



ALABAMA STATE BOARD OF MEDICAL EXAMINERS

LARRY D. DIXON, EXECUTIVE DIRECTOR

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February 23, 2006

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William L. Chenault, III, Esquire
Chenault, Hammond, and Hall, P.C.
P.O. Box 1906
Decatur, Alabama O 35602

Dear Mr. Chenault:

This will acknowledge receipt of your correspondence of December 21, 2005 requesting, whether under the facts stated therein, there would be a conflict of interest for your client, a physician, to own a financial interest in a pharmacy located in a building separate and apart from the physician's place of practice. In your letter, you have provided the following factual background:

FACTUAL BACKGROUND

Your law firm represents a group of potential investors, one of whom is a physician. The group is interested in opening a pharmacy in a rural area in north Alabama that is approximately fifteen miles from the nearest existing pharmacy. The physician/investor treats patients in this geographic area. In the event he prescribes medications, he does not recommend any particular pharmacy where the prescription should be filled. The physician is considering acquiring less than a five percent (5%) ownership interest in a corporation that will open a pharmacy in a separate building located near the physician's medical clinic. The physician will not require his patients to fill their prescriptions at the outside pharmacy, nor will he refer his patients to the outside pharmacy. He will simply continue his practice of giving prescriptions to his patients without any statement or comment as to where the prescription should be filled.

ANALYSIS AND OPINION

For purposes of this letter, it should first be made clear that the opinions and statements contained herein are based upon a review of ethical opinions of the American Medical Association, the Alabama Medical Practice Act as it relates to physicians and the Alabama Board of Medical Examiners' Rules and Regulations. No effort has been made to review federal rules, regulations or laws

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which may be applicable, and this opinion does not consider what effect, if any, such rules or laws may have regarding your inquiry. If further information is needed regarding these rules or statutes, it is suggested that a health care attorney be contacted to determine what impact, if any, they may have on your client.

The American Medical Association (AMA) Code of Medical Ethics is widely recognized as the most comprehensive ethics guide for physicians who strive to practice ethically. The AMA, through its Council on Ethical and Judicial Affairs, develops ethics policy for the AMA. When physicians refer patients to facilities in which they have an ownership interest, a potential conflict of interest exists. In general, physicians should not refer patients to a "health care facility" which is located outside their office practice and at which they do not directly provide care or services when they have an investment interest in that facility. The AMA has determined that a pharmacy is a "health care facility" for the purposes of its guidelines and ethical opinions. Hence, when a physician has a financial interest in a pharmacy, it is inappropriate to refer patients to the pharmacy unless certain criteria referred to as "demonstrated need" or "direct provision of care requirements" of the AMA's Council on Ethical and Judicial Affairs are met. (See E-8.032 Conflicts of Interest: Health Facility Ownership by a Physician). It does appear that AMA guidelines allow for a physician to own or operate a pharmacy, however, as long as the physician does not refer his or her patients to the pharmacy. (See E-8.06 Prescribing and Dispensing Drugs and Devices). It should be emphasized that in all instances, the physician should respect the patient's freedom of choice in selecting who will fill the patient's prescription, just as the patient has a choice in choosing a physician. In essence, the patient has the right to have a prescription filled wherever he or she wishes.

In the event a physician chooses to own or operate a pharmacy, AMA guidelines also advise that the contractual agreements pertaining to the physician's ownership should be scrutinized to avoid any appearance of financial impropriety. For example, there should be no requirement that a physician-investor make referrals to the pharmacy or otherwise generate business as a condition for remaining an investor and the return on the physician's investment should be tied to the physician's equity in the facility rather than to the volume of referrals. (See E-8.032 Conflicts of Interest: Health Facility Ownership by a Physician). Note should also be made of the AMA's prohibition against fee splitting. Any clinic, laboratory, hospital or other health care facility that compensates a physician for referral of patients is engaged in fee splitting which,

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according to the AMA, is unethical. (See E-6.03 Fee Splitting: Referrals to Health Care Facilities).


The Board of Medical Examiners, in its Rules and Regulations, does not expressly prohibit the ownership of a pharmacy by a physician. However, the Board would remind you that any conduct or practice of a physician deemed to be unethical by AMA standards or by the standards of the Board could be considered grounds for disciplinary action against the physician.

The Medical Practice Act contains no expressed prohibition against a physician having an ownership interest in a pharmacy.

CONCLUSION

Based upon the foregoing factual background and analysis, the Board of Medical Examiners concludes that there is no conflict of interest for your client, the physician, to own a financial interest in an outside pharmacy as long as the physician does not refer patients to the pharmacy or recommend that they use the pharmacy and as long as patients are free to choose the pharmacy of their choice. Further, the Board would remind you that any agreements or contractual arrangements between the physician and the pharmacy should in no way result in fee splitting or situations creating a potential conflict of interest as referred to herein.

Sincerely,


Larry D. Dixon
Executive Director

LDD:kjh

CHENAULT, HAMMOND, AND HALL, P.C.
ATTORNEYS AT LAW

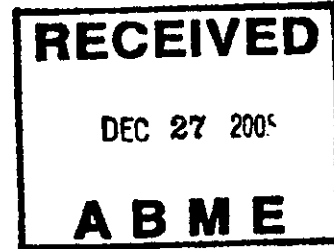
W.L. CHENAULT (1917-1982)
WILLIAM L. CHENAULT, III
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December 21, 2005

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VIA: FACSIMILE AND FIRST CLASS MAIL

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RE: Request for Written Opinion on Possible Conflicts of Interest
CHH File No.: 05-294C

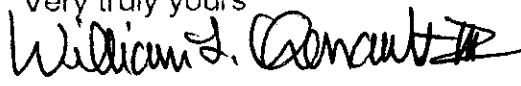
Dear Ms. Shaner

I am representing a group of potential investors, one of whom is a physician, who are interested in opening a pharmacy in a rural areas in north Alabama that is approximately fifteen (15) miles from the nearest existing pharmacy. The physician treats patients in the same geographic area. When he prescribes medications for his patients he does not now recommend any particular pharmacy where his patient should have the prescription filled.

The physician is contemplating acquiring less than a five percent (5%) ownership interest in a corporation that will open a pharmacy in a building near his medical clinic. The physician will not require his patients to fill their prescriptions at this outside pharmacy nor will he refer his patients to this outside pharmacy. He will simply give the prescriptions to his patients without any statement at all as to where the prescription should be filled.

I would like a written opinion from your office stating whether or not, under the above stated facts, there would be a conflict of interest for the physician to own a financial interest in the "new" outside pharmacy.

I would appreciate hearing from you as soon as possible.

Very truly yours

William L. Chenault, III.

WLC:wlc
Cc: Investors