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STATE OF FLORIDA  
BOARD OF MEDICINE

Final Order No. DOH-02-0274-DS-MQA  
FILED DATE - 2/21/02  
Department of Health  
By: Jicki R. Kenon  
Deputy Agency Clerk

IN RE: THE PETITION  
FOR DECLARATORY  
STATEMENT OF  
PHILLIP W. FARTHING, MD, JD

FINAL ORDER

THIS CAUSE came before the Board of Medicine (hereinafter Board) pursuant to §120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code, at a duly-noticed meeting in Jacksonville, Florida on February 2, 2002, for the purpose of considering the Petition for Declaratory Statement (attached as Exhibit A) filed on behalf of PHILLIP W. FARTHING, MD, JD (hereinafter Petitioner). Having considered the petition, the arguments submitted by counsel for Petitioner, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. This petition was noticed by the Board in Vol. 28, No.3, dated January 18, 2002 of the Florida Administrative Weekly at page 234.
2. Petitioner, PHILLIP W. FARTHING, MD, JD, is an allopathic physician licensed to practice medicine in the State of Florida, having license number MEME56609.
3. Petitioner's active license was due for biennial renewal on January 31, 2002.
4. Section 458.319, Florida Statutes, provides that licenses shall be renewed upon receipt of evidence that the applicant has actively practiced medicine for at least 2 of the preceding 4 years. If the applicant has not actively practiced medicine in

accordance with that provision, the applicant is required to pass a clinical competency examination prior to renewal.

5. Petitioner provided direct care to patients in Florida from 1996-1998.

6. In January 1999, Petitioner entered law school, graduating in May 2001.

7. While in law school, Petitioner performed medical-legal review of patient charts, and obtained and discussed cases with medical experts. As part of his reviews, Petitioner arrived at or confirmed diagnoses, evaluated or determined courses of treatment, and analyzed whether the care provided patients was necessary and within the standard of care.

8. Rule 64B8-13.001(5), Florida Administrative Code, in defining "actively practicing medicine" for the purposes of §458.319, includes the practice of administrative medicine.

9. Petitioner timely renewed his license scheduled to expire on January 31, 2002, but renewed it in inactive status because he was unsure if his activities since 1999 constitute the active practice of medicine, and this petition could not be heard before the license expired.

#### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

2. The petition filed in this cause is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

3. The practice described by Petitioner constitute actively practicing medicine for the purposes of renewal of his license pursuant to §458.319, Florida Statutes, and Rule

64B8-13.001(5), Florida Administrative Code.

WHEREFORE, the Board hereby finds that under the specific facts of the petition, as set forth above, Petitioner is entitled to renew his license without the necessity of a competency exam. Petitioner is excused payment of the fee for converting his license from inactive to active; however, if the renewal fee paid to renew the license in inactive status is less than the fee to renew in active status, Petitioner will be required to pay the additional fees.

DONE AND ORDERED this 18 day of FEBRUARY, 2002.

BOARD OF MEDICINE



Larry McPherson, Executive Director  
for Zachariah P. Zachariah, MD, Chair

**NOTICE OF APPEAL RIGHTS**

Pursuant to Section 120.569, Florida Statutes, the parties are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the clerk of the department and by filing a filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty days of the date this Final Order is filed.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to Petitioner PHILLIP W. FARTHING, MD, JD, c/o Jon M. Pellett, Esquire, Barr Murman et al, 201 E. Kennedy Blvd., Suite 1700, Tampa FL

33602, this 2<sup>nd</sup> day of May, 2002.

James J. C.C.

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STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF MEDICINE

In re: PHILLIP W. FARTHING, M.D., J.D.  
License ME 56609

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PETITION FOR DECLARATORY STATEMENT  
BEFORE THE FLORIDA BOARD OF MEDICINE

COMES NOW, THE PETITIONER, PHILLIP W. FARTHING, M.D., J.D., through his undersigned counsel and pursuant to Section 120.565, Florida Statutes submits this Petition for Declaratory Statement before the Florida Board of Medicine. Petitioner is in doubt about the application of Section 458.319, Florida Statutes and Rule 64B8-13.001(5), Florida Statutes to his particular set of circumstances and requests that the Board of Medicine issue a declaratory statement. As grounds for his request, Petitioner states the following:

1. Petitioner is a Florida licensed physician having been issued license number ME 56609 on December 11, 1989. His address is 2417 Huntington Boulevard, Safety Harbor, Florida 34695 and phone number is (813) 225-1655.
2. Petitioner is represented by undersigned counsel whose address, telephone number, and telephone facsimile number is as listed below.
3. Petitioner is seeking a declaratory statement concerning the application of Section 458.319 and Rule 64B8-13.001(5), Florida Statutes to his particular set of circumstances. These provisions substantially affect Petitioner's interests, as they directly relate and impact on his ability to practice medicine in this State.

4. Petitioner has an active medical license, which will expire on January 31, 2002. Petitioner is seeking to renew his license and is in doubt about whether he can be considered to have actively practiced medicine for two (2) out of the immediate preceding four (4) years and therefore, he is in doubt about whether he can maintain an "active" status license based on the application of Section 458.319 and Rule 64B8-13.001(5), Florida Administrative Code.

5. Petitioner provided direct care to patients in Florida from 1996 through December 1998. In January 1999, he entered law school and while in law school and since graduating in May 2001, his practice of medicine has consisted of the performance of multiple medical-legal reviews of patient charts and the obtaining and holding discussions with medical experts concerning review of patient files for cases concerning medical malpractice and other civil matters related to patient care including discussions regarding independent medical examinations performed on patients who were pursuing malpractice or other claims. Among other activities, as a part of his medical-legal reviews, Petitioner arrived at or confirmed diagnoses of patient conditions, determined or evaluated course of treatment, decided whether care provided to patients was reasonable or necessary and/or was provided within the prevailing standard of care.

6. Petitioner is in doubt whether his activities meet the "active" practice requirements found at Sections 458.319 and Rule 64B8-13.001(5), Florida Administrative Code. Petitioner is also in doubt whether his activities can be considered the "practice of administrative medicine," as that term is used by the Department of Health, Board of Medicine, for purpose of license renewal in Section 458.319 and Rule 64B8-13.001(5), Florida Administrative Code. Because of the uncertainty of the

application of Sections 458.319 and 64B8-13.001(5) to his particular set of circumstances, Petitioner is in doubt as to whether he can maintain his license under an "active" status classification preventing Petitioner from being able to provide care directly to patients or otherwise engaging in the practice of medicine in this State.

7. Petitioner has met all other conditions for renewal of his license in an "active" status including completion of the required number of hours of continuing medical education and establishing professional financial responsibility.

WHEREFORE, Petitioner requests that the Board of Medicine issue a declaratory statement advising Petitioner regarding the application of Section 458.319 and Rule 64B8-13.001, Florida Administrative Code to his particular set of circumstances.

Respectfully submitted,



JON M. PELLETT

Florida Bar Id # 0050679

BARR, MURMAN, TONELLI,

SLOTHER & SLEET, P.A.

201 East Kennedy Blvd. Suite 1700

Tampa, Florida 33602

Ph: (813)223-3951 Fx: (813)209-0214

ATTORNEYS FOR PETITIONER

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Pamela King, Acting Executive Director, Florida Board of Medicine, 4052 Bald Cypress Way, Bin C03, Tallahassee, Florida 32399; fax # (850) 488-9325, Lee Ann Gustafson, Assistant Attorney General & Counsel to the Board of Medicine, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399; (850) 922-6425, by

facsimile and U.S. Mail, postage prepaid, and that the original has been furnished to the Clerk of the Department of Health 4052 Bald Cypress Way, Bin C01, Tallahassee, Florida 32399; fax # (850) 414-7819 by overnight courier and facsimile this January 7, 2002.



Jon M. Pellet



#### **458.319 Renewal of license.--**

(1) The department shall renew a license upon receipt of the renewal application, evidence that the applicant has actively practiced medicine or has been on the active teaching faculty of an accredited medical school for at least 2 years of the immediately preceding 4 years, and a fee not to exceed \$500; provided, however, that if the licensee is either a resident physician, assistant resident physician, fellow, house physician, or intern in an approved postgraduate training program, as defined by the board by rule, the fee shall not exceed \$100 per annum. If the licensee has not actively practiced medicine for at least 2 years of the immediately preceding 4 years, the board shall require that the licensee successfully complete a board-approved clinical competency examination prior to renewal of the license. "Actively practiced medicine" means that practice of medicine by physicians, including those employed by any governmental entity in community or public health, as defined by this chapter, including physicians practicing administrative medicine. An applicant for a renewed license must also submit the information required under s. 456.039 to the department on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the Department of Health for the statewide criminal background check of the applicant. The applicant must submit a set of fingerprints to the Department of Health on a form and under procedures specified by the department, along with payment in an amount equal to the costs incurred by the department for a national criminal background check of the applicant for the initial renewal of his or her license after January 1, 2000. If the applicant fails to submit either the information required under s. 456.039 or a set of fingerprints to the department as required by this section, the department shall issue a notice of noncompliance, and the applicant will be given 30 additional days to comply. If the applicant fails to comply within 30 days after the notice of noncompliance is issued, the department or board, as appropriate, may issue a citation to the applicant and may fine the applicant up to \$50 for each day that the applicant is not in compliance with the requirements of s. 456.039. The citation must clearly state that the applicant may choose, in lieu of accepting the citation, to follow the procedure under s. 456.073. If the applicant disputes the matter in the citation, the procedures set forth in s. 456.073 must be followed. However, if the applicant does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the applicant's last known address. If an applicant has submitted fingerprints to the department for a national criminal history check upon initial licensure and is renewing his or her license for the first time, then the applicant need only submit the information and fee required for a statewide criminal history check.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The licensee must have on file with the department the address of his or her primary place of practice within this state prior to engaging in that practice. Prior to changing the address of the primary place of practice, whether or not within this state, the licensee shall notify the department of the address of the new primary place of practice.

(4) Notwithstanding the provisions of s. 456.033, a physician may complete continuing education on end-of-life care and palliative care in lieu of continuing education in AIDS/HIV, if that physician has completed the AIDS/HIV continuing education in the immediately preceding biennium.

(5)(a) Notwithstanding any provision of this chapter or chapter 456, the requirements for the biennial renewal of the license of any licensee who is a member of the Legislature shall stand continued and extended without the requirement of any filing by such a licensee of any notice or application for renewal with the board or the department and such licensee's license shall be an active status license under this chapter, throughout the period that the licensee is a

member of the Legislature and for a period of 60 days after the licensee ceases to be a member of the Legislature.

(b) At any time during the licensee's legislative term of office and during the period of 60 days after the licensee ceases to be a member of the Legislature, the licensee may file a completed renewal application that shall consist solely of:

1. A license renewal fee of \$250 for each year the licensee's license renewal has been continued and extended pursuant to the terms of this subsection since the last otherwise regularly scheduled biennial renewal year and each year during which the renewed license shall be effective until the next regularly scheduled biennial renewal date;

2. Documentation of the completion by the licensee of 10 hours of continuing medical education credits for each year from the effective date of the last renewed license for the licensee until the year in which the application is filed;

3. The information from the licensee expressly required in s. 456.039(1)(a)1.-8. and (b), and (4)(a), (b), and (c).

(c) The department and board may not impose any additional requirements for the renewal of such licenses and, not later than 20 days after receipt of a completed application as specified in paragraph (b), shall renew the active status license of the licensee, effective on and retroactive to the last previous renewal date of the licensee's license. Said license renewal shall be valid until the next regularly scheduled biennial renewal date for said license, and thereafter shall be subject to the biennial requirements for renewal in this chapter and chapter 456.

**History.**--ss. 1, 8, ch. 79-302; ss. 2, 3, ch. 81-318; s. 6, ch. 84-543; s. 6, ch. 84-553; ss. 13, 25, 26, ch. 86-245; s. 21, ch. 88-1; s. 16, ch. 88-392; s. 1, ch. 90-60; s. 4, ch. 91-429; s. 163, ch. 94-119; s. 206, ch. 97-103; s. 135, ch. 97-237; s. 21, ch. 97-264; s. 11, ch. 97-273; s. 45, ch. 98-166; s. 10, ch. 99-331; s. 104, ch. 2000-160; s. 1, ch. 2000-356; s. 76, ch. 2001-62; s. 129, ch. 2001-277.

**64B8-13.001 Criteria for License Renewal.**

An active license shall be renewed upon the demonstration that the applicant:

- (1) Has completed and filed the forms provided by the Department for the renewal of license and paid the applicable fees.
- (2) Has complied with the continuing education requirements of Section 456.013(6), F.S., and Rule 64B8-13.004, F.A.C.
- (3) Has complied with the financial responsibility requirements of Section 458.320, F.S., and Rule Chapter 64B8-12, F.A.C.
- (4) Has accounted for any activities related to the practice of medicine in this or any other jurisdiction within the previous 4 years.
- (5) Has actively practiced medicine or has been on the active teaching faculty of an accredited medical school for at least 2 years of the immediately preceding 4 years; alternatively, the licensee must successfully complete the Special Purpose Examination of the Federation of State Medical Boards of the United States (SPEX) prior to renewal of the license. "Actively practiced medicine" means that practice of medicine by physicians, including those employed by any governmental entity in community or public health, as defined in Chapter 458, F.S., including physicians practicing administrative medicine.

*Specific Authority 458.309 FS. Law Implemented 456.013(6), 458.319, 458.320 FS.*

*History New 12-5-93, Formerly 61F6-28.006, 59R-13.001,*

*Amended 5-14-98.*