

2/19/01

Final Order No. DOH-01-0418-DS-MOA
FILED DATE - 3/27/01
Department of Health
By: W. C. R. Kenon
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF MEDICINE**

**IN RE: THE PETITION
FOR DECLARATORY
STATEMENT OF
THE FEDERATION OF
PHYSICIANS AND DENTISTS**

FINAL ORDER

THIS CAUSE came before the Board of Medicine on December 1, 2000, for consideration of the petition by the Federation of Physicians and Dentists for interpretations of Sections 458.310, 458.315, and 458.317, Florida Statutes. Petitioners were represented at the hearing on this matter by Anthony Demma, Attorney at Law.

Having considered the Petition, applicable law, and being otherwise and fully advised in the premises, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. The Petitioner, the Federation of Physicians and Dentists, is an employee organization registered with the Public Employees Relations Commission as the exclusive bargaining agent for state-employed physicians and dentists, most of whom are employed by either the Florida Department of Corrections or the Florida Department of Children and Families.
2. Physician members of Petitioner hold restricted, temporary, or limited licenses to practice medicine under the provisions of 458.315, Florida Statutes.
3. In the Petition, the following assertions were made:

Over the last several years, the State of Florida, most notably the Florida Department of Corrections, has begun to contract out medical services to private, for-profit entities at certain state correctional institutions and other state-run facilities. Very recently, the move toward the subcontracting of Correctional medical services previously provided by State of Florida employed physicians has rapidly accelerated, and Corrections is presently taking bids from such corporate entities for the provision of medical care to inmates housed in twelve correctional facilities in the southern part of Florida. Thus, a drastic expansion in the number of current, state-employed physicians likely to become employed by private corporations to provide care to Florida's inmates is imminent.

The Federation has members who hold restricted, temporary, and/or limited licenses to practice medicine in Florida which restrict their practice based upon the nature of the employment setting (treatment of indigent patients), the nature of the employer (public agencies or non-profit agencies), and/or which limit their practice areas to those designated by the Board as areas of critical need. The licensure statutes which authorize such practice in Florida are Sections 458.310 (Restricted licenses), 458.315 (Temporary Certificate in Critical Need Area), and Section 458.317 (Limited licensure).

The Federation and its members have concerns about the possibility that any or all of these licensure provisions might be interpreted to apply only to physicians employed: 1) solely by government agencies as the text of Section 458.310(2)(c) specifically requires, or 2) "...only in the employ of public agencies or institutions or nonprofit agencies or institutions meeting the requirements of s.501(c)(3) of the Internal Revenue Code . . ." under the provisions of Section 458.317(1)(d), or 3) "... by a county health department, correctional facility, community health center funded by s.329, s.330, or s.340 of the United States Public Health Services Act, or other entity that provides care to indigents and that is approved by the Public Health Officer" as Section 458.315 requires.

The Federation is a substantially affected party with respect to the subcontracting of these medical services in that many of its current members will be removed from the bargaining unit at such time as they either lose their jobs in the privatization process or become employed by private employers who enter subcontracts to assume these medical care functions at state facilities. The Federation also has a direct membership assistance interest in responding to the licensure related inquiries of its current members licensed under the provisions in question who are offered positions with these private employers.

The Federation has already received inquiries from its state-employed members about the future viability of their licenses under the above-referenced licensure provisions should they be offered the opportunity to continue to provide medical services at correctional facilities as employees of private, for-profit subcontractors. These physicians are concerned that, upon taking such positions in the employ of such subcontractors, they could be determined to be effectively practicing medicine in Florida without a proper license. The Federation is unable to reasonably advise its members in this regard as the Board of Medicine has never provided any written guidance about the applicability of the above-reference licensure provisions to private, for profit employers who hire limited, restricted, and/or temporary license physicians to provide medical services in State-owned and operated facilities under contract to the Department of Corrections.

4. There have been no physicians licensed under the authority of Section 458.310, F.S. It follows, therefore, that no members of the Federation have been licensed under the authority of Section 458.310, F.S. In addition, during the presentation of the Petition it was determined that no members of the Federation are licensed under the authority of Section 458.317, F.S.

5. The Petition was noticed by the Board of Medicine in the November 17, 2000 issue of the Florida Administrative Weekly (Vol. 26, No. 46).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Chapter 28-104, Florida Administrative Code. The Petition for Declaratory Statement filed by Petitioner is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

2. The Board finds the Petitioner has the requisite interests to obtain the Declaratory Statement from the Board with regard to interpretation of the specified provisions of Section 458.315, Florida Statutes. Since no physicians who are members of the Federation are licensed pursuant to Section 458.310 or Section 458.317, Florida Statutes, the Board finds that the Federation has no standing to seek an interpretation of those provisions of the law.

3. The relevant provisions of Section 458.315, Florida Statutes, provide, as stated by Petitioner, that physicians who hold temporary licenses for practice in areas of critical need are not limited to practicing as employees of governmental entities. Rather, the statute explicitly authorizes that they can be employed by another "entity that provides health care to indigents and that is approved by the State Health Officer."

4. As for the applicability of Section 458.315, F.S., to correctional facilities, the Board has interpreted the phrase "areas of critical need" to include areas designated by the Department of Health and Human Services as health manpower shortage areas and to include state prisons. Thus, if the state prisons are approved by the State Health Officer, then licensees under Section 458.315, F.S., are authorized to provide medical services at correctional facilities as employees of private, for-profit subcontractors. For purposes of the interpretation of Section 458.315, F.S., a physician is "employed" by the entity with whom they have a contract.

5. This Final Order responds only to the specific facts set forth above and the statute cited by the Petitioners in their Petition for Declaratory Statement. The conclusions of the Board are with regard to the specific statutory provisions addressed and should not be interpreted as commenting on whether the proposed facts may or may not violate other provisions of Chapter 458, Florida Statutes, or other related obligations placed on physicians in Florida.

WHEREFORE, the Board hereby finds that under the specific facts of the petition, physicians licensed under Section 458.315, F.S., are authorized to provide medical services at correctional facilities as employees of private, for-profit subcontractors if the correctional facility is approved by the State Health Officer.

DONE AND ORDERED this 27th day of February, 2001.

BOARD OF MEDICINE


for GASTON ACOSTA-RUA, M.D.
CHAIRMAN

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 MAY BE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES REQUIRED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED AS SET FORTH ABOVE AND WITHIN THIRTY (30) DAYS OF RENDITION OF THIS FINAL ORDER.

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 Anthony Demma, Attorney for Petitioners, Meyer and Brooks, P.A., 2544 Blairstone Pines Drive, Post Office Box 1547, Tallahassee, Florida 32302-1542, and by interoffice mail to Nancy Murphy, Office of the Attorney General, Administrative Law Section, PL 01 The Capitol, Tallahassee, FL 32399-1050 this 27th day of March, 2001.

Lonnie D. Wright

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DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
FLORIDA BOARD OF MEDICINE

THE FEDERATION OF PHYSICIANS
AND DENTISTS,

Petitioner.

PETITION FOR DECLARATORY STATEMENT

The Petitioner, The Federation of Physicians and Dentists (hereinafter "the Federation"), petitions the Florida Board of Medicine for a Declaratory Statement pursuant to Section 120.565, Florida Statutes (1999), with respect to the following circumstances:

1. The Federation is an employee organization registered with the Public Employee Relations Commission (hereinafter "PERC") as the exclusive bargaining agent for State-employed physicians and dentists, most of whom are employed by either the Florida Department of Corrections or the Florida Department of Children and Families.

2. Over the last several years, the State of Florida, most notably the Florida Department of Corrections, has begun to contract out medical services to private, for-profit entities at certain state correctional institutions and other state-run facilities. Very recently, the move toward the subcontracting of Correctional medical services previously provided by State of Florida employed physicians has rapidly accelerated, and Corrections is presently taking bids from such corporate entities for the provision of medical care to inmates housed in twelve correctional facilities in the southern part of Florida. Thus, a drastic expansion in the number of current, state-employed physicians likely to become employed by private corporations to provide care to Florida's inmates is imminent.

3. The Federation has members who hold restricted, temporary, and/or limited licenses to practice medicine in Florida which restrict their practice based upon the nature of the employment setting (treatment of indigent patients), the nature of the employer (public agencies or non-profit agencies), and/or which limit their practice areas to those designated by the Board as areas of critical need. The licensure statutes which authorize such practice in Florida are Sections 458.310 (Restricted licenses), 458.315 (Temporary Certificate in Critical Need Area), and Section 458.317 (Limited licensure).

4. The Federation and its members have concerns about the possibility that any or all of these licensure provisions might be interpreted to apply only to physicians employed: 1) solely by government agencies as the text of Section 458.310(2)(c) specifically requires, or 2) "... only in the employ of public agencies or institutions or nonprofit agencies or institutions meeting the requirements of s.501(c)(3) of the Internal Revenue Code ..." under the provisions of Section 458.317(1)(d), or 3) "... by a county health department, correctional facility, community health center funded by s.329, s.330, or s.340 of the United States Public Health Services Act, or other entity that provides care to indigents and that is approved by the Public Health Officer" as Section 458.315 requires.

5. The Federation is a substantially affected party with respect to the subcontracting of these medical services in that many of its current members will be removed from the bargaining unit at such time as they either lose their jobs in the privatization process or become employed by private employers who enter subcontracts to assume these medical care functions at state facilities. The Federation also has a direct membership assistance interest in responding to the licensure related inquires of its current members licensed under the provisions in question who are offered positions

with these private employers.

6. The Federation has already received inquiries from its state-employed members about the future viability of their licenses under the above-referenced licensure provisions should they be offered the opportunity to continue to provide medical services at correctional facilities as employees of private, for-profit subcontractors. These physicians are concerned that, upon taking such positions in the employ of such subcontractors, they could be determined to be effectively practicing medicine in Florida without a proper license. The Federation is unable to reasonably advise its members in this regard as the Board of Medicine has never provided any written guidance about the applicability of the above-referenced licensure provisions to private, for profit employers who hire limited, restricted, and/or temporary license physicians to provide medical services in State-owned and operated facilities under contract to the Department of Corrections.


7. The Federation recently engaged in informal efforts to determine the Board's interpretation of the meaning of these licensure statutes as they relate to private subcontractors. Those efforts culminated with a letter from Board counsel, M. Catherine Lannon, which indicates only that Ms. Lannon views Section 458.315 as applicable to otherwise appropriate private subcontractor employers as well as public ones, and which includes an invitation to the Federation to formally bring this matter before the Board if a more definitive and expansive response is desired (See letter of April 11, 2000 from M. Catherine Lannon attached hereto as Exhibit A). The Federation now seeks such formal review and guidance from the Board.

WHEREFORE, Petitioner requests that the Florida Board of Medicine issue a Declaratory Statement clarifying whether Sections 458.310, 458.315, and 458.317 authorize physicians licensed under any or all of these provisions to practice medicine in Florida in the employ of private, for profit

subcontractors to State agencies in the same sense they would be authorized to engage in similar medical practices as employees of the Department of Corrections or other agencies of the State.

Respectfully submitted,

MEYER AND BROOKS, P.A.
2544 Blairstone Pines Drive
Post Office Box 1547
Tallahassee, Florida 32302-1547

By: 
ANTHONY D. DEMMA
Florida Bar No.: 0945870

ATTORNEY FOR PETITIONER



THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

Reply to:

Office of the Attorney General
Administrative Law
FL - 01 The Capitol
Tallahassee, Florida 32399-1050

April 11, 2000

Anthony Demma
Post Office Box 1547
Tallahassee, Florida 32302

Re: Restricted Licensure/Private Employment

Dear Mr. Demma:

This is a response to your inquiries about employment of physicians with restricted licenses.

First, you asked me about an interpretation of Section 458.310, F.S., as applied to physicians who are employed by private contractors, not by the Department of Corrections. When I check with staff at the Board of Medicine, I was informed that no licenses had been issued under that statutory section.

Then you asked about two specific people, but we were unable to find restricted licensees with those names.

After further discussion between us, you sent a list of the names of 15 people, 12 of whom work in facilities of the Departments of Health or Corrections. For three the place of practice was not identified. Of these 15 people, one is licensed as a psychologist and 12 have full medical licenses. Only two, Wilfredo Ortiz-Medina and Angel Manuel Diaz have restricted licenses. They are licensed under 458.315, F.S.

This specific statute does not, in my view, require that the licensee practice only as an employee of the Department of Corrections. A physician with a temporary certificate for practice in an area of critical need may be employed "by a county health department, correctional facility, community health center. . . or other entity that provides health care to indigents and that is approved by the State Health Officer."

I do not know the specific details of the identified physicians' employment arrangements, and I do not intend to opine as to the appropriateness of their particular arrangements except in the context of an authorized proceeding before the Board. However, the context of my discussions with you have been as to the general interpretation of the statute. As a matter of general interpretation, it is my view that the statutory scheme requires only that the licensee be employed by an entity that provides health care to indigents, which entity is approved by the State Health Officer, in an area approved by the Board as an area of critical need. I do not see Section 458.315 as requiring that the physician be directly employed by a public agency.

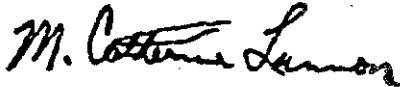


AN AFFIRMATIVE ACTION/EQUAL OPPORTUNITY EMPLOYER

Anthony Demma
April 11, 2000
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I trust that this responds to your question. If not, please let me know. If you are aware of physicians who are practicing outside of the authority of their restricted license, I would hope that you would file a complaint with the Department of Health. Furthermore, I would hope that if some of your physician-clients are aware of conduct that is in violation of the Medical Practice Act, you would remind them of their statutory duty to report persons in violation. See Sections 458.331(1)(u) and 455.624(1)(I), F.S.

Sincerely,



M. Catherine Lannon
Senior Assistant Attorney General
Counsel to the Board of Medicine

MCL/wb

cc: Dr. Georges El-Bahri, Board Chair
Tanya Williams, Executive Director

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458.310 Restricted licenses.--

(1) It is the intent of the Legislature to provide medical services to all the residents of this state at an affordable cost.

(2) The Board of Medicine may, by rule, develop criteria and, without examination, issue restricted licenses annually to up to 100 persons to practice medicine in this state who:

(a) Meet the requirements of s. 458.311;

(b) Show evidence of the active licensed practice of medicine in another jurisdiction for at least 2 years of the immediately preceding 4 years, or completion of board-approved postgraduate training within the year preceding the filing of an application; and

(c) Enter into a contract to practice for a period of 24 months solely in the employ of the state or a federally funded community health center or migrant health center, at the current salary level for that position. The Board of Medicine shall designate areas of critical need in the state where these restricted licensees may practice.

(3) Before the end of the 24-month practice period, the physician must take and successfully complete the licensure examination.

(4) If the restricted licensee breaches the terms of the employment contract, he or she may not be licensed as a physician in this state under any licensing provisions.

History.--s. 50, ch. 92-149; s. 201, ch. 97-103.

458.315 Temporary certificate for practice in areas of critical need.--Any physician who is licensed to practice in any other state, whose license is currently valid, and who pays an application fee of \$300 may be issued a temporary certificate to practice in communities of Florida where there is a critical need for physicians. A certificate may be issued to a physician who will be employed by a county health department, correctional facility, community health center funded by s. 329, s. 330, or s. 340 of the United States Public Health Services Act, or other entity that provides health care to indigents and that is approved by the State Health Officer. The Board of Medicine may issue this temporary certificate with the following restrictions:

(1) The board shall determine the areas of critical need, and the physician so certified may practice in any of those areas for a time to be determined by the board. Such areas shall include, but not be limited to, health professional shortage areas designated by the United States Department of Health and Human Services.

(a) A recipient of a temporary certificate for practice in areas of critical need may use the license to work for any approved employer in any area of critical need approved by the board.

(b) The recipient of a temporary certificate for practice in areas of critical need shall, within 30 days after accepting employment, notify the board of all approved institutions in which the licensee practices and of all approved institutions where practice privileges have been denied.

(2) The board may administer an abbreviated oral examination to determine the physician's competency, but no written regular examination is necessary.

(3) Any certificate issued under this section shall be valid only so long as the area for which it is issued remains an area of critical need. The Board of Medicine shall review the service within said area not less than annually to ascertain that the minimum requirements of the Medical Practice Act and the rules and regulations promulgated thereunder are being complied with. If it is determined that such minimum requirements are not being met, the board shall forthwith revoke such certificate.

(4) The board shall not issue a temporary certificate for practice in an area of critical need to any physician who is under investigation in another state for an act which would constitute a violation of this chapter until such time as the investigation is complete, at which time the provisions of s. 458.331 shall apply.

(5) The application fee and all licensure fees, including neurological injury compensation assessments, shall be waived for those persons obtaining a temporary certificate to practice in areas of critical need for the purpose of providing volunteer, uncompensated care for low-income Floridians. The applicant must submit an affidavit from the employing agency or institution stating that the physician will not receive any compensation for any service involving the practice of medicine.

History.--ss. 1, 8, ch. 79-302; s. 293, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 25, 26, ch. 86-245; s. 19, ch. 88-1; s. 8, ch. 88-277; s. 20, ch. 89-162; s. 8, ch. 89-374; s. 1, ch. 91-145; s. 12, ch. 91-220; s. 4, ch. 91-429; s. 141, ch. 97-101; s. 202, ch. 97-103; s. 96, ch. 99-397; s. 38, ch. 2000-318.

458.317 Limited licenses.—

(1)(a) Any person desiring to obtain a limited license shall:

1. Submit to the board, with an application and fee not to exceed \$300, an affidavit stating that he or she has been licensed to practice medicine in any jurisdiction in the United States for at least 10 years and intends to practice only pursuant to the restrictions of a limited license granted pursuant to this section. However, a physician who is not fully retired in all jurisdictions may use a limited license only for noncompensated practice. If the person applying for a limited license submits a notarized statement from the employing agency or institution stating that he or she will not receive compensation for any service involving the practice of medicine, the application fee and all licensure fees shall be waived. However, any person who receives a waiver of fees for a limited license shall pay such fees if the person receives compensation for the practice of medicine.

2. Meet the requirements in s. 458.311(1)(b)-(g) and (5). If the applicant graduated from medical school prior to 1946, the board or its appropriate committee may accept military medical training or medical experience as a substitute for the approved 1-year residency requirement in s. 458.311(1)(f).

(b) After approval of an application under this section, no license shall be issued until the applicant provides to the board an affidavit that there have been no substantial changes in status since initial application.

(c) If it has been more than 3 years since active practice was conducted by the applicant, the full-time director of the county health department or a licensed physician, approved by the board, shall supervise the applicant for a period of 6 months after he or she is granted a limited license for practice, unless the board determines that a shorter period of supervision will be sufficient to ensure that the applicant is qualified for licensure. Procedures for such supervision shall be established by the board.

(d) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions meeting the requirements of s. 501(c)(3) of the Internal Revenue Code, which agencies or institutions are located in the areas of critical medical need as determined by the board. Determination of medically underserved areas shall be made by the board after consultation with the Department of Health and statewide medical organizations; however, such determination shall include, but not be limited to, health professional shortage areas designated by the United States Department of Health and Human Services. A recipient of a limited license may use the license to work for any approved employer in any area of critical need approved by the board.

(e) The recipient of a limited license shall, within 30 days after accepting employment, notify the board of all approved institutions in which the licensee practices and of all approved institutions where practice privileges have been denied.

Nothing herein limits in any way any policy by the board, otherwise authorized by law, to grant licenses to physicians duly licensed in other states under conditions less restrictive than the requirements of this section. Notwithstanding the other provisions of this section, the board may refuse to authorize a physician otherwise qualified to practice in the employ of any agency or institution otherwise qualified if the agency or institution has caused or permitted violations of the provisions of this chapter which it knew or should have known were occurring.

(2) The board shall notify the director of the full-time local county health department of any county in which a licensee intends to practice under the provisions of this act. The director of the full-time county health department shall assist in the supervision of any licensee within the county and shall notify the board which issued the licensee his or her license if he or she becomes aware of any actions by the licensee which would be grounds for revocation of the limited license. The board shall establish procedures for such supervision.

(3) The board shall review the practice of each licensee biennially to verify compliance with the restrictions prescribed in this section and other applicable provisions of this chapter.

(4) Any person holding an active license to practice medicine in the state may convert that license to a limited license for the purpose of providing volunteer, uncompensated care for low-income Floridians. The applicant must submit a statement from the employing agency or institution stating that he or she will not receive compensation for any service involving the practice of medicine. The application and all licensure fees, including neurological injury compensation assessments, shall be waived.

History.--ss. 1, 8, ch. 79-302; s. 294, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 12, 25, 26, ch. 86-245; s. 23, ch. 89-162; s. 1, ch. 91-88; s. 4, ch. 91-429; s. 80, ch. 92-149; s. 1, ch. 97-3; s. 142, ch. 97-101; s. 205, ch. 97-103; s. 151, ch. 97-237; s. 20, ch. 97-264; s. 27, ch. 97-273; s. 243, ch. 98-166; s. 98, ch. 99-397.