

DECLARATORY RULING OF THE
MEDICAL LICENSURE COMMISSION

A. The Medical Licensure Commission has received a Petition for Declaratory Ruling filed under the provisions of Rule 545-X-1-.09(1) of the Rules and Regulations of the Medical Licensure Commission of Alabama. The Petitioners are Brookwood Health Services, Inc. and Brookwood Primary Care Centers, Inc., both of Birmingham, Alabama. Petitioners seek a declaratory ruling on the application of §34-24-360(10) and §34-24-360(13), Code of Alabama 1975 to the statement of facts as contained in the Petition and seek a declaratory ruling with respect to those statutes which would be enforceable by the Commission.

B. The following statement of facts is set forth in the Petition for Declaratory Ruling:

4. **STATEMENT OF FACTS.** Petitioner Brookwood Health Services, Inc. (“BHSI”) owns and operates AMI Brookwood Medical Center in Birmingham, Alabama. Petitioner Brookwood Primary Care Centers, Inc. (“BPCC”) owns and operates an outpatient medical clinic in Columbiana, Alabama (the “Columbiana Clinic”). BHSI and BPCC are wholly-owned subsidiaries of AMI. Pursuant to written employment agreements, BHSI has employed physicians to provide medical services to patients at the Columbiana Clinic. BHSI may assign the employment agreements to BPCC. The employment agreements require the physicians to make all decisions concerning the medical services provided to the patients. Neither of the Petitioners are able to influence such decisions. The physicians treat patients in such manner as the physicians, in the independent exercise of their medical judgment, determine to be in the best interests of the patients subject only to the rules of the Executive Committee of the Brookwood Hospital Medical Staff which is comprised exclusively of licensed physicians.

Specifically, each employment agreement contains the following provisions:

“Employee shall make any and all decisions pertaining or related to the practice of medicine and the care and treatment of patients.”

“Notwithstanding any provision hereof to the contrary, the Employee shall perform all services with respect to the diagnosis and treatment of patients in such manner as the employee, in the independent exercise of his medical judgment, deems to be in the best interests of the patients, subject only to the rules and regulations which are adopted by, and the decisions of, the Executive Committee of the Medical Staff of Brookwood Hospital, which shall be comprised exclusively of physicians licensed to practice medicine in the State of Alabama.”

“Subject to the authority of the Executive Committee as provided above, the parties specifically agree that the Employee shall have final authority over all medical decisions and the care and treatment of patients and all other matters related thereto.”

As the foregoing indicates, the Petitioners employ physicians who are licensed to practice medicine in Alabama and neither of the Petitioners exercises any control over the manner in which the physicians provide medical services or the independent exercise of the physicians’ medical judgment.

C. For the reasons indicated below, it is the ruling of the Medical Licensure Commission that the Petitioners’ employment of a licensed physician by a general business corporation does not constitute fee splitting within the meaning of §34-24-3690(1) and that the practice of medicine by a physician employed by a general business corporation does not constitute aiding and abetting the unlicensed practice of medicine within the meaning of §34-24-360(13). The Commission is in agreement with the position stated by the Petitioners that the statutory prohibition concerning the payment to a third party for referral of a patient is intended to ensure that a patient will not be referred to the physician because of the physician’s willingness to pay the referring party for such referral. That statutory prohibition is not intended to apply to salaries which are paid pursuant to a bona fide employment relationship between a physician and a corporation. The Medical Licensure Commission takes note of and agrees with the Declaratory Ruling issued by the Board of Medical Examiners on the 21st day of October, 1992 which ruling stated that a business corporation which employs a physician to practice medicine under the same factual circumstances as set forth in this request is not engaged in the unlicensed practice of medicine within the meaning of §34-24-51. In accordance with the declaratory ruling of the State Board of Medical Examiners, it is the ruling of the Commission that because a business corporation is not engaged in the unlicensed practice of medicine solely by virtue of its employment of a licensed physician, then the physician is not engaged in aiding or abetting the unlicensed practice of medicine by the corporation within the meaning of §34-24-360(13).

D. This Declaratory Ruling is limited to the facts and circumstances stated above and is intended by the Commission to represent a general statement of Commission policy with respect to all similarly situated parties.

This Declaratory ruling is entered this 28st day; of October, 1992.

/s/ Jerry N. Gurley, M. D.

Jerry N. Gurley, M. D., Chairman
Medical Licensure Commission

DECLARATORY RULING OF THE
ALABAMA BOARD OF MEDICAL EXAMINERS

A. The Alabama Board of Medical Examiners has received a Petition for Declaratory Ruling filed under the provisions of Rule 540-X-1-.10(1) of the Rules and Regulations of the State Board of Medical Examiners. The Petitioners are Brookwood Health Services, Inc. and Brookwood Primary Care Centers, Inc., both of Birmingham, Alabama. Petitioners seek a declaratory ruling on the application of §34-24-50 and §34-24-51, Code of Alabama 1975 to the statement of facts as contained in the Petition and seek a declaratory ruling with respect to those statutes which would be enforceable by the Board pursuant to §34-24-52, Code of Alabama 1975.

B. The following statement of facts is set forth in the Petition for Declaratory Ruling:

4. STATEMENT OF FACTS. Petitioner Brookwood Health Services, Inc. (“BHSI”) owns and operates AMI Brookwood Medical Center in Birmingham, Alabama. Petitioner Brookwood Primary Care Centers, Inc. (“BPCC”) owns and operates an outpatient medical clinic in Columbiana, Alabama (the “Columbiana Clinic”). BHSI and BPCC are wholly-owned subsidiaries of AMI. Pursuant to written employment agreements, BHSI has employed physicians to provide medical services to patients at the Columbiana Clinic. BHSI may assign the employment agreements to BPCC. The employment agreements require the physicians to make all decisions concerning the medical services provided to the patients. Neither of the Petitioners are able to influence such decisions. The physicians treat patients in such manner as the physicians, in the independent exercise of their medical judgment, determine to be in the best interests of the patients subject only to the rules of the Executive Committee of the Brookwood Hospital Medical Staff which is comprised exclusively of licensed physicians.

Specifically, each employment agreement contains the following provisions:

“Employee shall make any and all decisions pertaining or related to the practice of medicine and the care and treatment of patients.”

“Notwithstanding any provision hereof to the contrary, the Employee shall perform all services with respect to the diagnosis and treatment of patients in such manner as the employee, in the independent exercise of his medical judgment, deems to be in the best interests of the patients, subject only to the rules and regulations which are adopted by, and the decisions of, the Executive Committee of the Medical Staff of Brookwood Hospital, which shall be comprised exclusively of physicians licensed to practice medicine in the State of Alabama.”

“Subject to the authority of the Executive Committee as provided above, the parties specifically agree that the Employee shall have final authority over all medical decisions and the care and treatment of patients and all other matters related thereto.”

As the foregoing indicates, the Petitioners employ physicians who are licensed to practice medicine in Alabama and neither of the Petitioners exercises any control over the manner in which the physicians provide medical services or the independent exercise of the physicians’ medical judgment.

C. For the reasons indicated below, it is the ruling of the Alabama Board of Medical Examiners that the Petitioners’ employment of licensed physicians to provide medical services to patients at the Columbiana Clinic does not constitute the unlicensed practice of medicine by the Petitioners in violation of §34-24-51, Code of Alabama 1975. The Board is in agreement with the position stated by the Petitioners that §34-24-50 and §34-24-51 are intended to protect patients from the danger of receiving medical treatment from an individual who is not qualified to practice medicine. Since under the facts stated in the Petition for Declaratory Ruling the patients at the clinic receive medical treatment only from licensed physicians and the Petitioners are prohibited from influencing the manner in which the physicians provide medical services to patients, the employment by Petitioners of physicians duly licensed to practice medicine does not expose the patients to the danger which the statutes were intended to prevent. Physicians are free to enter into contracts of employment for their professional services with professional corporations, non-profit corporations, business corporations, partnerships, joint ventures or other entities, provided however, that the physician must exercise independent judgment in matters related to the practice of medicine and that his or her actions with respect to the practice of medicine must not be subject to the control of an individual not licensed to practice medicine.

D. This Declaratory Ruling is limited to the facts and circumstances stated above and is intended by the Board to represent a general statement of Board policy with respect to all similarly situated parties.

This Declaratory ruling is entered this 21st day; of October, 1992.

/s/ Richard H. Esham, M. D.

Richard H. Esham, M. D., Chairman
Alabama Board of Medical Examiners

DECLARATORY RULING OF THE
MEDICAL LICENSURE COMMISSION

The Medical Licensure Commission has received a Petition for Declaratory ruling filed under the provisions of Rule 545-X-1-.09 of the rules and regulations of the Medical Licensure Commission. The petitioner is Morpheus, Inc., an Alabama business corporation. Petitioner seeks a declaratory ruling on the application of §34-24-50 and §34-24-51 to the statement of facts as contained in the petition and seeks a declaratory ruling with respect to those statutes which are enforceable by the Commission pursuant to §34-24-52.

The following statement of facts is taken from the Petition for Declaratory Ruling:

_____, M. D., a physician licensed to practice medicine in the State of Alabama, presently practices medicine in Huntsville, Alabama, as an unincorporated sole proprietor. In addition, Dr. _____ operates an unincorporated sleep laboratory in connection with his professional medical practice. The sleep laboratory employs certain key personnel, including a registered polysomnographic technologist and a business manager. Dr. _____ proposes to incorporate his medical practice and the sleep laboratory under the Alabama Business Corporation Act by forming Petitioner. Dr. _____ will receive 80% of the capital stock of the corporation in exchange for transfer of the assets and liabilities of his medical practice and sleep laboratory. The corporation will simultaneously issue 15% of the capital stock to the technologist and 5% of the capital stock to the business manager. Dr. _____ will retain control of Petitioner. The Petitioner will perform billing, collection, and accounting services and will market and promote its activities. The Petitioner will also perform certain technical services in regard to the sleep laboratory.

Upon incorporation, Dr. _____ will enter into an employment agreement with the corporation which will contain, among other terms, the following provision regarding the performance of professional medical services:

“Employee shall make any and all decisions pertaining or related to the practice of medicine and the care and treatment of patients. Notwithstanding any provision hereof to the contrary, the Employee shall perform all services with respect to the diagnosis and treatment of patients in such manner as the Employee, in the independent exercise of his medical judgment, deems to be in the best interest of the patients. The employee shall have final authority over all medical decisions in the care and treatment of patients and all of the matters related thereto. The Employer shall not exercise any control over the manner in which the Employee provides medical services or the independent exercise of Employee’s medical judgment.”

Dr. _____ will receive compensation from the Petitioner in the form of salary and bonuses based principally on income production.

For the reasons indicated below, it is the ruling of the Medical Licensure Commission that the Petitioner's employment of Dr. _____ to provide medical services to patients does not constitute the unlicensed practice of medicine by the Petitioner in violation of §34-24-50 or §34-24-51. Following the reasoning previously announced by this Commission in an October 28, 1992 Declaratory Ruling issued at the request of Brookwood Primary Care Centers, Inc., the employment by the Petitioner of a physician licensed to practice medicine does not mean that the Petitioner is engaged in the unlicensed practice of medicine, provided, however, that the employed physician must exercise independent medical judgment in all matters related to the practice of medicine and his or her actions with respect to the practice of medicine must not be subject to the control of an individual not licensed to practice medicine. Only a properly licensed physician may engage in the practice of medicine. An employed physician who permits unlicensed corporate superiors to make medical decisions or to otherwise interfere with the physician-patient relationship may be subject to disciplinary action for aiding and abetting the unlicensed practice of medicine under §34-24-360.

This declaratory ruling is limited to the facts and circumstances stated above and is intended by the Commission to represent a general statement of Commission policy with respect to all similarly situated parties.

ENTERED this 6th of November, 1995.

/s/ Jerry N. Gurley, M. D.
Jerry N. Gurley, M. D., Chairman