

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

IN RE: THE PETITION FOR DECLARATORY
STATEMENT OF:
ROBERT J. GOLDSTONE, M.D.
Petitioner.

FINAL ORDER

THIS CAUSE came before the Board of Medicine (Board) pursuant to Section 120.565, Florida Statutes, and Rule Chapter 28-4, Florida Administrative Code, on October 9, 1988, in Tampa, Florida, for the purpose of considering the Petition for Declaratory Statement filed on behalf of Robert J. Goldstone, M.D. (hereinafter Petitioner). Petitioner was represented by Steve Ballinger, Attorney at Law, of the law firm of Morris & Green in Hollywood, Florida. No person or entity sought to intervene as a party.

Having considered the petition and supporting documentation, the testimony and argument of the Petitioner, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner is a medical doctor licensed in the State of Florida under Chapter 458, Florida Statutes, holding license number ME 0026690. Petitioner's business address is Belle Terre East, 2529 University Drive, Coral Springs, Florida 33065.

2. Petitioner intends to become employed as an Associate Medical Director of Blood Shield, Inc., which proposes to establish a business venture involving the storage of blood and other body fluids.

2. Petitioner sets forth in the Petition for Declaratory Statement six paragraphs numbered 6 through 12, which set forth the proposed business venture by the corporation and the corporation's relationship with physicians other than Petitioner himself.

3. Petitioner's role with the business venture will be that he will serve as an independent contractor for the corporation as Associate Medical Director. He will be responsible for overseeing the drawing and storing of blood, as well as other medical aspects of the venture.

4. Petitioner states that he has the requisite interest to seek a declaratory statement on the legality of his participation in the venture and the legality of the participation of other physicians in such venture.

5. Petitioner specifically asks whether the venture, and his participation therein, would violate Section 458.331(1)(k), Florida Statutes, or Section 458.331(1)(n), Florida Statutes, or any other portion of the Medical Practice Act.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Section 120.565, Florida Statutes, and Rule Chapter 28-4, Florida Administrative Code.

2. The petition filed by Petitioner is in substantial compliance with the requirements of Section 120.565, Florida Statutes, and Rule Chapter 28-4, Florida Administrative Code. Petitioner has the requisite interest to maintain this proceeding insofar as he requests an interpretation of specific statutory provisions as they relate to his participation in the business venture outlined.

3. The Board finds that Petitioner does not have the

requisite interest to request a Declaratory Statement on the legality of the participation of other physicians in such venture, nor does he have the requisite interest to ask for an interpretation of the law with regard to the plans of the corporation and the relationship between the corporation and the physicians other than Petitioner.

4. Petitioner requests a Declaratory Statement with regard to the specific requirements of Sections 458.331(1)(k) and (1)(n), Florida Statutes, which provide in pertinent part:

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(k) Making deceptive, untrue, or fraudulent representations in the practice of medicine or employing a trick or scheme in the practice of medicine.

(n) Exercising influence on the patient or client in such a manner as to exploit the patient or client for financial gain of the licensee or of a third party, which shall include, but not be limited to, the promoting or selling of services, goods, appliances, or drugs.

5. With regard to an interpretation of Section 458.331(1)(k), Florida Statutes, the Board finds no facts stated by Petitioner with regard to his specific arrangements with Blood Shield, Inc., namely serving as an independent contractor as Associate Medical Director and overseeing the drawing and storing of blood, which constitutes a violation of 458.331(1)(k). There is no statement of fact in the petition that Petitioner will be making any representations or misrepresentations in the practice of medicine and there is no fact stated which indicates Petitioner would be employing any scheme in the practice of medicine.

6. Similarly, with regard to Section 458.331(1)(n), Florida Statutes, the Board perceives no statement of fact related to Petitioner and his duties or role with the business

venture outlined which would constitute exploiting a patient for financial gain.

7. The assertion by Petitioner relating to possible misleading or overreaching representations which may be made on the part of lessee-physicians other than Petitioner is irrelevant to issues and facts relating to the Petitioner and, therefore, is not considered by the Board in answering this Declaratory Statement. Furthermore, Petitioner's invitation for the Board to state whether the arrangement outlined violates "any other portion of the Medical Practice Act" is declined. The requirements for a Petition for Declaratory Statement are that the Petitioner must state the specific facts on which Petitioner wishes to have a Declaratory Statement based and identify the specific laws or rules that the Petitioner wants interpreted. It is not the duty of the Board to search the laws and rules to see what provisions might be applicable to the facts stated by a Petitioner.

8. The Board's answer to this Petition for Declaratory Statement responds only to the questions asked which relate to the facts asserted as to the Petitioner and is not a comment with regard to any of the facts asserted with regard to other entities or persons who are not parties to this Declaratory Statement. Furthermore, the position stated by the Board responds only to the questions asked and the specific statutory provisions which have been identified by Petitioner for interpretation by the Board and is not a comment on whether or not the proposal may violate other provisions of Chapter 458, Florida Statutes, or other related obligations of physicians.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED

That subsections 458.331(1)(k) and (n), Florida Statutes, do not prohibit Petitioner from serving as an independent contractor for the corporation as Associate Medical Director and overseeing the drawing and storing of blood.

