

UNAPPROVED DRAFT
VIRGINIA BOARD OF HEALTH PROFESSIONS
PRACTITIONER SELF-REFERRAL COMMITTEE
INFORMAL CONFERENCE ON REQUEST FOR ADVISORY OPINION
OCTOBER 20, 2004

- TIME AND PLACE:** The meeting was called to order at 2:00 p.m. on Wednesday, October 20, 2004 in the 6th Floor Conference Room of the Department of Health Professions, 6603 W. Broad St., Richmond, VA.
- MEMBERS PRESENT:** Juan M. Montero, II, M.D. (Chair)
David H. Hettler, O.D.
- STAFF PRESENT:** Elizabeth A. Carter, Ph.D., Director for the Board
Emily Wingfield - Assistant Attorney General
Terri H. Behr - Administrative Assistant
Jim Banning, Executive Director, Administrative Proceedings Division
Grant Kronenberg, Administrative Proceedings Division
- OTHERS PRESENT:** Martin A. Donlan, Jr., Esq. (law firm of Williams Mullen)
- QUORUM:** With two members of the Committee present, a quorum was established.
- PURPOSE OF CONFERENCE:** **IN VISION HEALTHCARE, INC. (“INVISION”)**
The purpose of the informal conference was to review the draft InVision advisory opinion and make a decision on a recommendation to be presented to the full Board in accordance with §2.2-4019 of the Code of Virginia (1950), as amended. The issues under discussion were:
1. Does InVision have any investment interest in any of the Programs by virtue of its receipt of management service fees, as outlined in the Management Service Agreement?
 2. Will each Program be part of its Practice’s group practice, within the meaning of Virginia Code Section 54.1-2410, if it is an asset of the Practice?
 3. Will a Program be part of a Practice’s group practice, within the meaning of Virginia Code Section

54.1-2410, if the Program is an asset of a wholly-owned subsidiary of the Practice?

4. When a Program is part of a Practice's group practice, may the physical location of the office for the Program be anywhere within the Practice's service area and not be part of or adjacent to another office of the Practice?

5. If a Program and Practice fail to qualify under the group practice exemption, may the Program be part of the same office practice for any practitioner who provides supervision of the physical therapy or occupational therapy services provided at the Program?

6. Does compliance with the requirement for supervision of physical or occupational therapy services for an office practice require the practitioner to be physically present at the Program?

7. Does a practitioner who supervises therapy services for each of his or her patients satisfy the "ongoing basis" test for an office practice by complying with generally accepted medical practices in ordering and supervising such services?

Mr. Donlan addressed the Committee, with emphasis on issues 3 and 7.

CLOSED SESSION:

On properly seconded motion by Dr. Hettler, the Committee voted unanimously to convene a closed meeting pursuant to §2.2-3711(A)(7) of the Code of Virginia (1950), as amended, for the purpose of consultation with legal counsel on the matter involving an Advisory Opinion requested by InVision Healthcare, Inc. Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open meeting.

**COMMITTEE
RECOMMENDATION:**

The recommendation of the Committee to the full Board, pursuant to 18 VAC 75-20-60(E), is that:

1. InVision does not have an investment interest in any Program because it does not hold an equity or debt security in the Program;

2. A Program that is organized as an asset of a Practice is part of the Practice's group practice if the Program is integral to the Practice. Whether a Program is integral to a Practice is a fact-specific inquiry that could vary on a case-by-case basis. Among the important variables in the inquiry is the nature of the Program-Practice relationship, to include whether Program employees also provide therapy services for other Practices. A Program may provide services to patients of other group practices as long as the other group practice does not have any investment interest in the Program;

3. A Program that is an asset of a wholly-owned subsidiary of a Practice will not be part of the Practice's group practice because a group practice consists of multiple health care practitioners who are members of the same legally organized entity. If a Program is an asset of a wholly-owned subsidiary of a Practice, the wholly-owned subsidiary is a separate legally organized entity from the Practice, thus taking the Program outside of the Practice's group practice. While the Act may not allow a Program to be organized according to best business practices, a statutory change is necessary to permit a Program that is organized as a separate legal entity from the Practice to be considered part of the Practice's group practice, even if the Program is a wholly-owned subsidiary;

4. If the Program is part of the Practice's group practice, the Program may be located anywhere within the Practice's service area;

5. A Program may be part of a practitioner's office practice if the practitioner supervises the provision of physical or occupational therapy services at the Program on an ongoing basis;

6. A practitioner is not required to be physically present at the Program for it to qualify as an office practice, as long as the practitioner provides the required ongoing supervision of his patients who receive services at the Program; and

7. A practitioner does not necessarily provide supervision of therapy services on an "ongoing basis" by complying with generally accepted medical practices and the laws and regulations governing physical and

occupational therapy services. However, complying with generally accepted medical practices may be considered supervision on an ongoing basis, if in his clinical judgment, the referring physician considers himself to be supervising the care provided by the therapist.

ADJOURNMENT:

There being no further business, the meeting adjourned at 4:15 p.m.

Juan M. Montero, II, M.D.

Elizabeth A. Carter, Ph.D., Executive Director