

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

**COLLIER HMA PHYSICIAN
MANAGEMENT, LLC,**

Petitioner,

v.

LICENSE NO. PMC 611

**STATE OF FLORIDA,
AGENCY FOR HEALTH
CARE ADMINISTRATION,**

Respondent.

_____ /

PETITION FOR DECLARATORY STATEMENT

Pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code, Collier HMA Physician Management, LLC (“Collier HMA”) hereby petitions the State of Florida, Department of Health (“DOH” or “Department”) for a Declaratory Statement, and states:

INTRODUCTION

1. The affected agency is the Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida, 32399-1703.
2. The Petitioner is Collier HMA, a pain-management clinic, located at 24231 Walden Center Drive, Suite 202, Bonita Springs, in Collier County, Florida, 34134.
3. Collier HMA received a Notice of Intent to Revoke Registration from DOH on or about October 19, 2010. After several extensions were granted by the DOH to allow counsel for both parties to attempt settlement on the merits, Collier HMA requested a formal administrative

hearing on March 22, 2011, concerning the NOI to revoke certification of registration and whether Collier HMA meets any of the statutory exemptions from the registration requirements under section 458.3265, Florida Statutes (2010).

ISSUE PRESENTED

4. Is Collier HMA exempt from the pain-management clinic registration requirements of section 458.3265, Florida Statutes, by virtue of it being wholly, 100-percent owned by Health Management Associates, Inc. (“HMA”), through two subsidiaries which are also wholly, 100-percent owned by HMA, and pursuant to an exemption provided in section 458.3265 (1)(a)3., Florida Statutes (2010), which states:

(a) Each pain management clinic must register with the department unless:

3. 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 corporation’s most recent fiscal quarter exceeded \$50 million.

BACKGROUND FACTS

5. Collier HMA currently holds a pain-management clinic registration with the DOH (PMC 611).

6. Collier HMA provides certain pain-management services to its patients through a physician or physicians licensed pursuant to the requirements provided in Chapter 458, Florida Statutes.

7. The majority of the licensed physicians who provide services at Collier HMA primarily provide surgical services.

8. Collier HMA is a limited liability company that is wholly owned by HMA, through two subsidiaries (Southwest Florida HMA Holdings, LLC, and HMA Hospital Holdings, LLC) which are also wholly owned by HMA.

9. Thus, the chain of ownership with respect to Collier HMA is as follows: Collier HMA is wholly owned by Southwest Florida HMA Holdings, LLC, which is wholly owned by HMA Hospital Holdings, LLC (1-percent interest) and HMA (99-percent interest), with HMA Hospital Holdings, LLC, being wholly owned by HMA.

10. HMA is a “Fortune 500” corporation that owns 59 hospitals in 15 states. It is a publicly-traded corporation whose shares are traded on the New York Stock Exchange. HMA reported more than \$4.5 billion in assets in the most recent fiscal reporting period.

11. HMA routinely files a Form 10-Q with the U.S. Securities and Exchange Commission (SEC), with its most recent Form 10-Q filed on August 3, 2011, which summarizes the activities and operations of its subsidiaries (including Collier HMA) and includes those activities into its consolidated financial statements.

12. The operating results of HMA’s hospitals, clinics and other health care businesses acquired through its subsidiaries are all included in HMA’s consolidated financial statements immediately subsequent to the date of acquisition.

13. There are other indicia of the ownership of Collier HMA by HMA. For example, Collier HMA is publicly listed as a clinic under HMA’s ownership and control on HMA’s official website. Collier HMA is also included in many other stockholder portfolio and promotional materials.

COLLIER HMA IS SUBSTANTIALLY AFFECTED

14. Collier HMA, a pain-management clinic located in Collier County, is substantially affected by section 458.3265, Florida Statutes (2010), which is regulated by the DOH and which has been served with a Notice of Intent to Revoke its registration by the DOH pursuant to statutory authority.

15. As stated in its Notice of Intent, the DOH has preliminarily determined that Collier HMA is not qualified to be registered as a pain-management clinic, has refused to recognize that Collier HMA qualifies for one or more exemptions under section 458.3265, Florida Statutes, for pain-management clinic registration and, finally, threatens to take action against Collier HMA that would jeopardize Collier HMA's ability to provide medically necessary services to its patients.

16. Collier HMA filed a Petition for Administrative Hearing, which is currently pending at Division of Administrative Hearings (DOAH), Case Number 11-2669. Collier HMA filed a Motion for Abeyance in the DOAH matter pending the outcome of a similar Petition for Declaratory Statement on the same issue which was filed by Tenet Florida Physician Services, LLC ("Tenet") on July 15, 2011.

SUGGESTED INTERPRETATION

17. Collier HMA concurs with the interpretation of section 458.3265(1)(a)2.c., Florida Statutes (2011) suggested by Tenet in its Petition for Declaratory Statement.¹

18. In addition to the suggested interpretation offered by Tenet, Collier HMA would state that the Florida Legislature has recognized that, in certain situations, a parent corporation which operates through wholly-owned subsidiaries should be treated as a single entity. For example, section 220.02 (9), Florida Statutes, Income Tax Code, provides:

(9) Notwithstanding any other provision of this chapter, it is the intent of the Legislature that, except as otherwise provided under the Internal Revenue Code, for the purposes of this chapter, the term "qualified subchapter S subsidiary," as that term is defined in s. 1361(b)(3) of the Internal Revenue Code, *shall not be treated as a separate corporation or entity* from the S corporation parent to which the subsidiary's assets, liabilities, income,

¹ The exemption language in section 458.3265(1)(a)2.c., Florida Statutes (2011), is identical to the language of its predecessor, section 458.3265(1)(a)3., Florida Statutes (2010), which was the relevant section at the time DOH served its Notice of Intent on Collier HMA.

deductions, and credits are attributed under s. 1361(b)(3) of the Internal Revenue Code.

19. Another example is contained in Chapter 625, Florida Statutes, which regulates accounting and investment practices, where the Florida Legislature recognized the role of subsidiaries as an extension of a parent corporation where the parent maintained a controlling interest. Section 625.325, Florida Statutes, provides:

625.325 Investments in subsidiaries and related corporations.—

(1) AUTHORIZATION.—Any insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries, subject to the limitation of subsection (2). *Such subsidiaries may conduct any kind of business, and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of an insurer.*

(3) DEFINITIONS.—For purposes of this section:

(a) “Subsidiary” means a corporation in which the insurer holds, *directly or indirectly through an intermediary*, sufficient stock to give the insurer a controlling interest.

(b)1. “Related corporation” means a corporation in which the insurer’s parent corporation holds, *directly or indirectly* through an intermediary, sufficient stock to give the insurer’s parent corporation a controlling interest.

20. There are no shortages of “bad actor” provisions within the Florida Statutes, including section 408.815, which imposes penalties and sanctions against a licensed health care facility where the licensee’s controlling interest commits certain violations of state or federal law. These bad actor statutes, as well as the statutory definitions of “controlling interest,” should alleviate any concern by the DOH that an interpretation of the registration exemption in Collier HMA’s favor might somehow alleviate HMA from the full and faithful discharge of its responsibilities as a controlling interest of Collier HMA.

21. Finally, DOH must consider the purpose behind the exemption of section 458.3265 (1)(a)3., Florida Statutes (2010). The only reasonable explanation for the Florida

Legislature to enact such an exemption for pain clinics that are owned by publicly-traded corporations with a minimum of \$50 million in assets is the implied responsibility of such corporations and how they manage and govern their assets, operations, subsidiaries and other interests under the watchful eye of its shareholders, as well as the world at large through the uncompromising lens of the stock market. It must then follow that the purpose of the exemption will be satisfied where a clinic is wholly owned by a corporation, through two managing wholly-owned subsidiaries, which far exceeds the minimum criteria set forth in the exemption.

22. HMA owns and operates (through subsidiary corporations in the same manner as Collier HMA) twenty-two (22) hospitals in Florida, which are licensed with the Agency for Health Care Administration pursuant to Chapter 395. A pain management clinic that is licensed pursuant to Chapter 395 is exempt from registration requirements under section 458.3265, Florida Statutes. Therefore, it would not make sense to interpret the exemption for a clinic owned by a publicly-traded corporation that would result in a determination that wholly-owned subsidiaries of HMA are responsible in one exemption, but not in another.

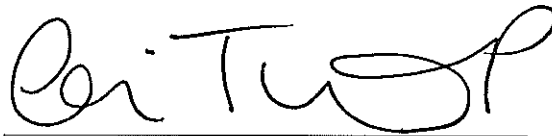
23. A corporate parent is often a holding company or “corporate identity” holder. It is a name with which public investors and consumers can identify. Names such as Ford Motor Company, Bank of America and IBM are easily identifiable and we can chose to buy their products or invest in their stock because they are sound, well-run companies with solid historical performance. The public at large trusts that these corporations have systems and procedures in place to ensure that their subsidiaries and their investments are properly managed. Because most, if not all, of the country’s largest and most successful corporations operate through managing subsidiaries, it would render section 458.3265(1)(a)3., Florida Statutes (2010), completely meaningless to interpret it to mean that a pain clinic, wholly-owned by HMA,

through two managing subsidiaries, could not qualify for the exemption. The statute must be interpreted to have meaning within the context of acceptable and commonly-practiced corporate governance.

WHEREFORE, Collier HMA Physician Management, LLC, respectfully requests the following:

- A. That the Department of Health accept this Petition for Declaratory Statement;
- B. That a Declaratory Statement be entered determining that Collier HMA is eligible for the pain-management clinic registration exemption in Section 458.3265(1)(a)3., Florida Statutes (2010); and
- C. That Collier HMA be granted such other and further relief as is deemed just and proper.

Respectfully,



CORINNE T. PORCHER

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850-297-2006

850-297-2009 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been furnished by facsimile to Sam Power, Agency Clerk, Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida, 32399-1703, and a copy to Morris Shelkofsky, Assistant General Counsel, 4052 Bald Cypress Way, Tallahassee, Florida, 32399-1703, by email transmission this 26th day of August, 2011.


CORINNE T. PORCHER

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