

DEPARTMENT OF PROFESSIONAL REGULATION

BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY
STATEMENT OF:

WILLIAM D. ERTAG, M.D.

Petitioner.

FINAL ORDER

THIS CAUSE came before the Board of Medicine (hereinafter Board) pursuant to Section 120.565, Florida Statutes, and Rule Chapter 20-4, Florida Administrative Code, on October 9, 1983, in Tampa, Florida, for the purpose of considering the Petition for Declaratory Statement filed by William D. Ertag, M.D. (hereinafter Petitioner). No person or entity sought to intervene as a party.

Having considered the petition, the argument and testimony of the Petitioner, 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 under Chapter 458, Florida Statutes. His address is 720 Goodlette Road, Suite 203, Naples, Florida.

2. Petitioner is the President, a Director, and a stockholder of a Florida corporation. Twelve other individuals own stock in the corporation, ten of whom are medical doctors licensed in the State of Florida and two of whom are individuals who do not hold licenses to practice medicine in the State of Florida. Each of the thirteen investors owns 7.69% of the stock of the corporation. The corporation is not a publicly held corporation and its shares are not traded on a national exchange or over-the-counter market.

3. The corporation was formed in order to establish, own, and operate a durable medical equipment business. The business will rent and sell home medical equipment and supplies, including certain drugs as intravenous solutions, to clients of the corporation. The corporation will maintain an office and will staff the office with non-physician employees. The physician stockholders will not be employees of the corporation.

4. Another business entity in the durable medical medical equipment business (hereinafter DME business) has offered to enter into a subcontract with the corporation; a copy of the proposed subcontract was attached to the Petition for Declaratory Statement, pursuant to which the other entity and the corporation will perform the following services and have the following responsibilities:

(a) The two business entities will establish policies including health care protocols, provision of care for indigents, and billing and collection procedures.

(b) Employees of the corporation will advise the DME business of client needs. The DME business will acquire and deliver to the clients home care equipment and supplies responsive to the needs communicated. The DME business also will

provide client training and follow-up visits; will provide repair, maintenance, and pickup services; and will implement a management reporting tracking system to monitor the equipment and services provided.

(c) The DME business will bill and collect for all services provided to the clients of the corporation. The DME business will post all collections to the appropriate accounts and deposit all monies in the corporation's bank account. The corporation will be responsible for all bad debts and uncollectible accounts.

(d) The DME business will bill the corporation for all services rendered by that business, based on the price of the products rented or purchased. Petitioner asserts that he believes that the compensation represents fair market value for the services to be rendered and has been advised by the DME business that the compensation arrangement is standard within the industry.

(e) Petitioner asserts that the corporation will perform periodic reviews of all arrangements and operations to insure compliance with existing and future standards, regulations, and guidelines.

(f) Petitioner asserts that his investment in the corporation is \$500 and that the \$500 is being treated by the corporation as capital. Petitioner will realize a return on the capital investment solely in accordance with the percentage of stock ownership in the corporation. The return will in no manner, Petitioner asserts, be based upon the number of referrals by him. Petitioner is subject to the terms of a shareholder's agreement, a copy of which was attached to the Petition for Declaratory Statement.

(g) Petitioner states that the ability to purchase stock in the corporation is not tied in any way to the ability or willingness of Petitioner or of any of the other stockholders to make referrals to the corporation or to the likelihood that Petitioner or any of the other stockholders will make referrals.

