

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

In re: The Petition for Declaratory
Statement of:

DR. GARY R. JOHNSON, M.D.,
and THE GREEN CLINIC, a
Partnership of Professional
Associates,

Petitioner.

FINAL ORDER

THIS CAUSE came before the Board of Medicine (hereinafter Board) pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code, on November 30, 1990 for the purpose of considering the Amended Petition for Declaratory Statement filed by The Green Clinic and Gary R. Johnson (hereinafter Petitioners). No person or entity sought to intervene as a party. Having considered the petition, the other evidence and documents of record, the applicable law, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. Petitioner, Gary R. Johnson, M.D., is licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes.
2. The Green Clinic is a partnership of professional associations.

3. The Petitioners have provisionally entered into an agreement and wish the Board to interpret whether the proposed business arrangement would constitute a "split-fee arrangement" prohibited by Section 458.331(1)(i), Florida Statutes. The facts are as follows:

The Agreement provides the GREEN CLINIC will furnish to Dr. Johnson an independent contractor physician, ". . . office space . . . supplies, equipment, nursing help and clerical help, as well as x-ray facilities, laboratory facilities, ultra-sound studies and nuclear medicine studies . . ." In addition, the GREEN CLINIC will also provide for the use of Dr. Johnson ". . . the usual small instruments that are used generally by physicians for diagnosis or treatment in their office, and minor medications such as alcohol, mercurochrome, bandages and the like . . ."

In consideration of the services, facilities, space and supplies furnished by the GREEN CLINIC, this Agreement provides that Dr. Johnson will ". . . determine the amount of the fees of [his] patients . . ." and will participate ". . . in a central professional fee billing arrangement . . ." which in substance places upon the GREEN CLINIC the responsibility of billing and collecting from those patients of Dr. Johnson who were treated by him as a result of his association with the GREEN CLINIC.

From the total fees collected, Dr. Johnson will be paid 46% for his services; while the GREEN CLINIC will be paid 54% for its services to Dr. Johnson and his patients.

Dr. Johnson's compensation will not be tied to or associated with referrals to the GREEN CLINIC or to any other physician associated with the GREEN CLINIC.

Dr. Johnson will not have an ownership interest in the GREEN CLINIC, but as to the GREEN CLINIC will be an independent contractor.

4. Petitioners request the Board to review the above-stated facts and to state whether the conduct described violates Section 458.331(1)(i), Florida Statutes.

5. This petition was noticed by the Board of Medicine in the November 2, 1990, issue of the Florida Administrative Weekly (Vol. 16, No.44, Pg. 5199).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida

Statutes, and Chapter 28-4, Florida Administrative Code.

2. The Petition for Declaratory Statement filed by Petitioner is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code.

3. Petitioner Johnson has the requisite interest to maintain this petition.

4. Section 458.331(1)(i), Florida Statutes, provides the following ground for disciplinary action:

Paying and receiving any commission, bonus, kickback, rebate, or engaging in any split-fee arrangement, in any form whatsoever with a physician, organization, agency, or person either directly or indirectly, for patients referred to providers of health care goods and services, including, but not limited to hospitals, nursing homes, clinical laboratories, ambulatory surgical centers, or pharmacies. The provisions of this paragraph shall not be construed to prevent a physician from receiving a fee for professional consulting services.

5. The Board finds that the facts set forth above in light of the statute reveal that the proposed arrangement is a classic fee splitting arrangement. The payments to Dr. Johnson and to the Clinic are based solely on the amount of the billings and bear no relationship to the cost of the provision of services by the Clinic. Of note (as revealed by the contract attached) is that the billings, of which the Clinic will receive 54%, even includes billings for services performed outside the Green Clinic.

6. The Board's response to this Petition for Declaratory Statement responds only to the questions asked based on the facts asserted and interprets only the statutory provisions provided by Petitioners. The conclusions by the Board with regard to the statutory provisions cited by Petitioners are not a comment on whether the proposal may or may not violate other provisions of Chapter 458, Florida Statutes, or other related obligations of physicians.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

That Section 458.331(1)(i), Florida Statutes, does prohibit an arrangement whereby a clinic retains a specified percentage of the physician's billings without regard to the cost of providing services by the clinic to the physician and without regard to whether the billings are for services performed by the physician within or outside the clinic.

This Order takes effect upon filing with the Clerk of the Department of Professional Regulation.

DONE AND ORDERED this 11th day of July, 1992.

BOARD OF MEDICINE

ZACHARIAH P. ZACHARIAH, M.D.
CHAIRPERSON

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