

Recommended Advisory Opinion

EXCIMER LASER CENTER, L.L.C.

Findings of Fact

1. Excimer Laser Center (the "Center") proposes to establish a Limited Liability Company ("LLC") wherein ophthalmologists, physicians and optometrists may be permitted to invest/participate in an open access, community-based, vision correction refractive laser care center.
2. The foregoing proposal would be accomplished by forming a LLC, which would own and operate the Center and to acquire or lease an excimer laser and related medical equipment to perform the photorefractive keratectomy ("PK") surgery.
3. Charges would include a facility fee, which would be charged to cover its ongoing operating costs, and a separate professional fee for the surgery. All procedures and professional services at the Center are elective and third party insurance may be available on a case by case basis.
4. Patients would be referred by either optometrists or physicians to ophthalmologists who are trained and qualified to perform PK surgery at the Center. These ophthalmologists would conduct an independent medical evaluation of the patient's appropriateness for PK surgery and would personally perform the surgery at the Center, where the patient is deemed to be a suitable candidate.
5. Referring optometrists may provide both pre-operative and post-operative care where appropriate and in addition, may be investors or have investment interest in the Center.
6. If an optometrist co-manages the care of the patient with the ophthalmologist, the optometrist may perform optical measurements, a check for eye disease and evaluate the patient's candidacy for PK surgery. Following referral, the ophthalmologist may repeat and verify the optometrist's findings.
7. Self-referred patients shall be directed to both surgical and non-surgical ophthalmologists/members of the Center for evaluation of appropriateness for PK surgery.
8. The Virginia Practitioner Self-Referral Act, Va. Code §§ 54.1-2410 through 54.1-2414 of the *Code of Virginia* (the "Act"), prohibits generally referrals where the referring practitioner or any of the practitioner's immediate family members are investors in such an entity, "[u]nless the practitioner directly provides health services within the entity and will be personally involved with the provision of care to the referred patient." See Va. Code § 54.1-2411(A).
9. The Act defines the following pertinent terms:

"Investor" means an individual or entity directly or indirectly possessing a legal or beneficial ownership interest, including an investment interest.

"Practitioner" is "any individual certified or licensed by any of the health regulatory boards with the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine."

"Referral" means "to send or direct a patient for health services to another health care practitioner or entity outside of the referring practitioner's group practice or office practice or to establish a plan of care which requires the provision of any health services outside the referring practitioner's group practice or office practice."

10. The Center's proposal clearly falls within the definition of a "referral" contained in Va. Code § 54.1-2410, regardless of any "independent evaluation" performed by the ophthalmologist. The independent evaluation referred to is akin to the customary exercise of professional judgment inherent in any delivery of health care by a practitioner upon referral from any other practitioner.

11. Notwithstanding the claimed "independent evaluation," so long as the patient ultimately undergoes PK surgery following referral from the initial non-surgical member of the LLC, it is a referral within the meaning of the Act.

Conclusions of Law

For the reasons set out hereinabove, the Committee shall recommend to the Board of Health Professions, pursuant to 18 VAC 75-20-60(E) that, notwithstanding the independent medical evaluation required prior to surgery at the Center in which the physician or optometrist is an investor, such referral is deemed to be prohibited by the Act given the clear and unambiguous language contained in Va. Code § 54.1-2411(A).