

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

In re: The Petition for Declaratory
Statement of:

PAUL B. SPEILLER, M.D., P.A.
d/b/a MULTI SPECIALISTS OF
DEERFIELD,
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 April 14, 1991, for the purpose of considering the Petition for Declaratory Statement filed by Paul B. Speiller, M.D., P.A., d/b/a Multi Specialists of Deerfield (hereinafter Petitioner). 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, Paul B. Speiller, M.D., is licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes, and has been issued license number ME 27800.
2. Petitioner is the owner of Multi Specialists of Deerfield (hereinafter Multi) and asks whether a proposed arrangement between Multi and Florida medical specialists as independent contractors is violative of Section 458.331(1)(i), Florida Statutes.
3. The factual details are as follows:

Multi is a multi-specialist medical center wholly owned by Paul B. Speiller, M.D., P.A. This Florida professional association is in turn wholly owned by Paul B. Speiller, M.D.

Multi shall operate as a medical clinic at 1874 West Hillisboro Boulevard, Deerfield Beach, Florida. The company has leased and built out substantial medical offices designed to accommodate the professional needs of a medical clinic staffed by a number of physician specialists. Multi envisions that the public will thereby have access to the services of a number of diverse physician specialists at one centrally located medical facility.

The physicians staffing the facility (or their respective professional associations) will be engaged by Multi as independent contractors. The physicians shall be chosen by Multi on the basis of their qualifications to perform the services required and not by reference to any patient referrals or their base of patients presently existing. The terms under which Multi intends to engage these physicians shall be set forth in Professional Service Agreements, pursuant to which,

Multi will provide or make available to the physicians:

1. The use of adequate consultation rooms and examining rooms;
 2. The use of durable medical equipment including x-ray facilities and various diagnostic and other equipment and machines;
 3. Blood analysis and other laboratory facilities;
 4. Disposable medical supplies;
 5. Nurses, technicians and other attendants;
 6. Secretarial and receptionist staff;
 7. Stationery and other office and paper supplies;
- and
8. Telephone service.

Multi will advertise and promote the medical center for its own account as a quality multi-specialist medical facility. All physicians engaged by Multi consent to the use by Multi of their names on clinic stationery and promotional and marketing materials.

All patients of the medical clinic shall belong to Multi and not to the physician contractors. Accordingly, all patient records will be the property of Multi and, to the extent such records are in the temporary possession or control of a physician, the physician holds such records as custodian on behalf of Multi. In the event the services of a physician

contractor are terminated for whatever reason, all patient records in the possession of the physician shall be returned to Multi. Multi shall maintain such records in a professional manner on its premises.

The physician contractors shall abide by all quality assurance, utilization review, credentialing and other policies established and revised from time to time by Multi. Similarly, such physicians shall abide by all grievance procedures of Multi.

Multi shall bill for all services performed on behalf of patients of Multi, both at the medical clinic and at area hospitals, in its own name and for its own account. Multi shall determine the fees and rates it shall charge for such services subject to applicable law and regulation. In the case of Medicare/Medicaid, Multi shall bill under its own group Provider Number. Multi shall be responsible for collection of all fees for services and the physician contractors agree to assist such collection efforts where necessary.

The physician contractors shall maintain at their expense professional liability insurance at minimum state mandated levels. Multi shall procure professional and other liability coverage for itself as may be required by law.

Physicians engaged by Multi shall be paid solely by Multi and not by Multi's patients or third party payors of such patients. All monies received by a physician from patients or from third party payors will be deemed to be Multi's property. Multi will pay each physician a flat fee for each medical procedure he or she performs for a clinic patient at the clinic or area hospitals or other facilities at which the physician has privileges. The fees shall be set forth in a negotiated fixed schedule to the Professional Services Agreement and shall be determined category by category by reference to the nature and complexity of the procedure performed or care rendered. The physician's fee shall not be determined by reference to patient referrals but may be influenced indirectly by the total volume of professional services envisioned to be performed by the physician contractor, i.e., like a preferred provider organization arrangement, the volume of services may indirectly result in a somewhat "discounted" fee structure overall without

any reference to the actual source of the patients themselves. Such fees shall be payable to the physician by Multi within one month following collection of Multi's fees billed to the patient or the patient's third party payor for such services.

Multi expects that it will establish a medical practice of sufficient size that each physician contractor shall maintain routine office hours at the medical clinic each week. The amount of such office hours shall likely vary by specialist.

Multi's physicians will be encouraged to refer patients, when medically necessary and for their convenience, to the clinic and other physicians engaged by the clinic. However, compliance with this procedure will be voluntary and no referral fees or other compensation to the referring physician will be generated by any such referral. The physician to whom the referral is made will only receive the scheduled payment to which he or she is entitled for professional services rendered on behalf of such patient pursuant to that physician's Professional Services Agreement.

Some, but not all physician contractors, may maintain separate and independent medical practices owned and operated by them at different geographic locations. Patients of such independent medical practices shall be patients of such physicians and shall not belong to Multi, nor shall Multi receive any fees or compensation of any kind from such patient services. On occasions, certain physicians may consolidate their independent medical practices with the medical practice of Multi and the medical center and such patients shall be incorporated into the financial and other contractual arrangements represented by the Professional Services Agreement. Where physicians maintain their own independent medical practice, Multi shall negotiate arm's length covenants-not-to-compete with such physician to protect Multi's proprietary rights to its medical practice.

Dr. Speiller shall actively practice medicine at the medical center on behalf of its patients and shall not maintain an independent medical practice. Dr. Speiller shall, from time to time, promote Multi and refer patients to other physician contractors, where medically necessary, for services to be performed by Multi. Dr. Speiller shall

receive a salary and perhaps dividends from Multi as opposed to negotiated fees for professional services rendered on behalf of Multi patients. From time to time, physician contractors may become co-shareholders of Multi sharing with Dr. Speiller in Multi's revenues and expenses.

4. This petition was noticed by the Board of Medicine in the April 5, 1991, issue of the Florida Administrative Weekly (Vol. 17, No. 14, Pg. 1513).

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 Paul B. Speiller, M.D., has the requisite interest to maintain this petition.

4. Section 458.331(1)(i), Florida Statutes, provides that disciplinary action may be taken against a physician for:

Paying or receiving any commission, bonus, kickback, or 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 proposed business arrangement does constitute fee splitting, which is prohibited by Section 458.331(1)(i), Florida Statutes. Multi is the clinic, the patients "belong" to Multi, it refers the patient to the physicians, and it keeps part of the fee. As evidence that the fee retained by Multi is not just for services performed, Multi will bill for services performed at Multi and at area hospitals. Cf., In RE: The Petition for Declaratory Statement of: Edmund G. Lundy, M.D., 9 FALR 6289 (Order filed December 3, 1987).

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 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 Chapter 458, Florida Statutes, or other related obligations of physicians.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

That the business arrangement set forth in detail above is violative of Section

458.331(1)(j), Florida Statutes.

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