

DEPARTMENT OF PROFESSIONAL REGULATION

BOARD OF MEDICINE

In re: The Petition for Declaratory  
Statement of:

ORTHOPEDIC CENTER AND  
OLIVER L. JONES, JR., M.D.

**FILED**

Department of Professional Regulation

DEPUTY CLERK

CLERK *Randy Shna*

/DATE 2-24-93

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 December 6, 1992, for the purpose of considering the Petition for Declaratory Statement and the amendment filed by Orthopedic Center and Oliver L. Jones, Jr., M.D. (hereinafter Petitioner). The original Petition was filed by Orthopedic Center, but it was amended to add Dr. Jones, a member of the group practice, Orthopedic Center. 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 Oliver L. Jones, Jr., M.D., is licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes, and practices medicine as one of the members of the group practice, Orthopedic Center, at 4801 South Congress Avenue, Lake Worth, Florida 33461.

2. The facts asserted by Petitioner are as follows: The Petitioner Orthopedic Center is a group practice which consists

of eight orthopedic surgeons and one primary care physician. This Petitioner meets the definition of a group practice as defined in Section 7(3)(g) of the Act. Currently, the Orthopedic Center is performing diagnostic testing and x-ray services for its patients within the confines of its offices. Occasionally, it also performs services for patients referred by outside physicians. Diagnostic testing and x-ray services are considered designated health services under Section (7)(3)(d) of the Act. The outside physicians recommend their patients to use the services of the Orthopedic Center purely for convenience and quality of service, and do not receive a kickback (as defined in Section 8 of the Act). The revenues resulting from the patients referred by outside physicians are less than 1% of the total collected revenues of the Orthopedic Center's practice per annum.

3. Petitioner requests the Board to review the above-stated facts and to state whether the conduct described is permitted/prohibited by Chapter 92-178, Laws of Florida (codified at Sections 455.236-455.239, Florida Statutes (1992 Supp.)).

4. This petition was noticed by the Board, of Medicine in the Vol. 18, No. 47, issue of the November 20, 1992, Florida Administrative Weekly (P. 7117).

#### 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. 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. Section 7(3)(g) of Chapter 92-178 (codified at Section 455.236, Florida Statutes (1992 Supp.)) provides that the term referral, as used in the Act, does not prohibit orders, recommendations, or plans of care:

By a health care provider who is the sole provider or member of a group practice for designated health services or other health care items or services that are prescribed or provided solely for such referring health care provider's or group practice's own patients, and that are provided or performed by or under the direct supervision of such referring health care provider or health practice.

See Section 455.236(3)(m), Florida Statutes (1992 Supp.)

3. At issue is whether the term "solely" prohibits Petitioner from performing the designated health services for patients referred by outside physicians. In reviewing the Patient Self Referral Act, its state purposes, and the specific facts of this case, the Board find that the action of Petitioner in providing designated health services to patients referred by outside physicians is not a prohibited referral so long as Petitioner bills a global fee and the patient referred becomes, in effect, the patient of Petitioner.

4. The Board's response to this Petition for Declaratory Statement responds only to the questions asked and interprets only the statutory provisions provided by Petitioner. The conclusions by the Board with regard to the statutory provisions cited by Petitioner are not a comment on whether the proposal may or may not violate other provisions of Chapters 458 or 455, Florida Statutes, or other related obligations of physicians.

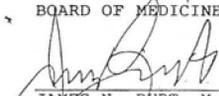
WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

The Orthopedic Center may perform designated health services, as defined in Section 455.236(3)(d), Florida Statutes (1992 Supp.), for patients referred by outside physicians without violating Section 455.236, Florida Statutes (1992 Supp.) so long as it bills global fee for the services and the patient referred becomes, in effect, its patient.

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

DONE AND ORDERED this 11 day of February, 1993.

BOARD OF MEDICINE

  
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JAMES N. BURT, 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 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 APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. mail to Orthopedic Center and Oliver L. Jones, Jr., M.D., 4801 South Congress Avenue, Lake Worth, Florida 33461, and Jodi B. Laurence, Attorney at Law, Broad and Cassel, Court House Center, Suite 2000, 175 N.W. First Avenue, Miami, Florida 33128-9965 this 24<sup>th</sup> day of February, 1993.

Abbot J. Fairchild

PDS