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STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

Final Order No. AHCA-95-00784 Date 6-2-95

IN RE: NANCY Y. BRYANT, M.D.
PETITION FOR DECLARATORY STATEMENT

FILED

Agency for Health Care Administration
AGENCY CLERK

R.S. Power, Agency Clerk
By: Dorinda P. Turk
Deputy Agency Clerk

MOTION TO INTERVENE AND STATEMENT IN
OPPOSITION TO PETITIONER'S REQUESTED
DECLARATORY STATEMENT REGARDING APPLICABILITY OF
SECTION 455.236, FLORIDA STATUTES

COMES NOW, The Agency for Health Care Administration, hereinafter referred to as "Agency", and pursuant to Rule 28-5.207, and Rule 28-5.201(2), Florida Administrative Code, files this Petition for Leave To Intervene and Objections to Dr. Bryant's Proposed Declaratory Statement Regarding Applicability of Section 455.236, Florida Statutes, and states as follows:

1. Agency Affected:

The Board of Medicine
Northwood Center
1940 North Monroe Street
Tallahassee, Florida 32399-0750

2. Name and address of Petitioner:

Agency for Health Care Administration
Division of Quality Assurance - Legal
1940 North Monroe Street, Suite 60
Tallahassee, Florida 32399-0792

3. The Petition For Declaratory Statement with the Board of Medicine regarding applicability of the Patient Self-Referral Act, Section 455.236, Florida Statutes, hereinafter referred to as "Act", on May 18, 1995 and the Board thereafter advised the Agency that the matter would be initially considered by the Board during their meeting on June 10, 1995, in Gainesville, Florida.

4. The Agency is tasked by Section 20.42 and Chapters 395 and Chapter 455, Florida Statutes, with the licensing and regulation of health care facilities and, specifically, with the regulation of Board of Medicine licensees as defined by statute and rule. The Board's determination of the Proposed Declaratory Statement regarding the applicability of Section 455.236(3)(g), Florida Statutes, would substantially affect the interests of the Agency in the uniform enforcement of the Act as applied to the 29,000 licensees practicing in Florida.

5. The agency does not dispute the facts in paragraphs 1 - 4 of Dr. Bryant's Petition For Declaratory Statement, except that the Agency has no knowledge whether the Clinic is a group practice within the meaning of Section 455.236(3)(g), Florida Statutes.

6. The Agency does dispute Dr. Bryant's conclusion that the financial arrangement presented in the Petition for Declaratory Statement is not in violation of the Act.

AGENCY POSITION

6. Dr. Bryant, by referring both her ophthalmology patients and patients of a group, of which she is not a member, for health care items to an optical shop which she is the sole owner, does violate the Act. Under the facts of this Petition, Dr. Bryant is not a member of the group as defined by Section 455.236(3)(g), Florida Statutes and therefore not entitled to claim a "group" exemption from the general prohibition on patient self-referral.

Relevant Statutes

7. The Patient Self-Referral Act of 1992, Section 455.236(2), Florida Statutes provides:

LEGISLATIVE INTENT.-It is recognized by the Legislature that the referral of a patient by a health care provider to a provider of health care services in which the referring health care provider has an investment interest represents a potential conflict of interest. The Legislature finds these referral practices may limit or eliminate competitive alternatives in the health care services market, may result in overutilization of health care services, may increase costs to the health care system, and may adversely affect the quality of health care. The Legislature also recognizes, however, that it may be appropriate for providers to own entities providing health care services, and to refer patients to such entities, as long as certain safeguards are present in the arrangement. It is the intent of the Legislature to provide guidance to health care providers regarding prohibited patient referrals between health care providers and entities providing health care services and to protect the citizens of Florida from unnecessary and costly health care expenditures.

8. Section 455.236 (3)(m)(3)(f), exempts from a general prohibition on self-referral, the referral:

By a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own Patients and that are provided or performed by or under direct supervision of such referring health care provider or group practice (emphasis added).

9. Section 455.236(3)(g), Florida Statutes defines "group" for purposes of exemption from the general prohibition on self-referral as follows:

(g) "Group practice" means a group of two or more health care providers legally organized as a partnership, professional corporation, or similar association:

(1) in which each health care provider who is a

member of the group provides substantially the full range of services which the health care provider routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment, and personnel;

(2) for which substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group an amount so received are treated as receipts of the group; and

(3) in which the overhead expenses of and the income from the practice are distributed in accordance with the methods previously determined by the members of the group.

ANALYSIS

10. Under the provisions of the Act, Dr. Bryant, as a sole practitioner and owner of the optician shop, is not precluded from referring her patients to the optician shop for health devices. There is a specific exemption for this as presented above in Section 455.236(3)(m)3. f. However, Dr. Bryant cannot accept patients for such health care devices from a group, of which she is not a member but an employee. A group is defined above in Section 455.236(3)(g) and clearly Dr. Bryant does not fit within this definition. There is no exemption applicable to the employee of a group.

11. The Agency does not agree with Dr. Bryant's characterization that the proposed arrangement is a "technical" difference and a logical application of the Act. The Act sets forth certain limited exemptions to the general prohibition on patient self referral and there is no statutory basis to expand

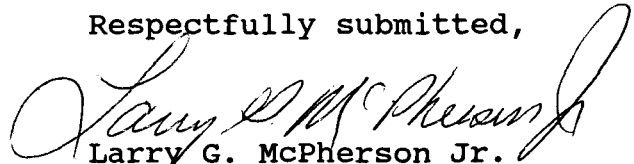
those exemptions by the use of an undefined employment contract.

WHEREFORE, the Agency requests the Board to grant the Agency Petition For Leave To Intervene in this Matter. Furthermore, the Agency requests that the Board find that the matter set forth in Dr. Bryant's Petition For Declaratory Statement does violate Section 455.236, Florida Statutes for reasons stated by the Agency.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing has been furnished by U.S. Mail this 2nd day of June, 1995 to Cynthia A. Mikos, Esquire, JACOBS, FORLIZZO & NEAL, P.A., 13577 Feather Sound Drive, Suite 300, Clearwater, Florida 34622-5547.

Respectfully submitted,



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