

By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY STATEMENT OF
RADIOLOGY ASSOCIATES OF SOUTH FLORIDA
P.A., *et. al.*

FINAL ORDER

This matter came before the Board of Medicine (hereinafter the "Board") on April 2, 2005, in Tampa, Florida, for consideration of the referenced Petition for Declaratory Statement (attached hereto as exhibit A). The Notice of Petition for Declaratory Statement was published on March 25, 2005, in the Vol. 31, No. 12, in the Florida Administrative Weekly.

The petition filed by RADIOLOGY ASSOCIATES OF SOUTH FLORIDA, P.A. and its 57 member physicians (hereinafter the "Petitioners") inquired as to whether they met the Minimum Financial Responsibility Requirements of Section 458.320, Florida Statutes (2004) and Rule 64B8-12.005, Florida Administrative Code.

FINDINGS OF FACTS

1. Each of the 57 Petitioners are currently licensed as allopathic physicians by the Board and are subject to the minimum financial responsibility requirements of Section 458.320, Florida Statutes (2004), and Rule 64B8-12.005, Florida Administrative Code.

2. The Petitioners each have hospital staff privileges and have elected to fulfill his or her minimum financial responsibility requirements by obtaining medical malpractice insurance in accordance with Section 458.320(2)(b), Florida Statutes.

3. Effective February 1, 2005, each of the individual Petitioners has obtained medical malpractice insurance coverage on a group basis under a claims-made physicians and surgeons professional liability policy (the "Policy") issued by Continental Casualty Company, an insurer

authorized to issue medical malpractice insurance policies in Florida in accordance with Section 624.09, Florida Statutes. The Policy itself has been issued on forms which have been approved by the Florida Office of Insurance Regulation in accordance with Chapter 627, Florida Statutes.

4. Under the Policy, Radiology Associates of South Florida, P.A., is the "First Named Insured," which is not afforded insurance coverage but is only named to be responsible for certain administrative functions arising under the Policy. Each of the individual Petitioners is included as an individual "Named Insured." Additional physicians may obtain coverage under the Policy through an endorsement which lists them as Named Insureds.

5. Each of the individual Petitioners, as Named Insureds, have limits of \$250,000 per medical incident, with an annual aggregate limit per Named Insured of \$750,000. In addition to the per medical incident and annual aggregate limits of liability per Named Insured, the limits of the Policy are further subject to a shared policy aggregate limit of \$10,000,000 that is inclusive of defense expenses and any additional benefits afforded under the Policy (the "Shared Aggregate Limit").

6. The Shared Aggregate Limit, if triggered during the Policy period, further limits coverage to the Petitioners so that each Named Insured, who had not already met or exceeded the \$750,000 annual aggregate limit under the Policy, will no longer have coverage which meets the \$250,000/\$750,000 financial responsibility requirements of Section 458.320(2)(b), Florida Statutes.¹

CONCLUSIONS OF LAW

¹ If, for example, 40 of the individual Petitioners incurred single claims of \$250,000 in a 12-month period, the Shared Aggregate Limit would be triggered and the remaining 17 physicians would be left with no coverage at all.

5. 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.

6. 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.

7. For purposes of determining standing in this matter, the individual Petitioners, allopathic physicians licensed pursuant to Chapter 458, Florida Statutes, are substantially affected persons because failure to comply with the minimum financial responsibility requirements of Section 458.320(2)(b), Florida Statutes (2004), and Rule 64B8-12.005, Florida Administrative Code, may result in disciplinary actions against their physician licenses issued by the Board.

8. Section 458.320(2)(b), Florida Statutes, reads as follows:

458.320 Financial responsibility.--

* * *

(2) Physicians who perform surgery in an ambulatory surgical center licensed under chapter 395 and, as a continuing condition of hospital staff privileges, physicians who have staff privileges must also establish financial responsibility by one of the following methods:

* * *

(b) Obtaining and maintaining professional liability coverage in an amount not less than \$250,000 per claim, with a minimum annual aggregate of not less than \$750,000 from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914(2), from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), through a plan of self-insurance as provided in s. 627.357, or through a plan of self-insurance which meets the conditions specified for satisfying financial responsibility in s. 766.110. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

* * *

9. Under Section 458.320(2), each physician who chooses to demonstrate financial responsibility through subsection (b) must each demonstrate that he or she has obtained and maintained professional liability coverage in an amount not less than \$250,000 per claim, with a minimum annual aggregate of not less than \$750,000. Section 458.320(2)(b) does not provide for any further minimum aggregate limits for either individual physicians or physicians practicing within a group setting.

10. The Board is of the opinion that under the facts presented above, the Petitioners have not demonstrated financial responsibility under Section 458.320(2)(b) because the Policy's Shared Aggregate Limit, if triggered during the policy period, leaves individual Petitioners/Named Insureds without the mandated \$250,000/\$750,000 coverage. The Board recognizes that the likelihood of the Shared Aggregate Limit being triggered during the 12-month period of the Policy is remote, but nevertheless, as long as the possibility exists, the Board is of the opinion that all 57 Petitioners cannot demonstrate that they each possess the \$250,000/\$750,000 coverage required under Section 458.320(2)(b), Florida Statutes.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 23 day of June, 2005.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Laurie K. Davies, 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: Marshall R. Burack, Esquire, Akerman Senterfitt, One Southeast 3rd Avenue, 28th Floor, Miami, Florida 33131-1715; Wes Strickland, Esquire, Foley & Lardner, LLP, 106 East College Avenue, Suite 900, Tallahassee, Florida 32301; 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 24th day of June, 2005.

Heather Coleman
Deputy Agency Clerk

