

By: Melissa Delella
Deputy Agency Clerk

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

IN RE:

**V.L. Rajyaguru, M.D., DABPM,
Petition for Declaratory Statement.**

**FINAL ORDER
DECLARATORY STATEMENT**

On or about June 6, 2011, Petitioner V. L. Rajyaguru, M.D., filed the attached Petition for Declaratory Statement with the Department of Health (Department) pursuant to section 120.565, Florida Statutes, and chapter 28-105 of the Florida Administrative Code Rules. The Petition requests a declaratory statement with regard to the pain-management clinic registration statute, which for allopathic physicians is section 458.3265, Florida Statutes.

Petitioner asks whether he must register, as a pain-management clinic, his practice with offices in three counties. Petitioner also asks if the use of a website to educate patients would constitute an advertisement. No public comments were received by the Department.

FINDINGS OF FACT

1. Petitioner is a solo practitioner and licensed physician who works out of three pain-management facilities or office locations.

2. Petitioner's facility locations are known as *Advanced Pain Clinic, PA*. Although Petitioner indicates that he does not pay for advertising in any media, he uses the letterhead *Advanced Pain Clinic*, he may use the business name in other ways, and it is likely that the name of the business appears on the door or on an identifying sign outside of each location.

3. According to Petitioner, he prescribes controlled substances, but his opioid prescribing is well below 50% of the total patients treated at each clinic.

4. Petitioner's letterhead shows that he is a board-certified pain management physician certified by the "American Board of [Anesthesiology]," by the American Board of Pain Medicine, by the American Board of Pain Management, and a Fellow with the American Board of Disability Analysts.

CONCLUSIONS OF LAW

5. The Department concludes that Petitioner's request for the issuance of a declaratory statement should be GRANTED. The purpose of a declaratory statement is to obtain the agency's opinion or interpretation of a statute as it applies to particular circumstances. Petitioner provided detailed circumstances and, as indicated in rule 28-105.003, F.A.C., this order relies on the statements of fact set out in the petition.

6. The governing statute is section 458.3265, Florida Statutes, as amended effective July 1, 2011, by chapter 2011-141, Laws of Florida.

7. As described by Petitioner, his office locations do not meet that portion of the definition of a pain-management clinic that requires, in any month, that a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.

8. To be pain-management clinic, the clinic only needs to advertise in any medium for any type of pain-management services. Identification posted outside of the facility locations, listings in the telephone book, business cards, or any other communications or notices

containing the name "Advanced Pain Clinic;" do fall within the advertisement portion of the definition of a pain-management clinic. Similarly, a website for patients that uses the name Advanced Pain Management also would constitute an advertisement in any medium for pain-management services.

9. Considering that the facilities operated by Petitioner meet the definition of a pain-management clinic, it must be determined whether these entities fall under any of the statutory exemptions from having to register as a pain-management clinic.

10. Among the exemptions from having to register, section 458.3265(1)(a)2.g. and h., Florida Statutes, provide an exemption if:

g. The clinic is wholly owned and operated by one or more board-certified anesthesiologists, physiatrists, or neurologists; or

h. The clinic is wholly owned and operated by one or more board-certified medical specialists who have also completed fellowships in pain medicine approved by the Accreditation Council for Graduate Medical Education,

9. Given Petitioner's board-certifications, he appears to meet a statutory exemption according to which he is not required to register the three clinic locations as pain-management clinics.

WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that the Petition for Declaratory Statement is GRANTED and, based on the statutory exemption, Petitioner is not required to register his clinics.

DONE AND ORDERED this 27 day of July, 2011.

H. Frank Farmer, Jr., M. D., Ph.D., FACP
State Surgeon General



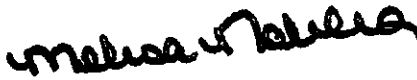
Kimberly Berfield, Deputy Secretary

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this final order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the agency clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. mail to V. L. Rajyaguru, M.D., 505 W. Vine Street, #301, Kissimmee, Florida 34741; and by electronic mail to Joy Tootle and Anthony Jusevitch, Executive Director, and to Donna Erlich, Assistant General Counsel, Department of Health, Tallahassee, Florida, this 28 day of July, 2011.



Deputy Agency Clerk

Advanced Pain Clinic,

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CLERK
DATE Angel Sanders

June 6, 2011
OFFICE LOCATIONS

MAILING ADDRESS

505 W. Vine Street, #301
Kissimmee, FL 34741

Phone: (407)935-9404
Fax: (407)935-9304

V. L. Rajyaguru, MD

Certified by American Board of Anesthesiologist
Certified by American Board of Pain Medicine
Certified by American Board of Pain Management
Fellow, American Board of Disability Analysts

. 505 W. Vine Street, #301
Kissimmee, FL 34741
. 3901 E. Colonial Drive
Orlando, FL 3 2803
. 82 Maxcy Plaza Circle
Haines City, FL 33884

May 30th, 2011

DOH Agency Clerk
4052 Bald Cypress Way, BIN # A-02
Tallahassee, FL 32399-1703

RE: Petition for a declaratory statement for my clinic, Lic # ME 006759, Tax ID 59-3339956.

Dear Sir / Madam,

I am a law abiding citizen and a doctor. Currently my clinic is not registered. Recently, I have heard conflicting information regarding the definition and requirement of pain clinics' registration. The law regarding pain clinics has modified few times. It is not easy to interpret the complexly worded law and its amendments regarding requirements for the registration for a particular pain clinic and its exclusion. As a result I wrote a letter on May 6th, 2011 to inquire about compliance for my unique practice in relation to the new state law legislated recently for pain clinics and its registration requirement. I received reply back from Ms. Kathryn E. Price dated May 23, 2011. Ms. Price is Chief Legal Counsel at the Department of Health, who has recommended me to contact you for "a Declaratory Statement, in accordance with section 120.565, Florida statutes (2010)". I first learned from Ms. Price's reply about the ability to request such a statement from the state government agency. As per her instruction, I am writing this request to provide me a Declaration statement for my unique practice in relation to its registration requirement.

I do understand the needs for the new law to curtail "Pill Mills". I agree and respect the law whole heartedly and I am in favor of complying with it fully. I have been practicing interventional pain management for 15 years in Central Florida. I have never been convinced that opiates alone could provide a good pain control and improve the quality of life for all chronic pain patients. As we came to know now, interventional modality proved to be an effective alternative to combate "Pill Mills" problem. My practice is unique in many ways and I request you to provide a Declaratory Statement based on the specifics to my practice as I have outlined here.

1. I am a solo practitioner and do not have nurse or PA. In my pain management practice located in three counties (Osceola, Orange and Polk), chronic intractable pain has been treated primarily with interventional modalities (i.e. "Nerve block" injectable treatments, nerve ablation treatments, intrathecal infusion treatment etc under fluoroscopic guidance) for 15 years as opposed to opioid prescriptions. Majority of the patients' visits (more than 70%) at my clinic are either for the interventional treatments or for non-controlled pain medication prescription and very few (less than 30%) patients' clinic visits are for evaluation & management with controlled pain prescriptions. Majority of the patients who come for the controlled pain prescriptions also receive periodic injectable "Nerve Block" treatments at my clinic to control their intense pain. Since the injectable "Nerve Block" treatments provide less than desired pain relief in some patients due to their resilient pain, only those

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patients would receive periodic supplementary pain medications to carry on with their day to day tasks, family obligations, work etc. I primarily prescribe long acting opiates to a small number of my patients strictly based on medical necessity. The long acting opiates are reportedly less euphoric and more analgesic. I do obtain an opioid contract and perform random urine drug screen on those patients to assess their compliance with the state guide line. I discharge those patients who do not comply with prescribing guide line, in whom I suspect drug diversion, or I notice any aberrant behavior and guide those patients for appropriate help. I also do periodic self audits to see what percentage of the total treated patients received opioid prescription and make sure it remained below 50%. To-date, the number of patients who receive opiates prescriptions remained less than 30% of the total number of the patients treated at each clinic location. I expect the same to continue in future. Majority (about 90%) of my practice is office based and small (about 10%) is hospital based.

2. I do not advertise my clinic or business in any media. Currently I do not even have website for the clinic. However, I do like to have website for the clinic in future to educate my patients about interventional treatments, its efficacy, its application, possible complication etc. I am not sure if that would classify as "advertisement" or not as per the new state law perspective. I like to know your opinion whether or not I could have such website for the clinic and still be compliantly unregistered.
3. I do not dispense medication from any clinic location.
4. I maintained unrestricted DEA license since 1995. The license has never been revoked or restricted since I obtained it.
5. I have privileges at three local hospitals to provide interventional pain management treatments in operating room setting. I provide pain management related surgical treatments such as implantation of intrathecal infusion pump, implant of stimulator system, nerve ablation etc to my patients as well as to patients admitted in the hospitals. My hospital privileges have never been restricted or denied since they were granted approximately 15 years ago.

Based on my understanding from news letter from medical societies, discussion conducted in society meetings, talking to qualified people, reading state material regarding pain clinics, etc my clinic would not require registration with the state. My clinic or practice is currently not registered with the state. Please look at these facts and provide me a declaratory statement regarding registration requirement for my clinic in my unique situation. Should you have any question, please do not hesitate to write me at my mailing address or call me on my cell (321) 624-6464. Thank you.

Truly,



V. L. Rajyaguru, MD, DABPM

CC: DOH Board of Medicine, Pain Clinic Registration Unit
Sindronio Casas
400W Robinson Street, Suite S-827
Orlando, FL 32801

Kathryn E. Price
Chief Legal Counsel
4052 Bald Cypress Way, Bin # A-02
Tallahassee, FL 32399-1703