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Client Alert: AHCA's Latest Interpretation of Florida's Health Care Clinic Statute

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Florida does not generally prohibit the corporate practice of medicine. However, Florida Statutes Chapter 400 Part X requires that any health care entity which meets the definition of a "Clinic" under the Statute must obtain a Health Care Clinic license. For the purposes of the Statute, "Clinic" is defined as "an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider." The Statute does provide for exemptions, which are listed in subsections (a) through (q).

One of the most commonly utilized exemptions is subsection (g). This subsection states:

A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this paragraph and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

Furthermore, this subsection is oft times relied upon by Advanced Practitioners Providers (APP), such as Physician Assistants and Advanced Practice Registered Nurses, so that the these individuals may own a practice without the need to have a Clinic license.

The Florida Agency for Health Care Administration (AHCA) has authority over this Statute from a regulatory perspective. In the case of *The Obstetric Physical Therapy Center, LLC v. The Agency for Health Care Administration*, case number 22-006PH, an AHCA Informal Hearing Officer was asked to determine whether a licensed physical therapist assistant who owned 100 percent of a health care entity satisfied the requirements of subsection (g). The Informal Hearing Officer found that because the owner was a physical

therapy assistant (PTA), and PTAs are required by law to be supervised by a licensed physical therapist, the owner could not qualify for the exemption. In *Obstetric Physical Therapy Center*, the Informal Hearing Officer found that a physical therapist would need to be in a supervisory capacity as to this physical therapy practice and that the PTA was not capable of being in any position of authority over a physical therapist. Therefore, the Informal Hearing Officer declared that the PTA failed to meet the components of the exemption related to the ability to "either obtain or maintain the responsibility for the entity's compliance with all federal and state laws…," and the Informal Hearing Officer opined that the owner in this case violated the requirement that the practitioner-owner not supervise services beyond the scope of the practitioner-owner's license. Based on these findings, the Informal Hearing Officer denied the requested exemption.

In light of this decision by the AHCA, practitioner-owners who rely on an exemption under subsection (g) should immediately consult experienced health care counsel. Reliance on an exemption that the AHCA may determine is not valid could place prior collections and billings at risk.

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