

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY STATEMENT
PROJECT ACCESS FOUNDATION

FINAL ORDER

This matter came before the Board of Medicine (hereinafter the "Board") on October 7, 2006, in Tampa, Florida, for consideration of the above-referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was published on August 18, 2006, in Vol. 32 , No. 33, in the Florida Administrative Weekly. The Petitioner did not make an appearance.

The petition filed on behalf of Project Access Foundation (PAF) inquired as to whether Liana Mendoza, M.D., a Florida physician who possesses a certificate to practice in Florida in an area of critical need pursuant to Section 458.315, Florida Statutes, may provide crisis stabilization services to PAF patients in a hospital and/or a mental health setting under the auspices of Project Access Foundation?

FINDINGS OF FACTS

1. Liana Mendoza, M.D., possesses a Florida certificate to practice in an area of critical need. She is currently a board eligible psychiatrist providing psychiatric services to uninsured and indigent PAF patients at one of the PAF clinics.
2. PAF has encountered situations where patients require Crisis Stabilization Services, that is, treating patients exhibiting suicidal ideation and treating patients who pose a danger to themselves or others, and therefore require action under the Baker Act.
3. PAF is not currently licensed to provide Crisis Stabilization Services.

4. Crisis Stabilization Services are only currently available at licensed hospitals and mental health facilities.

5. PAF would like Liana Mendoza, M.D. to follow and treat patients in hospital and mental health facilities so as to ensure continuity of care under the auspices of Project Access Foundation.

CONCLUSIONS OF LAW

6. 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.

7. The Petition filed in this cause is in substantial compliance with the provisions of 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code.

8. Section 120.565, Florida Statutes, reads as follows:

120.565. Declaratory statement by agencies

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action

9. PAF seeks the Board's opinion as to whether Liana Mendoza, M.D., a Florida licensee, may practice under her restricted license in hospital and mental health centers. In

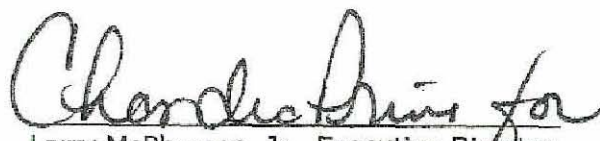
other words, it seeks the Board's opinion as to whether another's proposed conduct is permissible under Section 458.315, Florida Statutes.

10. The Board declines to issue a declaratory statement in response to PAF's petition because PAF has failed to demonstrate that it is authorized to represent Liana Mendoza, M.D., the licensee who is ultimately substantially affected in this matter. *See, Federation of Mobile Home Owners v. Department of Business Regulation, Div. of Fla. Land Sales, etc.*, 479 So. 2d 252 (Fla. 2nd DCA 1985)

11. Based on the foregoing, the Board hereby **DENIES** PAF's petition for declaratory statement.

DONE AND ORDERED this 26 day of October, 2006.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for Mammen P. Zachariah, 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: Jack J. Michel, M.D., Project Access Foundation, 11865 SW 26th Street, Miami, Florida 33174; and by interoffice mail to: Edward A. Tellechea, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050; and Timothy Cerio, General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, on this 28th day of October, 2006.



Deputy Agency Clerk



FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Alicia Steffen*
DATE: 8/8/2006

8000 Biscayne Blvd.
Miami, FL 33188
Tel: (305) 759-4778
Fax: (305) 751-9992

11865 S.W. 26th Street - #G-10
Miami, FL 33175
Tel: (305) 559-8333
Fax: (305) 559-5333

6140 S.W. 70th St. - Tercer Piso
Miami, FL 33143
Tel: (305) 661-2179
Fax: (305) 661-7843

August 3, 2006

Department of Health
Board of Medicine
4052 Bald Cypress Way
Bin #C03
Tallahassee, Florida 32399-3253

RE: Petition for Declaratory Statement


Dear Sir or Madam:

Enclosed please find a Petition for Declaratory Statement on behalf of Project Access Foundation.

Please let us know if there is anything else we need to do or provide. I look forward to the Board's response.

Thank you for your prompt attention to this matter.

Sincerely,


Project Access Foundation
11865 SW 26th Street,
Unit G-10
Miami, Florida 33174
(305) 559-8333

MEDICINE BOARD
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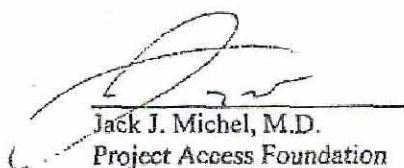
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PETITION FOR DECLARATORY STATEMENT BEFORE THE BOARD OF
MEDICINE

1. Petitioner, Project Access Foundation, located at 11865 SW 26th Street, Unit G-10, Miami, Florida 33174, (305) 559-8333, seeks a Declaratory Statement from the Board of Medicine with regard to Florida Statute 458.315.
2. Liana Mendoza, has been issued a certificate to practice, under Project Access Foundation, an approved Area of Critical Need Facility.
3. Dr. Mendoza is a board eligible psychiatrist and she is currently providing psychiatric services to uninsured and indigent Project Access patients at our clinic located in 11865 SW 26th Street.
4. We have encountered situations where patients require Crisis Stabilization Services (ie; patients exhibiting suicidal ideation or patients who may pose a danger to themselves or others, thus requiring Baker Act), which we are not licensed to be provided at our location.
5. Florida ranks 10th in the nation for suicides per 100,000 population. Suicide ranks 4th as the leading cause of death for youth between the ages of 15 to 24.
6. In view of the need for these services in the Miami-Dade County area and the lack of readily accessible psychiatric services at no cost (for uninsured people who meet 100% Federal Poverty Guidelines) or at affordable cost (for uninsured people who exceed 100% Federal Poverty Guidelines). Project Access is contemplating expanding its scope of services to include crisis stabilization.
7. Crisis Stabilization services are *only* available at licensed hospitals or mental health centers. Petitioner requests guidance as to assure that this physician (who is currently licensed to work only at our site) will be able to follow the patients in a hospital and/or mental health center setting, so as to ensure continuity of care, under the auspices of Project Access Foundation.

Signed on this 3rd day of August, 2006.

Respectfully submitted by:



Jack J. Michel, M.D.
Project Access Foundation
11865 SW 26th Street,
Unit G-10
Miami, Florida 33174
(305) 559-8333

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