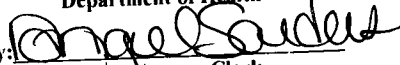


FILED DATE FEB 28 2013

Department of Health

By:   
Deputy Agency ClerkSTATE OF FLORIDA  
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY STATEMENT OF  
JOHN LUTHER LENTZ M.D. AND J. LUKE LENTZ,  
MD, PA.

---

**FINAL ORDER**

This matter came before the Board of Medicine (hereinafter the Board) on February 2, 2013, in Jacksonville, Florida, for consideration of the above-referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was published on January 7, 2013, in Vol. 39, No. 4, in the Florida Administrative Register.

The petition, filed on behalf of John Luther Lentz M.D. and J. Luke Lentz, MD, PA (hereinafter the "Petitioner"), inquires of the Board whether the Petitioner's practice constitutes a "pain-management clinic" as defined in Section 458.3265(1)(a)1., c., Florida Statutes, and whether it must register as such under Section 458.3265(1)(a)2., Florida Statutes.


The regulatory scheme for pain-management clinics set forth in Section 458.3265, Florida Statutes, requires such clinics to register with the Department of Health (hereinafter the "Department"). The Board of Medicine plays no role in the registration process nor does it determine whether a clinic must register pursuant to Section 458.3265(1), Florida Statutes. Such regulatory responsibilities lie solely within the jurisdiction of the Department. Fla. Stat. § 458.3265(1)(a)2. (2012).

Since the Board has no substantive jurisdiction over Section 458.3265, Florida Statutes, it has no authority to interpret the statute, and therefore, must decline to answer Petitioner's inquiry.

Based on the foregoing, the Board hereby **DENIES** John Luther Lentz M.D. and J. Luke Lentz, MD, PA's petition for declaratory statement

**DONE AND ORDERED** this 2<sup>nd</sup> day of February, 2013.

**BOARD OF MEDICINE**

  
Allison M. Dudley, Executive Director  
For Zachariah 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: Bruce Haught, Esquire, Bruce A. Haught, P.A., P.O. Box 5017, 543 Harbor Boulevard, Suite 403, Destin, Florida 32540; by email to: Edward A. Tellechea, Chief Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050, [ed.tellechea@myfloridalegal.com](mailto:ed.tellechea@myfloridalegal.com); and Jennifer Tschetter, General Counsel, Department of

Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703,

jennifer\_tschetter@doh.state.fl.us; on this 28<sup>th</sup> day of February, 2013.

A handwritten signature in black ink that reads "Angel Sanders". The signature is written in a cursive style and is positioned above a horizontal line.

**Deputy Agency Clerk**

**Bruce A. Haught, P.A.**  
ATTORNEY AT LAW

543 Harbor Boulevard, Suite 403  
P.O. Box 5017  
Destin, FL 32540  
E-mail: bruce@brucehaught.com  
Also Admitted to Practice in Alabama

Destin (850) 837-7021  
Pensacola (850) 437-0909  
Panama City (850) 784-9199  
Birmingham (205) 388-1779  
Mobile (251) 732-4088  
Montgomery (334) 651-0531  
Facsimile (850) 837-8121

November 23, 2012

VIA FACSIMILE TRANSMISSION  
Fax: 850 - 487-9626  
and OVERNIGHT DELIVERY

Florida Department of Health  
Board of Medicine - Medical Quality Assurance  
4052 Bald Cypress Way, Bin # C01  
Tallahassee, FL 32399-3251

**REQUEST FOR FILING OF PETITION AND REQUEST FOR  
CONSIDERATION OF INTERIM REQUEST FOR EXEMPTION  
FROM THE PROVISIONS OF Fl. Stat. Sec. 458.3256**

Re: Petition of John Luther Lentz MD, License No. ME 82437 and  
J. Luke Lentz MD PA, PMC registration #676

Dear Sir/Madam:

Along with out of state counsel Jacques G. Simon, Esq., whose address and phone number are 2174 Hewlett Avenue, Suite #201 Merrick, NY 11566 Phone (516)378-8400 and who will be seeking admission pro hac vice in connection with the underlying administrative petition, as local counsel, I represent the petitioners John Luther Lentz MD and J. Luke Lentz MD PA in connection with the attached Petition for a declaratory statement. The petition is brought pursuant to Fl. Stat. § 120.565. It is seeking a declaratory statement pertaining to petitioners' particular set of circumstances vis a vis the provisions of the "pain management clinic" provisions of Fl. Stat. Sec. 458.3256.

Enclosed herein for filing please find the petition, accompanying exhibits and certification. Please file and process the same accordingly pursuant to Fl. Stat. § 120.565.

**Request for interim exemption from Fl. Stat. Sec. 458.3256.**

In addition, pending the determination of the underlying petition, the petitioners request that the Board and the Department consider at the Board's meeting scheduled to take place on

Page -2-

November 29 and November 30, 2012 Petitioners' request for interim ruling that they be exempted from the mandates of Fl. Stat. Sec. 458.3256. This request is based upon the statements made on the face of the petition and the accompanying certification which unequivocally represent that the Petitioners do not operate a "pain management clinic" and do not treat chronic non-malignant pain within the meaning of Fl. Stat. Sec. 458.3256.

Very truly yours,



Bruce Haught, Esq.

Encls.

c.c.: John Luther Lentz MD and Jacques G. Simon, Esq.

**Bruce A. Haught, P.A.**  
**ATTORNEY AT LAW**

543 Harbor Blvd., Suite 403  
P.O. Box 5017  
Destin, FL 32540  
Also Admitted to Practice in Alabama

(850) 837-7021  
FAX: (850) 837-8121  
E-mail: bruce@brucehaught.com

**FACSIMILE TRANSMISSION SHEET**

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To: Fla. Dept. of Health From: \_\_\_\_\_

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From: **Bruce A. Haught, P.A.**

The Original of this transmission will be forwarded by:

- Regular U.S. Mail
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- Personal Delivery
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Should you have problems receiving this transmission, please call our office at (850) 837-7021.

REGARDING:

John Luther Lentz, M.D. Lic # ME 82437

MESSAGE:

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**PRIVACY NOTICE**

WARNING: THE INFORMATION IN THIS FACSIMILE TRANSMISSION IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION AND AS SUCH IS PRIVILEGED. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT NAMED ABOVE, YOU ARE NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, PLEASE NOTIFY THIS OFFICE IMMEDIATELY VIA TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO THE ABOVE ADDRESS BY MAIL. THANK YOU.

**FILED**

DEPARTMENT OF HEALTH  
DEPUTY CLERK

CLERK @ Angel Sanders

DATE: 11-26-12

**BEFORE THE STATE OF FLORIDA DEPARTMENT OF HEALTH**

X

In Re: Petition of John Luther Lentz MD  
and J. Luke Lentz MD, PA for a declaratory  
statement from the Florida Department of Health and  
the Florida Medical Board regarding Petitioner's  
exemptions from the mandates of Fl. Stat Sec. 458.3265

PMC Certificate No. 676

Petitioners

X

**PETITION PURSUANT TO Fla. Stat. § 120.565 FOR DECLARATORY RULING  
EXEMPTING THE PETITIONER FROM THE PROVISIONS OF  
Fla. Stat. Sec. 458.3265.**

COMES NOW the Petitioner, John Luther Lentz MD, by his undersigned attorneys and petitions the Florida Department of Health ("FDH"), Board of Medicine, Division of Medical Quality Assurance for a declaratory ruling pursuant to Fl. Stat. § 120.565 declaring that Dr. Lentz's practice of medicine under PMC Certificate 676 and under circumstances explained below and in the accompanying Certification of the Petitioner do not fall under the requirements of Fla. Stat. Sec. 458.3256 inasmuch as Dr. Lentz does not operate a "pain management clinic" as specifically defined by Fla. Stat. Sec. 458.3265.

**FACTUAL BACKGROUND.**

1. The Petitioner John Luther Lentz MD (hereinafter "Lentz") is a duly licensed to practice medicine in the state of Florida and possesses license No. ME 82437.
2. The Petitioner J. Luke Lentz MD PA (hereinafter "Clinic") is a Florida corporation for which only 100 shares have been issued out of a total of 1,000 shares authorized to be issued at any time.

3. At all of the relevant times hereinabove and hereinafter mentioned, the Clinic was and is registered with the Florida Department of Health pursuant to Fl. Stat. Sec. 458.3264 as a "pain management clinic" and possesses certificate of registration PMC #676.
4. At all of the relevant times hereinabove and hereinafter mentioned Petitioner Lentz was and still is the sole owner of the 100 issued shares of the Clinic.
5. At all of the relevant times hereinabove and hereinafter mentioned the Clinic was and still is fully owned by the Petitioner Lentz who is and has been a medical doctor licensed under Chapter 458 of the Florida Statutes.
6. The respondent Florida Department of Health ("FDH") is an agency of the state of Florida and it is charged inter alia with the administration and provisions of Fl. Stat. Sec. 458.3265.
7. On or about November 15, 2010 the Petitioners and the Respondent Department of Health entered into a settlement agreement pursuant to Fl. Stat. Sec. 120.57(e) which settled the contested hearing initiated by the FDH pursuant to which the petitioners retained the unencumbered Pain Management Clinic license (Exhibit "A" annexed hereto). The reason for that agreement and Petitioners' decision to retain the PMC certificate is because they were under the bona fide but erroneous legal belief that the use of the controlled substance suboxone in the manner described in Petitioner Lentz's accompanying certification in support of this petition, ipso facto placed them under the specific provisions of Fl. Stat. Sec. 458.3265.
8. In accordance with the provisions of Fl. Stat. Sec. 458.3265 the FDH Department of Investigative services, by inspector Shanon Seroogy, conducted an inspection of the Clinic on or about February 21, 2011 (See Exhibit "B" hereto).



9. The inspection report (Exhibit "B" hereto) specifically points as follows: (1) Item No. "9" - the Petitioners do not advertise the use, sale or dispensing of any controlled substance appearing on any schedule in Chapter 893 Section 458.331(1)(qq) and 459.015(1)(ss). The handwritten remarks read "clinic provides treatment for Lyme disease and is also a Suboxone clinic".

10. Fl. Stat. Sec. 458.3265(1)(c) defines "pain management clinic" as follows:

c. "Pain-management clinic" or "clinic" means any publicly or privately owned facility:

(I) That advertises in any medium for any type of pain-management services; or

(II) Where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

11. Fl. Stat. Sec. 458.3265(1)(b) defines "Chronic nonmalignant pain" means pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

12. As can be seen from Petitioner's accompanying certification, neither Lentz nor the Clinic engage or have ever engaged in the activities provided by Fl. Stat. Sec. 458.3265(1)(c) (I) or (II).

13. Suboxone is a narcotic medication indicated for the maintenance treatment of opioid dependence. See Lentz certification.

14. Dr. Lentz uses suboxone to reduce opioid dependence in his patients, including those with Lyme disease who also have opioid dependence.

15. Neither Dr. Lentz nor the Clinic advertise "in any medium for any type of pain-management services" as defined by Fl. Stat. Sec. 458.3265(1)(c)(I).

16. In fact neither Lentz nor the clinic provide any pain management services at all. See Lentz accompanying certification.

17. The Clinic is not a "pain management clinic" as defined by Fl. Stat. Sec. 458.3265(1)(c)(II) because a majority of its patients are not prescribed in any month "opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain".

18. In fact neither Dr. Lentz nor the Clinic treat chronic malignant pain with suboxone at all. That medication is exclusively used in accordance with its FDA intended and approved use to reduce opioid dependency. See Lentz certification.

19. The Petitioners retained their PMC registration because they were under the belief that the prescription of suboxone to the patients for the purposes of reducing opioid dependence subjects them to the provisions of Fl. Stat. Sec. 458.3265(1)(c)(II).

20. Fl. Stat § 120.565 provides in its entirety as follows:

**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.

21. In the present petition the Petitioner is seeking a declaratory statement from the Florida Department of Health that Petitioner's use of suboxone for the purposes of reducing opioid dependence in patients of the petitioners does not qualify the Petitioners as a "pain management

clinic" under the provisions of Fl. Stat. Sec. 458.3265(1)(c) and that the Petitioners are not a "pain management clinic" subject any of the provisions of Fl. Stat. Sec. 458.3265.

22. The petitioners request from the Department that pending the consideration of this petition the Department does not subject the Petitioners to the inspections and rigors of Fl. Stat. Sec. 458.3265 and that any inspection be held in abeyance pending the filing and determination of this petition.

23. For all of the foregoing reasons and for all of the reasons set forth in Petitioner's accompanying certification the petitioners request the FDH to issue a declaratory statement pursuant to Fl. Stat § 120.565 stating that neither the Clinic J. Luke Lentz MD PA nor Dr. Lentz practice "pain management" under Fl. Stat. Sec. 458.3265 and further stating that neither one of the petitioners are subject to the provisions of Fl. Stat. Sec. 458.3265 so long as soboxone is used to reduce opioid dependency rather than to treat "Chronic nonmalignant pain" as defined by Fl. Stat. Sec. 458.3265(1)(b) and (c).

Dated: November 23, 2012

Attorney for the Petitioner



Bruce Haught, Esq.,  
Florida Bar No. 0983325  
Bruce A. Haught, P.A.  
P.O. Box 5017  
543 Harbor Blvd., Suite 403  
Destin, FL 32540  
Voice: 850-837-7021  
Fax: 850-837-8121  
Toll Free: 800-804-3637  
Email: bruce@brucehaught.com

# **EXHIBIT "A"**

***Transmission Interrupted.***

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**25229**

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STATE OF FLORIDA  
DEPARTMENT OF HEALTH

In Re: the Certificate of )  
J. LUKE LENTZ, MD PA )  
LICENSE NO. PMC 676 )  
\_\_\_\_\_ )

SETTLEMENT AGREEMENT

Pursuant to section 120.57(4), Florida Statutes, the above named parties hereby offer this Settlement Agreement to the Florida Department of Health as disposition of the Petition for a hearing herein, in lieu of any other administrative proceedings. The Petitioner filed a Petition challenging the Notice of Intent to Revoke Certificate of Registration (ITAR) served on it by certified mail on October 20, 2010. The Petition was timely filed with the Agency Clerk, Florida Department of Health, on November 10, 2010. The terms herein become effective only if and when a Final Order adopting this Settlement Agreement as the disposition of this matter is issued and filed by the Florida Department of Health.

STIPULATED FACTS

1. Petitioner is a Pain-management clinic with the Certificate of Registration of PMC 676.
2. Petitioner is a Florida Corporation for which only 100 shares have been issued out of a total of 1,000 shares authorized to be outstanding at any one time.
3. At all pertinent times to this Settlement Agreement, J. Luke Lentz is and has been the sole owner of all 100 issued shares of the Petitioner.

4. J. Luke Lertz is a Medical Doctor (M.D.) with a full, active, and unencumbered Florida medical license.
5. Petitioner is fully owned by a medical doctor licensed under chapter 458, Florida Statutes.
6. The records of the Florida Department of State reflect J. Luke Lertz as the owner of 100% of the 100 issued shares of the Petitioner.

**STIPULATED LAW**

7. Petitioner admits that this matter is subject to the provisions of Section 458.3265, Florida Statutes, and the jurisdiction of the Florida Department of Health and the Florida Board of Medicine.
8. Petitioner admits that the Settlement Agreement is a fair, appropriate, and reasonable resolution to this pending matter.

**PROPOSED DISPOSITION**

9. The parties request the Florida Department of Health to enter a final order adopting this Settlement Agreement as the disposition of this matter and directing the Bureau of Operations, Department of Health, to issue, file with the Agency Clerk, and serve on Petitioner a Withdrawal of Notice of Intent to Revoke Certificate of Registration as a Pain-management clinic issued against Petitioner.
10. Petitioner agrees that the Petition will not be submitted for a hearing by the filing of the Settlement Agreement, unless the Florida Department of Health rejects the Settlement Agreement. Should the Department adopt the Settlement Agreement

as the disposition of this matter by final order, the Petitioner hereby agrees that its Petition for hearing pending before the Department is voluntarily dismissed.

- 11. The parties agree to pay their own attorneys' fees and costs and agree to waive all rights to an appeal.
- 12. The parties stipulate and agree that this Settlement Agreement is a legal and binding document and is fully enforceable against all parties in any court of competent jurisdiction. The signatories hereto are vested with the authority to execute this Settlement Agreement on behalf of their respective principals, and as duly designated representatives, to fully bind such principals.

WHEREFORE, the parties hereto request the Florida Department of Health to enter a Final Order adopting the terms contained herein as the disposition of this matter.

Respectfully Submitted,

J. Luke Lentz, M.D.  
J. LUKE LENTZ, M.D.

STATE OF FLORIDA  
COUNTY OF Okaloosa

Sworn to (or affirmed) and subscribed before me this 15<sup>th</sup> day of November, 2010,  
by J. Luke Lentz, M.D.



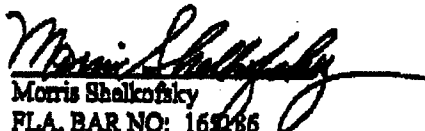
Juliet G. Lee  
(Signature of Notary Public-State of Florida)

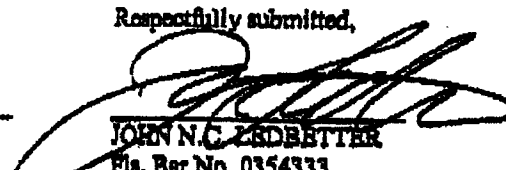
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known  OR Produced Identification   
Type of Identification Produced \_\_\_\_\_



Respectfully submitted,

  
Morris Shelkofsky  
FLA. BAR NO: 168286  
Assistant General Counsel and Senior Attorney  
Florida Department of Health  
Office of General Counsel  
4052 Bald Cypress Way, BIN A02  
Tallahassee, Florida 32399-1703  
Telephone: (850) 245-4005  
Facsimile: (850) 410-1448

  
JOHN N.C. ESDIBETTER  
Fla. Bar No. 0354333  
Attorney for Petitioner J. Luke Lentz, M.D.  
4641 Gulfstar Drive, Suite 102  
Destin, FL 32541  
Telephone: 850-650-1040  
Fax: 850-650-3020  
E-mail: led@destinlawgroup.com

Email: Morris\_Shelkofsky@doh.state.fl.us

# **EXHIBIT "B"**

From LENTZ LYME CLINIC 1.850.807.5000 Mon Jul 16 14:57:50 2012 EST Page 3 of 13

Jul 16 12:12:40p

DLentz

18504243888

p.2



STATE OF FLORIDA DEPARTMENT OF HEALTH INVESTIGATIVE SERVICES



FILE# 423

INSPECTIONS 286

PAIN MANAGEMENT CLINIC

Radio buttons for 'Random' and 'Other'

INSPECTION AUTHORITY - SECTION 462.2265, 462.0157, CHAPTER 65B.05 AND CHAPTER 488, FLORIDA STATUTES, 6416-8.0151 and 8416-14.001 F.A.C.

Main inspection form with fields for establishment name, address, physician details, and license information.

From LENTZ LYME CLINIC 1.850.807.5000 Mon Jul 16 14:57:50 2012 EST Page 4 of 13

Jul 16 12:40p

DrLentz

18504243898

p.3



STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
INVESTIGATIVE SERVICES  
www.flhealth.com



1. Clinic is currently registered. Section 488.220(1)(a), and 488.0137 (1)(a), F.S.			
2. The Department has been notified of the name of designated physician. Section 488.220 (1)(a), and 488.0137 (1)(a), F.S.	NA	Yes	No
3. Physician examination performed by physician on same day controlled substance prescribed. If answer is "No" provide explanation in the narrative section. Section 488.220 (2)(c), and 488.0137 (2)(c), F.S.		✓	
4. Physician is documenting in the patient record, the reason for prescribing or dispensing more than a 72 hour dose of controlled substance for chronic non malignant pain. Section 488.220 (2)(c), and 488.0137 (2)(c), F.S.		✓	
5. Physician maintains control and security of prescription blanks and other methods for prescribing controlled substances. Section 488.220 (2)(d), and 488.0137 (2)(d), F.S.		✓	
6. Counterfeit resistant prescription blanks being used? Section 488.220 (2)(e), and 488.0137 (2)(e), F.S.		✓	
7. Department notified within 24 hours following the theft or loss of prescription blanks. Section 488.220 (2)(f), and 488.0137 (2)(f), F.S.		✓	
8. Designated physician practices at the clinic location. Section 488.220 (1)(a), and 488.0137 (1)(a), F.S.		✓	
9. Advertising the use, sale, or dispensing of any controlled substance appearing on any schedule in Chapter 880. Section 488.031(1)(a) and 488.018(1)(a), F.S.		✓	
10. Physician dispensed more than a 72-hour supply of a controlled substance for any patient who pays for the medication by cash, check or credit card. Chapter 488.027(1)(b), F.S.	✓		✓

Time entered facility 2:45pm showed credentials to John L. Lentz, MD

Remarks: CLINIC provides treatment for Lyme disease and  
is also a Suboxone clinic

I have read and had this inspection report and the violations, if any, explained, and the information given is true and correct to the best of my knowledge. Pursuant to Rule 64B-4.006, F.A.C. and Section 488.020(2)(b), F.S., and 488.0187(000), F.S., an invoice will be mailed to you for the cost of inspection.

John L. Lentz, MD  
Owner or designated physician  
John Lentz  
Print Name

3-31-11  
Date

John Seaway BE38  
Investigator, Pharmacist Identification Number

**Bruce A. Haught, P.A.**  
**ATTORNEY AT LAW**

543 Harbor Blvd., Suite 403  
P.O. Box 5017  
Destin, FL 32540  
Also Admitted to Practice in Alabama

(850) 837-7021  
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E-mail: bruce@brucehaught.com

**FACSIMILE TRANSMISSION SHEET**

DATE: 11/23/12 NUMBER OF PAGES (including cover sheet): 18

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From: **Bruce A. Haught, P.A.**

The Original of this transmission will be forwarded by:

- Regular U.S. Mail
- Overnight Delivery
- Certified Mail
- Personal Delivery
- This transmission will be the only form of delivery

Should you have problems receiving this transmission, please call our office at (850) 837-7021.

REGARDING: John Luther Lentz, M.D. Lic # 11482437

MESSAGE:

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Page -2-

November 29 and November 30, 2012 Petitioners' request for interim ruling that they be exempted from the mandates of Fl. Stat. Sec. 458.3256. This request is based upon the statements made on the face of the petition and the accompanying certification which unequivocally represent that the Petitioners do not operate a "pain management clinic" and do not treat chronic non-malignant pain within the meaning of Fl. Stat. Sec. 458.3256.

Very truly yours,



Bruce Haught, Esq.

Encls.

c.c.: John Luther Lentz MD and Jacques G. Simon, Esq.

**BEFORE THE STATE OF FLORIDA DEPARTMENT OF HEALTH**

X

In Re: Petition of John Luther Lentz MD  
and J. Luke Lentz MD, PA for a declaratory  
statement from the Florida Department of Health and  
the Florida Medical Board regarding Petitioner's  
exemptions from the mandates of Fl. Stat Sec. 458.3265

PMC Certificate No. 676

Petitioners

X

**PETITION PURSUANT TO Fla. Stat. § 120.565 FOR DECLARATORY RULING  
EXEMPTING THE PETITIONER FROM THE PROVISIONS OF  
Fla. Stat. Sec. 458.3265.**

COMES NOW the Petitioner, John Luther Lentz MD, by his undersigned attorneys and  
petitioners the Florida Department of Health ("FDH"), Board of Medicine, Division of Medical  
Quality Assurance for a declaratory ruling pursuant to Fl. Stat. § 120.565 declaring that Dr. Lentz's  
practice of medicine under PMC Certificate 676 and under circumstances explained below and in  
the accompanying Certification of the Petitioner do not fall under the requirements of Fla. Stat. Sec.  
458.3256 inasmuch as Dr. Lentz does not operate a "pain management clinic" as specifically defined  
by Fla. Stat. Sec. 458.3265.

**FACTUAL BACKGROUND.**

1. The Petitioner John Luther Lentz MD (hereinafter "Lentz") is a duly licensed to  
practice medicine in the state of Florida and possesses license No. ME 82437.
2. The Petitioner J. Luke Lentz MD PA (hereinafter "Clinic") is a Florida  
corporation for which only 100 shares have been issued out of a total of 1,000 shares authorized  
to be issued at any time.

3. At all of the relevant times hereinabove and hereinafter mentioned, the Clinic was and is registered with the Florida Department of Health pursuant to Fl. Stat. Sec. 458.3264 as a "pain management clinic" and possesses certificate of registration PMC #676.

4. At all of the relevant times hereinabove and hereinafter mentioned Petitioner Lentz was and still is the sole owner of the 100 issued shares of the Clinic.

5. At all of the relevant times hereinabove and hereinafter mentioned the Clinic was and still is fully owned by the Petitioner Lentz who is and has been a medical doctor licensed under Chapter 458 of the Florida Statutes.

6. The respondent Florida Department of Health ("FDH") is an agency of the state of Florida and it is charged inter alia with the administration and provisions of Fl. Stat Sec. 458.3265.

7. On or about November 15, 2010 the Petitioners and the Respondent Department of Health entered into a settlement agreement pursuant to Fl. Stat Sec. 120.57(c) which settled the contested hearing initiated by the FDH pursuant to which the petitioners retained the unencumbered Pain Management Clinic license (Exhibit "A" annexed hereto). The reason for that agreement and Petitioners' decision to retain the PMC certificate is because they were under the bona fide but erroneous legal belief that the use of the controlled substance suboxone in the manner described in Petitioner Lentz's accompanying certification in support of this petition, ipso facto placed them under the specific provisions of Fl. Stat Sec. 458.3265.

8. In accordance with the provisions of Fl. Stat Sec. 458.3265 the FDH Department of Investigative services, by Inspector Shanon Seroogy, conducted an inspection of the Clinic on or about February 21, 2011 (See Exhibit "B" hereto).



9. The inspection report (Exhibit "B" hereto) specifically points as follows: (1) Item No. "9" - the Petitioners do not advertise the use, sale or dispensing of any controlled substance appearing on any schedule in Chapter 893 Section 458.331(1)(qq) and 459.015(1)(ss). The handwritten remarks read "clinic provides treatment for Lyme disease and is also a Suboxone clinic".

10. Fl. Stat. Sec. 458.3265(1)(e) defines "pain management clinic" as follows:

a. "Pain-management clinic" or "clinic" means any publicly or privately owned facility:

(I) That advertises in any medium for any type of pain-management services; or

(II) Where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

11. Fl. Stat. Sec. 458.3265(1)(b) defines "Chronic nonmalignant pain" means pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

12. As can be seen from Petitioner's accompanying certification, neither Lentz nor the Clinic engage or have ever engaged in the activities provided by Fl. Stat. Sec. 458.3265(1)(c) (I) or (II).

13. Suboxone is a narcotic medication indicated for the maintenance treatment of opioid dependence. See Lentz certification.

14. Dr. Lentz uses suboxone to reduce opioid dependence in his patients, including those with Lyme disease who also have opioid dependence.

15. Neither Dr. Lentz nor the Clinic advertise "in any medium for any type of pain-management services" as defined by Fl. Stat. Sec. 458.3265(1)(c)(I).

16. In fact neither Lentz nor the clinic provide any pain management services at all. See Lentz accompanying certification.

17. The Clinic is not a "pain management clinic" as defined by Fl. Stat. Sec. 458.3265(1)(c)(II) because a majority of its patients are not prescribed in any month "opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain".

18. In fact neither Dr. Lentz nor the Clinic treat chronic malignant pain with suboxone at all. That medication is exclusively used in accordance with its FDA intended and approved use to reduce opioid dependency. See Lentz certification.

19. The Petitioners retained their FMC registration because they were under the belief that the prescription of suboxone to the patients for the purposes of reducing opioid dependence subjects them to the provisions of Fl. Stat. Sec. 458.3265(1)(c)(II).

20. Fl. Stat § 120.565 provides in its entirety as follows:

**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.

21. In the present petition the Petitioner is seeking a declaratory statement from the Florida Department of Health that Petitioner's use of suboxone for the purposes of reducing opioid dependence in patients of the petitioners does not qualify the Petitioners as a "pain management

clinic" under the provisions of Fl. Stat. Sec. 458.3265(1)(e) and that the Petitioners are not a "pain management clinic" subject any of the provisions of Fl. Stat. Sec. 458.3265.

22. The petitioners request from the Department that pending the consideration of this petition the Department does not subject the Petitioners to the inspections and rigors of Fl. Stat. Sec. 458.3265 and that any inspection be held in abeyance pending the filing and determination of this petition.

23. For all of the foregoing reasons and for all of the reasons set forth in Petitioner's accompanying certification the petitioners request the FDH to issue a declaratory statement pursuant to Fl. Stat § 120.565 stating that neither the Clinic J. Luka Lentz MD PA nor Dr. Lentz practice "pain management" under Fl. Stat. Sec. 458.3265 and further stating that neither one of the petitioners are subject to the provisions of Fl. Stat. Sec. 458.3265 so long as soboxone is used to reduce opioid dependency rather than to treat "Chronic nonmalignant pain" as defined by Fl. Stat. Sec. 458.3265(1)(b) and (c).

Dated: November 23, 2012

Attorney for the Petitioner



Bruce Haught, Esq.,  
Florida Bar No. 0985325  
Bruce A. Haught, P.A.  
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543 Harbor Blvd., Suite 403  
Destin, FL 32540  
Voice: 850-837-7021  
Fax: 850-837-8121  
Toll Free: 800-804-3637  
Email: bruce@brucehaught.com

# **EXHIBIT "A"**

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

In Re: the Certificate of )  
J. LUKE LENTZ, MD PA )  
LICENSE NO. PMC 676 )  
\_\_\_\_\_ )

SETTLEMENT AGREEMENT

Pursuant to section 120.57(4), Florida Statutes, the above named parties hereby offer this Settlement Agreement to the Florida Department of Health as disposition of the Petition for a hearing herein, in lieu of any other administrative proceedings. The Petitioner filed a Petition challenging the Notice of Intent to Revoke Certificate of Registration (ITAR) served on it by certified mail on October 20, 2010. The Petition was timely filed with the Agency Clerk, Florida Department of Health, on November 10, 2010. The terms herein become effective only if and when a Final Order adopting this Settlement Agreement as the disposition of this matter is issued and filed by the Florida Department of Health.

STIPULATED FACTS

1. Petitioner is a Pain-management clinic with the Certificate of Registration of PMC 676.
2. Petitioner is a Florida Corporation for which only 100 shares have been issued out of a total of 1,000 shares authorized to be outstanding at any one time.
3. At all pertinent times to this Settlement Agreement, J. Luke Lentz is and has been the sole owner of all 100 issued shares of the Petitioner.

4. J. Luke Lentz is a Medical Doctor (M.D.) with a full, active, and unencumbered Florida medical license.
5. Petitioner is fully owned by a medical doctor licensed under chapter 458, Florida Statutes.
6. The records of the Florida Department of State reflect J. Luke Lentz as the owner of 100% of the 100 issued shares of the Petitioner.

STIPULATED LAW

7. Petitioner admits that this matter is subject to the provisions of Section 458.3265, *Florida Statutes*, and the jurisdiction of the Florida Department of Health and the Florida Board of Medicine.
8. Petitioner admits that the Settlement Agreement is a fair, appropriate, and reasonable resolution to this pending matter.

PROPOSED DISPOSITION

9. The parties request the Florida Department of Health to enter a final order adopting this Settlement Agreement as the disposition of this matter and directing the Bureau of Operations, Department of Health, to issue, file with the Agency Clerk, and serve on Petitioner a Withdrawal of Notice of Intent to Revoke Certificate of Registration as a Pain-management clinic issued against Petitioner.
10. Petitioner agrees that the Petition will not be submitted for a hearing by the filing of the Settlement Agreement, unless the Florida Department of Health rejects the Settlement Agreement. Should the Department adopt the Settlement Agreement

as the disposition of this matter by final order, the Petitioner hereby agrees that its Petition for hearing pending before the Department is voluntarily dismissed.

- 11. The parties agree to pay their own attorneys' fees and costs and agree to waive all rights to an appeal.
- 12. The parties stipulate and agree that this Settlement Agreement is a legal and binding document and is fully enforceable against all parties in any court of competent jurisdiction. The signatories hereto are vested with the authority to execute this Settlement Agreement on behalf of their respective principals, and as duly designated representatives, to fully bind such principals.

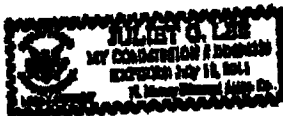
WHEREFORE, the parties hereto request the Florida Department of Health to enter a Final Order adopting the terms contained herein as the disposition of this matter.

Respectfully Submitted,

J. Luke Lentz, M.D.  
J. LUKE LENTZ, M.D.

STATE OF FLORIDA  
COUNTY OF Okaloosa

Sworn to (or affirmed) and subscribed before me this 15<sup>th</sup> day of November, 2010,  
by J. Luke Lentz, M.D.

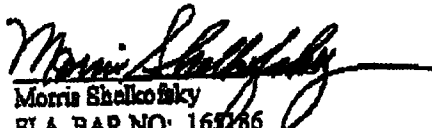


Robert A. Lee  
(Signature of Notary Public-State of Florida)

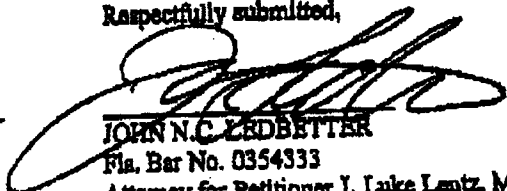
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known  OR Produced Identification   
Type of Identification Produced \_\_\_\_\_

Respectfully submitted,



Morris Shelkofsky  
FLA. BAR NO: 162286  
Assistant General Counsel and Senior Attorney  
Florida Department of Health  
Office of General Counsel  
4052 Bald Cypress Way, BIN A02  
Tallahassee, Florida 32399-1703  
Telephone: (850) 245-4005  
Facsimile: (850) 410-1448



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Fla. Bar No. 0354333  
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4641 Gulfstar Drive, Suite 102  
Destin, FL 32541  
Telephone: 850-650-1040  
Fax: 850-650-3020  
E-mail: led@destinlawgroup.com

Email: [Morris\\_Shelkofsky@doh.state.fl.us](mailto:Morris_Shelkofsky@doh.state.fl.us)



# **EXHIBIT "B"**

From LENTZ LYME CLINIC 1.850.807.5000 Mon Jul 16 14:57:50 2012 EST Page 3 of 13

Jul 16 12:40p

DrLentz

18504243898

p.2



STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
INVESTIGATIVE SERVICES  
www.flhhs.com



PAIN MANAGEMENT CLINIC

FILE# 423

INSPECTION# 280

Routine  Other

INSPECTION AUTHORITY - SECTION 462.206, 462.217, CHAPTER 60L09 AND CHAPTER 406, FLORIDA STATUTES, 94B-8.7131 and 60P16-14.001 F.A.C.

NAME OF ESTABLISHMENT <u>J. Lutz Lentz, MD PA</u>		REGISTRATION NUMBER <u>PA1. 60710</u>	DATE OF REGISTRATION <u>2/21/11</u>
DOING BUSINESS AS <u>Lentz Lyme Clinic</u>		TELEPHONE NUMBER <u>(850) 424-1684</u>	CITY <u>Destin</u>
FAX NUMBER <u>(850) 424-1684</u>		STATE <u>FL 32541</u>	
STREET ADDRESS <u>137 Hwy 98 East</u>		CITY <u>Destin</u>	COUNTY <u>Okaloosa</u>
OWNER NAME <u>John L. Lentz</u>		DEA # <u>YL 533874</u>	LICENSING BOARD AGENCY NUMBER OR NPO NUMBER
NO. OF OTHER <u>FIS</u>		START DATE	END DATE
J. L.		BOARD CERTIFIED YES NO	DATE
DEPUTY PHYSICIAN		CERTIFYING ORG	REGISTERED TO DISPENSE YES NO
LICENSE # <u>ME 82437</u>		1978	AMERICAN ACADEMY OF F.A.M.P.M.
DEA # <u>YL 533874</u>			
OTHER PHYSICIANS:			
1			
LICENSE #			
DEA #			
2			
LICENSE #			
DEA #			
3			
LICENSE #			
DEA #			
4			
LICENSE #			
DEA #			
ALL PAs OR ARNPs <u>NONE</u>		LICENSE NUMBER	REGISTERED TO DISPENSE YES NO
1			YES NO
2			YES NO
3			YES NO
4			YES NO
5			YES NO

From LENTZ LYME CLINIC 1.850.807.5000 Mon Jul 16 14:57:50 2012 EST Page 4 of 13

Jul 16 12:40p

Dr.Lentz

18604248888

p.3



STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
INVESTIGATIVE SERVICES  
www.dhs.state.fl.us



	NA	Yes	No
1. Clinic is currently registered. Section 488.3285(1)(a), and 488.0137(1)(a), F.S.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The Department has been notified of the name of designated physician. Section 488.3285(1)(c), and 488.0137(1)(c), F.S.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Physical examination performed by physician on same day controlled substance prescribed. If answer is "No" provide explanation in the remarks section. Section 488.3285(2)(c), and 488.0137(2)(c), F.S.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Physician is documenting in the patient record, the reason for prescribing or dispensing more than a 72 hour dose of controlled substance for chronic non malignant pain. Section 488.3285(2)(e), and 488.0137(2)(e), F.S.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Physician maintains control and security of prescription blanks and other methods for prescribing controlled substances. Section 488.3285(2)(d), and 488.0137(2)(d), F.S.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Counterfeit resistant prescription blanks being used? Section 488.3285(2)(f), and 488.0137(2)(f), F.S.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Department notified within 24 hours following the theft or loss of prescription blanks. Section 488.3285(2)(g), and 488.0137(2)(g), F.S.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Designated physician practices at the clinic location. Section 488.3285(1)(a), and 488.0137(1)(a), F.S.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Advertising the use, sale, or dispensing of any controlled substance appearing on any schedule in Chapter 885. Section 488.331(1)(a)(i) and 488.0137(1)(a)(i), F.S.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Physician dispensed more than a 72-hour supply of a controlled substance for any patient who pays for the medication by cash, check or credit card. Chapter 488.0276(1)(a), F.S.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Time entered facility: 2:45pm      Checked medication by: John L. Lentz, MD

Remarks: CLINIC provides treatment for Lyme disease and  
is also a Soboxone clinic

I have read and had the inspection report and the violations, if any, explained, and the information given is true and correct to the best of my knowledge. Pursuant to Rule 64B-4.005, F.A.C. and Section 488.3285(3)(b), F.S., and 488.0137(3)(b), F.S., an invoice will be mailed to you for the cost of inspection.

John L. Lentz, MD  
Owner or designated physician  
John Lentz  
Print Name

8-31-11  
Date

John Seery, PE-38  
Investigator or Pharmacist Signature/ID Number

INV 020 Created: 08/10

**BEFORE THE STATE OF FLORIDA DEPARTMENT OF HEALTH**

---

X

In Re: Petition of John Luther Lentz MD  
and J. Luke Lentz MD, PA for a declaratory  
statement from the Florida Department of Health and  
the Florida Medical Board regarding Petitioner's  
exemptions from the mandates of Fl. Stat Sec. 458.3265

PMC Certificate No. 676

Petitioners

---

X**CERTIFICATION OF JOHN LUTHER LENTZ MD IN SUPPORT OF PETITION FOR  
DECLARATORY STATEMENT PURSUANT TO FL. Stat. § 120.565.**

1. My name is John Luther Lentz, I am over 18 years of age, I am of sound mind and qualify to testify in connection with the facts presented herein and in the accompanying petition. I reside in Okaloosa County Florida and maintain a practice of medicine in the said county under the business name of J.Luke Lentz MD, PA. I am fully familiar with all of the facts underlying the request for a declaratory statement. I submit this certification in support of the present petition.
2. I have read the accompanying petition and know all of the facts therein to be true to the best of my knowledge.
3. I am a physician duly licensed to practice medicine in the state of Florida under license No. ME 82437.
4. J.Luke Lentz MD, PA. (hereinafter "Clinic") is a Florida corporation for which only 100 shares have been issued out of a total of 1,000 shares authorized to be issued at any time.
5. At all of the relevant times hereinabove and hereinafter mentioned, the Clinic was and is registered with the Florida Department of Health pursuant to Fl. Stat. Sec. 458.3264 as a "pain management Clinic" and possesses certificate of registration PMC #676.

6. At all of the relevant times hereinabove and hereinafter mentioned I was and still am the sole owner of the 100 issued shares of the Clinic.
7. At all of the relevant times hereinabove and hereinafter mentioned the Clinic was and still is fully owned by me. I am and have been a medical doctor licensed under Chapter 458 of the Florida Statutes.
8. In the course of my medical practice at the Clinic I use suboxone to reduce opioid dependency. This is a medical condition for which Lyme disease patients and non Lyme disease patients seek my treatment. For a large segment of the patients suboxone is prescribed as only one of the many treatments related to their general medical condition which may include an array of maladies in addition to and independent of opioid dependency.
9. I registered the Clinic as a "pain management Clinic" because it was my understanding that I had to undergo such registration because of the use of the scheduled drug suboxone for the foregoing specific purpose of reducing opioid dependency.
10. Neither me nor the Clinic provide any pain management services as we do not treat patients for chronic non malignant pain per se. Nor is there nor has there ever been a situation where in any month a majority of patients at the Clinic are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.
11. While patients are prescribe suboxone, such prescriptions are not related to or given in connection with pain management.
12. Neither myself nor the Clinic advertise in any type of media for pain management services as such services are not offered at the Clinic.
13. Because it is unclear to me under the circumstances set forth above, whether the Clinic falls under the provisions of the "pain management" the Florida statutes cited in the Petition,

I am requesting the Florida Department of Health and/or the Florida Board of Medicine to issue a declaratory statement clarifying whether the use of suboxone for reduction of opioid dependency qualifies the Clinic as a "pain management Clinic" under the applicable Florida statutes and whether the PMC registration #676 still has to be maintained under these circumstances.

14. I am also requesting that in the event that the Department determines that the foregoing use of suboxone for the reduction of opioid dependency does not amount to "pain management" the Department issue a declaratory statement exempting me and the clinic from the mandates of Fl. Stat. Sec. 458.3265.

15. I further request that pending the determination of this Petition the Department of Health stay its inspections of the Clinic and any actions which it is entitled to take in furtherance and enforcement of Fl. Stat. Sec. 458.3265 should there be a preliminary determination that the provisions of the same statute are not applicable to the Clinic and to me.

16. I certify that all of the foregoing is true to the best of my knowledge and that if any of the foregoing statements are knowingly false, I am subject to punishment under Florida law.

Dated: November 23, 2012

  
JOHN LUTHER LENTZ, MD

**Bruce A. Haught, P.A.**  
**ATTORNEY AT LAW**

543 Harbor Boulevard, Suite 403  
 P.O. Box 5017  
 Destin, FL 32540  
 E-mail: bruce@brucehaught.com  
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 Panama City (850) 784-9199  
 Birmingham (205) 588-1779  
 Mobile (251) 732-4088  
 Montgomery (334) 651-0531  
 Facsimile (850) 837-8121

November 23, 2012

VIA FACSIMILE TRANSMISSION  
 Fax: 850 - 487-9626  
 and OVERNIGHT DELIVERY

Florida Department of Health  
 Board of Medicine - Medical Quality Assurance  
 4052 Bald Cypress Way, Bin # C01  
 Tallahassee, FL 32399 -3251

**REQUEST FOR FILING OF PETITION AND REQUEST FOR  
 CONSIDERATION OF INTERIM REQUEST FOR EXEMPTION  
 FROM THE PROVISIONS OF FL Stat. Sec. 458.3256**

Re: Petition of John Luther Lentz MD, License No. ME 82437 and  
 J. Luke Lentz MD PA, PMC registration #676

Dear Sir/Madam:

Along with out of state counsel Jacques G. Simon, Esq., whose address and phone number are 2174 Hewlett Avenue, Suite #201 Merrick, NY 11566 Phone (516)378-8400 and who will be seeking admission pro hac vice in connection with the underlying administrative petition, as local counsel, I represent the petitioners John Luther Lentz MD and J. Luke Lentz MD PA in connection with the attached Petition for a declaratory statement. The petition is brought pursuant to Fl. Stat. § 120.565. It is seeking a declaratory statement pertaining to petitioners' particular set of circumstances vis a vis the provisions of the "pain management clinic" provisions of Fl. Stat. Sec. 458.3256.

Enclosed herein for filing please find the petition, accompanying exhibits and certification. Please file and process the same accordingly pursuant to Fl. Stat. § 120.565.

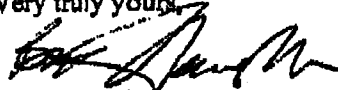
**Request for interim exemption from Fl. Stat. Sec. 458.3256.**

In addition, pending the determination of the underlying petition, the petitioners request that the Board and the Department consider at the Board's meeting scheduled to take place on

Page -2-

November 29 and November 30, 2012 Petitioners' request for interim ruling that they be exempted from the mandates of Fl. Stat. Sec. 458.3256. This request is based upon the statements made on the face of the petition and the accompanying certification which unequivocally represent that the Petitioners do not operate a "pain management clinic" and do not treat chronic non-malignant pain within the meaning of Fl. Stat. Sec. 458.3256.

Very truly yours,



Bruce Haught, Esq.

Encls.

c.c.: John Luther Lentz MD and Jacques G. Simon, Esq.



**BEFORE THE STATE OF FLORIDA DEPARTMENT OF HEALTH**

\_\_\_\_\_ X  
In Re: Petition of John Luther Lentz MD  
and J. Luke Lentz MD, PA for a declaratory  
statement from the Florida Department of Health and  
the Florida Medical Board regarding Petitioner's  
exemptions from the mandates of Fl. Stat Sec. 458.3265

PMC Certificate No. 676

Petitioners

\_\_\_\_\_ X  
**PETITION PURSUANT TO Fla. Stat. § 120.565 FOR DECLARATORY RULING  
EXEMPTING THE PETITIONER FROM THE PROVISIONS OF  
Fla. Stat. Sec. 458.3265.**

COMES NOW the Petitioner, John Luther Lentz MD, by his undersigned attorneys and  
petitions the Florida Department of Health ("FDH"), Board of Medicine, Division of Medical  
Quality Assurance for a declaratory ruling pursuant to Fl. Stat. § 120.565 declaring that Dr. Lentz's  
practice of medicine under PMC Certificate 676 and under circumstances explained below and in  
the accompanying Certification of the Petitioner do not fall under the requirements of Fla. Stat. Sec.  
458.3265 inasmuch as Dr. Lentz does not operate a "pain management clinic" as specifically defined  
by Fla. Stat. Sec. 458.3265.

**FACTUAL BACKGROUND.**

1. The Petitioner John Luther Lentz MD (hereinafter "Lentz") is a duly licensed to  
practice medicine in the state of Florida and possesses license No. ME 82437.
2. The Petitioner J. Luke Lentz MD PA (hereinafter "Clinic") is a Florida  
corporation for which only 100 shares have been issued out of a total of 1,000 shares authorized  
to be issued at any time.

3. At all of the relevant times hereinabove and hereinafter mentioned, the Clinic was and is registered with the Florida Department of Health pursuant to Fl. Stat. Sec. 458.3264 as a "pain management clinic" and possesses certificate of registration PMC #676.

4. At all of the relevant times hereinabove and hereinafter mentioned Petitioner Lentz was and still is the sole owner of the 100 issued shares of the Clinic.

5. At all of the relevant times hereinabove and hereinafter mentioned the Clinic was and still is fully owned by the Petitioner Lentz who is and has been a medical doctor licensed under Chapter 458 of the Florida Statutes.

6. The respondent Florida Department of Health ("FDH") is an agency of the state of Florida and it is charged inter alia with the administration and provisions of Fl. Stat Sec. 458.3265.

7. On or about November 15, 2010 the Petitioners and the Respondent Department of Health entered into a settlement agreement pursuant to Fl. Stat Sec. 120.57(e) which settled the contested hearing initiated by the FDH pursuant to which the petitioners retained the unencumbered Pain Management Clinic license (Exhibit "A" annexed hereto). The reason for that agreement and Petitioners' decision to retain the PMC certificate is because they were under the bona fide but erroneous legal belief that the use of the controlled substance suboxone in the manner described in Petitioner Lentz's accompanying certification in support of this petition, ipso facto placed them under the specific provisions of Fl. Stat Sec. 458.3265.

8. In accordance with the provisions of Fl. Stat Sec. 458.3265 the FDH Department of Investigative services, by inspector Shanon Seroogy, conducted an inspection of the Clinic on or about February 21, 2011 (See Exhibit "B" hereto).

9. The inspection report (Exhibit "B" hereto) specifically points as follows: (1) Item No. "9" - the Petitioners do not advertise the use, sale or dispensing of any controlled substance appearing on any schedule in Chapter 893 Section 458.331(1)(qq) and 459.015(1)(ss). The handwritten remarks read "clinic provides treatment for Lyme disease and is also a Suboxone clinic".

10. Fl. Stat. Sec. 458.3265(1)(e) defines "pain management clinic" as follows:

c. "Pain-management clinic" or "clinic" means any publicly or privately owned facility:

(I) That advertises in any medium for any type of pain-management services; or

(II) Where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

11. Fl. Stat. Sec. 458.3265(1)(b) defines "Chronic nonmalignant pain" means pain unrelated to cancer which persists beyond the usual course of disease or the injury that is the cause of the pain or more than 90 days after surgery.

12. As can be seen from Petitioner's accompanying certification, neither Lentz nor the Clinic engage or have ever engaged in the activities provided by Fl. Stat. Sec. 458.3265(1)(c) (I) or (II).

13. Suboxone is a narcotic medication indicated for the maintenance treatment of opioid dependence. See Lentz certification.

14. Dr. Lentz uses suboxone to reduce opioid dependence in his patients, including those with Lyme disease who also have opioid dependence.

15. Neither Dr. Lentz nor the Clinic advertise "in any medium for any type of pain-management services" as defined by Fl. Stat. Sec. 458.3265(1)(c)(I).

16. In fact neither Lentz nor the clinic provide any pain management services at all. See Lentz accompanying certification.

17. The Clinic is not a "pain management clinic" as defined by Fl. Stat. Sec. 458.3265(1)(c)(II) because a majority of its patients are not prescribed in any month "opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain".

18. In fact neither Dr. Lentz nor the Clinic treat chronic malignant pain with suboxone at all. That medication is exclusively used in accordance with its FDA intended and approved use to reduce opioid dependency. See Lentz certification.

19. The Petitioners retained their PMC registration because they were under the belief that the prescription of suboxone to the patients for the purposes of reducing opioid dependence subjects them to the provisions of Fl. Stat. Sec. 458.3265(1)(c)(II).

20. Fl. Stat § 120.563 provides in its entirety as follows:

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.

21. In the present petition the Petitioner is seeking a declaratory statement from the Florida Department of Health that Petitioner's use of suboxone for the purposes of reducing opioid dependence in patients of the petitioners does not qualify the Petitioners as a "pain management


clinic" under the provisions of Fl. Stat. Sec. 458.3265(1)(c) and that the Petitioners are not a "pain management clinic" subject any of the provisions of Fl. Stat. Sec. 458.3265.

22. The petitioners request from the Department that pending the consideration of this petition the Department does not subject the Petitioners to the inspections and rigors of Fl. Stat. Sec. 458.3265 and that any inspection be held in abeyance pending the filing and determination of this petition.

23. For all of the foregoing reasons and for all of the reasons set forth in Petitioner's accompanying certification the petitioners request the FDH to issue a declaratory statement pursuant to Fl. Stat. § 120.565 stating that neither the Clinic J. Luke Lentz MD PA nor Dr. Lentz practice "pain management" under Fl. Stat. Sec. 458.3265 and further stating that neither one of the petitioners are subject to the provisions of Fl. Stat. Sec. 458.3265 so long as soboxone is used to reduce opioid dependency rather than to treat "Chronic nonmalignant pain" as defined by Fl. Stat. Sec. 458.3265(1)(b) and (c).

Dated: November 23, 2012

Attorney for the Petitioner

  
Bruce Haught, Esq.,  
Florida Bar No. 0985325  
Bruce A. Haught, P.A.  
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**EXHIBIT "A"**

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

In Re: the Certificates of  
J. LUKE LENTZ, MD PA  
LICENSE NO. FMC 676

SETTLEMENT AGREEMENT

Pursuant to section 120.57(4), Florida Statutes, the above named parties hereby offer this Settlement Agreement to the Florida Department of Health as disposition of the Petition for a hearing herein, in lieu of any other administrative proceedings. The Petitioner filed a Petition challenging the Notice of Intent to Revoke Certificate of Registration (ITAR) served on it by certified mail on October 20, 2010. The Petition was timely filed with the Agency Clerk, Florida Department of Health, on November 10, 2010. The terms herein become effective only if and when a Final Order adopting this Settlement Agreement as the disposition of this matter is issued and filed by the Florida Department of Health.

STIPULATED FACTS

1. Petitioner is a Pain-management clinic with the Certificate of Registration of FMC 676.
2. Petitioner is a Florida Corporation for which only 100 shares have been issued out of a total of 1,000 shares authorized to be outstanding at any one time.
3. At all pertinent times to this Settlement Agreement, J. Luke Lentz is and has been the sole owner of all 100 issued shares of the Petitioner.

4. J. Luke Lentz is a Medical Doctor (M.D.) with a full, active, and unencumbered Florida medical license.
5. Petitioner is fully owned by a medical doctor licensed under chapter 458, Florida Statutes.
6. The records of the Florida Department of State reflect J. Luke Lentz as the owner of 100% of the 100 issued shares of the Petitioner.

**STIPULATED LAW**

7. Petitioner admits that this matter is subject to the provisions of Section 458.3265, Florida Statutes, and the jurisdiction of the Florida Department of Health and the Florida Board of Medicine.
8. Petitioner admits that the Settlement Agreement is a fair, appropriate, and reasonable resolution to this pending matter.

**PROPOSED DISPOSITION**

9. The parties request the Florida Department of Health to enter a final order adopting this Settlement Agreement as the disposition of this matter and directing the Bureau of Operations, Department of Health, to issue, file with the Agency Clerk, and serve on Petitioner a Withdrawal of Notice of Intent to Revoke Certificate of Registration as a Pain-management clinic issued against Petitioner.
10. Petitioner agrees that the Petition will not be submitted for a hearing by the filing of the Settlement Agreement, unless the Florida Department of Health rejects the Settlement Agreement. Should the Department adopt the Settlement Agreement



as the disposition of this matter by final order, the Petitioner hereby agrees that its Petition for hearing pending before the Department is voluntarily dismissed.

- 11. The parties agree to pay their own attorneys' fees and costs and agree to waive all rights to an appeal.
- 12. The parties stipulate and agree that this Settlement Agreement is a legal and binding document and is fully enforceable against all parties in any court of competent jurisdiction. The signatories hereto are vested with the authority to execute this Settlement Agreement on behalf of their respective principals, and as duly designated representatives, to fully bind such principals.

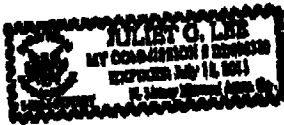
WHEREFORE, the parties hereto request the Florida Department of Health to enter a Final Order adopting the terms contained herein as the disposition of this matter.

Respectfully Submitted,

J. Luke Lentz M.D.  
J. LUKE LENTZ, M.D.

STATE OF FLORIDA  
COUNTY OF Okaloosa

Sworn to (or affirmed) and subscribed before me this 15<sup>th</sup> day of November, 2010,  
by J. Luke Lentz, M.D.

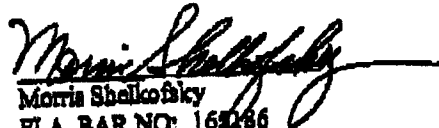


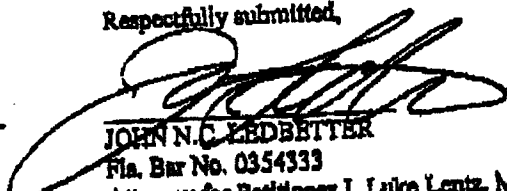
Juliet G. Lee  
(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known  OR Produced Identification   
Type of Identification Produced \_\_\_\_\_

Respectfully submitted,

  
Morris Shelkofsky  
FLA. BAR NO: 169286  
Assistant General Counsel and Senior Attorney  
Florida Department of Health  
Office of General Counsel  
4052 Bald Cypress Way, BIN A02  
Tallahassee, Florida 32399-1703  
Telephone: (850) 245-4005  
Facsimile: (850) 410-1448

  
JOHN N.C. LEDBETTER  
Fla. Bar No. 0354333  
Attorney for Petitioner J. Luke Lentz, M.D.  
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Telephone: 850-650-1040  
Fax: 850-650-3020  
E-mail: led@destinlawgroup.com

Email: Morris\_Shelkofsky@doh.state.fl.us

# **EXHIBIT "B"**

From LENTZ LYME CLINIC 1.850.807.5000 Mon Jul 18 14:57:50 2012 EST Page 3 of 13

Jul 18 12:40p

Dr. Lentz

18504243898

p.2



STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
INVESTIGATIVE SERVICES  
WWW.DOH.FL.GOV



PAIN MANAGEMENT CLINIC

FILE# 423  
INSPECTION# 280

Routine  Other

INSPECTION AUTHORITY - SECTION 462.206, 462.0137, CHAPTER 659.09 AND CHAPTER 438, FLORIDA STATUTES, 8488-8.3131 and 88716-14.0081 F.A.C.

NAME OF ESTABLISHMENT <u>J. Luke Lentz, MD PA</u>		REGISTRATION NUMBER <u>PHL 6076</u>	DATE OF INSPECTION <u>8/21/11</u>				
DUNS BUSINESS AS <u>Lentz Lyme Clinic</u>		TELEPHONE NUMBER <u>(850) 424-6841</u>	EXTENSION				
FAX NUMBER <u>850 424-6845</u>		EMAIL ADDRESS					
STREET ADDRESS <u>137 Hwy 98 East</u>		CITY <u>Destin</u>	COUNTY <u>Okaloosa</u>	STATE <u>FL</u>			
ZIP <u>32541</u>		FEDERAL REGISTER AND DEA NUMBER OR FCC NUMBER					
CHIEF NAME <u>John L. Lentz</u>	M.D./OTHER <u>MD</u>	DEA: <u>YL 5331874</u>					
J.	START DATE	END DATE	BOARD CERTIFIED	DATE	CERTIFYING ORG	REGISTERED TO DISPENSE	DISPENSING
			YES NO			YES NO	YES NO
DISPENSING PHYSICIAN							
LICENSE # <u>ME 82437</u>	<u>5/9/10</u>	<u>Present</u>	<input checked="" type="checkbox"/>	<u>1978</u>	<u>American Academy of Fam. Phys</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
DEA # <u>AL5331874</u>							
OTHER PHYSICIAN							
1							
LICENSE #							
DEA #							
2							
LICENSE #							
DEA #							
3							
LICENSE #							
DEA #							
4							
LICENSE #							
DEA #							
ALL PAYOR AGENCIES	LICENSE NUMBER		REGISTERED TO DISPENSE		DISPENSING		
<u>NONE</u>			YES	NO	YES	NO	
1							
2							
3							
4							
5							

From LENTZ LYME CLINIC 1-850-897-5000 Mon Jul 16 14:57:50 2012 EST Page 4 of 13

Jul 16 12:40p

DrLentz

18504243888

p.3



STATE OF FLORIDA DEPARTMENT OF HEALTH INVESTIGATIVE SERVICES www.doh.state.fl.us



Table with 4 columns: Question, NA, Yes, No. Contains 10 regulatory questions regarding clinic registration, physician notification, controlled substance prescribing, and record keeping.

Time entered facility: 2:45pm Received prescription for: John L. Lentz, MD

Remarks: Clinic provides treatment for Lyme disease and is also a Suboxone clinic

I have read and had this inspection report and the violations, if any, explained, and the information given is true and correct to the best of my knowledge. Pursuant to Rules 64B-4.005, F.A.C. and Section 489.326(2)(b), F.S., and 489.017(2)(b), F.S., an invoice will be mailed to you for the cost of inspection.

Signature of John L. Lentz, MD, Owner or designated physician.

Date: 7-21-11

Signature of Investigator/Dr. Pharmacist, BE38

Print Name: INV 000 Credent BE40

**BEFORE THE STATE OF FLORIDA DEPARTMENT OF HEALTH**

\_\_\_\_\_ X  
 In Re: Petition of John Luther Lentz MD  
 and J. Luke Lentz MD, PA for a declaratory  
 statement from the Florida Department of Health and  
 the Florida Medical Board regarding Petitioner's  
 exemptions from the mandates of Fl. Stat Sec. 458.3265  
 \_\_\_\_\_ X  
 Petitioners

PMC Certificate No. 676

**CERTIFICATION OF JOHN LUTHER LENTZ MD IN SUPPORT OF PETITION FOR  
DECLARATORY STATEMENT PURSUANT TO Fl. Stat. § 120.565.**

1. My name is John Luther Lentz, I am over 18 years of age, I am of sound mind and qualify to testify in connection with the facts presented herein and in the accompanying petition. I reside in Okaloosa County Florida and maintain a practice of medicine in the said county under the business name of J.Luke Lentz MD, PA. I am fully familiar with all of the facts underlying the request for a declaratory statement. I submit this certification in support of the present petition.
2. I have read the accompanying petition and know all of the facts therein to be true to the best of my knowledge.
3. I am a physician duly licensed to practice medicine in the state of Florida under license No. ME 82437.
4. J.Luke Lentz MD, PA. (hereinafter "Clinic") is a Florida corporation for which only 100 shares have been issued out of a total of 1,000 shares authorized to be issued at any time.
5. At all of the relevant times hereinabove and hereinafter mentioned, the Clinic was and is registered with the Florida Department of Health pursuant to Fl. Stat. Sec. 458.3264 as a "pain management Clinic" and possesses certificate of registration PMC #676.

6. At all of the relevant times hereinabove and hereinafter mentioned I was and still am the sole owner of the 100 issued shares of the Clinic.

7. At all of the relevant times hereinabove and hereinafter mentioned the Clinic was and still is fully owned by me. I am and have been a medical doctor licensed under Chapter 458 of the Florida Statutes.

8. In the course of my medical practice at the Clinic I use suboxone to reduce opioid dependency. This is a medical condition for which Lyme disease patients and non Lyme disease patients seek my treatment. For a large segment of the patients suboxone is prescribed as only one of the many treatments related to their general medical condition which may include an array of maladies in addition to and independent of opioid dependency.

9. I registered the Clinic as a "pain management Clinic" because it was my understanding that I had to undergo such registration because of the use of the scheduled drug suboxone for the foregoing specific purpose of reducing opioid dependency.

10. Neither me nor the Clinic provide any pain management services as we do not treat patients for chronic non malignant pain per se. Nor is there nor has there ever been a situation where in any month a majority of patients at the Clinic are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

11. While patients are prescribe suboxone, such prescriptions are not related to or given in connection with pain management.

12. Neither myself nor the Clinic advertise in any type of media for pain management services as such services are not offered at the Clinic.

13. Because it is unclear to me under the circumstances set forth above, whether the Clinic falls under the provisions of the "pain management" the Florida statutes cited in the Petition,

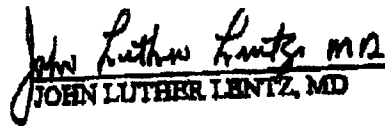
I am requesting the the Florida Department of Health and/or the Florida Board of Medicine to issue a declaratory statement clarifying whether the use of suboxone for reduction of opioid dependency qualifies the Clinic as a "pain management Clinic" under the applicable Florida statutes and whether the PMC registration #676 still has to be maintained under these circumstances.

14. I am also requesting that in the event that the Department determines that the foregoing use of suboxone for the reduction of opioid dependency does not amount to "pain management" the Department issue a declaratory statement exempting me and the clinic from the mandates of Fl. Stat. Sec. 458.3265.

15. I further request that pending the determination of this Petition the Department of Health stay its inspections of the Clinic and any actions which it is entitled to take in furtherance and enforcement of Fl. Stat. Sec. 458.3265 should there be a preliminary determination that the provisions of the same statute are not applicable to the Clinic and to me.

16. I certify that all of the foregoing is true to the best of my knowledge and that if any of the foregoing statements are knowingly false, I am subject to punishment under Florida law.

Dated: November 23, 2012

  
JOHN LUTHER LENTZ, MD