

 **Maryland**  
Department of Economic &  
Employment Development

*William Donald Schaefer*  
Governor

*Mark L. Wasserman*  
Secretary

*Board of Appeals*  
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— DECISION —

IN THE MATTER OF THE APPEAL OF:  
Pharmakinetics Laboratories

Decision No.: 156-EA-94  
Date: November 14, 1994  
Exec. Determ. No.: 2157  
Employer Account No

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ISSUE:

Whether payments to certain individuals constitute covered employment or represent payments to independent contractors and are thereby excluded from unemployment insurance covered wages.

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— NOTICE OF RIGHT OF APPEAL TO COURT —

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAYBE TAKEN IN PERSON OR THROUGH AN ATTORNEY, IN THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU DO BUSINESS.

THE PERIOD FOR FILING AN APPEAL TO COURT EXPIRES December 14, 1994

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— APPEARANCES —

For the Appellant:

Craig F. Ballew, Esquire  
Taryn L. Kunkel, V. P.,  
Chief Financial Officer

For the Secretary:

John McGucken, Legal  
Legal Counsel

## PREAMBLE

The Board of Appeals held a hearing for legal argument only, on the decision of the Special Examiner. The Board recognizes that the employer's company and the business involved here are still in their embryonic stage. Maryland Labor and Employment Article Section 8-205 was originally written when the unique, independent business arrangement discussed herein was not contemplated within the language and spirit of the statute. The statute was written for traditional-type independent contractor arrangements. The Board must apply the law to this new business arrangement between the employer, Pharmakinetics, and the independent contractors -- the "drug-tester volunteers".

## FINDINGS OF FACT

The employer performs bio-pharmaceutical services, including clinical evaluations and analytical chemistry services with respect to prescription and non-prescription products (drugs) for the pharmaceutical industry. This is an industry which must operate subject to extensive governmental oversight and regulation. The services that the employer performs provide the data the pharmaceutical companies need to obtain approval from the various governmental agencies to market new products.

To conduct some forms of drug evaluations, the employer uses volunteer test subjects who are selected and reimbursed through the following manner:

1. Initially the volunteers are obtained through referrals and various forms of advertising. These individuals must be drug and alcohol free, have no history of ongoing diseases, and fall within certain weight requirements.
2. The volunteer test subjects are then given (free of charge) a battery of tests to confirm their general health.
3. After satisfying the basic health requirements, the volunteer is advised of upcoming studies to be conducted by the employer. The volunteer drug tester (hereafter known as the "volunteer") is invited to select a study which meets his/her needs, schedule, or other personal criteria. The employer does not require that a volunteer select any study and at no time does the employer assign or direct the volunteer to any particular study.
4. After the volunteer selects a study, he/she is provided with an informed consent contract for participation. This certifies that the volunteer, as a participant of the study, understands the protocol, risks, and conditions of the study. In the consent form is a paragraph which informs the volunteer