

BEFORE THE BOARD OF MEDICINE

IN RE: The Petition for  
Declaratory Statement of:  
GENE E. MYERS, M.D.

FILED

Department of Professional Regulation  
AGENCY CLERK

CLERK *Michael L. Womack*

DATE *10-25-88*

FINAL ORDER

THIS MATTER came before the Board of Medicine pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code, on June 4, 1988, in Tallahassee, Florida, for the purpose of considering the Petition for Declaratory Statement filed by Gene E. Myers, M.D.

Having considered the Petition, the letter amending the Petition dated April 14, 1988, the applicable law, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner is licensed in the State of Florida as a medical doctor, having been issued license number ME 0030363.
2. The factual scenario Petitioner presents is as follows:  
Petitioner is a shareholder in a corporation which owns equipment. The equipment would be either leased or sold to the Limited Partnership. The technicians operating the equipment would either be corporate employees leased to the Limited Partnership or employed directly by the Limited Partnership. The Limited Partnership will be formed for the purpose of performing

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peripheral vascular laboratory studies. The partnership would offer Limited Partners units through a private placement being conducted under applicable exemptions from registrations under state and federal securities laws. Most if not all of the Limited Partners would be physicians. The General Partner would not be a physician.

3. Each physician who refers a patient to the Limited Partnership would advise that patient that he has an ownership interest in the Limited Partnership. The return on investment of the Limited Partners would be based upon the overall success of the Limited Partnership and based upon the investment made by the Limited Partner. The return on investment would not be based upon the number of referrals by a physician to the facility.

4. This Petition was noticed by the Board in the May 13, 1988, issue of the Florida Administrative Weekly, Vol. 14, No. 19, Pg. 1779.

#### CONCLUSIONS OF LAW

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

2. The Petition filed by Petitioner, as amended by the letter dated April 14, 1988, is in substantial compliance with the provisions of Section 120.565, Florida statutes, and Chapter 28-4, Florida Administrative Code.

3. Petitioner has a requisite interest to maintain this proceeding.

4. Petitioner requests that the Board interpret Sections 458.311(1)(i), (n), and (gg), Florida Statutes, in light of the proposed arrangement and state whether the arrangement set forth above in the Findings of Fact would violate those statutory provisions. Petitioner states that he believes that this arrangement is consistent with the past petitions approved by the Board, such as the Order on the Petition for Declaratory Statement for Melbourne Health Associates, Inc. and John Lozito, M.D., 9 FALR 6295 (Order filed December 3, 1987).







