

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Melissa Robles*
DATE: 7-15-2011

IN RE:

Petition for Declaratory Statement of
TENET FLORIDA PHYSICIAN SERVICES,
LLC

DOH Case No.

**PETITION FOR DECLARATORY STATEMENT BEFORE
THE STATE OF FLORIDA, DEPARTMENT OF HEALTH**

Tenet Florida Physician Services, LLC (“TFPS”), by and through its undersigned attorneys and pursuant to Section 120.565, Florida Statutes and Florida Administrative Code Chapter 28-105, hereby petitions the State of Florida, Department of Health (“Department”) for a Declaratory Statement and says:

INTRODUCTION

1. The agency affected by this Petition is the State of Florida, Department of Health, 4052 Bald Cypress Way, Bin #A02, Tallahassee, Florida, 32399-1703.
2. The Petitioner is Tenet Florida Physician Services, LLC. TFPS is located at 1100 NW 95th Street, Miami, Florida 33150. For purposes of this proceeding, the address of TFPS is that of its undersigned counsel.
3. The statutory provision on which TFPS seeks a declaratory statement is Section 458.3265, Florida Statutes (2011). Section 458.3265 was significantly amended by the Florida Legislature in 2011. Ch. 2011-141 §4, Laws of Fla. This amendment was recently signed by the Governor and became effective July 1, 2011. However, the specific statutory subsection at issue in this Petition was not amended in 2011.

ISSUE PRESENTED

4. Is TFPS exempt from the pain management registration requirements of Section 458.3265, Florida Statutes (2011) by virtue of the exemption set forth in Section 458.3265(1)(a)2.c., which provides:

“2. Each pain management clinic must register with the department unless:

* * * *

c. The clinic is owned 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 corporations’s most recent fiscal quarter exceeded \$50 million;”¹

BACKGROUND FACTS

5. Pursuant to Section 458.3265, Florida Statutes (2010), TFPS currently holds a pain management clinic registration issued by DoH under Registration No. PMC 812. A copy of TFPS’s registration is attached as Exhibit A. TFPS currently provides certain pain management services to its patients. TFPS employs and provides these services through physicians licensed pursuant to Chapter 458, Florida Statutes.

6. On or about November 19, 2010, DoH issued a “Notice of Intent to Revoke Certification of Registration” with regard to Tenet’s pain management clinic registration. A copy of said Notice is attached hereto as Exhibit B.

7. TFPS provides pain management services to people that suffer chronic malignant pain as described in Section 458. 3265, Florida Statutes (2011).

8. Tenet Florida Physician Services, LLC is a Florida limited liability company. It is wholly owned by its managing member, Tenet Florida, Inc. Tenet Florida, Inc. is wholly owned by Tenet Hospitals, Inc. Tenet Hospitals, Inc. is wholly owned by Tenet Healthcare Corporation.

¹ At the time this issue arose for TFPS, the relevant exemption was found in Section 458.3265(1)(a)3, Florida Statutes (2010).

Tenet Healthcare Corporation is one of the largest hospital and healthcare companies in the United States. It has almost 50 hospitals in 11 states and has total assets in excess of \$8 billion.

9. There are other indicia of the ownership of TFPS by Tenet Healthcare Corporation. For example, Tenet Healthcare Corporation files consolidated federal income tax and Florida corporate tax returns that include the activities of various subsidiaries, including TFPS.²

TFPS IS SUBSTANTIALLY AFFECTED

10. TFPS is substantially affected by Section 458.3265, Florida Statutes (2011). As noted above, TFPS currently holds a pain clinic registration issued by the Department but that registration is subject to a Notice of Intent to Revoke.

11. The Department has taken the position that TFPS is not eligible to be registered as a pain management clinic in Florida. TFPS's ability to provide needed services to its patients would be in jeopardy absence its ability to qualify for an exemption.

12. TFPS has had to challenge that Notice of Intent to Revoke. That challenge is currently pending before the Florida Division of Administrative Hearings in Case No. 11-2596. Said case is currently being held in abeyance based on an agreement between the Department and TFPS that TFPS would file this Petition for Declaratory Statement.

² These facts are supported by the Affidavit of Douglas E. Rabe attached hereto as Exhibit C.

SUGGESTED INTERPRETATION

13. TFPS believes the Department should interpret Section 458.3265(1)(a)2.c., Florida Statutes (2011), in a manner that allows TFPS to qualify for the exemption.

14. It is axiomatic that large companies, like Tenet Healthcare Corporation and others with assets in excess of \$50 million routinely operate through a series of subsidiary companies. *See, e.g.,* Mary Siegel, *The Erosion of the Law of Controlling Shareholders*, 24 Del. J. Corp. L. 27, 30 (1999) (“...recognition that many corporations have subsidiaries and transact business with these controlled corporations”); Phillip I. Blumberg, *Control and the Partly Owned Corporation: A Preliminary Inquiry Into Shared Control*, 10 Fla. J. Int’l L. 419, 420 (1996) (“While most U.S. multinational groups operate through wholly owned subsidiaries, a minority of U.S. subsidiaries are partly owned”); Phillip I. Blumberg, *The Corporate Entity in an Era of Multinational Corporations*, 15 Del. J. Corp. L. 283, 326-328 (1990) (noting that large corporations typically conduct their business through a structure that includes holding companies, subsidiaries and affiliates and goes on to discuss the level of control often exercised by the parent company).³

15. The statute only makes sense if interpreted to allow a wholly owned subsidiary of Tenet Healthcare Corporation to qualify for the exemption. It is reasonable to assume that the Legislature is aware of common business practices. *Department of Revenue v. Bank of America*, 752 So.2d 637, 643 (Fla. 1st DCA 2000). In reality, TFPS is “owned” by the publicly traded

³ Even as vaunted a source as Wikipedia includes the following regarding the term “subsidiary”: “Subsidiaries are a common feature of business life, and most if not all major businesses organize their operations in this way. Examples include holding companies such as Berkshire Hathaway as in this listing of its subsidiaries, Time Warner, or Citigroup; as well as more focused companies such as IBM, or Xerox Corporation. These, and others, organize their businesses into national or functional subsidiaries, sometimes with multiple levels of subsidiaries.”

parent company even though the pain management services are provided through a subsidiary legal entity. It would be a logical interpretation of the law if Tenet Healthcare Corporation is able to qualify for an exemption but its subsidiary cannot.⁴

16. Any other interpretation would render the statute virtually meaningless as it would be hard to point to an entity that would qualify if the actual company providing the services had to be the large, publicly traded entity. One of the fundamental rules of statutory construction is that statutes should be construed in a way that avoids absurd or unreasonable results or would render a statute purposeless. *State v. Webb*, 398 So.2d 820, 824 (Fla. 1981).

17. While there is no question but that this statute was enacted to curb abuses in the pain management arena,⁵ it must be applied logically.⁶ As such, TFPS, under the facts as stated, should be eligible for the exemption in Section 458.3265(1)(a)2.c., Florida Statutes.

18. TFPS is willing to meet with Department officials to discuss this Petition, provide additional information and to answer any questions.

WHEREFORE, Tenet Florida Physician Services, LLC respectfully requests as follows:


- A. That the Department of Health accept this Petition for Declaratory Statement;
- B. That a Declaratory Statement be entered determining that, based on the facts as stated, Tenet Florida Physician Services, LLC is eligible for the pain-management clinic registration exemption in Section 458.3265(1)(a)2.c., Florida Statutes; and
- C. That TFPS be granted such other and further relief as is deemed just and proper.

⁴ Tenet Healthcare Corporation has other wholly owned subsidiaries that are hospitals licensed in Florida pursuant to Chapter 395, Florida Statutes. It would seem to be an odd result indeed if those subsidiary corporations don't have to register pursuant to the exemption in Section 458.3265(1)(a)2.a., Florida Statutes (2011), but TFPS does have to register.

⁵ See the "Whereas" clauses in Ch. 2009-198, Laws of Fla. However, even these clauses recognize the balance that must be struck so as not to interfere with the legitimate prescription and use of pain medication.

⁶ This is not to suggest that the Department is completely without regulatory jurisdiction over actions taken by TFPS. TFPS provides its pain management services through doctors who are subject to the jurisdiction of the Board of Medicine.

DATED this 15th day of July, 2011.



MICHAEL J. GLAZER
Ausley & McMullen
Post Office Box 391
123 South Calhoun Street
Tallahassee, Florida 32302
(850) 425-5474
mglazer@ausley.com
Florida Bar #0286508

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2011 the foregoing has been provided by Hand Delivery to Sam Power, Agency Clerk, State of Florida, Department of Health, 4052 Bald Cypress Way, Bin #A02, Tallahassee, Florida 32399-1703 and a copy has been furnished by Hand Delivery to:

Morris Shelkofsky
Assistant General Counsel
State of Florida, Department of Health
4052 Bald Cypress Way, Bin #A02
Tallahassee, Florida 32399-1703



ATTORNEY

C# 3837268

STATE OF FLORIDA
DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE

DATE	REGISTRATION NO.	CONTROL NO.
03/16/2010	PMC 812	812

AC# 3837268

STATE OF FLORIDA
DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE

DATE	REGISTRATION NO.	CONTROL NO.
03/16/2010	PMC 812	812

THE PAIN MANAGEMENT CLINIC
NAMED BELOW HAS REGISTERED WITH
THE DEPARTMENT OF HEALTH.
Expiration Date: DOES NOT EXPIRE

TENET FLORIDA PHYSICIAN SERVICES
PAIN MANAGEMENT CLINIC DIR.:
CHRISTOPHER GEORGE VENDRYES

REGISTRANT SIGNATURE

THE PAIN MANAGEMENT CLINIC
NAMED BELOW HAS REGISTERED WITH
THE DEPARTMENT OF HEALTH.
Expiration Date: **DOES NOT EXPIRE**
TENET FLORIDA PHYSICIAN SERVICES
PAIN MANAGEMENT CLINIC DIR.:
CHRISTOPHER GEORGE VENDRYES
100 NW 95 STREET
DADE CITY, FL 33150

THIS CLINIC IS REGISTERED PURSUANT TO 458.309(4) OR 459.005(3), FLORIDA STATUTES



Charlie Crist
GOVERNOR



Ana M. Viamonte Ros, M.D., M.P.H.
STATE SURGEON GENERAL

DISPLAY IF REQUIRED BY LAW

EXPIRATION DATE: **DOES NOT EXPIRE**

YOUR REGISTRATION NUMBER IS **PMC 812**. ANY CHANGES TO THIS REGISTRATION MUST BE SUBMITTED IN WRITING TO THE DEPARTMENT OF HEALTH.

THE FACILITY MUST DISPLAY THE REGISTRATION CERTIFICATE IN A CONSPICUOUS LOCATION WITHIN THE FACILITY READILY VISIBLE TO ALL PATIENTS.

REGISTRANT SIGNATURE

DEPARTMENT OF HEALTH
DIVISION OF MEDICAL QUALITY ASSURANCE
LICENSURE SERVICES
4052 BALD CYPRESS WAY, BIN #C-10
TALLAHASSEE, FLORIDA 32399-3260

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Brandon Gray*
DATE 11-19-10

STATE OF FLORIDA
DEPARTMENT OF HEALTH

IN RE: THE CERTIFICATE OF REGISTRATION

TENET FLORIDA PHYSICIAN SERVICES

LICENSE NO. PMC 812

NOTICE OF INTENT TO REVOKE CERTIFICATION OF REGISTRATION

Under section 458.3265, Florida Statutes, a certificate of registration as a privately owned Pain-management clinic, previously issued by the Florida Department of Health, shall be revoked if the aforesaid department finds as to a clinic:

That said clinic is not fully owned by a physician licensed under chapter 458 or chapter 459 or a group of physicians, each of whom is licensed under chapter 458 or 459;

That said clinic is not a health care clinic licensed under Part X of chapter 400, Florida Statutes; or

That said clinic is owned by or with any contractual or employment relationship with a physician:

Whose Drug Enforcement Administration number has ever been revoked;

Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction; or

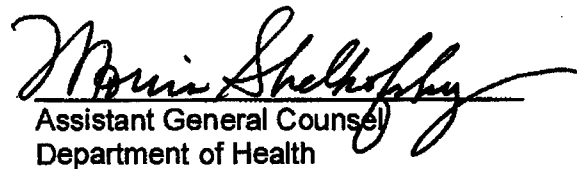
Who has been convicted of, or pled guilty or nolo contendere to, regardless of adjudication, an offense that constitutes a felony for receipt of illicit and diverted drugs, including a controlled substance listed in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of section 893.03, Florida Statutes, in this state, another state, or the United States.

EXHIBIT B

Convicted includes an adjudication of guilt following a plea of guilty, nolo contendere, or the forfeiture of a bond when charged with a crime.

WHEREFORE, the determination was made to REVOKE your certificate of registration as a Pain-management clinic.

DONE AND ORDERED this 17th day of November, 2010.


Assistant General Counsel
Department of Health

NOTICE OF RIGHT TO HEARING

This Notice of Intent to Deny Certificate of Registration constitutes final agency action if no request is received on or before the 21st day after the Certificate of Registration holder's receipt of this notice. The Certificate of Registration holder may seek review of this Order by filing a petition with the Department of Health at 4052 Bald Cypress Way, Bin # A02, Tallahassee, Florida 32399-1703. If the Certificate of Registration holder disputes any material fact supporting the determination, the Certificate of Registration holder may request a hearing before an Administrative Law Judge pursuant to section 120.57(1), Florida Statutes, provided that the petition contains the information required by Rule 28-106.201, Florida Administrative Code, including a statement of the material facts that are in dispute. If no material facts are disputed, the Certificate of Registration holder may request a hearing under section 120.57(2), Florida Statutes, provided that the petition contains the information required by Rule 28-106.301, Florida Administrative Code.

In accordance with section 120.573, Florida Statutes, mediation is not available.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing notice has been provided by certified mail to Tenet Florida Physician Services, 1100 NW 95 Street, Miami, FL 33150 and by interoffice mail to Morris Shelkofsky, Assistant General Counsel, Bin A-02 and to the Bureau of Operations, Bin C-90, this 19 day of December 2010.

7009 3410 0001 4584 7663
SERV OF F CHG SER RE (EN) TR

Brandi May

Deputy Agency Clerk

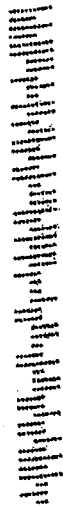
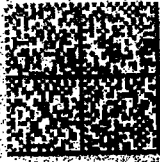
REGISTERED MAIL



7009 3410 0001 4564 7663



02 1M
000 428499
MAILED FROM ZIP CODE 33150



DEPARTMENT OF
HEALTH

Mid Cypress Way

Sec. FL 32899-3251

CENTRAL RECORDS
BIN C-01

TENET FLORIDA PHYSICIAN
SERVICES
1100 NW 95 STREET
MIAMI, FL 33150

STATE OF FLORIDA
DEPARTMENT OF HEALTH

IN RE:

Petition for Declaratory Statement of
TENET FLORIDA PHYSICIAN SERVICES,
LLC

_____/

AFFIDAVIT

BEFORE ME, the undersigned authority, this day personally appeared Douglas E. Rabe, who, being first by me duly sworn, deposes and says:

1. My name is Douglas E. Rabe. I am a Vice President of Tenet Healthcare Corporation. My business address is 1445 Ross Avenue, Suite 1400, Dallas, Texas 75202. This Affidavit is made based on my personal knowledge.
2. I am familiar with the ownership of Tenet Florida Physician Services, LLC.
3. Tenet Florida Physician Services, LLC is a Florida limited liability company. It is wholly owned by its managing member, Tenet Florida, Inc.
4. Tenet Florida, Inc. is wholly owned by Tenet Hospitals, Inc.
5. Tenet Hospitals, Inc. is wholly owned by Tenet Healthcare Corporation.
6. Tenet Healthcare Corporation is a publicly traded company whose shares are traded on the New York Stock Exchange under the symbol: "THC."
7. As of June 30, 2011, Tenet Healthcare Corporation had total assets in excess of \$8 billion. While Tenet Healthcare Corporation's Form 10-Q filed with the United States Securities and Exchange Commission for the quarter ended June 30, 2011 is not yet available, an excerpt from that report for the quarter ended March 31, 2011 is attached as Exhibit A showing total assets in excess of \$8.5 billion.

8. Tenet Healthcare Corporation files a consolidated federal tax return that includes the activities of its subsidiaries, including Tenet Florida Physician Services, LLC.

9. Tenet Healthcare Corporation files a consolidated Florida corporate tax return that includes its affected subsidiaries, including Tenet Florida Physician Services, LLC.

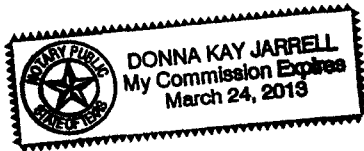
FURTHER AFFIANT SAYETH NOT.



DOUGLAS E. RABE

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, personally appeared Douglas E. Rabe, who is personally known to me and, after being duly sworn, states that he has read the foregoing and it is true and accurate to the best of his knowledge and belief.





NOTARY PUBLIC

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

Form 10-Q

**Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
for the quarterly period ended March 31, 2011**

OR

**Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
for the transition period from _____ to _____**

Commission File Number 1-7293

TENET HEALTHCARE CORPORATION

(Exact name of Registrant as specified in its charter)

Nevada
(State of Incorporation)

95-2557091
(IRS Employer Identification No.)

1445 Ross Avenue, Suite 1400
Dallas, TX 75202
(Address of principal executive offices, including zip code)

(469) 893-2200
(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). Yes No

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company (as defined in Exchange Act Rule 12b-2).

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Indicate by check mark whether the Registrant is a shell company (as defined in Exchange Act Rule 12b-2). Yes No

As of April 27, 2011, there were 489,552,540 shares of the Registrant's common stock, \$0.05 par value, outstanding.

EXHIBIT A

**TENET HEALTHCARE CORPORATION
TABLE OF CONTENTS**

	<u>Page</u>
PART I. FINANCIAL INFORMATION	
Item 1. Financial Statements (Unaudited)	
Condensed Consolidated Financial Statements.....	1
Notes to Condensed Consolidated Financial Statements.....	4
Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations	19
Item 3. Quantitative and Qualitative Disclosures About Market Risk	44
Item 4. Controls and Procedures.....	44
PART II. OTHER INFORMATION	
Item 1. Legal Proceedings.....	45
Item 6. Exhibits	46

PART I. FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS

TENET HEALTHCARE CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS

Dollars in Millions
(Unaudited)

ASSETS	March 31, 2011	December 31, 2010
Current assets:		
Cash and cash equivalents	\$ 267	\$ 405
Investments in Reserve Yield Plus Fund	2	1
Investments in marketable securities	1	0
Accounts receivable, less allowance for doubtful accounts (\$359 at March 31, 2011 and \$352 at December 31, 2010)	1,237	1,143
Inventories of supplies, at cost	156	156
Income tax receivable	22	22
Current portion of deferred income taxes	283	282
Assets held for sale	13	14
Other current assets	412	288
Total current assets	2,393	2,311
Investments and other assets	162	164
Deferred income taxes, net of current portion	589	627
Property and equipment, at cost, less accumulated depreciation and amortization (\$3,167 at March 31, 2011 and \$3,100 at December 31, 2010)	4,262	4,304
Goodwill	677	652
Other intangible assets, at cost, less accumulated amortization (\$318 at March 31, 2011 and \$302 at December 31, 2010)	441	442
Total assets	\$ 8,524	\$ 8,500
LIABILITIES AND EQUITY		
Current liabilities:		
Current portion of long-term debt	\$ 68	\$ 67
Accounts payable	638	720
Accrued compensation and benefits	368	363
Professional and general liability reserves	104	84
Accrued interest payable	116	115
Accrued legal settlement costs	13	8
Other current liabilities	350	368
Total current liabilities	1,657	1,725
Long-term debt, net of current portion	4,014	3,997
Professional and general liability reserves	373	383
Accrued legal settlement costs	22	22
Other long-term liabilities	550	554
Total liabilities	6,616	6,681
Commitments and contingencies		
Equity:		
Shareholders' equity:		
Preferred stock, \$0.15 par value; authorized 2,500,000 shares; 345,000 of 7% mandatory convertible shares with a liquidation preference of \$1,000 per share issued at March 31, 2011 and December 31, 2010	334	334
Common stock, \$0.05 par value; authorized 1,050,000,000 shares; 550,992,372 shares issued at March 31, 2011 and 550,882,110 shares issued at December 31, 2010	27	27
Additional paid-in capital	4,448	4,449
Accumulated other comprehensive loss	(43)	(43)
Accumulated deficit	(1,443)	(1,522)
Common stock in treasury, at cost, 61,655,445 shares at March 31, 2011 and 65,098,918 shares at December 31, 2010	(1,479)	(1,479)
Total shareholders' equity	1,844	1,766
Noncontrolling interests	64	53
Total equity	1,908	1,819
Total liabilities and equity	\$ 8,524	\$ 8,500

See accompanying Notes to Condensed Consolidated Financial Statements.