

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
BOARD OF MEDICINE

Final Order No. AHCA-95-01139 Date 8-18-95

FILED

Agency for Health Care Administration

AGENCY CLERK

R.S. Power, Agency Clerk

By: *Brandon D. Moore*
Deputy Agency Clerk

IN RE: THE PETITION FOR DECLARATORY
STATEMENT OF CHRISTOPHER
THOMAS SOPRENUK, M.D.

FINAL ORDER

This cause came before the Board of Medicine (hereinafter Board) pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code, on August 8, 1995, for the purpose of considering the Petition for Declaratory Statement filed on behalf of Christopher Thomas Soprenuk, M.D. (hereinafter Petitioner). The Agency for Health Care Administration (hereinafter AHCA), has petitioned to intervene in this matter. Having considered the Petition, the arguments of counsel, the applicable law, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. Petitioner, Christopher Thomas Soprenuk, M.D. is licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes.

2. The facts asserted by Petitioner are as follows:

Petitioner is a practicing oncologist in Tavares, Florida. He has been offered the opportunity to participate in an incentive program sponsored by Universal Healthcare Distributors, Inc. (hereinafter Universal). Universal is a national distributor of pharmaceutical, surgical, and medical supplies, headquartered in Orlando, Florida. The incentive program is structured so as to provide that if Petitioner refers a minimum of 50% of his homebound ambulatory patients to Universal, Petitioner will then be able to purchase all of the pharmaceuticals required for his practice from Universal at cost rather than at the retail price normally charged by Universal. Cost is defined by Universal and Petitioner as Universal's acquisition price direct from the manufacturer with Universal retaining all cash discounts and wholesale rebates. Freight costs from the warehouse to the Petitioner will be paid by Petitioner. When Universal receives a "referral" from Petitioner, it would act as a broker to match the patient and Petitioner's prescribed therapy with an appropriate home health care provider. Universal does not own or manage any home health care entities and will permit Petitioner to designate particular home health care providers when Petitioner deems it appropriate or necessary. Under the incentive program, Petitioner does not receive any remuneration derived from or as a percentage of the charges for services rendered to patients referred to a home health care provider through Universal. The incentive program would not be a mandatory buying arrangement. Petitioner is free at all times to purchase from Universal pursuant to the incentive

(6) This Petition was noticed by the Board in Vol. 21, No. 22, dated June 2, 1995, Florida Administrative Weekly (p. 3715).

CONCLUSIONS OF LAW

(1) The Board of Medicine has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Rule 28-4, Florida Administrative Code.

(2) The Petition for Declaratory Statement is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Rule Chapter 28-4, Florida Administrative Code.

(3) Section 458.331(1)(i), Florida Statutes, provides authority for the Board to discipline any licensee who is found by the Board to be:

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,

Through this provision, the Legislature has effectively prohibited the enumerated financial arrangements by physicians licensed pursuant to Chapter 458, Florida Statutes.

(4) The term "kickback" is defined in Section 455.237(1), Florida Statutes, as:

... a remuneration or payment back pursuant to an investment interest, compensation arrangement, or otherwise, by a provider of health care services or items, of 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.

The other terms used in Section 458.331(1)(i), Florida Statutes, are not clearly defined in Florida law. However, their definitions are commonly understood to be as follows:

"commission" is a fee or percentage allowed to a salesman or agent for his services;

"bonus" is something given or paid in addition to the usual or expected; and

"rebate" is a deduction from an amount to be paid or a return of part of an amount given in payment.

The American Heritage Dictionary, 1985.

(5) The Board concludes that Universal's offer to provide pharmaceuticals to Petitioner at below fair market prices in return for a promise to refer home bound ambulatory patients for "brokering" to home health care providers by Universal would result in Petitioner receiving either a commission, bonus, or rebate from Universal. Petitioner has suggested that because Universal would not actually be paying any amount to Petitioner that their proposed incentive program should not be considered to be within the enumerated prohibited arrangements. However, the Board is concerned about the incentive program's requirements for the referral of patients in connection with significant financial savings to be received by Petitioner as a result of the below

fair market price to be charged to Petitioner by Universal. The Board considers such savings to be an indirect commission, bonus, or rebate. In that Universal is a provider of health care goods, Petitioner's receipt of such savings is prohibited by Section 458.331(1)(i), Florida Statutes.

WHEREFORE, the Board of Medicine hereby determines that Petitioner's involvement in the incentive program offered by Universal would be a violation of the prohibitions set forth in Section 458.331(1)(i), Florida Statutes.

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

DONE AND ORDERED this 5th day of August, 1995.

BOARD OF MEDICINE


GARY E. WINCHESTER, 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 SECTION 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 AGENCY FOR HEALTH CARE ADMINISTRATION AND A SECOND COPY, ACCOMPANIED BY THE FEES REQUIRED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THIS FINAL