*, 9 FALR 6299 (1987).

8. The Petitioner at hand presents a slightly different factual scenario than the petitioner in *Lister*. Emergency Medical Associates of New Jersey, P.A. is a foreign corporation which intends to transact business in Florida upon receipt of certificate of authority to do so from the Florida Secretary of State. However, such a difference is of little or any significance.

9. Its is the Board's opinion that there is no express or implied provision in Florida law that precludes a Florida licensed physician from practicing medicine in Florida when employed by a foreign corporation which is legally authorized to transact business in Florida under Florida law.

10. The Board's response to this Petition responds only to the question propounded by the Petitioner and only addresses issues regarding the practice of medicine. It does not in anyway address issues of corporate governance or other such issues that the Board does not possess the requisite jurisdiction to entertain.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 8th day of AUGUST, 2003.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Raghavendra Vijayanagar, M.D., Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, Respondents are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the Clerk of the Department of Health and the filing fee and one copy of a notice of appeal with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: John D. Fanburg, Esquire, Brach, Eichle, Rosenberg, Silver, Bernstein, Hammer & Gladstone, P.A., 101 Eisenhower Parkway, Roseland, New Jersey 07068-1067; and by interoffice mail to Edward A. Tellechea, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050; and William Large, Esquire, General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, on this 16 day of September, 2002.

Shawn Dykas

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PLEASE RESPOND TO ROSELAND OFFICE

March 3, 2003

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ALSO ADMITTED TO PRACTICE IN
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A CERTIFIED CIVIL TRIAL ATTORNEY
OFF.

Florida Board of Medicine
Medical Quality Assurance
4052 Bald Cypress Way, Bin #C00
Tallahassee, FL 32399-3250

Re: Our File No.: 000366-114

Ladies and Gentlemen:

In accordance with Section 120.565 of the Florida Statutes, Emergency Medical Associates of New Jersey, P.A. ("Petitioner") seeks a declaratory statement from the Florida Board of Medicine as to whether Petitioner may conduct an emergency medical practice in Florida under the circumstances set forth herein. In particular, Petitioner wishes a declaratory statement as to whether the arrangement described below would constitute the practice of medicine or an attempt to practice medicine without a license to practice in Florida by Petitioner or by its shareholders or directors who do not hold licenses to practice medicine in the State of Florida, within the meaning of the Title 32, Chapter 458 of the Florida Statutes, and Section 458.327 thereof.

Petitioner is a professional services corporation established under the laws of the State of New Jersey. Petitioner's shareholders are approximately 121 physicians, and all of Petitioner's shareholders, directors and officers are licensed to practice medicine under the laws of the State of New Jersey. Currently, two of Petitioner's shareholders hold licenses to practice medicine under the laws of the State of Florida, including L. Scott Larsen, M.D., a Board member of Petitioner. Petitioner provides 24-hour emergency department coverage at more than ten acute care hospitals in New Jersey by physicians who are certified or eligible for certification by the American Board of Emergency Medicine (the "ABEM").

Petitioner wishes to apply to the Florida Secretary of State for a certificate of authority to conduct business as a foreign corporation in the State of Florida and to conduct business under the fictitious name "Emergency Medical Associates of Florida" (or another appropriate name if this name is not available), and then employ a number of physicians to work as emergency physicians at hospital in Florida. All physicians employed or otherwise engaged by Petitioner to

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work in Florida would hold a license to practice medicine under the laws of the State of Florida and would be certified or eligible for certification by the ABEM. The terms of Petitioner's employment of all physicians working in Florida would prohibit Petitioner from requiring such physicians to do anything that is contrary to Florida law or to deviate from the standard of care in the communities in which they practice.

Please feel free to contact me if you require any additional information in order to respond to this request.

Very truly yours,



JOHN D. FANBURG

cc: Charles F.V. Grunau, M.D.
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March 25, 2003

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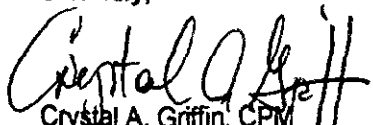
Dear Mr. Fanburg:

The Board of Medicine received your request for a declaratory statement. Your request was placed on the agenda for the April 4-5, 2003 meeting of the Florida Board of Medicine in West Palm Beach, Florida. However, due to Florida Administrative Weekly notice requirements, this matter must be withdrawn from the agenda and postponed until the June Board Meeting.

Your request will automatically be scheduled for the June 6-7, 2003 Board Meeting which will be held at the Embassy Suites, 3974 NW South River Drive, Miami, Florida. An official notice will be sent to you approximately 2 weeks prior to the meeting advising of the exact date and time this matter will be considered.

If you need anything further, please do not hesitate to contact me via email at Crystal_Griffin@doh.state.fl.us, via telephone at (850) 245-4132 or via facsimile at (850) 488-9325.

Sincerely,


Crystal A. Griffin, CPM
Program Operations Administrator

/cg

Mission Statement: To protect health care consumers by licensing qualified health providers, establishing and enforcing health care standards and disseminating appropriate information to consumers and practitioners.

Florida Board of Medicine
4052 Bald Cypress Way, Bin C03, Tallahassee, FL 32399-3253
www.doh.state.fl.us/mqa

458.327 Penalty for violations.--

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) The practice of medicine or an attempt to practice medicine without a license to practice in Florida.

(b) The use or attempted use of a license which is suspended or revoked to practice medicine.

(c) Attempting to obtain or obtaining a license to practice medicine by knowing misrepresentation.

(d) Attempting to obtain or obtaining a position as a medical practitioner or medical resident in a clinic or hospital through knowing misrepresentation of education, training, or experience.

(2) Each of the following acts constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Knowingly concealing information relating to violations of this chapter.

(b) Making any willfully false oath or affirmation whenever an oath or affirmation is required by this chapter.

(c) 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 or her financial interest and of the patient's right to obtain such goods or services at the location of the patient's choice. This section does not apply to the following types of equity interest:

1. The ownership of registered securities issued by a publicly held corporation or the ownership of securities issued by a publicly held corporation, the shares of which are traded on a national exchange or the over-the-counter market;

2. A physician's own practice, whether he or she is a sole practitioner or part of a group, when the health care good or service is prescribed or provided solely for the physician's own patients and is provided or performed by the physician or under the physician's supervision; or

3. An interest in real property resulting in a landlord-tenant relationship between the physician and the entity in which the equity interest is held, unless the rent is determined, in whole or in part, by the business volume or profitability of the tenant or is otherwise unrelated to fair market value.

(d) Leading the public to believe that one is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without holding a valid, active license.

(e) Practicing medicine or attempting to practice medicine with an inactive or delinquent license.

History.--ss. 1, 8, ch. 79-302; ss. 2, 3, ch. 81-318; s. 32, ch. 85-175; ss. 17, 25, 26, ch. 86-245; s. 23, ch. 88-1; s. 86, ch. 91-224; s. 4, ch. 91-429; s. 81, ch. 92-149; s. 165, ch. 94-119; s. 209, ch. 97-103; s. 48, ch. 2000-318.