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Final Order No. DOH-08-2440-DSMOA  
FILED DATE - 10-28-08  
Department of Health  
By: Racquel B...  
Deputy Agency Clerk

**STATE OF FLORIDA  
BOARD OF CHIROPRACTIC MEDICINE**

**IN RE: THE PETITION FOR DECLARATORY  
STATEMENT OF MEDICAL DIAGNOSTIC NETWORK, INC.  
GARY GREENWOOD, PRESIDENT**

**FINAL ORDER**

THIS MATTER came before the Board of Chiropractic Medicine, pursuant to Section 120.565, Florida Statutes. At a duly-noticed public meeting held on August 22, 2008, in Orlando, Florida, the Board considered Medical Diagnostic Network, Inc.'s (Petitioner) Petition for Declaratory Statement. The Petition was filed with the Department of Health on June 12, 2008. The Petitioner is requesting that the Board issue a Declaratory Statement interpreting the applicability of Section 460.4167(6), Florida Statutes, to contracts entered into by Petitioner. No comments were received. Petitioner was not present. Having considered the Petition and relevant statutes and rules, the Board issues the following:

**FACTUAL FINDINGS**

1. The Petition was duly filed and noticed in the Florida Administrative Law Weekly.
2. The Petition is attached hereto and incorporated herein by reference.
3. Petitioner is a mobile diagnostic medical clinic that performs Physical Performance testing at a referring physician's clinic location, and who has hired a chiropractic physician as medical director.
4. The Petition seeks the Board's opinion as to the application of Section 460.4167(6), Florida Statutes, which states,

**Any contract or arrangement entered into or undertaken in**

**violation of this section shall be void as contrary to public policy. This section applies to all contracts entered into or renewed on or after July 1, 2008.**

5. Petitioner requests an opinion as to whether the above-referenced provision voids his contract with the chiropractic physician.

### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over this matter pursuant to section 120.565, and Chapter 460, Florida Statutes.

2. The Board determines that Petitioner is seeking a declaratory statement for circumstances occurring based upon prior conduct, as the contract at issue had been entered into prior to the filing of the Petition. A Petition for Declaratory Statement is not available when seeking approval or validity of prior acts. *Adventist Health System/Sunbelt, Inc., v. Agency for Health Care Administration*, 955 So.2d 1176 (Fla. 1<sup>st</sup> DCA 2007) (citing *Novick v. Department of Health, Board of Medicine*, 816 So.2d 1237, 1240 (Fla. 5<sup>th</sup> DCA 2002)). As such, the Petition is improper and shall be denied.

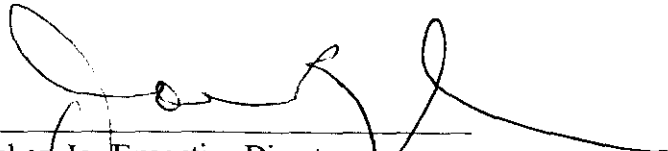
3. While the Board determines that the Petition should be denied on the above-referenced grounds, it believes that because of the confusion related to a prior Board statement made in error related to the statutory provision at issue, it wishes to clarify its opinion based upon that prior Board statement. The Board interprets Section 460.4167(6), Florida Statutes, to mean that contracts in violation of Section 460.4176, Florida Statutes, entered into or renewed on or after July 1, 2008 are void. Contracts that would be in violation of current Section 460.4176, Florida Statutes, entered into prior to July 1, 2008 are not void; however, after they expire, they cannot be renewed, and any such renewal would be void.

**THEREFORE**, for the aforementioned grounds stated above, the Petition for Declaratory Statement is hereby **DENIED**.

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

DONE AND ORDERED, this 20<sup>th</sup> day of Oct, 2008.

**BOARD OF CHIROPRACTIC MEDICINE**

  
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Joe Baker, Jr., Executive Director  
for Kenneth Dougherty, D.C., Chair

**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 thirty (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 was furnished by U.S. Mail to: **Medical Diagnostic Network, Inc., Gary Greenwood, President**, 184 Golfview Drive, Tequesta, Florida 33469; and Steven Ballinger, Esq., 1792 Bell Tower Lane, Weston, Florida 33326; and by interoffice mail to **Deborah Loucks**, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, and **Angela Southwell**, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, this 28 day of October, 2008.

Angel Sanders

Deputy Agency Clerk

FILED  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK: Rachel  
DATE 11-12-08

**Petition for Declaratory Statement Before the  
Florida Board of Chiropractic Medicine**

**Petitioner:** Medical Diagnostic Network, Inc.  
Gary Greenwood, President  
184 Golfview Drive  
Tequesta, FL 33469

Phone: (561) 745-5450  
Fax: (561) 745-5451

**Attorney:** Steven R. Ballinger  
1792 Bell Tower Ln  
Weston, FL 33326

Phone: (954) 315-3440  
Fax: (954) 315-3441

**Statutory Provision:** FS 460.4167 "Proprietorship by persons other than licensed chiropractic physicians";

**Statement:** In FS 460.4167 section (6) states " **this section applies to contracts entered into or renewed on or after July 1, 2008**". The Florida Board of Chiropractic Medicine has instructed ACHA to disallow Chiropractors to be Medical Directors even if there is a signed contract prior to July 1, 2008. They have informed ACHA to not reinstate any Chiropractors license if they continue being a medical director after July 1, 2008.

We are a mobile diagnostic medical clinic that falls under the "portability equipment provider" license. We primarily perform Physical Performance Testing in house at the referring physician clinic location. We have been doing such business for the past 12 years. When it became a requirement we hired a Chiropractic Orthopedist as our Medical Director. The scope of this practitioner license fits our testing requirements perfectly. Our Medical Director performs the required duties of S.400.9935(1) overseeing our license, records, billing etc..... He does not practice chiropractic medicine within our clinic and owns and runs his personal clinic completely separate from us.

The Boards interpretation of the new law would jeopardize our agreement with our present medical director. We believe this is unfounded as the law clearly states it pertains to "**contracts entered into or renewed on or after July 1, 2008**". Our clinic should be exempt from this new law as our contract has been in effect for the past 4 years.

My attorney has reviewed this statute and also believes that the legal system and legislation will agree with this conclusion. We have an excellent working relationship with our Medical Director and would like to continue. Please advise how we can resolve this issue in advance so that a future legal dispute can be avoided.



Gary Greenwood  
President, M.D.N.I.  
Lic# HCC4668

Dated: June 09, 2008

cc: Board of Chiropractic Medicine  
Steven R. Ballinger, P.A.

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