

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

IN RE:

**Ramirez and Weisman for
Florida Medical Clinic, P.A.
Petition for Declaratory Statement**

**FINAL ORDER
DECLARATORY STATEMENT**

On or about August 29, 2011, representatives for Petitioner Florida Medical Clinic, P.A., (FMC) filed with the Florida Department of Health (Department) the attached Petition for Declaratory Statement pursuant to section 120.565, Florida Statutes. The petition was deemed sufficiently in compliance with Florida Administrative Code Rule 28-105.002, for review by the Department. The Petition requests an interpretation of section 458.3265, Florida Statutes, relating to statutory exemptions from having to register as a pain-management clinic. The issue raised is whether the majority of the physicians in the clinics: 1) primarily provide surgical services; 2) whether the clinics are wholly owned and operated by certain specialists including board-certified anesthesiologists, or 3) whether the clinics are wholly owned and operated by certain board-certified medical specialists, board-certified in pain medicine and performing interventional pain procedures of the type routinely billed using surgical codes. No public comments were received with regard to this petition.

FINDINGS OF FACT

1. Petitioner FMC is a multi-specialty group practice with offices in Pasco and Hillsborough counties. Petitioner is wholly owned by physicians and has 81 physician shareholders and more than 100 physician providers.

2. Petitioner FMC owns three registered pain-management clinics at addresses in Land O' Lakes, Tampa, and Zephyrhills, Florida. One of these clinics, the Land O' Lakes office, also is registered with the Department of Health as a level 2 office surgery center.

3. The three clinics are organized into departments including an Interventional Pain Medicine Department where different types of chronic pain are diagnosed and treated.

4. In the three clinics, more than 80 percent of the patients had at least one interventional pain procedure this year. In the pain management department portion of the clinics, physicians performed interventional pain procedures 59 percent of the time.

5. Dr. Edgar Ramirez, a shareholder in Petitioner FMC, is Board Certified in Anesthesia with a subspecialty certification in pain medicine. Dr. Neil Weisman, an employee of Petitioner FMC, in addition to holding the same certifications as Dr. Ramirez, is a Diplomate of the American Board of Pain Medicine.

CONCLUSIONS OF LAW

6. The Department is the regulating agency with regard to pain-management clinic registration. The Department has jurisdiction to issue declaratory statements under section 120.565, Florida Statutes, with regard to pain-management clinic statutory provisions as they apply to a petitioner's particular set of circumstances.

7. The Department determined that Petitioner's request for the issuance of a declaratory statement should be granted. Petitioner's future conduct will be governed by knowing whether, based on the facts provided by Petitioner FMC, its three clinics are required to maintain their registrations or are exempt from registration as pain-management clinics.

8. Section 458.3265(1)(a)2., Florida Statutes, in part provides:

Each pain-management clinic must register with the department unless:

....

b. The majority of the physicians who provide services in the clinic primarily provide surgical services; . . .

g. The clinic is wholly owned and operated by one or more board-certified anesthesiologists, physiatrists, or neurologists; or

h. The clinic is wholly owned and operated by one or more board-certified medical specialists who have also completed fellowships in pain management approved by the Accreditation Council for Graduate Medical Education, or who are also board-certified in pain medicine by a board approved by the American Board of Medical Specialties and perform interventional pain procedures of the type routinely billed using surgical codes.

9. Petitioner suggests the interpretation of "surgical services" as equal to interventional pain procedures of the type routinely billed using surgical codes under the exemption provided in subparagraph b. Subparagraph b., however, does not provide for or permit such an interpretation. As demonstrated by subparagraph h., the Legislature knows how to write and did write an exemption relating to "interventional pain procedures of the type routinely billed using surgical codes." This is not the standard articulated in subparagraph b., which provides an exemption where a majority of physicians in the clinic primarily provide surgical services.

10. Surgical services are directly related to actual surgery, which is performed by a surgeon and is characterized as the cutting and removal or repair of bodily parts.

Interventional pain procedures or the treatment of pain before surgery, more than a few hours after surgery, or outside of a setting where surgery may be performed does not constitute surgical services.

11. The facts as presented in the Petition establish that the performance of surgical services is only authorized in Petitioner's Land O' Lakes clinic location because it is the only clinic with a level 2 office surgery registration. Even at this location, a *majority* of the physicians need primarily to be engaged in surgery or actually performing level 2 procedures lasting more than 5 minutes for the Land O' Lakes clinic to qualify for the surgical services exemption from registration.

12. Out of Petitioner FMC's 81 physician shareholders only one of them, Dr. Ramirez, holds a board-certification. Since the three clinics are owned by many physician shareholders who are not board certified as specified in subparagraphs g. and h., they clearly do not meet the requirement of being entirely or 100 percent owned by one or more board-certified specialists.


WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that the request for a Petition for Declaratory Statement is GRANTED. It has not been demonstrated that Petitioner's three pain-management clinics fall under exceptions from having to register with the Department as set forth in section 458.3265, Florida Statutes. Accordingly, unless and until a pain-

management clinic owned by Petitioner meets the exception criteria, it is advised to keep and not relinquish its pain-management clinic registration.

DONE AND ORDERED this 24 day of October, 2011.

H. Frank Farmer, Jr., M.D., Ph.D., FACP
State Surgeon General



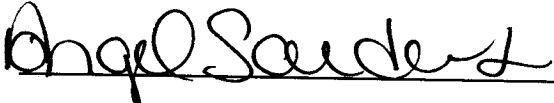
Kimberly A. Berfield, Deputy Secretary
Department of Health

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this final order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the agency clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

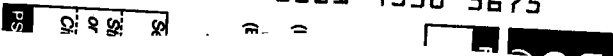
I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. mail to Nancy S. Paikoff, Macfarlane Ferguson & McMullen, Post Office Box 1669, Clearwater, Florida 33757; and by interoffice mail to Donna Erlich, Assistant General Counsel, Department of Health, Tallahassee, this 24th day of October, 2011.



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Deputy Agency Clerk

7011 1150 0001 4538 3675



FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Angela Baiter*
DATE 8/29/11

STATE OF FLORIDA
DEPARTMENT OF HEALTH

PETITION FOR DECLARATORY
STATEMENT BEFORE THE FLORIDA
DEPARTMENT OF HEALTH ADDRESSING
§458.3265, FLORIDA STATUTES, ON BEHALF
OF EDGAR DANIEL RAMIREZ, M.D. AND
NEIL WEISMAN, M.D., INDIVIDUALLY AND
AS REPRESENTATIVES OF FLORIDA MEDICAL
CLINIC, P.A.

Case No.: _____

PETITION FOR DECLARATORY STATEMENT

Pursuant to Sections 120.565, Florida Statutes (2011), and Chapter 28-105, Florida Administrative Code, Edgar Daniel Ramirez, M.D. and Neil Weisman, M.D., individually and as representatives of Florida Medical Clinic, P.A. (FMC), petition the Department of Health for a Final Order setting forth a Declaratory Statement on the facts and law presented herein.

Background Information

1. Petitioners, Edgar Daniel Ramirez, M.D. and Neil Howard Weisman, M.D. are physicians licensed pursuant to Chapter 458, Florida Statutes. Dr. Ramirez is a shareholder of FMC and Dr. Weisman is an employee of FMC. Both Dr. Ramirez and Dr. Weisman are Board Certified in Anesthesia and both physicians hold a subspecialty certification in Pain Medicine from The American Board of Anesthesiology. Dr. Weisman is also a Diplomate of the American Board of Pain Medicine.

2. Petitioner FMC is a multi-specialty group practice with offices throughout Pasco and Hillsborough Counties. FMC is wholly owned by physicians regulated by Chapters 458 and 459, Florida Statutes, and currently has 81 physician shareholders and more than 100 physician

procedure during that period of time and more than 86 percent of the charges billed by the Pain Medicine Department were billed using surgical codes or codes related to services ancillary to the surgical procedure. These figures are typical for the patients seen by the Interventional Pain Medicine Department. The remaining charges for the Department were billed using medical codes.

16. The statute provides that a clinic is exempt if “the majority of the physicians who provide services in the clinic primarily provide surgical services.” §458.3265(1)(a)2b., Fla. Stat. The terms used in this subsection are not defined. According to Merriam-Webster dictionary, the word “primarily” means “for the most part.” www.merriam-webster.com/dictionary. See also dictionary.com, which defines primarily as “essentially; mostly; chiefly; principally.” FMC has two physicians who provide services in their pain management clinics. More than 80 percent of the patients seen by these two physicians in the three locations had at least one interventional procedure during the first six months of 2011 and more than 86 percent of the billings of these two physicians are for procedures. FMC believes that since the physicians who provide services in their pain management clinics treat more than 80 percent of their patients with surgical services — although they may receive other non-surgical treatment and be prescribed controlled substances also — that all three FMC pain management clinics should be exempt from the registration requirements under §458.3265(1)(a)2b, Fla. Stat. as providing “primarily surgical services.”

17. Alternately, FMC believes that it should be exempt from the registration requirements because the Florida Legislature did not intend to require legitimate pain management clinics owned by physicians and operated by board-certified pain management specialists to be required to register, as evidenced by the addition of exemptions provided in §458.3265(1)(a)2 g & h, Fla.

providers. The executive offices of FMC are located at 38135 Market Square, Zephyrhills, Florida 33542 and the phone number is 813-780-8774.

3. FMC is organized into departments by line of service and maintains an Interventional Pain Medicine Department which specializes in the diagnosis and treatment of different types of chronic pain. The Interventional Pain Medicine Department consists of and is operated by Dr. Ramirez and Dr. Weisman. Both Dr. Ramirez and Dr. Weisman perform interventional pain procedures of the type routinely billed using surgical codes. William Scott Blackshear, M.D., a board-certified anesthesiologist and employee of FMC, provides anesthesia services for the interventional pain procedures performed by Dr. Ramirez and Dr. Weisman. Dr. Ramirez and Dr. Weisman also treat patients medically for chronic pain.

4. FMC owns and operates three pain management clinics as that term is defined in Section 458.3265(1)(a)1.b, Florida Statutes (2011). Each pain management clinic is currently registered with the Department of Health. The physical addresses and registration numbers for the pain management clinics are:

2100 Via Bella Blvd., Suite 103
Land O' Lakes, FL 34639
PMC 507

14547 Bruce B. Downs Blvd., Suite B
Tampa, FL 33613
PMC 1075

38105 Market Square
Zephyrhills, FL 33542
PMC 1306

5. Patients are seen at the Land 'O Lakes office for medical pain management treatment and interventional pain management procedures five days a week during regular business hours. The Land 'O Lakes office is also registered with the Department of Health pursuant to Section

458.309(3), Florida Statutes, for level II office surgery. Dr. Ramirez works primarily out of the Land 'O Lakes office. He also sees patients one half day a week in the Tampa office and performs interventional pain procedures one half day a week at an Ambulatory Surgery Center owned and operated by FMC in Tampa. Dr. Weisman performs interventional pain procedures two days per week at the Land 'O Lakes office and one half day per week at the FMC Ambulatory Surgery Center. He sees patients in the Zephyrhills office two days a week and in the Tampa office one-half day per week. The same patient may be seen in more than one of FMC's pain management offices depending on patient convenience, physician schedule and the need for an interventional procedure.

6. According to FMC's records, for the first six months of 2011, based on the total number of unique patients seen by the physicians in the Interventional Pain Medicine Department in all three clinics, more than 80 percent of the patients had at least one interventional pain procedure this year. More than 86 percent of the charges billed by this Department in the first six months of 2011 were for surgical procedures or services ancillary to the surgery. A list of the procedure codes used for more than 86 percent of the charges during this six month time period are listed on Exhibit "A" attached to this Petition. Additionally, based on scheduling records, 59 percent of the time of the physicians in the Pain Management Department during the first six months of 2011 was spent performing interventional pain procedures.

7. These numbers can be further broken down by office, but as mentioned above, the same patient could be seen at more than one of the pain management clinics during this period of time so they would be counted as a unique patient at each office. Additionally, regardless of which office the patient was initially seen at if the patient required an interventional procedure it would be performed at either the Land 'O Lakes office or the Tampa ASC. The numbers broken down

by pain clinic location are as follows: in the Land 'O Lakes pain management clinic, of the unique patients seen for the period from January 1, 2011 to June 30, 2011 approximately 79 percent had at least one interventional pain procedure; in the Tampa pain management clinic, of the unique patients seen during this same six month time period approximately 75 percent had at least one interventional pain procedure; and in the Zephyrhills pain management clinic, of the unique patients seen approximately 73 percent had at least one interventional procedure.

8. The agency affected by this Petition is the Department of Health of the State of Florida (hereafter the "Department"). The statutory provisions upon which this Declaratory Statement is sought are contained in Section 458.3265, Florida Statutes (2011).

9. The manner in which all of these Petitioners are substantially affected by Section 458.3265, Florida Statutes, is described further herein.

Requested Declaration

10. Petitioners respectfully request that the Department of Health make the following declarations:

(a) That the Pain Management Clinics owned and operated by FMC are exempt from the registration requirements of Section 458.3265(1) because the majority of the physicians who provide services in the clinics primarily provide surgical services; and/or

(b) That the Pain Management Clinics owned and operated by FMC are exempt from the registration requirements of Section 458.3265(1) because FMC is wholly owned by physicians, each Pain Management Clinic is operated by physicians who are board-certified in anesthesia, and all patient care provided in the Pain Management Clinics is exclusively provided by these board-certified physicians; and/or

(c) That the Pain Management Clinics owned and operated by FMC are exempt from the registration requirements because the physicians that operate FMC's Pain Management Clinics hold subspecialty board-certification in Pain Management and they perform interventional pain procedures of the type routinely billed using surgical codes.

Argument

11. Section 458.3265, Florida Statutes, which governs the registration of pain management clinics, was amended by the Legislature during the 2011 Legislative Session to include additional exemptions from the registration requirements for pain management clinics owned and operated by certain board-certified specialists, and also pain management clinics owned and operated by board-certified specialists who perform certain interventional pain procedures.

12. Section 458.3265(1)(a)2, Florida Statutes (2011), provides as follows:

2. Each pain-management clinic must register with the department unless:
 - a. That clinic is licensed as a facility pursuant to chapter 395;
 - b. The majority of physicians who provide services in the clinic primarily provide surgical services;
 - c. The clinic is owned and operated by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded \$50 million;
 - d. The clinic is affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
 - e. The clinic does not prescribe controlled substances for the treatment of pain;
 - f. The clinic is owned by a corporate entity exempt from federal taxation under 26 U.S.C. s. 501(c)(3);

g. The clinic is wholly owned and operated by one or more board-certified anesthesiologists, physiatrists, or neurologists; or

h. The clinic is wholly owned and operated by one or more board-certified medical specialists who have also completed fellowships in pain medicine approved by the Accreditation Council for Graduate Medical Education, or who are also board-certified in pain medicine by a board approved by the American Board of Medical Specialties and perform interventional pain procedures of the type routinely billed using surgical codes.

13. Subsections g. and h. were added by the 2011 legislation.

14. FMC believes that its pain management clinics should be exempt from the registration requirements for at least two reasons: 1) the services provided by the physicians who provide services in the clinics are primarily surgical; and 2) the clear intent of the legislature in adding subsections g. and h. was to exempt legitimate pain management clinics owned and operated by board-certified physicians who specialize in pain management and FMC fits within the intent and spirit of the law.

15. The physicians in the Interventional Pain Medicine Department at FMC provide patient care services at three office locations and an ambulatory surgery center. Because of the prior registration requirements, FMC separately registered each of the three office locations where Dr. Ramirez and Dr. Weisman treat patients. Of the three pain management clinic locations, interventional procedures are only performed in Land 'O Lakes, although patients seen in the other two offices who require interventional procedures will have the procedure performed at the Land 'O Lakes office or at the FMC Ambulatory Surgery Center. Based on a review of the total number of patients seen by FMC's Interventional Pain Medicine Department for the first six months of 2011, more than 80 percent of the patients had at least one interventional pain

Stat. FMC is wholly owned by physicians. Its pain management clinics are operated exclusively by board-certified anesthesiologists. As a multi-specialty group, the physician owners of FMC practice in a variety of specialties but the practice is owned entirely by physicians.

18. If Dr. Ramirez and Dr. Weisman were the sole owners of the pain management clinic, or in a group practice owned solely by board certified anesthesiologists, their pain management clinics would be exempt from registration under subsections g and h. However, because they choose to practice in a large multi-specialty group practice, owned by physicians in many specialties, the pain management clinics may not be exempt from the registration requirement. That cannot have been the intent of the Legislature in adding these additional exemptions for board-certified pain management specialists.

19. A reasonable interpretation of subsection g would be that a pain management clinic that is wholly owned by physicians (even though all of the physician owners may not be board-certified anesthesiologists, physiatrists or neurologists), and that is operated exclusively by board-certified anesthesiologists, physiatrist, or neurologists is exempt.

20. Additionally, a reasonable interpretation of subsection h would be that a pain management clinic that is wholly owned by physicians (again, not all of whom are board-certified anesthesiologists, physiatrists or neurologists), and that is operated exclusively by specialists who hold board-certification in pain management and who perform interventional pain procedures of the type routinely billed using surgical codes is exempt.

21. Petitioners respectfully request that the Department of Health declare that the three pain management clinics owned and operated by FMC are exempt from the registration requirements of Section 458.3265, Florida Statutes.

WHEREFORE, Petitioners respectfully request that the Department of Health issue a Final Order finding that the Pain Management Clinics owned and operated by Florida Medical Clinic, P.A. are exempt from the registration requirements of Section 458.3265, Florida Statutes.

Respectfully submitted this 29th day of August, 2011.



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Attorneys for Petitioners,

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Weisman, M.D. and Florida Medical Clinic, P.A.

Pain Management
Florida Medical Clinic

Procedure Codes

01991, Anesthesia for diagnostic or therapeutic nerve blocks and injections other than the prone position
01992, Anesthesia for diagnostic or therapeutic nerve blocks and injections; prone position
20550, Trigger point, tendon
20552, Trigger point, single or mult. 1-2 muscles
20553, Trigger point, single or mult, 3 or more muscles
20610, Arthrocentesis, major jt, asp/inj
27096, Injection for sacroiliac joint
62264, EPIDURAL LYSIS ON SINGLE DAY
62290, INJECT FOR SPINE DISK X-RAY
62311, INJECT SPINE L/S (CD)
63650, Percutaneous implant neurostimulator electrode array
64405, Greater occipital nerve block
64450, Other peripheral nerve/branch block
64479, Inj, foraminal epidural, cervical or thoracic, single level
64480, Inj. foraminal epidural, cervical or thoracic, each add level
64483, Inj, transforaminal epidural, lumbar or sacral, single level
64484, Inj, transforaminal epidural, lumbar/sacral, each add level
64490, NJX DX/THER AGT PVRT FACET JT CRV/THRC 1 LEVEL
64491, NJX DX/THER AGT PVRT FACET JT CRV/THRC 2ND LEVEL
64493, NJX DX/THER AGT PVRT FACET JT LMBR/SAC 1 LEVEL
64494, NJX DX/THER AGT PVRT FACET JT LMBR/SAC 2ND LEVEL
64495, NJX DX/THER AGT PVRT FACET JT LMBR/SAC 3+ LEVEL
64510, Nerve Block, Stellate Ganglion
64520, N BLOCK, LUMBAR/THORACIC
64550, Apply Neurostimulator
64622, Destruction paravertebral facet joint nerve, single level
64623, Destruction paravertebral facet joint nerve, each add level
64626, Destruct paravertebral nerve, cervical/thoracic, single level
64627, Destruct paravertebral nerve, cervical/thoracic, each add
64640, INJECTION TREATMENT OF NERVE
72275, Epidurography
72295, X-RAY OF LOWER SPINE DISK
77002, Xray, Needle Localization by Xray
77003, Xray, Fluoroguide for Spine Injection
95972, Implanted neurostimulator/intraoperative programming, 1st hr
95973, Impanted neurostimulator/ each add 30 min
L8680, Implantable neurostimulator electrode, each