

FILED

Department of Professional Regulation
AGENCY CLERK

DEPARTMENT OF PROFESSIONAL REGULATION
BEFORE THE BOARD OF MEDICINE

CLERK

John Cope

DATE 11-10-89

IN RE: The Petition for

Declaratory Statement of:

CASE NUMBER: 89-BOM-01

Conrad Goulet, M.D.

FINAL ORDER

THIS CAUSE came before the Board of Medicine, pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code, on February 5, 1989, in Dania, Florida, for the purpose of considering the Petition for Declaratory Statement filed by Conrad Goulet, M.D. (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 a physician licensed to practice medicine in the State of Florida and is in the practice of medicine at 1233 45th Street, Suite A-8, West Palm Beach, Florida 33407.
2. Petitioner is interested in being employed by a clinic which will be organized either as a Florida corporation pursuant to Chapter 607, Florida Statutes, or as a Florida partnership pursuant to Chapter 620, Florida Statutes. If organized as a corporation, the shares of the clinic will be owned completely by individuals other than physicians licensed to

practice medicine in the State of Florida. If organized as a partnership, none of the partners will be physicians licensed to practice medicine in the State of Florida.

3. The clinic will perform the following functions: lease office space; provide medical equipment and supplies; establish the fees which will be charged for services rendered to patients, bill patients for services rendered and receive payment from patients and market the medical services available through physicians. The clinic will directly reimburse physicians for the services rendered to patients. Only physician licensed by the State of Florida will engage in the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity or other physical or mental condition.

4. In the Petition for Declaratory Statement filed with the Board, Petitioner requests the Board to answer, under the Florida Administrative Code set forth above, the following:

(a) Whether the clinic operating as either a corporation or partnership under the facts set forth above, would be deemed to be practicing medicine without a license in violation of Florida's Statute Section 458.327(1)(a)?

(b) If (a) is answered in the affirmative, would Petitioner, as an employee of the clinic, be in violation of Florida Statute Section 458.331(1)(f), for aiding and assisting an unlicensed person to practice medicine contrary to the law?

5. The Petition was duly noticed by the Board of Medicine in the January 13, 1989, issue of the Florida Administrative Weekly (Vol. 15, No. 2, Pg. 128).

CONCLUSIONS OF LAW

1. The Board of Medicine has jurisdiction has over this matter pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, 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 28-4, 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 as a specified provision of the law. Both statutes for which he asks an interpretation describe activities which are prohibited by the Medical Practice Act and Petitioner is subject to the provisions of the Medical Practice Act.

3. Section 458.327(1)(a), Florida Statutes (1987), provides that it is a felony of the third degree to practice medicine or attempt to practice medicine without an active license. It is the Board's interpretation that Section 458.327(1)(a), does not prohibit the practice of medicine by duly licensed medical doctors as employees of a Florida corporation or of a Florida partnership as described herein. There is no clear statutory prohibition in Chapter 458, Florida Statutes, which prohibits medical doctors from engaging in the practice of medicine through a business entity as proposed herein. This is in contrast to the provisions of the Optometry Practice Act and the Dentistry Practice Act. Specifically, Section 463.014,



Florida Statutes (1987), 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, Florida Statutes (1987), specifically provides that no person other than a dentist licensed pursuant to Chapter 466, Florida Statutes, may employ a dentist or dental hygienist in the operation of a dental office. See, In Re: The Petition for Declaratory Statement of John W. Lister, M.D., 9 FALR 6299.

4. The presence of express prohibitions in other practice acts, read in conjunction with the entirety of Chapter 458, indicates the failure of the Legislature to include a prohibition against a corporation or partnership other than a licensed practitioner from practicing medicine, a prohibition against a licensed doctor from engaging in the practice of medicine within a corporation or partnership, 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 or partnerships.

5. The second question asked by Petitioner, with regard to whether he may be in violation of Section 458.331(1)(f), Florida Statutes, which prohibits a licensed medical doctor from aiding and assisting an unlicensed person to practice medicine need not be answered since the answer to the first question was no. If the arrangement does not constitute the practice of

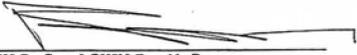
medicine, then Petitioner's participation in the arrangement would not constitute aiding and assisting the unlicensed practice of medicine.

6. The Board's response to this Petition for Declaratory Statement responds only to the questions asked. The conclusion by the Board that the proposal submitted does not constitute the unauthorized practice of medicine or aiding and assisting the unauthorized practice of medicine is not a comment on whether the proposal may violate other provisions of Chapter 458, Florida Statutes, or other related obligations of physicians.

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

DONE AND ORDERED this 30 day of March, 1989.

BOARD OF MEDICINE


FUAD S. ASHKAR, M.D.,
CHAIRMAN

NOTICE OF THE RIGHT TO APPEAL

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 ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF PROFESSIONAL REGULATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF