



ALABAMA STATE BOARD OF MEDICAL EXAMINERS
LARRY D. DIXON, EXECUTIVE DIRECTOR

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June 26, 2008

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Jason E. Gilmore, Esquire
Gordon, Dana, Still, Knight & Gilmore, LLC
600 University Park Place, Suite 100
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Dear Mr. Gilmore:

This will acknowledge receipt of your correspondence of April 1, 2008 wherein you set forth two hypotheticals and request that the Alabama State Board of Medical Examiners (the Board) answer them. In connection therewith, the Board has reviewed correspondence from Associate General Counsel Wendell Morgan to attorney James E. Turnbach dated January 14, 1999 regarding issues similar to those raised by you. In your letter, you have provided the following:

HYPOTHETICAL: A licensed professional of the Alabama Medical Association (physician) forms a limited liability company in Alabama (this "LLC") which is organized for the following purposes:

- (a) to purchase, otherwise acquire, hold and sell for investment purposes real and personal property and make other real and personal (or mixed) property investments, of every character and nature and wherever situated, as the members shall determine;
- (b) to borrow money and issue notes and other evidences of indebtedness, and to secure the payment or performance of its obligations by mortgage, deeds of trust, pledge, or otherwise;
- (c) to lend money with or without security, including but not limited to the security of mortgages, deeds of trust, pledges, or other hypothecations of real and personal property;
- (d) to draw, make, accept, endorse, discount, execute or issue promissory notes, drafts, bills of exchange, warrants, and other negotiable or transferable instruments;
- (e) to enter into and make, perform and carry out contracts of every kind and description made for lawful purposes, without limit as to amount, with any person, firm, association, limited liability company, or corporation, either public or private;

(f) to have one or more offices and to carry on all or any of the objects and purposes herein enumerated, and to conduct the business of the Company in any of the states of the United States of America, the District of Columbia, the territories of the United States, and foreign countries;

(g) to do business under fictitious or assumed names; to act as agent or principal; to become a member of a limited liability company; joint venture, association, general or limited partnership, trust, or any other form of business organizations, or a stockholder in a corporation, by purchase, investment, affiliation or otherwise; and

(h) to carry on any other lawful business permitted by Alabama law and to perform all acts in furtherance thereof.

The licensed physician anticipates utilizing this LLC in the delivery of medical services (i.e. the licensed physician will be employed by this LLC).

QUESTION #1: Can this LLC be used by the physician to conduct medical services, without amending the Articles of Organization to specifically provide that this LLC is organized to render medical professional services? In other words, can a licensed physician perform medical services in a LLC that was not organized (either initially or by amendment) to specifically perform professional services?

RESPONSE: It is the opinion of the Board that Question #1 should be answered in the negative. Alabama Code §10-12-1, et. seq., encompasses the Alabama Limited Liability Company Act. Specifically, Section 10-12-45 applies to any limited liability company organized to render professional services. Subsection (f) of this statute expressly states that a limited liability company organized to render professional services may render only one specific type of professional services, and services ancillary to them, and may not engage in any business other than rendering the professional services which it was organized to render, and services ancillary to them.

The Articles of Organization establish the existence of an LLC and describe its fundamental identifying and operating characteristics. The fact that the articles must be filed with the Judge of Probate and forwarded to the Secretary of State to legally create the LLC as a registered business entity within the state emphasizes their importance as they relate to the actual function or purpose of a limited liability company. If a function or purpose of the LLC includes the delivery of medical services or services ancillary to them, the Articles of Organization of the LLC must reflect that purpose.

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QUESTION #2: If the Board answers Question #1 in the affirmative, and still assuming that the LLC was not organized to perform professional services, can a membership interest in the LLC be transferred to a partnership, entity, or individual who is not a licensed physician and not engaged in performing medical services? In other words, are the ownership restrictions imposed upon professional corporations under Ala. Code §10-4-380 through 10-4-404 (and limited liability companies under Ala. Code §10-12-45) applicable to this LLC even though this LLC was not specifically organized to perform professional services?

RESPONSE: It is the opinion of the Board that Question #2 should be answered in the negative. Because the LLC in the proposed hypothetical is not organized (either initially or by amendment) to qualify as a professional services entity under the applicable statutes, the restrictions on transfer imposed by those statutes would not apply. This does not, however, address any restrictive transfer provisions imposed by the entity's organizational documents or contractual restrictions. The LLC still would not be authorized to hold itself out as engaging in the performance of medical services.

If you have any questions, please do not hesitate to call.

Sincerely,

ALABAMA BOARD OF MEDICAL EXAMINERS


Larry D. Dixon
Executive Director