

STATE OF FLORIDA
BOARD OF MEDICINE

77777

Final Order No. AHCA-97-0495 Date 5-2-97

FILED

Agency for Health Care Administration
AGENCY CLERK

R. S. Power, Agency Clerk

By: *[Signature]*
Deputy Agency Clerk

IN RE: THE PETITION FOR DECLARATORY
STATEMENT OF GEORGE G. LEVY, M.D.

FINAL ORDER

This cause came before the Board of Medicine (hereinafter Board) pursuant to §120.565, Fla. Stat., on April 5, 1997, for the purpose of considering the Petition for Declaratory Statement filed on behalf of George G. Levy, M.D. (hereinafter Petitioner) The Agency for Health Care Administration (hereinafter AHCA) appeared before the Board for the purpose of addressing the interpretation to be made by the Board. Having considered the petition, the arguments submitted by counsel for Petitioner, counsel for AHCA, and counsel for the Board, and being fully advised in the premises, the Board, makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner is licensed to practice medicine in Florida pursuant to Chapter 458, Fla. Stat., having been issued license number ME 0035865.
2. In his practice of medicine, Petitioner has the need, from time to time, to have Magnetic Resonance Imaging ("MRI") scans and studies ("MRI Scans") performed for his patients, in order to properly diagnose and treat his patients' injuries or ailments. With regard to the performance of the MRI Scans, Petitioner refers his patients to an MRI Scanning Center (the "Center") to perform the MRI Scans. With regard to such MRI Scans, Petitioner requests that the

Center provide the films from same to Petitioner, in order that he may have the MRI Scans read and interpreted.

a. With regard to the reading and interpretation of the MRI Scans, Petitioner employs, on a part-time basis, a licensed and trained radiologist. As such, as Petitioner receives the films from the MRI Scans (The "Films") from the Center, Petitioner provides same to the radiologist to be read and interpreted by the same. Subsequent to the reading and interpretation of the MRI Scans, the radiologist prepares a report to Petitioner and, based upon the findings contained in this report, Petitioner then will diagnose and treat his patients.

b. With regard to the reading and interpretation of the MRI Scans by the radiologist, Petitioner pays the radiologist on a "per read" basis, so that the compensation paid by Petitioner to the radiologist will vary with the number of MRI Scans read and interpreted by same. With regard to the reading and interpretation of the MRI Scans, Petitioner bills insurance companies and other third party payors (the "Payors") for the professional component of the MRI Scans (i.e. the reading and interpretation portion of the MRI Scans). The Center bills the Payors for the technical component of the MRI Scan (i.e. the performance of the MRI Scan by the Center utilizing its MRI equipment and technicians).

3. Based upon the circumstances outlined in paragraph 2 above, Petitioner desires to learn whether he would be subject to discipline in the following circumstance:

Petitioner orders MRI Scans performed for his patients by the Center and requests that the results of the MRI Scans be provided to him, so that same may be read and interpreted by him, through a radiologist employed by Petitioner, on a part-time basis, with Petitioner compensating the radiologist on a "per read" basis. With regard to the MRI Scans, the Center performs the MRI Scans utilizing their equipment and technicians and bill Payors for the technical portion of

the MRI Scans. Petitioner has the MRI Scans read and interpreted by the radiologist employed by him and bills Payors for the professional component of the MRI Scans.

The following are the relevant aspects of the business relationship between Petitioner and the Center:

- a. Based upon the Petitioner's consultation and evaluation of his patients, Petitioner orders the performance of MRI Scans for his patients, as he deems same to be medically necessary, in his professional judgment and experience.
- b. When the performance of the MRI Scans are necessary for his patients, Petitioner refers his patients to the Center for the performance of same.
- c. Utilizing its MRI equipment and technicians, the Center performs the MRI Scans on Petitioner's patients, pursuant to the written prescription prepared by Petitioner.
- d. The Center bills the Payor for the technical component of the MRI Scans.
- e. At Petitioner's request, the Center provides the Films from the MRI Scans to Petitioner, so that same may be read and interpreted by the radiologist employed by Petitioner.
- f. Petitioner provides the Films from the MRI Scans to the radiologist employed by him and same are read and interpreted by the radiologist, who, subsequent to the reading and interpretation of same, prepares a report for Petitioner.
- g. Petitioner utilizes the information contained in the radiologist's report in his diagnosis and treatment of his patient's injuries or ailments.
- h. Petitioner bills the Payors for the professional component of the Tests.

The following are the relevant aspects of the business relationship between Petitioner and the radiologist, relative to the radiologist's reading and interpretation of the MRI Scans, as contained in the Professional Service Agreement (referred to as the "Agreement"), which will be

entered into between Petitioner and the radiologist, a copy of which is attached hereto as Exhibit "A":

a. The radiologist shall read and interpret MRI Scans provided to him by Petitioner and shall dictate all reports pertaining to same and provide same to Petitioner on the same working day on which the MRI Scans were performed.

b. Radiologist agrees to perform his work and functions in strict conformance with currently approved methods and practices in his professional specialty of radiology. Petitioner shall neither have nor exercise any control over the professional medical judgment or methods used by the radiologist in his practice of medicine.

c. The term of the Agreement shall be for a period of one year.

d. The Agreement may be terminated by either Petitioner or the radiologist, for cause, as defined and pursuant to the procedures contained in the Agreement.

e. Petitioner shall be solely responsible for billing Payors for the professional component of the MRI Scans. All monies paid by Payors with regard to the professional component of the MRI Scans shall belong to Petitioner. The failure by Petitioner to collect for any services rendered by the radiologist shall not release Petitioner from his obligation to pay the radiologist the compensation otherwise owing to same.

f. On a monthly basis, Petitioner pays radiologist compensation for professional services rendered by the radiologist during the preceding month, based upon the number of MRI scans read and interpreted by the radiologist during the preceding month. Each payment of compensation shall have withheld therefrom federal income tax and Social Security (FICA).

4. AHCA did not dispute any of the factual assertions set forth by Petitioner. Neither Petitioner nor AHCA or any other interested person has requested a §120.57(1), Fla. Stat.,

hearing.

5. This petition was noticed by the Board in Vol. , No. , dated , 1997, of the Florida Administrative Weekly (p.).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to §120.565, Fla. Stat.

2. The petition filed in this cause is in substantial compliance with the provisions of §120.565, Fla. Stat.

3. The Board finds that Petitioner, Dr. Levy, has the requisite interest to receive a declaratory statement from the Board in that he is a licensed medical doctor who proposes a stated course of action and requests an interpretation of specific provisions of the law which relate to that stated course of action.

4. Section 458.331(1)(i), Fla. Stat.,¹ prohibits any physician from:

Paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to, hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consultation services.

5. In the scenario described in the petition, Dr. Levy would have MRI bill for the technical component related to scans and studies performed on his patients. He would then bill for the professional component related to those same scans and studies. Dr. Levy would then

¹The petition requests interpretation of several other provisions of Chapters 455 and 458, Fla. Stat. However, the Board determines that the restriction set forth in §458.331(1)(i), Fla. Stat., is the provision most critical to the resolution of the questions set forth in the petition.

take a portion of the fee received for the professional component and pay that portion to a radiologist who actually performed the read and interpretation and provided Dr. Levy with a report of the results.

6. The term "split-fee arrangement" is not defined in statute. However the District Court of Appeal has adopted the common definitions of the term. In Practice Management Associates, Inc. v. Orman, 614 So. 2d 1135 (Fla. 2d DCA 1993), the Second District Court of Appeal recognized the definition of "fee splitting" as "a dividing of a professional fee for specialist's medical services with the recommending physician." Citing, Webster Third New International Dictionary, p. 835.

7. The Board of Medicine finds that Dr. Levy's retention of any portion of the professional fees billed for reading and interpreting scans and studies performed on his patients, without Dr. Levy actually performing any professional service is a "split-fee arrangement" and therefore prohibited by §458.331(1)(i), Fla. Stat.

WHEREFORE, the Board hereby determines that under the specific facts of the petition filed herein, Dr. Levy's retention of some portion of the professional fees billed in relation to scans and studies performed on his patients would be prohibited under §458.331(1)(i), Fla. Stat.

This Final Order takes effect upon filing with the Clerk of the Agency for Health Care Administration.

DONE AND ORDERED this 22nd day of April, 1997.

BOARD OF MEDICINE

Edward A. Dauer M.D.
EDWARD A. DAUER, M.D.
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO §120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS MAY BE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY ACCOMPANIED BY THE FILING FEES REQUIRED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by United States Mail to George G. Levy, M.D. c/o Mitchell F. Green, Esquire, Kramer, Green, Zuckerman & Kahn, P.A. at 4000 Hollywood Boulevard, Suite 485 South, Hollywood, Florida 33021, and by inter office delivery to Larry G. McPherson, Jr., Chief Medical Attorney, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, Florida 32308, this _____ day of _____, 1997.

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to George G. Levy, M.D., 7171 North University Drive, Suite 200, Tamarac, FL 33321, Mitchell F. Green, Esquire, 4000 Hollywood Boulevard, Ste. 485, South Hollywood, FL 33021, and interoffice delivery to Larry McPherson, Jr., Chief Attorney, 2727 Mahan Drive, Tallahassee, Florida 32308-5403, at or before 5:00 p.m., this 2nd day of May, 1997.

Vicki R. Ellison

PETITION FOR DECLARATORY STATEMENT

NAME OF PETITIONER: George G. Levy, M.D.
ADDRESS OF PETITIONER: 7171 North University Drive, Suite 200
Tamarac, FL 33321
NAME OF AGENCY: Board of Medicine

AGENCY RULE, ORDER OR STATUTORY PROVISION ON WHICH DECLARATORY STATEMENT IS SOUGHT:

- A. Section 455.227(1)(q) Fla. Stat.
- B. Section 455.236, Fla. Stat.
- C. Section 455.237, Fla. Stat.
- D. Sections 458.331(1)(i) and (j), Fla. Stat.

DESCRIPTION:

1. Petitioner is licensed in the State of Florida, having been issued license No. 035865, and does business in the State of Florida as George G. Levy, M.D., P.A.

2. In his practice of medicine, Petitioner has the need, from time to time, to have Magnetic Resonance Imaging ("MRI") scans and studies ("MRI Scans") performed for his patients, in order to properly diagnose and treat his patients' injuries or ailments. With regard to the performance of the MRI Scans, Petitioner refers his patients to an MRI Scanning Center (the "Center") to perform the MRI Scans. With regard to such MRI Scans, Petitioner requests that the Center provide the films from same to Petitioner, in order that he may have the MRI Scans read and interpreted.

a. With regard to the reading and interpretation of the MRI Scans, Petitioner employs, on a part-time basis, a licensed and trained radiologist. As such, as Petitioner receives the films from the MRI Scans (the "Films") from the Center, Petitioner provides same to the radiologist to be read and interpreted by the same. Subsequent to the reading and interpretation

of the MRI Scans, the radiologist prepares a report to Petitioner and, based upon the findings contained in this report, Petitioner then will diagnose and treat his patients.

b. With regard to the reading and interpretation of the MRI Scans by the radiologist, Petitioner pays the radiologist on a "per read" basis, so that the compensation paid by Petitioner to the radiologist will vary with the number of MRI Scans read and interpreted by same. With regard to the reading and interpretation of the MRI Scans, Petitioner bills insurance companies and other third party payors (the "Payors") for the professional component of the MRI Scans (i.e. the reading and interpretation portion of the MRI Scans). The Center bills the Payors for the technical component of the MRI Scan (i.e. the performance of the MRI Scan by the Center utilizing its MRI equipment and technicians).

3. Based upon the circumstances outlined in paragraph 2 above, Petitioner desires to learn whether he would be subject to discipline in the following circumstance:

Petitioner orders MRI Scans performed for his patients by the Center and requests that the results of the MRI Scans be provided to him, so that same may be read and interpreted by him, through a radiologist employed by Petitioner, on a part-time basis, with Petitioner compensating the radiologist on a "per read" basis. With regard to the MRI Scans, the Center performs the MRI Scans utilizing their equipment and technicians and bill Payors for the technical portion of the MRI Scans. Petitioner has the MRI Scans read and interpreted by the radiologist employed by him and bills Payors for the professional component of the MRI Scans.

The following are the relevant aspects of the business relationship between Petitioner and the Center:

a. Based upon the Petitioner's consultation and evaluation of his patients, Petitioner orders the performance of MRI Scans for his patients, as he deems same to be medically necessary, in his professional judgment and experience.

b. When the performance of the MRI Scans are necessary for his patients, Petitioner refers his patients to the Center for the performance of same.

c. Utilizing its MRI equipment and technicians, the Center performs the MRI Scans on Petitioner's patients, pursuant to the written prescription prepared by Petitioner.

d. The Center bills the Payor for the technical component of the MRI Scans.

e. At Petitioner's request, the Center provides the Films from the MRI Scans to Petitioner, so that same may be read and interpreted by the radiologist employed by Petitioner.

f. Petitioner provides the Films from the MRI Scans to the radiologist employed by him and same are read and interpreted by the radiologist, who, subsequent to the reading and interpretation of same, prepares a report for Petitioner.

g. Petitioner utilizes the information contained in the radiologist's report in his diagnosis and treatment of his patient's injuries or ailments.

h. Petitioner bills the Payors for the professional component of the Tests.

The following are the relevant aspects of the business relationship between Petitioner and the radiologist, relative to the radiologist's reading and interpretation of the MRI Scans, as contained in the Professional Service Agreement (referred to as the "Agreement"), which will be entered into between Petitioner and the radiologist, a copy of which is attached hereto as Exhibit "A":

a. The radiologist shall read and interpret MRI Scans provided to him by Petitioner and shall dictate all reports pertaining to same and provide same to Petitioner on the same working day on which the MRI Scans were performed.

b. Radiologist agrees to perform his work and functions in strict conformance with currently approved methods and practices in his professional specialty of radiology. Petitioner shall neither have nor exercise any control over the professional medical judgment or methods used by the radiologist in his practice of medicine.

c. The term of the Agreement shall be for a period of one year.

d. The Agreement may be terminated by either Petitioner or the radiologist, for cause, as defined and pursuant to the procedures contained in the Agreement.

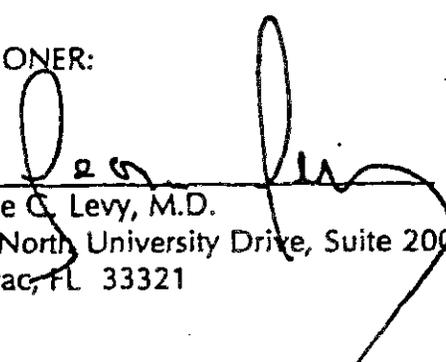
e. Petitioner shall be solely responsible for billing Payors for the professional component of the MRI Scans. All monies paid by Payors with regard to the professional component of the MRI Scans shall belong to Petitioner. The failure by Petitioner to collect for any services rendered by the radiologist shall not release Petitioner from his obligation to pay the radiologist the compensation otherwise owing to same.

f. On a monthly basis, Petitioner pays radiologist compensation for professional services rendered by the radiologist during the preceding month, based upon the number of MRI scans read and interpreted by the radiologist during the preceding month. Each payment of compensation shall have withheld therefrom federal income tax and Social Security (FICA).

ISSUE: Would the foregoing arrangement subject Petitioner to discipline as a violation of Section 455.236, 455.227(1)(q), 455.237, 458.331(1)(i) or 458.331(1)(j), Fla. Stat.?

Date:

PETITIONER:


George C. Levy, M.D.
7171 North University Drive, Suite 200
Tamarac, FL 33321

LAW OFFICES
KRAMER, GREEN, ZUCKERMAN & KAHN, P.A.

PRESIDENTIAL CIRCLE
4000 HOLLYWOOD BOULEVARD
SUITE 485 SOUTH
HOLLYWOOD, FLORIDA 33021

BROWARD 954 / 966-2112
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FAX 954 / 981-1605

RECEIVED
JAN 21 1997

ROBERT M. KRAMER
MITCHELL F. GREEN
LESLIE H. ZUCKERMAN
HOWARD N. KAHN

VIA FEDERAL EXPRESS

January 20, 1997

Dr. Marm Harris
Executive Director
Board of Medicine
1940 North Monroe Street
Tallahassee, FL 32399-0750

Re: Petition for Declaratory Statement by George G. Levy, M.D.

Dear Dr. Harris:

I enclose herewith the above-captioned Petition which I wish to be placed on the agenda for the upcoming meeting of the Board of Medicine, which I understand is to be held on February 7 and 8, 1997, in Orlando, Florida. A draft of the above-captioned petition was previously sent to Allan Grossman, attorney for the Board of Medicine, who reviewed same for form and content only (and not for ruling purposes). It is my understanding Mr. Grossman has or will contact you regarding placing the above-captioned Petition on the agenda for the February 7 and 8, 1997 meeting.

If possible, I would appreciate you scheduling time for hearing the Petition sometime on February 7, rather than on February 8.

Should you have any questions with regard to the above-captioned petition or the scheduling of same at the upcoming meeting of the Board of Medicine, please feel free to contact me. Your cooperation in getting this matter on the agenda for the February meeting will be greatly appreciated.

Very truly yours,

KRAMER, GREEN, ZUCKERMAN & KAHN, P.A.



Mitchell F. Green

MFG/mea

Enclosures

cc: Allan Grossman, Esq. (with enclosures)

K:MFGWEDSCANHARRIS.LTR

EXHIBIT "A"

PROFESSIONAL SERVICE AGREEMENT
(MRI READING SERVICES)

THIS AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, 199__, by and between _____, ("Physician"), and _____ (hereinafter collectively referred to as "Radiologist").

WITNESSETH:

WHEREAS, Physician, in his practice of medicine, has the need, from time to time, to have Magnetic Resonance Imaging ("MRI") scans and studies ("MRI Scans") performed on his patients, in order to properly diagnose and treat his patient's injuries or ailments; and

WHEREAS, with regard to such MRI Scans, Physician has same performed at an MRI Scanning Center, which, subsequent to their performance of the MRI Scan, provides the films from same to Physician, so that Physician may have same read and interpreted; and

WHEREAS, Radiologist is recognized by its peers and Physician as qualified to read the MRI Scans to be performed on Physician's patients, and

WHEREAS, Physician and Radiologist wish to contract with one another for the performance of various medical services to be provided by Radiologist for and on behalf of Physician, as an employee of same, on the terms, conditions and provisions contained herein below.

NOW, THEREFORE, in consideration of the foregoing and the agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I
RECITATIONS

The aforestated recitations are true and correct and incorporated herein by reference.

ARTICLE II
SCOPE OF SERVICES

Radiologist shall provide, as an employee of Physician, on a non-exclusive basis, professional services, with regard to the reading and interpretation of MRI Scans provided to him by Physician for Physician's patients.

ARTICLE III
DUTIES AND RESPONSIBILITIES OF Radiologist

3.1 Radiologist shall provide the necessary medical services, with regard to the reading and interpretation of MRI Scans, regardless of race, sex or national origin, in accordance with generally accepted radiological standards and practices in the medical community.

3.2 Radiologist shall comply with all reasonable policies, rules and regulations established by Physician, not inconsistent with this Agreement, and all pertinent state and federal statutes, applicable to the reading and interpretation of MRI Scans. Physician agrees to consult with Radiologist with regard to all rules, regulations and procedures established by it and which are applicable to the reading and interpretation of MRI Scans.

3.3 Radiologist shall read all MRI Scans provided to him by Physician and dictate all reports thereon within the same working day the test was performed.

3.4 Radiologist agrees to perform its work and functions at all times in strict conformance with currently approved methods and practices in his professional specialty and its various branches in a competent and professional manner. Physician shall neither have nor exercise any control over the professional medical judgment or methods used by Radiologist in his practice of medicine.

ARTICLE IV
DUTIES AND RESPONSIBILITIES OF PHYSICIAN

4.1 Physician hereby agrees that, for and during the term of this Agreement, it will provide and make available at its own cost and expense for the use of Radiologist all of Physician's facilities and services, to the extent necessary by Radiologist.

4.2 Physician shall obtain the films from the MRI Scans from the MRI Center which performs same and shall have same available for Radiologist's scheduled pick-up, in order to permit for Radiologist's reading and interpretation of same.

ARTICLE V
TERM AND TERMINATION

5.1 The term of this Agreement shall be for a period of one (1) year, commencing on _____, 199__, and terminating on _____, 199__. At the end of each year, this Agreement will be extended automatically for additional one (1) year periods unless notice is given by either party at least thirty (30) days prior to the end of the then current term of his or its desire not to so extend the term hereof. However, either party may terminate this Agreement for cause, pursuant to Sections 4.2 and 4.3 hereof.

5.2 Physician shall have the right to terminate this Agreement, for cause, upon the occurrence by Radiologist of any one of the following events:

5.2.1 Radiologist's license to practice medicine is either suspended, denied or revoked in the State of Florida, or Radiologist is otherwise legally disqualified to engage in his specialty in the State of Florida;

5.2.2 Radiologist shall commit any act which, according to accepted medical practices in the community, shall constitute professional negligence by Radiologist, or repeated neglect of duty or any violation of Physician's policies, rules or regulations, provided that such violation is not corrected by Radiologist, to Physician's reasonable satisfaction, within thirty (30) days from his receipt of written notice of such violation from Physician;

5.2.3 Radiologist shall commit any material breach of this Agreement or otherwise not comply with the material terms and conditions hereof and such breach is not corrected by Radiologist within thirty (30) days of his receipt or written notice of such breach from Physician; or

5.2.4 Radiologist shall fail to maintain his medical malpractice coverage in full force and effect at all times as required by this Agreement.

5.3 Radiologist shall have the right to terminate this Agreement for cause, upon the occurrence by Physician of any one of the following events:

5.3.1 Physician's failure to pay the compensation in the amounts and as provided in Article V hereof; or

5.3.2 Physician shall commit any material breach of this Agreement or otherwise not comply with the material terms and conditions hereof and such breach is not corrected by Physician within thirty (30) days of his receipt of written notice of such breach from Radiologist.

5.3.3 It is understood that, in the event Physician terminates this Agreement pursuant to this Article, Radiologist shall have no further rights under this Agreement other than receipt of monies due under the terms and conditions hereof for services rendered through the date of termination.

ARTICLE VI **BILLING AND COMPENSATION**

6.1 Physician or its agent shall produce a daily charge register for review by Radiologist on a monthly basis, detailing all professional services rendered to patients and the collection thereupon.

6.2 On or before the tenth (10th) day of each month, Physician shall pay Radiologist compensation for professional services rendered during the preceding month, _____ (\$ _____) Dollars per MRI Scan read by Radiologist during the preceding month. As an employee of Physician, Radiologist shall have withheld from each payment of compensation Federal Income Tax, Social Security (FICA) and such other items as are necessary or appropriate.

6.3 The parties hereto acknowledge and agree that although Radiologist is an employee of Physician, he shall not be entitled to any benefits and shall have no claim under this Agreement or otherwise against Physician for vacation pay, sick leave, health insurance, professional dues, retirement plans or any other employee benefits of any kind.

6.4 Radiologist hereby covenants and agrees not to separately bill any patient for services rendered and assigns to Physician his right to bill patients and/or their insurers, including Medicare/Medicaid, for professional services rendered by or under the supervision of Radiologist at the Center, and Radiologist further agrees to execute all documents necessary to fulfill same.

6.5 Radiologist agrees that the billing and collections, including the institution of judicial proceedings for its services rendered, shall be the responsibility of Physician, and Radiologist authorizes Physician to take such action as it may deem necessary and appropriate to collect such fees or to waive collection at the option of Physician.

6.6 Failure by Physician to collect for any services rendered by Radiologist, whether or not after good faith attempts to bill for said services, shall not release Physician from its obligation to pay Radiologist the compensation set forth in Section 5.2 hereof.

6.7 Radiologist hereby agrees to abide by any reasonable Statement of Policy issued by Physician relating to indigent care and care for certain physicians and their families. The Statement of Policy may be amended by Physician from time to time at its discretion after consultation with Radiologist.

ARTICLE VII MALPRACTICE INSURANCE

Radiologist agrees to maintain, at his sole cost and expense, insurance for professional liability with limits of not less than _____ (\$ _____) Dollars per person, _____ (\$ _____) Dollars annual aggregate, inclusive of costs, against claims for malpractice of Radiologist and its employees and to indemnify and hold Physician harmless from any claims, actions, judgments, settlements, liabilities, expenses, including reasonable attorney's fees and costs at both the trial and appellate levels, arising therefrom, which may result from their acts or omissions. Radiologist shall submit proof to Physician that such insurance policies are in full force and effect as of the date hereof and on each anniversary thereafter. The required insurance shall provide that it may not be amended or cancelled without sixty (60) days prior written notice to Physician and that Physician shall be an additional named insured

on the policy. If any such policy is terminated or if Radiologist switches insurance carriers, Radiologist shall obtain "tail coverage" or an extended discovery period clause or endorsement, for the applicable statute of limitations period, as necessary to meet the requirements of this Article VII. The requirements of this Article VII shall survive the termination of this Agreement.

ARTICLE VIII
EXAMINATION OF RECORDS

In the event that it is determined that this Agreement falls within the regulations requiring disclosure to the Health Care Financing Administration ("HCFA") (including its duly authorized representatives), pursuant to 42 C.F.R. Part 400-End, then the Parties to this Agreement agree that, until the expiration of three (3) years after the term of this Agreement or the time periods for the particular records specified in the applicable federal regulations, whichever is later, all authorized representatives of HCFA shall have access to and the right to examine any directly pertinent books, documents, papers and records of Radiologist and Physician involving transactions pertaining to this Agreement.

ARTICLE IX
NOTICE

Any and all payments, notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing and sent certified mail, return receipt requested, and addressed to the principal office of Physician or to the principal office of the Radiologist, as the case may be, and as indicated below:

PHYSICIAN: _____

COPY TO: _____

RADIOLOGIST: _____

ARTICLE X
RIGHTS TO PROPERTY

10.1 All records, supplies, equipment, furnishings, charts, film, etc., are and shall remain the property of Physician and shall not be removed from its premises without the written permission of Physician.

10.2 Radiologist shall have the right during reasonable business hours to inspect the business records of Physician, as they pertain to the billing and collection of patient charges, the right to copy all records, the right of access to originals, at reasonable times, upon prior notice to Physician, and the right to remove originals as may be necessary in any judicial proceeding. In the event Radiologist shall exercise this right to remove originals as may be necessary in any judicial proceeding, it shall be Radiologist's responsibility to return same to Physician, as promptly as possible.

ARTICLE XI
HEADINGS

The headings of the various provisions of this Agreement are not to be construed as limiting or expanding any provisions hereof but are merely intended to act as aids in referring to the provisions hereof.

ARTICLE XII
ENTIRE AGREEMENT

This Agreement constitutes the entire understanding and agreement between the parties hereto and may not be modified without the written agreement of the parties.

ARTICLE XIII
FEES AND EXPENSES

In the event of any dispute arising in any way out of or involving interpretation of this Agreement, the prevailing party shall be entitled to recover its reasonable fees and expenses, including legal fees at all levels, from the other party.

ARTICLE XIV
GOVERNING LAW

The validity, interpretation and construction of this Agreement shall be determined and governed in all respects by the laws of the State of Florida.

**ARTICLE XV
SEVERABILITY**

Each section and paragraph of this Agreement shall be considered severable, and if for any reason any section or paragraph herein is determined to be invalid under current or future law, such invalidity shall not impair the operation of or otherwise affect the valid portions of this Agreement.

**ARTICLE XVI
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

PHYSICIAN:

By: _____

Print Name: _____

RADIOLOGIST:

Print Name: _____

KWFGMEDSCANMRREAD3.AGT