

By: Amy L. Casaway  
Deputy Agency ClerkSTATE OF FLORIDA  
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY STATEMENT

MY MEDICAL CD, LTD., JAMES K. KNIGHT.

**FINAL ORDER**

This matter came before the Board of Medicine (hereinafter the "Board") on October 7, 2006, in Tampa, Florida, for consideration of the above-referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was published on September 1, 2006, in Vol. 32, No. 35, in the Florida Administrative Weekly. The Petitioner did not make an appearance.

The petition filed on behalf of MY MEDICAL CD, LTD., by James K. Hogan inquired as to whether it can pay a doctor for one of his or her office staff to complete an online application for a patient who is interested in obtaining a mini compact disc that contains the patient's "medical history" and "emergency medical information without having the physician violate Section 456.054(1), Florida Statutes (2006)?"

**FINDINGS OF FACTS**

1. The petitioner provides a service where a patient's "medical history" and "emergency medical information" is stored on a mini compact disc the size of a credit card that can be carried in a person's wallet, purse or pocket.
2. The compact disc can be placed in any computer and upon providing a login and a password medical personnel can access the data off the compact disc.

3. The Petitioner would like to pay a physician or the physician's staff twenty dollars (\$20.00) to fill out a 6 page on-line application on behalf of a patient who is interested in obtaining a medical compact disc.

4. The Petitioner does not disclose how the patient is made aware of its services or whether the physician or his or her staff have any role in offering the Petitioner's services.

### **CONCLUSIONS OF LAW**

6. 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.

7. The Petition filed in this cause is in substantial compliance with the provisions of 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code.

8. Section 120.565, Florida Statutes, reads as follows:

#### 120.565. Declaratory statement by agencies

(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. (3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action

9. Petitioner inquires as to whether its paying a physician, or his or her staff twenty dollars (\$20.00) to complete the requisite six page on-line application for a medical compact displace the physician in violation of Section 456.054(1), Florida Statutes (2006).

10. The Board declines to issue a declaratory statement in response to My Medical CD's petition because it has failed to demonstrate that it is substantially affected by the application of Section 456.054(1), Florida Statutes (2006) to the circumstances it has presented, and therefore, lacks the requisite standing to obtain a declaratory statement from the Board of Medicine.

11. Based on the foregoing, the Board hereby **DENIES** My Medical CD's petition for declaratory statement.

**DONE AND ORDERED** this 26 day of October, 2006.

**BOARD OF MEDICINE**

  
Larry McPherson, Jr., Executive Director  
for Mammen P. Zachariah, 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: My Medical CD, LTD, James K. Knight, Pres., 6 Judith Court, Rocky Point, New York, New York 11776; and by interoffice mail to: Edward A. Tellechea, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050; and Timothy Cerio, General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, on this 31 day of October, 2006.



**Deputy Agency Clerk**

MY MEDICAL CD  
315 East 54 Street – Ste. 1C  
New York, NY 10022  
(631) 831 4263  
(631) 821 6221 – fax

RECEIVED  
DEPARTMENT OF HEALTH  
2006 JUL 21 PM 12:33  
OFFICE OF THE CLERK

James K. Hogan  
President  
E-mail: jimhogan@mymedicalcd.com

July 18, 2006

The Florida Department of Health  
Clerk's Office  
4052 Bald Cypress Way,  
Bin #A02  
Tallahassee, FL 32399-1703

\_\_\_\_\_X  
In the Matter of My Medical CD, Ltd.  
  
Petitioner  
  
\_\_\_\_\_X

Petition for  
Declaratory Statement  
Before the Florida  
Medical Board

Petitioner: My Medical CD, Ltd.  
By: James K. Hogan, Pres.  
6 Judith Court  
Rocky Point, NY 11776  
(631) 831 4263

Counsel: Pro Se

Statute: Title XXXII, Chapter 456 of the Florida Statutes  
§ 456.054 – Kickbacks.

Facts: At My Medical CD a person fills out an application with his medical history. He fills out an application on our web site. We take that data and burn a mini CD, about the size of a credit card. The size enables the person to carry it in the wallet, pocket or purse. If there is a medical emergency, EMS personnel place the CD into their P/C and the person's emergency medical information appears on the monitor. If the client can provide a Login and Password, additional information is available.

When we make the CD we also create a page on our web site for the client. He can enter this page and make changes to the data stored there.

We also create an electronic filing box. The client can send us documents and we make images of them and store them in this box.

**Question:** Can My Medical CD pay a doctor if one of his/her office staff were to fill out the On-line application for the patient?

**Statute:** 456.054 (1) states that "kickback" means a remuneration or payment back to an investment interest, compensation arrangement, or otherwise, by a provider of health care services or items, or a portion of the charges for services rendered to a referring health care provider as an incentive or inducement to refer patients for future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

(2) It is unlawful for any health care provider or any provider of health care services to offer, pay, solicit, or receive a kickback, directly or indirectly, overtly or covertly, in cash or in kind, for referring or soliciting patients.

**Argument** My Medical CD is not asking the health care professional to engage in any professional conduct or to use any professional judgment. It is simply the administrative act of filling out a form. This is very similar to the doctor filling out a form for a disability claim. Some offices charge patients a fee for this service.

My Medical CD, Ltd. is not a "provider of health care services."

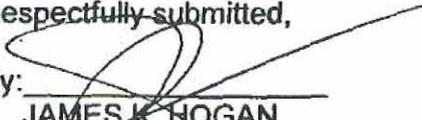
My Medical CD is simply a health care record retrieval system.

The client's Emergency Medical History is geared to being completed by an ordinary person, akin to the medical history he would give to an Emergency Room admitting person.

The fee payable to the doctor would be \$20.00 for a clerk to fill out a 6 page application. This is a reasonable fee for this service. There is no ongoing fee payable to the doctor.

Date at Rocky Point, NY  
July 18, 2006

Respectfully submitted,

By:   
JAMES K. HOGAN  
President,  
My Medical CD, Ltd.

**From:** McPherson, Larry  
**Sent:** Wednesday, October 25, 2006 4:10 PM  
**To:** Aills, Wendy; Alphin, Lynda; Austin, Cheryl; Bowen, Whitney; Cappe, Martha; Chester, Tammy; Clayton, Connie; Connell, Christina; Davis, Bettye; Denson, Angela; Dickens, Karrell D; Gilley, Carmelette; Graham, Cheryl; Gray, Melinda; Groover, Alexia M.; Harmon, Aaron; Hills, Tangela; Jackson, Tiana; Johnson, Vera M; Knight, LaShonda; Kress, Elizabeth; List, Crystal A; McPherson, Larry; Moody, Amanda S; Morss, Shirley B; Nelson, Dane; Nelson, Gloria J; Perez, Rafael; Prine, Chandra; Randolph, Camela; Richardson, Matt P; Smiley, Cheryl; Smith, Teri; Trexler, JoAnne; Wiggins, Tiffany; Willis, Gwyn  
**Cc:** 'Ed Tellechea'; Sanders, Sylvia (MQA); Baker, Joe Jr; Poston, Rebecca; Erlich, Donna; Foster, Sue; Gee, Lucy; Hentz, James; King, Pamela E; Orcutt, Diane  
**Subject:** Delegation

Citizens,

During my absence on Thursday, October 26, Board of Medicine Executive Director authority is delegated to Chandra Prine, 345-4135.

Larry McPherson  
Executive Director  
Florida Board of Medicine