

BEFORE THE BOARD OF MEDICINE

IN RE: The Petition for
Declaratory Statement of:
JOHN W. LISTER, M.D.,
Petitioner.

Case No. E7-DS-08

FILED

Department of Professional Regulation
AGENCY CLERK

FINAL ORDER

CLERK *Melinda W. Wagon*

DATE 12/13/87

THIS CAUSE came before the Board of Medicine pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code, on August 1, 1987, in Orlando, Florida, for the purpose of considering the Petition for Declaratory Statement filed by John W. Lister (hereinafter Petitioner). No person or entity sought to intervene as a party.

Having considered the petition and other evidence of record, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner is licensed in the State of Florida as a medical doctor and is in the practice of medicine at 240 Daytonia Road, Miami Beach, Florida 33240. Petitioner is interested in being employed by a Florida Corporation organized pursuant to Chapter 607, Florida Statutes, wherein Petitioner and other duly licensed Florida physicians would be employed by that corporation to practice medicine under the name of the corporation, which name would be Advanced Cardiology, Inc. The Corporation would lease office space and would provide all medical equipment and supplies, render statements to, and receive payment, from patients for services rendered by its employee-doctors. Only the Corporation's employee-doctors, who will be licensed as Florida physicians, will engage in the diagnosis, treatment, operation or prescription for any human disease, pain, injury, or other

physical or mental condition.

2. In the Petition for Declaratory Statement filed with the Board, Petitioner requests the Board to answer whether a corporation operating under the facts set forth above would be deemed to be practicing medicine without a license. The statutory citations in the Petition for Declaratory Statement are Section 458.301, F.S. and Section 458.311, F.S.

3. The petition was noticed by the Board of Medicine in the July 31, 1987, issued of the Florida Administrative Weekly (Vol. 13, No. 31, Pg. 2849).

CONCLUSIONS OF LAW

1. The board has jurisdiction over this matter pursuant to Section 120.565, F.S., and Chapter 28-4, Florida Administrative Code. The Amended Petition for Declaratory Statement filed by Petitioner is in substantial compliance with the provisions of Section 120.565, F.S., and Chapter 28-4, Florida Administrative Code.


2. The Board finds that Petitioner has a requisite interest to receive the Declaratory Statement from the Board in that he is a licensed medical doctor who proposes a stated course of action and requests an interpretation of specified provisions in the law.

3. Neither Section 458.301, F.S., which relates to the legislative intent in enacting Chapter 458, F.S., nor Section 458.311, F.S., which relates to qualifications for licensure by examination, deal with the issue of the unauthorized practice of medicine. However, Petitioner has given sufficient information to make it apparent that he is requesting an interpretation of Section 458.327(1)(a), F.S. Section 458.327(1)(a), F.S., provides that it is a felony to practice or attempt to practice medicine without a license.

4. There is no clear statutory prohibition in Chapter 458, F.S., which prohibits medical doctors from engaging in the practice of medicine through a corporate structure as proposed herein. This is in contrast to provisions of the Optometry Practice Act and the Dentistry Practice Act. Specifically, Section 463.014, F.S. (1986 Supp.), expressly prohibits any corporation other than a licensed practitioner from engaging in the practice of optometry through the means of engaging the services of any person licensed to practice optometry in the state. It further prohibits any licensed practitioner from engaging in the practice of optometry with any corporation. Similarly, Section 466.0285, F.S. (1986 Supp.) specifically provides that no person other than a dentist licensed pursuant to Chapter 466, F.S., may employ a dentist or dental hygienist in the operation of a dental office.

5. It is the Board's interpretation that Section 458.327(1)(a), F.S., which prohibits the unlicensed practice of medicine, does not prohibit the practice of medicine by duly licensed medical doctors as employees of a corporation as described herein. The presence of express prohibitions in other practice acts, read in conjunction with Chapter 458, indicates a failure of the Legislature to include a prohibition against a corporation other than a licensed practitioner from practicing medicine, a prohibition against a licensed doctor from engaging in the practice of medicine with a corporation, or a prohibition against someone other than a licensed doctor from employing a doctor. Thus, it does not prohibit the practice of medicine by doctors as employees of corporations.

6. The Board's response to this Petition for Declaratory statement responds only to the question asked, that is, whether the corporation operating under the facts set forth below would



on whether or not the proposal may violate other provisions of Chapter 458, F.S., or other related obligations of physicians.

Pursuant to Section 120.59, Florida Statutes, the Petitioner is hereby notified that he may appeal this final order by filing one copy of a notice of appeal with the clerk of the agency and by filing the filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty days of the date this order is filed, as provided in Chapter 120, Florida Statutes, and the Florida Rules of Appellate Procedure.

DONE AND ORDERED this 22 day of November, 1987.

BOARD OF MEDICINE

Emilio D. Echevarria
EMILIO D. ECHEVARRIA
Chairman