



## ALABAMA STATE BOARD OF MEDICAL EXAMINERS

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August 5, 2004

James R. Lyle, Executive Director  
Alabama Association of Pathologists  
1054 Claussen Road, Suite 313  
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### DECLARATORY RULING

Dear Mr. Lyle:

This ruling issued pursuant to your request of May 4, 2004 for a declaratory ruling from the State Board of Medical Examiners concerning the application of Ala. Code Section 34-24-360(10) to the factual situation as related in your correspondence and its attachments. The Board understands that the following factual background constitutes the basis for your request:

#### I. FACTUAL BACKGROUND

##### A. [Company A]

Company A is a State X professional corporation with three shareholders, all of whom are specialists in pathology and are licensed to practice medicine in State X. Company A employs five pathologists and fourteen technicians. It provides pathology services (including clinical and anatomic pathology services) (1) to five hospitals, as well as to the patients of physicians in private practice.

##### B. Billing Procedures

Company A has several billing methodologies depending upon the payor. For Federal health care program patients, Company A bills its charges to the government payor and bills the patients for any applicable copayments or deductibles.

For non-Federal health care program patients, referring physicians have two payment options. One option is for Company A to bill its charges directly to the applicable third-party payor, and bill

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the patients for any copayments or deductibles. The alternative is for Company A to bill the physicians for the pathology services and accept that payment as payment in full. The physicians then bill the third-party payors and patients for the purchased pathology services. This option is commonly referred to as "account billing".

Under its account billing arrangements, Company A has traditionally offered physicians a discount off its usual charges which reflects the cost savings it realizes. Company A generates a single monthly statement to the referring physician who is required to pay on a prompt basis. Company A has represented that an account billing arrangement saves time and expense because: (I) claims are not submitted to a wide range of payors; (ii) Company A need not consider the claims submission criteria of the various payors; and (iii) Company A is not responsible for determining and collecting applicable copayments and deductibles owed by the patients. In addition, Company A realizes a better collection rate under account billing. Most physicians who have an account billing arrangement with Company A refer virtually all of their patients to Company A, whether the patients' specimens are covered under the account billing arrangement or are directly billed to the Federal health care program. (2)

### C. The Proposed Arrangement

Under the Proposed Arrangement, Company A will offer its account billing customers discounts that are greater than its cost savings, in order to match the prices of its competitors. Some of the discounted charges will be below the actual cost of providing the pathology services. In addition, Company A's profit margin for the non-Federal health care program business under the Proposed Arrangement would be less than the profit margin on the services that it bills directly to Federal healthcare programs. The discount will not be conditioned upon the physicians sending Company A its Federal health care program business. However, Company A has assumed that the physicians receiving discounts under the Proposed Arrangement will send virtually all of their patients to Company A. If Company A does not match the discounts of its competitors, Company A has represented that it will lose both the account billing business and the Federal health care program business of those clients.

## II. LEGAL ANALYSES

Ala Code Section 34-24-360(10) authorizes the Medical Licensure Commission to impose disciplinary sanctions on the license of a doctor of medicine or a doctor of osteopathy found to have committed the following act:

- (10) Division of fees or arrangement to split or divide the fees received for professional services with any person for brining or referring a patient.

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This section of the Medical Practice Act has not been interpreted by the appellant courts. The State Board of Medical Examiners, as the investigative and prosecutorial agency, would be required to interpret the provisions of Section 34-24-360(10) to determine whether or not a physician's conduct fell within the prohibitions of that section and warranted the filing of an administrative complaint before the Medical Licensure Commission. The Medical Licensure Commission of Alabama has final authority to determine whether or not a violation of the provisions of Section 34-24-360 has occurred. In applying the provisions of this section to the factual situation described above, the Board has concluded that the discount for professional services offered by Company A to the patient's treating physician under an "account billing" arrangement which permits the patient's treating physician to bill the patient (or the patient's third party payor) an amount greater than the amount paid by the patient's physician (i.e. the actual cost to the physician plus the amount of the discount) is the equivalent of a payment by Company A to the physician for the referral of that patient for pathology services and as such constitutes a violation of Section 34-24-360(10). The Board believes that the amount of the discount represents an additional payment to the physician for which he or she provided no service to the patient. The fact that the payment to the physician takes the form of a discount off of Company A's usual charge for the same service instead of a rebate or kickback of a percentage of the charge usually made by Company A for the same services does not distinguish the payment for the purposes of prohibition on the division of fees for bringing or referring a patient. Under Section 34-24-360(10) it is a violation both to make or offer to make a payment for the referral of a patient or to accept a payment for the referral of a patient. Therefore, any physician who participates in the discounted account billing arrangement could be subject to investigation by the Board of Medical Examiners and possible disciplinary sanctions imposed by the Medical Licensure Commission.

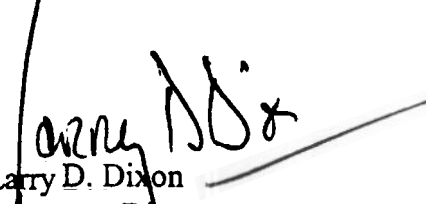
### III. CONCLUSION

Based on the facts recited above, the Board of Medical Examiners concludes that a discount for professional services provided to a patient's attending physician by a company offering pathology services under a billing arrangement which permits the treating physician to bill the patient (or the patient's third party payor) an amount greater than that actually paid by the attending physician for which no additional services were provided constitutes the division of fees or an arrangement to split or divide fees for professional services for bringing or referring a patient within the meaning of Ala Code Section 34-24-360(10). This declaratory ruling is limited to the facts stated herein and is not binding on the Medical Licensure Commission of Alabama.

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I hope that the foregoing information is responsive to your request.

Sincerely,  
ALABAMA BOARD OF MEDICAL EXAMINERS



Larry D. Dixon  
Executive Director

LDD:chk



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April 25, 2005

Michael R. Hess, Esquire  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
Southtrust Tower  
420 Twentieth Street, North, Suite 1600  
Birmingham, Alabama 35203

RE: Request for Clarification

Dear Mr. Hess:

This will acknowledge receipt of your recent correspondence requesting clarification from the State Board of Medical Examiners' concerning the application of a August 5, 2004 Declaratory Ruling to certain billing arrangements engaged in by radiologists. According to the information provided, your client is a radiology group concerned as to whether the Board's Declaratory Ruling concerning the practice of "account" or "client" billing for pathology services would also be applied to the purchase of radiology interpretations from a radiologist for a set fee which may be either more or less than the professional component of the global fee for that diagnostic imaging service.

Initially, I should like to point out that the August 5, 2004 Declaratory Ruling, is expressly limited to the factual situation stated in the ruling and is not intended by the Board of Medical Examiners to apply to other factual situations unrelated to the billing of pathology services in the manner described in the opinion.


Under the facts as stated in your correspondence, the patient's treating physician (usually not a radiologist) provides the patient with a diagnostic imaging service such as an x-ray or ultrasound test which service is billed to the patient (or to the patient's insurer) under a global fee which is intended to reimburse for both the technical component and the professional interpretation of the results. The billing physician, in turn, contracts with a radiologist to provide an interpretation of the diagnostic imaging test for a set fee which may or may not be less than the professional component of the service if it were billed separately. Under this arrangement, the billing physician has provided a service to the patient which includes both a technical and a professional component.

The Board believes that this fact distinguishes the payment arrangement between the billing physician and the radiologist from the conclusion reached in the August 5, 2004 Declaratory Ruling in which the Board found that "... the amount of the discount represents an additional payment to the physician for which he or she provided no service to the patient."

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The Board of Medical Examiners has therefore concluded that the August 5, 2004 Declaratory Ruling applicable to the billing of pathology services should not be interpreted to apply to the allocation of a global fee between the patient's treating physician and a radiologist engaged by the treating physician to provide interpretation of diagnostic tests. This opinion is not binding on the Medical Licensure Commission.

Yours sincerely,

  
Larry D. Dixon  
Executive Director