

No. 23-13979

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IN THE  
**United States Court of Appeals**  
FOR THE ELEVENTH CIRCUIT

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,  
STATE FARM FIRE AND CASUALTY COMPANY,  
*Plaintiffs-Appellants,*  
*against*

MICHAEL THOMAS LARocca, D.C., BLAKE THOMAS LARocca,  
MICHAEL AUGUST MAJOR, D.C., JASON EDWARD HUNT, D.C.,  
ANTOINETTER DENISE STEWART, D.C., *et al.*,  
*Defendants-Appellees,*

JEFFREY EDUARD RAHEB, D.C.,  
*Defendant,*

ZZZ ABIDING MARKETING, LLC, *et al.*,  
*Third-Party Defendants.*

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*On Appeal from the United States District Court  
for the Middle District of Florida  
Honorable Susan C. Bucklew  
Case No. 8:21-cv-02536-SCB-AEP*

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**BRIEF FOR *AMICUS CURIAE* THE COALITION  
AGAINST INSURANCE FRAUD IN SUPPORT OF  
PLAINTIFFS-APPELLANTS AND REVERSAL**

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**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and 11<sup>th</sup> Circuit Rule 26.1-1, amicus curiae The Coalition Against Insurance Fraud (the “Coalition”) hereby certifies that it is a nonprofit consumer advocacy association that does not have any parent corporation. No publicly-traded corporation owns 10% or more of the Coalition’s stock. The Coalition further certifies that the following persons or entities have or may have an interest in this appeal:

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**STATEMENT OF AMICUS CURIAE'S IDENTITY AND INTEREST**

The Coalition Against Insurance Fraud (the “Coalition”), founded in 1993, is the nation’s only consumer advocacy organization – comprised of approximately 300 member organizations spanning consumers, insurers, state and national government agencies, legislators, prosecutors, and other interested parties – that seeks to combat all forms of insurance fraud through public advocacy and consumer education. The Coalition’s mission is to leverage the combined energy and resources of consumers, government organizations, and insurers by fostering an environment and forum where collaboration thrives to: (i) combat all forms of insurance fraud; (ii) reduce costs for consumers and insurers; and (iii) promote fairness and integrity in the insurance system.

Toward those ends, the Coalition has played an active role in advocating for laws, regulations, and policies to detect, prevent, deter, and prosecute insurance fraud. In addition, the Coalition maintains an active amicus program, serving as a voice to federal and state courts on key anti-fraud issues. Through research and advocacy, the Coalition seeks to protect consumers, and aid anti-fraud efforts.

In the present case, the Coalition supports the position taken by Plaintiffs-Appellants State Farm Mutual Automobile Insurance Company, et al. (“State Farm” or “Appellants”). The Coalition submits this brief pursuant to F.R.A.P. 29.<sup>1</sup>

### **STATEMENT OF THE ISSUES**

A. Did the District Court err in applying the Florida Health Care Clinic Act (the “Clinic Act”, Fla. Stat. §§ 400.990, et seq.) when adjudicating State Farm’s motion for partial summary judgment, and subsequent motion for reconsideration of the District Court’s summary judgment order?

B. May a healthcare practice engage in extensive, deliberate violations of the Florida Patient Brokering Act (the “Patient Brokering Act”, Fla. Stat. § 817.505) and Anti-Kickback Statute (the “Anti-Kickback Statute”, Fla. Stat. § 456.054), yet nonetheless maintain a valid exemption from Florida healthcare clinic licensing requirements pursuant to Section 400.9905(4)(g) of the Clinic Act?

### **SUMMARY OF THE ARGUMENT**

It is hardly controversial to say that – in a legitimate clinical setting – patients only should be referred between and among healthcare providers based upon their individual circumstances, presentation, and medical need. Likewise, it is clearly inappropriate – and in fact illegal – for healthcare providers and others to

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<sup>1</sup> Pursuant to F.R.A.P. 29(a)(4)(E), no party’s counsel authored this brief in whole or in part, and no party, party’s counsel, or other person besides amicus curiae, its members, or its counsel contributed money intended to fund the preparation or submission of this brief.

buy and sell patients like so many chattels, by making patient referrals based not on each individual's actual healthcare needs, but in exchange for fancy meals, vacations, gift cards, or untraceable cash. For decades, Florida's Patient Brokering Act and Florida's Anti-Kickback Statute have made it unlawful – and indeed criminal – to pay or receive any kind of kickback or bribe, in cash or in kind, in exchange for a patient referral. See Fla. Stat. §§ 817.505; 456.054. This makes perfect sense because, were it otherwise, patient care could be subordinated to the pecuniary interests of unscrupulous healthcare providers, and the healthcare and insurance systems themselves would be corrupted.

Even so, unlawful patient brokering and kickback schemes continue to plague Florida, and the problem has been particularly acute in the context of no-fault (“personal injury protection” or “PIP”) insurance claims. In September 2000, for instance, Florida's Fifteenth Statewide Grand Jury issued a “Report on Insurance Fraud Related to Personal Injury Protection” that detailed the problem.

As the report explained:

[A] number of greedy and unscrupulous legal and medical professionals have turned [the] \$10,000 [PIP] coverage into their personal slush fund. Paying kickbacks for patients, abusing diagnostic tests, grossly inflating costs by engaging in sham transactions and filing fraudulent claims of injury, these individuals think nothing of enriching themselves by exploiting the misfortunes of others. The result is loss of coverage and marginal medical treatment for those who are injured, as well as higher insurance rates for all drivers.

See Fifteenth Statewide Grand Jury Report, Report on Insurance Fraud Related to Personal Injury Protection (Aug. 2000).

The persistence of these problems is further illustrated by the proliferation of arrests and convictions arising from PIP-focused patient brokering schemes.<sup>2</sup>

Against that backdrop, during the summary judgment phase of this action State Farm presented considerable evidence to demonstrate that Defendants-Appellees Michael LaRocca, D.C. (“LaRocca”) and his various chiropractic practices (the “LaRocca Practices”) systematically violated the Patient Brokering Act and Anti-Kickback Statute by providing hundreds of thousands of dollars worth of unlawful kickbacks in exchange for patient referrals. See ECF No. 256, pp. 3-15. This, in turn, permitted the LaRocca and the LaRocca Practices to submit fraudulent, unlawful, and non-reimbursable PIP billing, thereby causing damages. Id.

In opposition to State Farm’s summary judgment motion, LaRocca and the LaRocca practices did not seriously refute State Farm’s showing that they paid large amounts of kickbacks in exchange for patient referrals. Instead, LaRocca and

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<sup>2</sup> See, e.g., <https://www.claimsjournal.com/news/southeast/2005/08/26/58856.htm>; <https://www.tampabay.com/archive/2005/03/12/14-from-tampa-charged-with-patient-brokering/>; <https://www.theledger.com/story/news/2015/06/18/authorities-arrest-auburndale-doctor-3-others-in-complex-insurance-fraud-scam/27061284007/>; <https://www.nbcmiami.com/news/local/massage-clinic-owner-busted-for-insurance-fraud/1920960/>; <https://www.local10.com/news/2017/09/21/5-south-florida-attorneys-5-others-arrested-in-alleged-patient-brokering-scheme/>.

the LaRocca Practices contended – in substance – that State Farm could not establish their liability unless it could tie a particular kickback to the referral of a particular State Farm insured. See ECF No. 274, pp. 7-10. This, of course, would have been practically impossible, considering the fundamentally opaque, “under-the-table” nature of patient brokering and kickback schemes involving large amounts of gift cards, expensive meals, untraceable cash, or other blandishments.

However, State Farm should not have had to prove that any particular insured was referred to the LaRocca Practices as the result of any particular kickback. Rather, State Farm was able to – and did – establish that the LaRocca Practices’ pervasive and unlawful patient brokering activities demonstrated a lack of compliance with the licensing requirements set forth in the Clinic Act, which in turn disqualified all of the LaRocca Practices’ PIP claims from reimbursement, regardless of whether any one patient referral was procured through any one kickback. See ECF No. 256, pp. 15-25.

In particular, LaRocca – a chiropractor – purported to operate the LaRocca Practices pursuant to an exemption from the Clinic Act’s licensing requirements, which permits a Florida healthcare practice to operate without a clinic license, or the regulatory requirements attendant thereto, so long as: (i) the practice is “wholly owned” by a licensed healthcare practitioner (such as a chiropractor); and (ii) the licensed practitioner-owner legitimately supervises the business activities of the

practice actually is responsible for its compliance with federal and state laws. See Fla. Stat. § 400.9905(4)(g).

In light of the considerable evidence of unlawful activity at the LaRocca Practices – including evidence of extensive violations of the Patient Brokering Act and Anti-Kickback Statute – State Farm contended that LaRocca did not legitimately supervise the business activities of the LaRocca Practices and assume responsibility for their legal compliance. See ECF No. 256, pp. 15-25. As a result, the LaRocca Practices failed to qualify for the “wholly owned” exemption from the Clinic Act’s licensing requirements, and otherwise lacked the clinic licenses required by the statute. Because a healthcare practice that operates in violation of the Clinic Act is ineligible to receive PIP insurance payments (see Fla. Stat. § 400.9935(3)), State Farm argued – at summary judgment – that none of the LaRocca Practices’ PIP claims were entitled to payment. See ECF No. 256, pp. 15-25.

Even so, the District Court denied State Farm’s motion for partial summary judgment, and adhered to its decision on reconsideration. See ECF Nos. 361, 420. In reaching these decisions, the District Court effectively concluded – as a matter of law – that a healthcare practice may operate in pervasive violation of the Patient Brokering Act and Anti-Kickback Statute, but nonetheless maintain a “wholly owned” exemption from the Clinic Act’s licensing requirements.

In the present case, however, there was substantial evidence in the record to demonstrate that LaRocca did not legitimately supervise the business activities of the LaRocca Practices, did not actually assume responsibility for the LaRocca Practices' compliance with relevant law, and – to the contrary – instead caused the LaRocca Practices to operate through extensive violations of the Patient Brokering Act and Anti-Kickback Statute. Once the LaRocca Practices began to operate in this lawless manner, any exemptions they may have had from the Clinic Act's licensing requirements expired, and they operated – illegally – as unlicensed clinics. See 59A-33.006(14), F.A.C.

At a minimum, the District Court should not have determined, as a matter of law, that a healthcare practice may engage in extensive violations of remedial statutes such as the Patient Brokering Act and Anti-Kickback Statute, yet nonetheless maintain a valid “wholly owned” exemption from the Clinic Act's licensing requirements. Rather, if the District Court had any doubt as to whether the LaRocca Practices were entitled to the “wholly owned” exemption, it should have permitted the jury to consider whether the LaRocca Practices' violations of the Patient Brokering Act and Anti-Kickback Statute demonstrated a failure of supervision or responsibility for legal compliance sufficient to disqualify them from entitlement to the exemption.

In this context, the Clinic Act was designed to protect the public, by ensuring that Florida healthcare practices have legitimate professional supervision and operate in compliance with the law. Toward that end, unless a practice is owned by a licensed healthcare practitioner, and unless the practitioner-owner legitimately supervises the practice’s business activities and is responsible for its legal compliance, the practice must obtain a clinic license, hire a physician to serve as its medical director, and otherwise conform to the extensive regulations governing healthcare clinics.

If not reversed, the District Court’s decisions will undermine the Clinic Act, and jeopardize the public, inasmuch as they would – in effect – permit Florida healthcare practices to operate without either a clinic license, a physician on staff as medical director, and regulatory oversight by the Agency for Health Care Administration, or the legitimate professional supervision and responsibility required of a practitioner-owner.

## **ARGUMENT**

### **I. The Relevant Legal Framework**

#### **A. The Florida Health Care Clinic Act**

The Florida Legislature enacted the Clinic Act in 2003 to “strengthen the regulation of health care clinics as a measure to protect consumers”. Allstate Ins. Co. v. Vizcay, 2013 U.S. Dist. LEXIS 143453 at \*\*4-5 (M.D. Fla. Sep’t 30, 2013), citing Fla. Stat. § 400.990(2); aff’d 826 F.3d 1326 (11<sup>th</sup> Cir. 2016). The Clinic Act

was enacted following legislative findings that “the regulation of health care clinics must be strengthened to prevent significant cost and harm to consumers”, and makes clear that its purpose is “to provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration.” Fla. Stat. § 400.990(2)(emphasis added).

Toward those ends, the Clinic Act defines “clinic” broadly, to include any “entity where healthcare services are provided to individuals and which tenders charges for reimbursement for such services”, and requires any “clinic” – as so defined – to obtain a license from the Florida Agency for Health Care Administration (the “AHCA”). See Fla. Stat. §§ 400.9905(4); 400.991. The Clinic Act also requires any such “clinic” to appoint a licensed physician as medical director, who must perform various required oversight duties at the clinic. See Fla. Stat. § 400.9935. These medical director oversight duties include, among other things, systematically reviewing the clinic’s billing to ensure that it is neither fraudulent nor unlawful, ensuring that all healthcare practitioners at the clinic are properly licensed, and reviewing the clinic’s referral contracts or arrangements. Id.<sup>3</sup> As the pertinent regulations make clear, a licensed clinic “may not operate or

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<sup>3</sup> Taken together, these requirements – *i.e.*, that physician-medical directors at licensed clinics both review clinic billing to ensure that it is not fraudulent or unlawful, and review clinic referral arrangements – underscore the legislative

be maintained without the day-to-day supervision of a single medical ... director”.  
59A-33.008, F.A.C.

While the Clinic Act requires all “clinics” to obtain a license from the AHCA, appoint a medical director, and otherwise comply with the statute and its attendant regulations, it also contains a commonsense exemption for healthcare practices that legitimately are “wholly owned” and supervised by licensed healthcare practitioners. In particular, the “Definitions” section of the Clinic Act – at Fla. Stat. § 400.9905(4)(g) – specifies that the term “clinic”:

does not include and the licensure requirements of this part do not apply to: ...

A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners ..., and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this paragraph and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity’s compliance with all federal and state laws.

(Emphasis added).

Thus, to qualify for the “wholly owned” exemption from the Clinic Act’s licensing requirements, a healthcare practice not only must be “wholly owned” by

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intent to ensure legitimate professional oversight of referral relationships between and among healthcare providers, so as to make certain that they are lawful. Likewise, the “wholly owned” exemption should be read to require actual supervision of a practice by a practitioner-owner with a view toward ensuring legal compliance.

a licensed healthcare practitioner, but the practitioner-owner also must legitimately supervise the business activities of the practice and assume legal responsibility for the practice's compliance with relevant law. The clear purpose of these requirements is to ensure that all healthcare practices in Florida, be they "clinics" or "wholly owned" practices, are subject to legitimate supervision and oversight by at least one licensed healthcare professional, so as to ensure that the practices operate lawfully and in the best interests of Florida patients.

In this context, healthcare practices that qualify for the "wholly owned" exemption under the Clinic Act do not necessarily have to apply to the AHCA for the exemption. Rather, an entity that qualifies for the "wholly owned" exemption under the Clinic Act may either apply to the AHCA for a certificate of exemption, or may "self-determine" their exempt status. See 59A-33.006, F.A.C. However, and as the regulations make clear, "[e]ntities that claim an exemption, either by filing an application for a certificate of exemption with the Agency and receiving a certificate of exemption, or self-determining, must maintain an exempt status at all times of operation." 59A-33.006(2), F.A.C. (Emphasis added).

In fact, both the Clinic Act and its related regulations specify that a healthcare practice's claimed exemption – whether pursuant to a "self-determined" exempt status or a certificate of exemption from AHCA – is not determinative of whether the practice is actually exempt from the Clinic Act's licensing and

regulatory requirements. To the contrary, and as noted above, Section 400.9905(4)(g) requires that, to qualify for the exemption, a healthcare practice must be “wholly owned” by a licensed healthcare practitioner, who also must actually supervise the practice’s business activities and actually be responsible for its legal compliance.

In keeping with this statutory language, 59A-33.006(14), F.A.C. provides that a healthcare practice’s “wholly owned” exemption automatically expires, and the practice becomes a “clinic” subject to the Clinic Act’s licensing and regulatory requirements, the moment when it no longer meets the requirements for the exemption:

An entity becomes a “clinic” as defined in section 400.9905(4), F.S., when it does not qualify for an exemption, provides health care services to individuals, and bills third-party payers for those services. **A facility or entity’s exempt status expires when a change occurs that negates a facility or entity’s qualification for the exemption. In such a case, the health care clinic must file with the Agency a license application under sections 400.900-400.995, F.S. and shall be subject to all provisions applicable to unlicensed health care clinics.**

In furtherance of its remedial purposes, the Clinic Act prohibits clinics that operate in violation of the statute from collecting on their healthcare charges, and actually criminalizes the knowing submission of healthcare claims through a non-compliant clinic. In particular, and as set forth in Section 400.9935(3):

A charge or reimbursement claim made by or on behalf of a clinic that is required to be licensed under this part but that is not so licensed, or

that is otherwise operating in violation of this part, regardless of whether a service is rendered or whether the charge or reimbursement claim is paid, is an unlawful charge and is noncompensable and unenforceable. A person who knowingly makes or causes to be made an unlawful charge commits theft within the meaning of and punishable as provided in s. 812.014.

What is more, the Clinic Act makes it a felony to establish, own, operate, manage, or maintain any unlicensed clinic that ought to be licensed, requires licensed healthcare practitioners to report any unlicensed healthcare clinics to the AHCA, and subjects them to professional discipline if they fail to do so. See Fla. Stat. § 400.9935(4).

### **B. The Florida No-Fault Law**

Florida has a statutory system designed to ensure that automobile accident victims are compensated for their injuries. The system is set forth in the Florida No-Fault Law, Fla. Stat. §§ 627.730-627.7405, which requires automobile insurers to provide PIP benefits to their insureds. Under the No-Fault Law, an insured can assign their right to PIP benefits to healthcare services providers in exchange for healthcare services. See Fla. Stat. § 627.736(5). Pursuant to such an assignment, a healthcare provider may submit claims directly to an insurance company in order to receive payment for “medically necessary” services that it rendered to the insured. Id.

In order for a healthcare service to be eligible for PIP reimbursement, it not only must be medically necessary, but also must be “lawfully” provided, meaning

it must be provided “in substantial compliance with all relevant applicable criminal, civil, and administrative requirements of state and federal law related to the provision of medical services or treatment.” See Fla. Stat. §§ 627.736(5)(b); 627.732(11). Pursuant to the No-Fault Law, insurers are not required to pay claims or charges “[f]or any service or treatment that was not lawful at the time rendered”. See id.

**C. Numerous Courts – Applying The Clinic Act And The No-Fault Law – Have Sustained Affirmative Claims By Plaintiff-Insurers Against Healthcare Practices That Allegedly Operated In Violation Of The Clinic Act, Even Where The Practices Had Facially-Valid Clinic Licenses Or Certificates Of Exemption**

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In keeping with these statutes and regulations, numerous courts – including this Court – have sustained affirmative claims by plaintiff-insurers to recover PIP benefits paid to healthcare practices that allegedly operated in violation of the Clinic Act, even where the practices had facially-valid clinic licenses or certificates of exemption. These courts likewise have sustained declaratory judgment claims, in which plaintiff-insurers have sought declarations to the effect that they need not pay PIP benefits to healthcare practices alleged to have violated the Clinic Act.

For instance, in State Farm Fire & Cas. Co. v. Silver Star Health & Rehab, 739 F.3d 579 (11<sup>th</sup> Cir. 2013), the plaintiff-insurer obtained a jury verdict on an unjust enrichment claim to recover PIP benefits, and a declaratory judgment that it did not have to pay the defendant healthcare providers’ outstanding PIP claims,

based on evidence that the defendant healthcare providers – which purported to operate under the “wholly owned” exemption to the Clinic Act – did not actually qualify for the exemption, were not otherwise licensed, and therefore unlawfully operated as unlicensed clinics in violation of the statute. Id. at 582-583. The defendant healthcare providers appealed, contending that because the Clinic Act “does not expressly state that a violation of its licensing requirements can be determined by a court in a civil action, the district court erred by allowing State Farm's lawsuit to proceed.” Id. However, this Court rejected that argument, and held that: (i) pursuant to the No-Fault Law, insurers are not required to pay for services that were unlawful at the time rendered, including services provided in violation of state administrative requirements; (ii) the plain language of the Clinic Act provides that charges submitted through a practice that operates in violation of the statute are unlawful and noncompensable; and (iii) “[b]ecause courts are traditional forums for determining the lawfulness, compensability, and enforceability of claims, it would make no sense to read into a statute a provision that courts lack the authority to decide the crucial question on which the lawfulness, compensability, and enforceability of a claim depends, which in this case is whether the exemption Silver Star asserts applied, excusing its failure to obtain a license”. Id. Notably, the critical question in the case – i.e., whether the

defendant healthcare practice actually was “wholly owned” by the purported practitioner-owner – was tried to the jury. Id. at 585.

In Silver Star, the practice failed to qualify for the “wholly owned” exemption because it was owned, at least in part, by someone who was not licensed as a healthcare practitioner at all. See Silver Star, 739 F.3d at 582. However, plaintiff-insurers also should be able to challenge the validity of a practice’s “wholly owned” exemption where – as here – the practice may have been “wholly owned” by a licensed healthcare practitioner, but the practitioner-owner failed to legitimately supervise the business activities of the practice and/or assume responsibility for its legal compliance as also required to qualify for the exemption. See, e.g., State Farm Mut. Auto. Ins. Co. v. Fakhoury Med. & Chiropractic Ctr., P.L.L.C., 2023 U.S. Dist. LEXIS 142921 at \* 2 (M.D. Fla. Aug. 11, 2023)(denying motion to dismiss plaintiff-insurer’s fraud-based claims based on PIP billing submitted through defendant healthcare practice that allegedly failed to qualify for the “wholly owned” exemption, because the practitioner-owner did not legitimately supervise the business activities or the practice or be responsible for its legal compliance, inasmuch as he permitted the practice to engage in fraudulent and unlawful activities); Gov’t Emples. Ins. Co. v. AFO Imaging, Inc., 2021 U.S. Dist. LEXIS 35278 at \*\*10-11, \*\*14-34 (M.D. Fla. Feb. 25, 2021)(same); Gov’t Emples. Ins. Co. v. Palm Wellness Ctr., LLC, 2021 U.S. Dist.

LEXIS 232075 at \* 10 (M.D. Fla. Dec. 3, 2021)(holding that plaintiff-insurer stated fraud, RICO, FDUTPA, unjust enrichment, and declaratory judgment claims based on allegations that healthcare practice unlawfully operated without a clinic license, and rejecting defendants’ argument that the practice qualified for the “wholly owned” exemption and did not require a license, because the plaintiff insurer had alleged that the practitioner-owner could not legitimately supervise the business activities of the practice, inasmuch as it provided healthcare services that were outside the scope of the practitioner-owner’s professional license); Gov’t Emples. Ins. Co. v. Cereceda, et al., S.D. Fla. Case No. 1:19-cv-22206-CMA, at ECF 57, pp. 19-27; 64, pp. 16-22; 83, p. 64, and 72 (denying motion to dismiss or abstain from fraud, RICO, FDUTPA, unjust enrichment, and declaratory judgment claims, which were based – in part – on allegations that the defendant healthcare practices failed to qualify for the “wholly owned” exemption from the Clinic Act’s licensing requirements, notwithstanding the fact that they had certificates of exemption from AHCA, because the chiropractor who owned them did not legitimately supervise their business activities or be responsible for their legal compliance, in light of the fraudulent and unlawful activities in which they were engaged); Allstate Ins. Co. v. Vizcay, 2014 U.S. Dist. LEXIS 57212 at \* 12 (M.D. Fla. Arp. 23, 2014), aff’d, 826 F.3d 1326 (11<sup>th</sup> Cir. 2016)(holding that, in order for healthcare practices to qualify for the “wholly owned” exemption, the practitioner-

owner not only had to “wholly own” the practices, “but also supervise the business activities at” the practices); State Farm Mut. Auto. Ins. Co. v. Miami Med. Care Ctr., Inc., 103 F. Supp. 3d 1343, 1350 (S.D. Fla. 2015)(“In order to lawfully qualify for the [“wholly owned” exemption], the licensed health care practitioner has a continuing obligation to supervise the business activities of the clinic and remain legally responsible for the entity's compliance with all federal and state laws.”)

The decision in State Farm Mut. Auto. Ins. Co. v. Performance Orthopaedics & Neurosurgery, LLC, 2018 U.S. Dist. LEXIS 26841 (S.D. Fla. Feb. 16, 2018), further explicates this point. In Performance Orthopaedics, State Farm alleged that the defendant healthcare practice operated without a clinic license in violation of the Clinic Act. Id. at \*\*10-11. The defendants contended that State Farm’s claims were subject to dismissal, without leave to amend, because – among other things – the defendant healthcare practice was “wholly owned” by licensed chiropractors, and therefore qualified for the “wholly owned” exemption from the Clinic Act’s licensing requirements. Id. at \*\*20-21. State Farm, however, had alleged – much as in the present case – that the chiropractor-owners did not legitimately supervise the business activities of the practice or be responsible for its compliance with federal and state law, as required to qualify for the “wholly owned” exemption. Id. at \*10, \*\*21-22. In holding that State Farm could proceed on the theory that the practice

failed to qualify for the “wholly owned” exemption because the practitioner-owners failed to legitimately supervise the business activities of the practice or assume responsibility for its compliance with federal and state law, the court held that:

allowing clinics to operate unlicensed merely because they are owned by a practitioner or group of practitioners—irrespective of whether these practitioners supervised the clinic’s business activities or ensured compliance with federal and state law—would undermine the purpose of the [Clinic Act]. The explicit purpose to the [Clinic Act] is “to provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration.” Fla. Stat. § 400.990(2). If the Court adopted Defendants’ proposed interpretation, Calhoun’s owners could potentially delegate 100% of the responsibilities in running Calhoun’s business to a layperson and Calhoun would still operate free from regulatory oversight. ... This would not only defeat the stated purpose of the [Clinic Act], but contravene the legislature’s finding that “the regulation of health care clinics must be strengthened to prevent significant cost and harm to consumers.” Fla. Stat. § 400.990(2). Florida courts construe statutes in such a way as to avoid absurd results. See Amente v. Newman, 653 So. 2d 1030, 1032 (Fla. 1995) (“[C]ourts should avoid a statutory interpretation which leads to an absurd result.”).

For these reasons, the Court finds that in order to qualify for the “wholly owned” exemption, a clinic’s practitioner owners must supervise the clinic’s business activities and remain responsible for its legal compliance. This interpretation has been adopted by a growing number of courts.

Id. at \*\* 23-24.

In this context, and notably, both State Farm and the defendants later proceeded to file cross-motions for summary judgment in the Performance

Orthopaedics case, including on the issue of whether the defendant healthcare practice legitimately qualified for the “wholly owned” exemption from the Clinic Act’s licensing requirements. See State Farm Mut. Auto. Ins. Co. v. Performance Orthopaedics & Neurosurgery, LLC, 315 F. Supp. 3d 1291 (S.D. Fla. 2018). However, the court denied summary judgment on this issue, holding that questions regarding whether the practitioner-owners actually supervised the business activities of the practice, so as to qualify for the “wholly owned” exemption, presented a “factual inquiry for the jury.” Id. at 1305-1306.

## **II. The District Court’s Decisions Should Be Reversed**

Against this backdrop, and for various reasons, the District Court’s decisions on State Farm’s motion for summary judgment, and subsequent motion for reconsideration, should be reversed.

First, the District Court erroneously concluded that the provision of the “wholly owned” exemption requiring practitioner-owners to be “legally responsible for the entity’s compliance with all federal and state laws” did not equate to any requirement for such practitioner-owners to actually ensure compliance such laws. See ECF No. 361, p. 12.

In this context, Florida applies supremacy-of-text principles to statutory interpretation, which require that “every word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes

some ground to control, qualify, or enlarge it.” Ham v. Portfolio Recovery Assocs., LLC, 308 So.3d 942, 946-947 (Fla. 2020).

Here, both the plain language of the “wholly owned” exemption, and the relevant context, counsel strongly against the interpretation applied by the District Court. While the word “responsible” can be defined in different ways, it appears as if every dictionary defines the word to include – in some sense – an affirmative obligation to do something, and not just a passive assumption of liability for failing to act. For instance, the Britannica Dictionary defines “responsible” to mean, among other things, “having the job or duty of dealing with or taking care of something or someone”.<sup>4</sup> The Cambridge Dictionary likewise defines “responsible” to mean “to have control and authority over something or someone and the duty of taking care of it, him, or her”.<sup>5</sup> Along similar lines, the Oxford English Dictionary defines “responsible” to include “being in charge of something; appointed to look after something”.<sup>6</sup> Merriam-Webster defines the term “responsible” to include “being the cause or explanation”.<sup>7</sup>

With that in mind, to be “legally responsible for the entity’s compliance with all federal and state laws” – as required to qualify for the “wholly owned” exemption – a practitioner-owner has an actual, affirmative obligation to at least

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<sup>4</sup> See <https://www.britannica.com/dictionary/responsible>.

<sup>5</sup> See <https://dictionary.cambridge.org/us/dictionary/english/responsible>.

<sup>6</sup> See <https://www.oed.com/search/dictionary/?scope=Entries&q=responsible>.

<sup>7</sup> See <https://www.merriam-webster.com/dictionary/responsible>.

take reasonable steps to effectuate their legal compliance. Certainly, a practitioner-owner who deliberately causes his healthcare practices to break the law – for instance, by paying kickbacks for referrals in violation of the Patient Brokering Act and Anti-Kickback Statute – is not being “responsible” for the practice’s compliance with the law.

Though the plain language of the “wholly owned” exemption should resolve this question, the interpretation advanced by the District Court also runs contrary to the legislative intent and context of the Clinic Act. As discussed above, the purpose of the Clinic Act is to protect consumers by ensuring proper oversight of healthcare practices. See Fla. Stat. § 400.990(2). Toward that end, the Clinic Act is designed to ensure that every healthcare practice in Florida is subject to legitimate professional oversight by at least one licensed healthcare practitioner, in that it requires “wholly owned” practices to have actual, legitimate supervision by a practitioner-owner responsible for the practice’s legal compliance, and defines all other practices as “clinics” that must retain a physician as medical director and subject themselves to AHCA clinic regulations. See Fla. Stat. §§ 400.9905(4); 400.991; 400.9935.

If permitted to stand, the District Court’s decisions would undermine the Clinic Act’s remedial purpose, because they would permit a “wholly owned” healthcare practice to avoid the licensure, medical director, and regulatory

supervision attendant to “clinics”, and at the same time operate without legitimate oversight by its practitioner-owner. Considering that “courts should avoid readings that would render part of a statute meaningless”, the Court should avoid any interpretation of the Clinic Act’s “wholly owned” exemption that would permit healthcare practices to operate without actual, legitimate supervision and oversight by their practitioner-owners. See State of Florida v. Knighton, 235 So.3d 312, 316 (Fla. 2018).

Second, and relatedly, the District Court found that State Farm’s interpretation of the “wholly owned” exemption could lead to absurd results, in that a healthcare practice might find itself ineligible for the exemption based on even the most minor or technical legal infractions. See ECF No. 361, pp. 13-14. However, the District Court’s reading of the Clinic Act will lead to absurd results on the other side of the ledger: Instead of disqualifying a generally-legitimate practice because of some inadvertent and minor infraction, the District Court’s decision, if permitted to stand, would permit a totally fraudulent practice to operate pursuant to the “wholly owned” exemption, without any of the professional oversight and responsibility required to qualify for the exemption.

However, there is no reason to believe that the choices are quite so stark as suggested by the District Court. For instance, a court or jury could certainly conclude that a practitioner-owner sufficiently supervised the business activities of

a practice, and actually was responsible for its legal compliance, notwithstanding some minor technical infractions. Nobody is perfect. On the other hand, a court or jury could also conclude that an extensive and willful pattern of fraudulent and unlawful activity – such as that alleged by State Farm in the present case – demonstrates a failure of supervision and responsibility sufficient to disqualify a practice from entitlement to the “wholly owned” exemption.

At bottom, the Coalition respectfully submits that – if there were any doubt as to whether the LaRocca Clinics’ violations of the Patient Brokering Act and Anti-Kickback Statute demonstrated a failure of supervision or responsibility for legal compliance sufficient to disqualify them from entitlement to the exemption – the proper course, followed by other courts under analogous circumstances, would have been to allow the question to go to the jury. See, e.g., Vizcay, supra (jury determined that defendant healthcare practices were not legitimately supervised by their supposed practitioner-owner, and therefore did not qualify for the “wholly owned” exemption); Performance Orthopaedics, supra (questions regarding whether the practitioner-owners actually supervised the business activities of the practice, so as to qualify for the “wholly owned” exemption, presented a “factual inquiry for the jury.”); c.f. Gov’t Emples. Ins. Co. v. DG Esthetic & Therapy Ctr., Inc, 2019 U.S. Dist. LEXIS 78034 at \*\* 19-20 (S.D. Fla. Apr. 19, 2019)(issue of whether healthcare clinic medical directors performed the required duties under the

Clinic Act presented a fact question for the jury); Gov't Emps. Ins. Co. v. Right Spinal Clinic, Inc., 2022 U.S. Dist. LEXIS 119301 at \*\* 13-16 (M.D. Fla. July 6, 2022)(same).

Third, the District Court noted that – in some of the cases where courts have found the “wholly owned” exemption inapplicable – it was because the healthcare practices in question were not, in fact, “wholly owned” by licensed healthcare practitioners. The District Court distinguished those situations from the situation in the present case, where there was no dispute as to LaRocca’s ownership of the LaRocca Practices, only as to whether LaRocca legitimately supervised the practices and was responsible for their legal compliance. See ECF No. 420, pp. 4-6.

However, this distinction should not make any difference. While it is necessary for a practice to be wholly owned by a licensed healthcare practitioner in order to qualify for the “wholly owned” exemption, it is not sufficient. The plain language of the Clinic Act makes clear that – for the practice to qualify for the exemption – its practitioner-owner also must supervise the business activities of the entity and assume responsibility for its legal compliance. The Court should therefore avoid any reading of the Clinic Act that would render these requirements meaningless or ineffective. See Knighton, supra.

In fact, and as noted above, courts have sustained similar PIP fraud claims against practices that indisputably were “wholly owned” by licensed healthcare practitioners, but where – as in this case – the practitioner-owners did not legitimately supervise the practices’ business activities and assume responsibility for their legal compliance. See, e.g., Fakhoury Med, supra; Palm Wellness, supra; Cereceda, supra; AFO Imaging, supra (all sustaining PIP fraud claims against healthcare practices that allegedly failed to qualify for the “wholly owned” exemption, not because they were not owned by licensed healthcare practitioners, but rather because the practitioner-owners allegedly failed to legitimately supervise the business activities of the entity and be responsible for their legal compliance).

Fourth, the District Court incorrectly suggested that – in order for a “wholly owned” clinic to lose its exemption because of a practitioner-owner’s failure to supervise its business activities or be responsible for its legal compliance – the AHCA must itself take some action to revoke the exemption. See ECF No. 420, p. 6. In fact, this is not the case. Rather, and as discussed above, the pertinent regulations make clear that a “wholly owned” exemption expires automatically – with no action by the AHCA necessary – the moment a practice no longer meets the requirements for the exemption. See 59A-33.006(14), F.A.C.; see also Miami Med. Care, supra (“to lawfully qualify for the [“wholly owned” exemption], the licensed health care practitioner has a continuing obligation to supervise the

business activities of the clinic and remain legally responsible for the entity's compliance with all federal and state laws.”)(Emphasis added).

What is more, the plain language of the Clinic Act contemplates that a plaintiff-insurer can look beyond a facially-valid exemption to determine whether a healthcare practice is or is not in actual compliance with the requirements of the statute. See, e.g., Fla. Stat. § 400.9935(3)(“[a] charge or reimbursement claim made by or on behalf of a clinic that is required to be licensed under this part but that is not so licensed, or that is otherwise operating in violation of this part, regardless of whether a service is rendered or whether the charge or reimbursement claim is paid, is an unlawful charge and is noncompensable and unenforceable.”) (Emphasis added).

Fifth, and more generally, a “textually permissible interpretation that furthers rather than obstructs the [statute’s] purpose should be favored.” Campbell v. Universal City Dev. Partners, LTD, 72 F.4th 1245, 1258 (11<sup>th</sup> Cir. 2023), quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 63 (2012). Here, the purpose of the Clinic Act – as expressed in the plain text of the statute itself – is to ensure that every healthcare practice in Florida is subject to actual, legitimate, responsible oversight and control, either by AHCA and a physician-medical director (in the case of licensed clinics) or by a licensed

practitioner-owner (in the case of practices subject to the “wholly owned” exemption).

These remedial provisions would be undermined, not advanced, by the District Court’s interpretation of the “wholly owned” exemption. Though the District Court gave due consideration to whether LaRocca “wholly owned” the LaRocca Practices, it relegated LaRocca’s supervision and responsibility for the practices to a secondary consideration. This, despite the fact that the plain text of the “wholly owned” exemption requires much more than mere ownership. Certainly, the “wholly owned” exemption does not contemplate a situation in which a wholly owned healthcare practice can be operated as an out-and-out fraudulent enterprise, without either genuine supervision and responsibility by a practitioner-owner, or the protections afforded by clinic licensure, a physician-medical director, and regulatory oversight by the AHCA.

Sixth, and finally, proper interpretation of the Clinic Act – under these circumstances – also furthers the purposes of the Patient Brokering Act and Anti-Kickback Statute. In particular, it would prevent healthcare providers such as LaRocca and the LaRocca Practices from retaining the proceeds of unlawful patient brokering schemes by making it practically impossible for any plaintiff-insurer to tie any particular one of their kickbacks to any particular referral. It also would prevent patients from being harmed through inappropriate and medically

unwarranted “treatment”, with the attendant dissipation of insurance benefits that otherwise would be available for medically necessary care.

Accordingly, the District Court should be reversed and, if there is any question of fact as to whether the LaRocca Practices legitimately qualified for the “wholly owned” exemption, it should be resolved by a jury.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH FRAP 32(a)**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,446 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft© Word in Times New Roman, 14 point font.

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