

STATE OF FLORIDA
BOARD OF MEDICINE

By: Heather Coleman
Deputy Agency Clerk

IN RE: PETITION FOR DECLARATORY STATEMENT

AMT, L.L.C.

FINAL ORDER

This matter came before the Board of Medicine (hereinafter the "Board") on August 2, 2003, in Orlando, Florida, for consideration of the above-referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was published on June 27, 2003, in the Vol. 29, No. 26, in the *Florida Administrative Weekly*. The Petitioner was not present nor was its legal counsel.

The petition filed by AMT, L.L.C. inquired as to whether it may implement a patient referral services where a participating physicians group will direct a pool of member clients to a pool of member physicians and medical specialists.

FINDINGS OF FACTS

1. The Petitioner intends to implement a patient referral services where a participating physicians group will direct a pool of member clients to a pool of member physicians and medical specialists.
2. The member clientele will pay a renewable fee for access to the member physicians at a discounted rate for services.
3. Prospective member physicians will pay a one-time fee to be listed among the physicians in the Petitioner's group.
4. The member physicians will have a financial interest in the Petitioner's organization insofar as member physicians will be members of the company.

5. The additional benefit to the physicians will be to have access to a pre-determined pool of member clients that will pay cash at the pre-determined discounted rate for services rendered.

6. The benefit to the member clients will be access to the pre-determined pool of member physicians that will accept cash payment at the pre-determined discounted rate for services rendered.

7. The petition in question does not disclose the identity of AMT, L.L.C.

8. The petition in question does not specify the statutory provision, rule, or order that Petitioner believes may apply its set or circumstances, and thus, is unable to disclose how any statutory provision, rule, or order substantially affects it under the above outlined circumstances.

CONCLUSIONS OF LAW

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

10. Section 120.565, Florida Statutes, reads in part as follows:

(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

11. Rule 28-105.001, Florida Administrative Code, mandates that a petition for declaratory statement , "describe the potential impact of statutes, rules, or orders upon the petitioner's interest."

12. Since the petition fails to identify the nature of the Petitioner and does not specify the statutory provision, rule, or order that Petitioner believes may apply to its set of circumstances, the Board is unable to determine whether the Petitioner has the requisite standing to obtain a declaratory statement.

13. Furthermore, the Petitioner fails to meet a basic statutory predicate for obtaining a declaratory statement. That is, that it describe the potential impact of statutes, rules, or orders upon the petitioner's interest.

14. Based on the foregoing, the Board hereby **DENIES** AMT, L.L.C.'s petition for declaratory statement.

DONE AND ORDERED this 17 day of OCTOBER, 2003.

BOARD OF MEDICINE



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

NOTICE OF APPEAL RIGHTS

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: Guillermo Pena, Esquire, Guillermo Pena & Associates, P.L., 1101 Brickell Avenue, Suite 1801, Miami, Florida 33131 ; and by interoffice mail to Edward A. Tellechea, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050; and William Large, Esquire, General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, on this 20 day of October, 2003.

Shawn Sykes

THE STATE OF FLORIDA
BOARD OF MEDICINE

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Vicki R. Kenon*
DATE 6/11/03

AMT, L.L.C.

CASE NO:

Petitioner,

vs.

FLORIDA BOARD OF MEDICINE

Respondent.

Petition for a Declaratory Statement Based on
a Hypothetical Question.

PETITION FOR A DECLARATORY STATEMENT

The Petitioner, AMT, L.L.C. (the Petitioner), whose address is 2029 N.W. 87th Avenue, Miami, Florida 33172, requests, pursuant to § 120.565, Florida Statutes, and Chapter 28-105.003, Florida Administrative Code, that the FLORIDA BOARD OF MEDICINE (the Respondent) furnish a declaratory statement regarding the following:

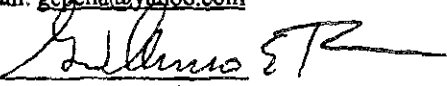
- 1) The Respondent agency administers the statutes and rules that may affect the Petitioner's substantial rights and conduct of business.
- 2) The Petitioner is currently organizing and planning to implement a business consisting of patient referral service and participating physicians group that will direct a pool of member clients to a pool of member physicians and medical specialists.
- 3) The member clientele will pay a renewable fee for access the member physicians at a *discounted rate for services*.
- 4) Prospective member physicians will pay a one-time fee to be listed among the

physicians in the Petitioner's group.

- 5) The member physician will have a financial interest in the Petitioner's organization insofar as member physicians will be members of the company.
- 6) The additional benefit to the physicians will be to have access to a pre-determined pool of member clients that will pay cash at the pre-determined, discounted rate for services rendered.
- 7) The benefit to the member clients will be access to the pre-determined pool of member physicians that will accept cash payment at the pre-determined discounted rate for services rendered.
- 8) *The Petitioner is in doubt as to whether the above facts raise the need for ant special licensing or permit from the agency or raise any special issues of liability, fine, penalty or ethical conflict for the Petitioner of the member physicians.*

Therefore, Petitioner requests that the Board of Medicine issue a declaratory statement regarding whether the member physicians can be both members of the company, receiving dividends and profit sharing with the company, and at the same time be referral physicians seeing subscriber patients of the company.

Respectfully submitted,
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By: 
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