

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF MEDICINE**

Final Order No. DOH-10-1910-<sup>DS</sup>-MOA  
FILED DATE - 8.24.10  
Department of Health

By: Angela Sands  
Deputy Agency Clerk

IN RE: PETITION FOR DECLARATORY  
STATEMENT OF U.S. HEALTHWORKS  
MEDICAL GROUP OF FLORIDA, INC.

---

**FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT**

This matter came before the Board of Medicine (hereinafter the "Board") on June 4, 2010, in Ft. Lauderdale, 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 May 21, 2010, in Vol. 36, No. 20, of the Florida Administrative Weekly.

The petition filed by U.S. Healthworks Medical Group of Florida, Inc. and presents the following inquiry:

Whether a provider organized as an occupational health care group practice may create an incentive program whereby the practice pays a managing physician who is a member of the group a percentage of the group's aggregate net profit as compensation for management services when (1) the group consists of employed physicians who have no investment interest in the group; (2) all occupational health care services provided are pre-authorized; (3) the managing physician does not engage in marketing or solicitation of business, and (4) there is no economic incentive to engage in the inappropriate overutilization of occupational health care services?

**FINDINGS OF FACTS**

1. U.S. HealthWorks Medical Group of Florida, Inc. ("USHW") is a Florida corporation and a certified occupational health care provider pursuant to Section 440.13(1), Florida Statutes (2009). USHW is a single legal entity that employs physicians and is a "group practice" as defined by Section 456.053(3)(h), Florida Statutes (2009).

2. USHW provides pre-authorized occupational health care services in conjunction with the Florida workers' compensation program, and in addition provides certain employer services, including pre-employment screening and fitness-for-work evaluations, at the request of and on behalf of employers. More than ninety percent of USHW's revenue is derived from the provision of occupational health care and employer-related services such as pre-employment physicals and drug screen testing . To a more limited extent, USHW may provide walk-in urgent care services to the public. USHW receives no funds from either Medicare or Medicaid. With respect to its provision of occupational health care services USHW receives no payment from patients.

3. USHW intends to appoint a managing physician (the "Managing Physician") at each of the USHW clinic locations who will have certain administrative responsibilities in addition to treating patients.

4. USHW intends to compensate this physician for effective office management services, independent of the compensation paid to the physician for his or her professional medical services.

5. The occupational health care system is distinct from and exists in parallel with the larger general health care system in the state of Florida because it is separately financed and organized around different principles than general health care. As set forth by the Florida Legislature in Section 440.15, Florida Statutes (2009), the state's occupational health care program is a highly structured system intended and designed to be "efficient and self-executing."

6. Florida's occupational health care system is built on different assumptions than the general (traditional fee-for-service) health care system. While the physician has primary responsibility for the injured worker (the patient) and his/her plan of treatment for medical

services, the Florida Division of Workers' Compensation controls through regulation both the process for the referral of patients to workers' compensation health care providers, as well as the utilization of services. The employer or employer-contracted insurance carrier selects the provider of workers' compensation services for the injured worker. All services provided or requested by the health care provider must be pre-authorized pursuant to a regulated process.

7. The workers' compensation system involves a built-in structural mechanism that controls and regulates the referral for and utilization of health care services that is not present in the general health care system and that differentiates the risk between the two systems. While the physician-patient relationship is fundamentally the same in both the workers' compensation and traditional fee-for-service settings, the workers' compensation practitioner is governed by explicit administrative rules and procedures that are designed to protect the legitimate interests of the employer, the carrier and the regulators in preventing the inappropriate or over-utilization of health care services or items.

8. Within the context of this system, and unlike a traditional fee-for-service group practice, the profitability of the USHW group practice would quickly diminish in the event of inappropriate utilization or over-utilization of services, because the services would not be authorized by the payor.

#### USHW Managing Physician Duties and Proposed Compensation.

9. Physicians employed by USHW do not have an ownership or investment interest in USHW. All of USHW's physicians, including the Managing Physician, receive a pre-determined, set compensation for their professional medical services which is based on the fair market value of the physician's time and the actual professional services performed.

10. In addition to providing medical services, the USHW Managing Physician also has responsibility for administrative and management oversight of the clinic, including improving outcomes, optimizing staff schedules, managing expenses, implementing USHW policies and protocols with respect to the delivery of appropriate and high quality services, and maintaining effective client communication.

11. The USHW Managing Physician's duties do not include marketing or solicitation of business. USHW employs national, regional and local sales and marketing managers who are responsible for the promotion and marketing of USHW's services to prospective clients. USHW does not actively directly solicit patients in any capacity, rather the focus of its marketing efforts are employer groups.

12. USHW will pay its Managing Physicians, on an annual basis, a pre-determined percentage based on a sliding scale which correlates to specified levels of net profit attained, based on the aggregate net profit of the clinic if the clinic achieves a year-over-year increase in profitability (the "USHW Managing Physician Program") as compensation for management services. Compensation paid to the Managing Physician will not exceed the fair market value of the management and administrative services provided by the Managing Physician, and will be tax deductible by USHW as an ordinary and necessary operating expense.

#### CONCLUSIONS OF LAW

13. 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.

14. 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.

15. For purposes of determining standing in this matter, the Petitioner, an employer of an allopathic physician that will serve as a Managing Physician for the Petitioner, is a substantially affected entity and hence has standing to bring this petition for declaratory statement.

16. Physician compensation programs are appropriately subject to analysis and scrutiny under applicable state and federal laws that are designed to remove economic incentives for inappropriate medical referrals. As a Florida certified occupational health care provider, USHW is subject to Florida law with respect to its physician compensation arrangements.

17. The Board is of the opinion that it appears that the USHW Managing Physician has no economic incentive to make inappropriate medical referrals. The Managing Physician receives a pre-determined, set compensation for his or her professional medical services that is based on the fair market value of the physician's time and the actual professional services performed. The Managing Physician's compensation for professional medical services has no correlation to the volume or value of the physician's referrals.

18. All services provided by USHW physicians or other clinical personnel within the group practice are pre-authorized, pursuant to Florida's Division of Workers' Compensation regulations. Accordingly, inappropriate or over-utilization of services results in an immediate loss of revenue because the services either will not be authorized for payment or payment will be reduced by the carrier or self-insured employer.

Florida's Self-Referral Act.

19. Under Section 456.053, Florida Statutes, the Florida Legislature has recognized 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.”

20. In this instance, the USHW Managing Physician does not have an ownership or investment interest in USHW. Pursuant to section 456.053(k), Florida Statutes (2009), an "investment interest" means an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments. All USHW physicians, including the Managing Physician, are salaried employees of the group, with no equity or debt security in USHW. Accordingly, under the facts as described herein and Section 456.053, Florida Statutes, the proposed USHW Managing Physician Program is not precluded by Florida's Patient Self-Referral Act.

**Florida's Patient Brokering Prohibition Act.**

21. Section 817.505(1), Florida Statutes, provides that it is unlawful for any health care provider or health care facility to:

- (a) Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;
- (b) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility;
- (c) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgement of treatment from a health care provider or health care facility; or
- (d) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a), paragraph (b), or paragraph (c).

22. The Florida Patient Brokering Prohibition Act does not apply to "any payment, compensation, or financial arrangement within a group practice as defined in Section 456.053, provided such payment, compensation, or arrangement is not to or from persons who are not members of the group practice." Section 817.505(3)(b), Florida Statutes (2009).

23. The USHW Managing Physician Program involves the payment within the group practice of a pre-determined percentage based on a sliding scale which correlates to specified levels of net profit attained, based on the aggregate net profit of the clinic if the clinic achieves a year-over-year increase in profitability, in an amount that does not in any case exceed the fair market value of the management and administrative services provided by the Managing Physician, who is a member of the group practice.

24. The USHW Managing Physician Program as set forth above does not involve the payment of any kickback or inducement of any kind for the referral of patients, or in return for the acceptance of treatment by a patient. The USHW Managing Physician does not engage in marketing or solicitation of business. All occupational health care services and items provided by USHW are provided solely at the request of employers, or employer-contracted carriers, who receive no payment, compensation, or inducement of any kind from or on behalf of USHW. Further, USHW does not accept payments from patients with respect to any occupational health care services provided. Accordingly, under these facts, the USHW Managing Physician Program is not precluded by Section 817.505, Florida.

Florida Anti-Kickback Statute.

25. Section 456.054, Florida Statutes, provides that:

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.

26. Under the statute, "kickback" is defined as:

[R]emuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense.

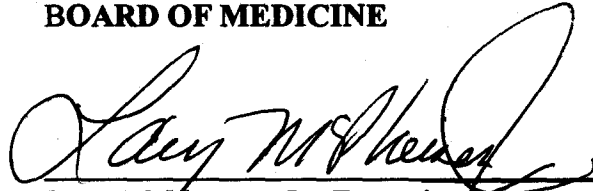
27. As noted above, the compensation paid to USHW physicians for professional medical services provided consists of an hourly wage based on the fair market value of the physician's time, without regard to the volume or value of referrals made by the physician. The compensation proposed is limited to compensation for specific administrative and management services, which do not include marketing, and is not based on or tied to the physician's provision of professional medical services. While the compensation is dependent upon the overall aggregate net profitability of the group, the Managing Physician lacks both the discretion and any economic incentive to engage in or promote inappropriate medical referrals or the overutilization of health care services. The compensation to be paid to the Managing Physician for his or her administrative services will be tax deductible as an ordinary and necessary expense of operation of the clinic. Accordingly, under the facts set forth above, the USHW Managing Physician Program is not precluded by Section 456.054, Florida Statutes (2009).

28. The Board's response to this Petition addresses solely the question propounded by the Petitioners and only addresses issues regarding the practice of allopathic medicine in Florida under Florida law. The Board's conclusion is based solely on the Board's application of the factual circumstances outlined in the Petition to the pertinent statutory and rule provisions set forth above.

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

DONE AND ORDERED this 23 day of AUGUST, 2010.

**BOARD OF MEDICINE**



Larry McPherson, Jr., Executive Director  
For Onelia Lage, 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: Karen A. Putnal, Esq. and Robert A. Weiss, Esq., Parker, Hudson, Rainer & Dobbs LLP, 118 N. Gadsden Street, 2<sup>nd</sup> Floor, Tallahassee, Florida 32301; and by email transmission to Edward A. Tellechea, Senior Assistant Attorney General, at ed.tellechea@myfloridaleagal.com; and Josefina M. Tamayo, General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, on this 24 day of August, 2010.

7010 0780 0002 2870 0688

Return to:	Postage	<b>OFFICE</b>	S. Postal Service <b>CERTIFIED MAIL</b> with Restricted Mail Form
Business Reply No.:	• Certified Fee		
or PO Box No.:	Return Receipt Fee (measurement required)		
Zip Code, ZIP+4:	Registered Delivery Fee (measurement required)		
	Total Postage & Fees	\$	



**Deputy Agency Clerk**

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF MEDICINE

FILED  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK *Angel Sanders*  
DATE **MAY 11 2010**

IN RE: PETITION FOR DECLARATORY  
STATEMENT

U.S. HEALTHWORKS MEDICAL GROUP  
OF FLORIDA, INC.

---

Petitioner U.S. HealthWorks Medical Group of Florida, Inc., requests an advisory statement from the Florida Board of Medicine with respect to the following question:

Whether a provider organized as an occupational health care group practice may create an incentive program whereby the practice pays a managing physician who is a member of the group a percentage of the group's aggregate net profit as compensation for management services when (1) the group consists of employed physicians who have no investment interest in the group; (2) all occupational health care services provided are pre-authorized; (3) the managing physician does not engage in marketing or solicitation of business, and (4) there is no economic incentive to engage in the inappropriate overutilization of occupational health care services?

I. FACTS.

U.S. HealthWorks Medical Group of Florida, Inc. ("USHW") is a Florida corporation and a certified occupational health care provider pursuant to section 440.13(1), Florida Statutes (2009). USHW is a single legal entity that employs physicians and is a "group practice" as defined by section 456.053(3)(h), Florida Statutes (2009). USHW provides pre-authorized occupational health care services in conjunction with the Florida workers' compensation program, and in addition provides certain employer services, including pre-employment screening and fitness-for-work evaluations, at the request of and on behalf of employers. To a

more limited extent, USHW may provide walk-in urgent care services to the public.<sup>1</sup> USHW receives no funds from either Medicare or Medicaid. With respect to its provision of occupational health care services USHW receives no payment from patients.

USHW intends to appoint a managing physician (the "Managing Physician") at each of the USHW clinic locations who will have certain administrative responsibilities in addition to treating patients, as more fully described below, and to compensate this physician for effective office management services, independent of the compensation paid to the physician for his or her professional medical services.

A. Occupational Health Care.

The occupational health care system is distinct from and exists in parallel with the larger general health care system in the state of Florida. Because it is separately financed and organized around different principles than general health care, it is not accurate to speak of occupational health care as a subset of the health care system in general.<sup>2</sup> As noted by the Florida Legislature, the state's occupational health care program is a highly structured system intended and designed to be "efficient and self-executing."<sup>3</sup>

As noted above, the occupational health care system is built on different assumptions than the general (traditional fee-for-service) health care system. While the physician has primary responsibility for the injured worker (the patient) and his/her plan of treatment for medical services, the Florida Division of Workers' Compensation controls through regulation both the process for the referral of patients to workers' compensation health care providers, as well as the utilization of services. The employer or employer-contracted insurance carrier selects the

---

<sup>1</sup> More than ninety percent of USHW's revenue is derived from the provision of occupational health care and employer-related (e.g., pre-employment physicals and drug screen testing) services.

<sup>2</sup> Tee L. Guidotti, John W.F. Cowell, Geoffrey G. Jamieson, Occupational Health Care Services: A Practical Approach (Caldwell: The Blackburn Press, 2002).

<sup>3</sup> Section 440.015, Fla. Stat. (2009).

provider of workers' compensation services for the injured worker. All services provided or requested by the health care provider must be pre-authorized pursuant to a regulated process.<sup>4</sup>

The workers' compensation system thus involves a built-in structural mechanism that controls and regulates the referral for and utilization of health care services that is not present in the general health care system and that differentiates the risk between the two systems. While the physician-patient relationship is fundamentally the same in both the workers' compensation and traditional fee-for-service settings, the workers' compensation practitioner is governed by explicit administrative rules and procedures that are designed to protect the legitimate interests of the employer, the carrier and the regulators in preventing the inappropriate or over-utilization of health care services or items. Within this context, and unlike a traditional fee-for-service group practice, the profitability of the USHW group practice would quickly diminish in the event of inappropriate utilization or over-utilization of services, because the services would not be authorized by the payor.

**B. USHW Managing Physician Duties and Proposed Compensation.**

Physicians employed by USHW do not have an ownership or investment interest in USHW. All of USHW's physicians, including the Managing Physician, receive a pre-determined, set compensation for their professional medical services which is based on the fair market value of the physician's time and the actual professional services performed.

In addition to providing medical services, the USHW Managing Physician also has responsibility for administrative and management oversight of the clinic, including improving outcomes, optimizing staff schedules, managing expenses, implementing USHW policies and protocols with respect to the delivery of appropriate and high quality services, and maintaining effective client communication. The USHW Managing Physician's duties do not include

---

<sup>4</sup> Rule 69L-7.020, Florida Administrative Code, Workers' Compensation System Guide 2008 Edition, 5, 20-21.

marketing or solicitation of business. USHW employs national, regional and local sales and marketing managers who are responsible for the promotion and marketing of USHW's services to prospective clients. USHW does not actively directly solicit patients in any capacity, rather the focus of its marketing efforts are employer groups.

USHW distinguishes itself as an occupational health care provider and maintains a competitive edge within the occupational health care field by providing employers with highly efficient and appropriate health care services, resulting in reduced lost work time and medical expenses. An important component of USHW's business is a proprietary client communication system that facilitates clear and timely communication among the medical provider, the employer, and the claims examiner, and is key to helping injured workers get back to work quickly and safely. The USHW Managing Physician has responsibility for ensuring that USHW's standards with respect to quality of care, communication, and responsiveness to the needs of employers, patients, and regulators are met. USHW believes that the on-site administrative oversight of its clinics is best provided by a physician. As a clinician, the Managing Physician is in the best position to make decisions with respect to issues such as patient flow, staff composition and scheduling, and the local management of supply inventories and drug formularies.

USHW proposes to pay its Managing Physicians, on an annual basis, a pre-determined percentage based on a sliding scale which correlates to specified levels of net profit attained, based on the aggregate net profit of the clinic if the clinic achieves a year-over-year increase in profitability (the "USHW Managing Physician Program") as compensation for management services. Compensation thus paid to the Managing Physician will not exceed the fair market value of the management and administrative services provided by the Managing Physician, and will be tax deductible by USHW as an ordinary and necessary operating expense.

## II. LEGAL ANALYSIS

In general, physician compensation programs are appropriately subject to analysis and scrutiny under applicable state and federal laws that are designed to remove economic incentives for inappropriate medical referrals. As a Florida certified occupational health care provider, USHW is subject to Florida law with respect to its physician compensation arrangements. Because USHW does not receive funds from the Medicare or Medicaid programs, USHW is not subject to regulation under the federal "Stark" law. Accordingly, the following analysis of USHW's proposed Managing Physician Program addresses only Florida law.

As a fundamental matter, the USHW Managing Physician has no economic incentive to make inappropriate medical referrals. The Managing Physician receives a pre-determined, set compensation for his or her professional medical services that is based on the fair market value of the physician's time and the actual professional services performed. The Managing Physician's compensation for professional medical services has no correlation to the volume or value of the physician's referrals.

In addition, all services provided by USHW physicians or other clinical personnel within the group practice are pre-authorized, pursuant to Florida's Division of Workers' Compensation regulations. Accordingly, the economic reality of the occupational health care provider is that inappropriate or over-utilization of services results in an immediate loss of revenue (because the services either will not be authorized for payment or payment will be reduced by the carrier or self-insured employer). Moreover, inappropriate utilization of occupational health care services by an occupational health care provider inevitably leads to a rapid loss of business reputation, the potential loss of certified status under Florida law, and ultimately the potential loss of the provider's business. These factors together create an environment where there is no economic incentive for the inappropriate utilization of services. Instead, there is a strong economic as well

as a professional incentive to consistently achieve positive outcomes through the appropriate utilization of high quality health care services and to meet the needs of employers, carriers, and patients through an organized and efficiently run clinic environment.

The USHW Managing Physician Program is more specifically discussed below within the context of Florida law governing physician compensation arrangements.

A. Florida's Self-Referral Act.

Section 456.053, Florida Statutes, states that "a health care provider may not refer a patient for the provision of designated health services to an entity in which the health care provider is an investor or has an investment interest."

The USHW Managing Physician does not have an ownership or investment interest in USHW. Pursuant to section 456.053(k), Florida Statutes (2009), an "investment interest" means an equity or debt security issued by an entity, including, without limitation, shares of stock in a corporation, units or other interests in a partnership, bonds, debentures, notes, or other equity interests or debt instruments. All USHW physicians, including the Managing Physician, are salaried employees of the group, with no equity or debt security in USHW.

Accordingly, under the facts as described herein and applicable law, the proposed USHW Managing Physician Program is not a violation of Florida's Self-Referral Act.

B. Florida's Patient Brokering Prohibition Act.

Section 817.505(1), Florida Statutes, states that it is unlawful for any person to:

Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or to engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;

Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or to engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility; or

Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or to engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgement of treatment from a health care provider or health care facility.

The Florida Patient Brokering Prohibition Act does not apply to "any payment, compensation, or financial arrangement within a group practice as defined in section 456.053, provided such payment, compensation, or arrangement is not to or from persons who are not members of the group practice." Section 817.505(3)(b), Florida Statutes (2009).

The USHW Managing Physician Program involves the payment within the group practice of a pre-determined percentage based on a sliding scale which correlates to specified levels of net profit attained, based on the aggregate net profit of the clinic if the clinic achieves a year-over-year increase in profitability, in an amount that does not in any case exceed the fair market value of the management and administrative services provided by the Managing Physician, who is a member of the group practice.

The USHW Managing Physician Program does not contemplate or involve the payment of any kickback or inducement of any kind for the referral of patients, or in return for the acceptance of treatment by a patient. The USHW Managing Physician does not engage in marketing or solicitation of business. All occupational health care services and items provided by USHW are provided solely at the request of employers, or employer-contracted carriers, who receive no payment, compensation, or inducement of any kind from or on behalf of USHW. Further, USHW does not accept payments from patients with respect to any occupational health care services provided.

Under these facts, the proposed compensation under the USHW Managing Physician Program is permissible under the group practice exception in section 817.505(3)(b), Florida Statutes, for "any payment, compensation, or financial arrangement within a group practice as defined in section 456.053" and does not violate the Florida Patient Brokering Prohibition Act.

**C. Florida Anti-Kickback Statute.**

**Section 456.054, Florida Statutes provides that:**

**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.**

**Under the statute, "kickback" is defined as:**

**[R]emuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense.**

**Section 456.054(1), Fla. Stat. (2009).**

**As noted above, the compensation paid to USHW physicians for professional medical services provided consists of an hourly wage based on the fair market value of the physician's time, without regard to the volume or value of referrals made by the physician.**

**The compensation proposed in the USHW Managing Physician Program is limited to compensation for specific administrative and management services, which do not include marketing, and is not based on or tied to the physician's provision of professional medical services. While the compensation under the USHW Managing Physician Program is dependent upon the overall aggregate net profitability of the group, as discussed above the Managing Physician lacks both the discretion and any economic incentive to engage in or promote inappropriate medical referrals or the overutilization of health care services. The compensation to be paid to the Managing Physician for his or her administrative services will be tax deductible as an ordinary and necessary expense of operation of the clinic.**

**Accordingly, under the facts as described herein and applicable law, the USHW Managing Physician Program does not violate the Florida Anti-Kickback Statute.**

III. CONCLUSION

Based on the facts and law as set forth herein, Petitioner USHW seeks a statement by the Board of Medicine that the compensation proposed under the USHW Managing Physician Program, as described herein, consisting of a payment by USHW of a fixed percentage based on sliding scale of the group's aggregate net profit, measured on a year over year comparison, to a Managing Physician who is a member of the group, when (1) the group consists of employed physicians who have no investment interest in the group; (2) all occupational health care services provided are pre-authorized; (3) the managing physician does not engage in marketing or solicitation of business, and (4) there is no economic incentive to engage in the inappropriate overutilization of occupational health care services does not violate the Florida Self-Referral Act, the Florida Patient Brokering Act, or the Florida Anti-Kickback Statute.

DATED THIS 10<sup>th</sup> day of May, 2010.

RESPECTFULLY SUBMITTED,



Karen A. Putnal  
Fla. Bar No. 0037745  
Robert A. Weiss  
Fla. Bar No. 0222038  
Parker, Hudson, Rainer & Dobbs LLP  
118 N. Gadsden Street, 2<sup>nd</sup> Floor  
Tallahassee, FL 32301  
(850) 681-0191  
(850) 681-9493 (fax)

**COUNSEL FOR U.S. HEALTHWORKS  
MEDICAL GROUP OF FLORIDA, INC.**