



## ALABAMA STATE BOARD OF MEDICAL EXAMINERS

LARRY D. DIXON, EXECUTIVE DIRECTOR

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February 19, 2014

VIA U. S. MAIL AND  
ELECTRONIC MAIL ([jhenry@babbc.com](mailto:jhenry@babbc.com))

James F. Henry, Esq.  
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### DECLARATORY RULING

Dear Mr. Henry:

The Alabama Board of Medical Examiners has received the written request for a Declaratory Ruling filed on behalf of your client, the Practice, a licensed, independent pathology practice which provides both the technical and professional components of anatomical pathology services for physician clients. A Declaratory Ruling is sought on the application of Ala. Code § 34-24-360(10) to the statement of facts contained in the request.

The following statement of facts is set forth in the Request for Declaratory Ruling:

### FACTS

The Practice and a group of dermatologists (the "Dermatology Group") propose to enter into a written agreement pursuant to which the Practice would provide both the technical and professional components of anatomic pathology services to the Dermatology Group as requested from time to time . . . [T]he Dermatology Group would bill third-party payers and/or patients for all pathology services provided by the Practice, both technical and professional, and would retain all collections associated with the billings. The Dermatology Group would then pay the Practice a fee equal to a fixed percentage of the Dermatology Group's collections from such services.

The fee paid by the Dermatology Group to the practice would be set in advance through an arm's length negotiation between the parties. The fee would be set at a level that constitutes the estimated fair market value for the projected volume of work to be performed by the Practice. The projection would be based on the Dermatology Group's historical need for anatomical pathology services and would take into account the cost of providing the services.

The arrangement would be non-exclusive and either party would have the option of obtaining services from, or performing services for, any other person or entity of its choosing. The Dermatology Group would not be required to purchase any services from the Practice.

The fee percentage would remain unchanged during the initial one-year term of the agreement and would be subject to renegotiation only at the time of the agreement's annual renewal.

#### ANALYSIS

For the reasons outlined below, the Board concludes that the arrangement between the Practice and the Dermatology Group as described in your request would not violate Ala. Code § 34-24-360(10) which prohibits physicians from fee splitting or dividing fees received for professional services in exchange for referring a patient. This conclusion was reached in part because it appears that the payment for services of the Practice is not dependent upon the number of patients for services and that compensation given or received was not directly related to the referral of a patient. Based upon the facts, as stated in the request, the fee will be negotiated at arm's length and will constitute the estimated fair market value for the projected volume of pathology work to be performed based upon the Dermatology Group's historical need for pathology services and taking into account the cost of providing the services.

Additionally, the facts presented are substantially the same as stated in a Declaratory Ruling issued by the Board on April 17, 2007, concerning a substantially identical arrangement between a pathology practice and a group of urologists. In that ruling, the Board concluded that the contractual arrangement between the pathology practice and the urology group did not constitute a violation of Ala. Code § 34-24-360(10).

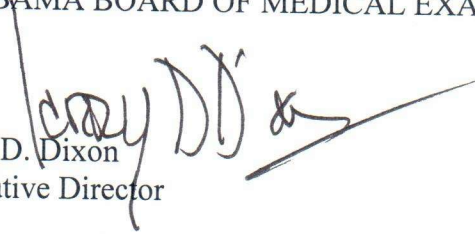
#### CONCLUSION

Based upon the foregoing statement of facts and analysis, the Board of Medical Examiners concludes that the contractual arrangement between the independent pathology practice and the group of dermatologists described in this Request for a Declaratory Ruling does

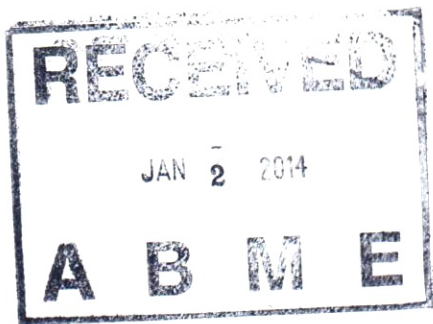
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not violate Ala. Code § 34-24-360(10). This Declaratory Ruling is limited to the facts and conclusions stated above and is not binding on the Medical Licensure Commission of Alabama.

Sincerely,  
ALABAMA BOARD OF MEDICAL EXAMINERS

  
Larry D. Dixon  
Executive Director

LDD:chk



December 31, 2013

Mr. Larry D. Dixon  
Executive Director  
Alabama State Board of Medical Examiners  
848 Washington Avenue  
Montgomery, AL 36101-0946

***Re: Request for Declaratory Ruling***

Dear Mr. Dixon:

Our law firm represents a licensed, independent pathology practice (the "Practice") that provides both the technical and professional components of anatomical pathology services for its physician clients. On behalf of the Practice, I hereby request a declaratory ruling from the Alabama State Board of Medical Examiners (the "Board") on the propriety of the arrangements set forth below. Specifically, the Practice seeks a ruling as to the applicability of ALA. CODE §34-24-360(10) to the proposed arrangement.

**FACTS**

The Practice and a group of dermatologists (the "Dermatology Group") propose to enter into a written agreement pursuant to which the Practice would provide both the technical and professional components of anatomic pathology services to the Dermatology Group as requested from time to time. The proposed arrangement is substantially the same as the arrangement that the Board approved in its April 17, 2007 Declaratory Ruling (a copy of which is attached hereto). The only substantive difference between the facts of this request and those underlying the Board's April 17, 2007 Declaratory Ruling is that the pathology services contemplated here would be provided to a group of dermatologists rather than urologists.

Just as with the facts underlying the Board's April 17, 2007 ruling, the Dermatology Group would bill third-party payers and/or patients for all pathology services provided by the Practice, both technical and professional, and would retain all collections associated with the billings. The Dermatology Group would then pay the Practice a fee equal to a fixed percentage of the Dermatology Group's collections from such services.

The fee paid by the Dermatology Group to the Practice would be set in advance through an arm's length negotiation between the parties. The fee would be set at a level that constitutes the estimated fair market value for the projected volume of work to be performed by the Practice. The projection would be based on the Dermatology Group's historical need for anatomical pathology services and would take into account the cost of providing the services.

The arrangement would be non-exclusive and either party would have the option of obtaining services from, or performing services for, any other person or entity of its choosing. The Dermatology Group would not be required to purchase any services from the Practice.

The fee percentage would remain unchanged during the initial one-year term of the agreement and would be subject to renegotiation only at the time of the agreement's annual renewal.

### ANALYSIS

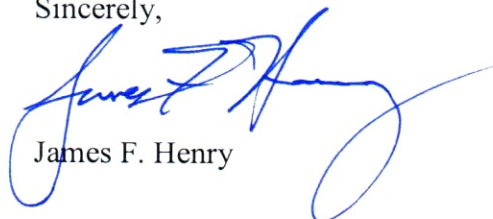
We submit that the proposed arrangement would not violate ALA. CODE §34-24-360(10) and is substantially the same as the arrangement approved in the Board's April 17, 2007 Declaratory Ruling. In both cases;

- (1) the Practice would be paid a fixed percentage of collections for services provided;
- (2) the fee would be negotiated by the parties in an arm's length transaction;
- (3) the fee percentage would be based on the parties' reasonable estimate of fair market value for the services provided and reasonable estimate of the cost of providing the services; and
- (4) the compensation arrangement would not take into account, or be in any way related to, referrals between the parties.

Accordingly, we think the arrangement should be viewed as permissible under ALA. CODE §34-24-360(10) as was the arrangement that was approved in the Board's April 17, 2007 Declaratory Ruling.

Thank you for considering this request. If you have any questions or need any additional information, please contact me.

Sincerely,



James F. Henry

JFH/mgd