

By: Heather Coleman
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

IN RE: PETITION FOR DECLARATORY STATEMENT
OF ROBERT W. PATTON, JR., M.D.

FINAL ORDER

This matter came before the Board of Medicine (hereinafter the "Board") on October 2, 2004, in Miami, Florida, for consideration of the referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was published on September 17, 2004, in the Vol. 30, No. 38, in the Florida Administrative Weekly.

The petition filed by ROBERT W. PATTON, JR., M.D. inquired as to whether his activities as set forth below constitute the active practice of medicine for two (2) out of the immediate preceding four (4) years as set forth in Rule 64B8-13.001(5), Florida Administrative Code, so that he may renew an "active" status license pursuant to Section 458.319, Florida Statutes.

FINDINGS OF FACTS

1. Petitioner is a Florida licensed physician having been issued license number ME 49564 on October 30, 1986. He currently resides in Clearwater, Florida.
2. Petitioner has an active medical license, which will expire on January 31, 2005 and is seeking to renew his license.
3. Petitioner provided direct care to patients until October, 1999. In January, 2000, he entered law school and since graduating in May, 2002, 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 courses of treatment, decided whether care provided to patients was reasonable or necessary and/or was provided within the prevailing standard of care.

4. Petitioner will have completed by January, 2005 over 70 hours of Continuing Medical Education including over 20 hours of Internal Medicine Board Review and 50 hours of General Medicine Review through the New England Journal of Medicine Continuing Medical Education program. Additionally, Petitioner will have completed the required HIV Continuing Medical Education credits.

5. Petitioner currently does not plan to return to the full time practice of medicine but will continue to assist part time at the Clearwater Free Clinic providing medical care to indigent patients within the practice of Internal Medicine.

6. 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.

CONCLUSIONS OF LAW

7. The Board of Medicine has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

8. The Petition filed in this cause is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code.

9. The crux of this inquiry involves the issue of whether Petitioner's activities from May, 2002 till the present constitute the "active" practice of medicine as set forth in Section 458.319(1), Florida Statutes; and Rule 64B8-13.001(5), Florida Administrative Code.

10. Section 458.319(1), Florida Statutes reads in part as follows:

(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.

11. Rule 64B8-13.001(5), Florida Administrative Code, reads as follows:

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

...

(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.

12. The Board is of the opinion that Petitioner's activities from May, 2002 to the present, as set forth above, does constitutes the active practice of medicine for two (2) out of the immediate preceding four (4) years as set forth in Rule 64B8-13.001(5), Florida Administrative Code, which enables him to renew an "active" status license pursuant to Section 458.319, Florida Statutes.


13. This Final Order is issued in response to the question propounded by the Petitioner as set forth in his Petition For Declaratory Statement. The Board's conclusions is based solely on the Board's application of the factual circumstances outlined in the Petition to the pertinent statutory and rule provisions set forth above.

WHEREFORE, the Board hereby finds that under the specific facts of the Petition, Petitioner's activities from May, 2002 to the present does constitutes the active practice of medicine for two (2) out of the immediate preceding four (4) years which enables the Petitioner to renew an "active" status license.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 16 day of DECEMBER, 2004.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for Elisabeth Tucker M.D., Chair

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, Respondents 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 of Health and the filing fee and one copy of a notice of appeal with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: Petitioner's Legal Counsel, Jon M. Pellet, Barr, Murman, Tonelli, Slother & Sleet, 201 East Kennedy Blvd., Suite 1700, Tampa, Florida 33602; and by interoffice mail to Edward A. Tellechea, Senior Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 3239-1050; and Quincy Page, Acting General Counsel, Department of Health, 4052 Bald Cypress Way, BIN A02, Tallahassee, Florida 32399-1703, on this 17th day of December, 2004.

Shalunda Lino

Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Heather Coleman
DATE September 2, 2004

In re: ROBERT W. PATTON, Jr., M.D.
License ME 49564

PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA BOARD OF MEDICINE

COMES NOW, THE PETITIONER, ROBERT W. PATTON, Jr., M.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 49564 on October 30, 1986. His address is 2100 Laurence Drive in Clearwater, Florida and office phone number is (813) 228-7755.
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, 2005. 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 until October 1999. In January 2000, he entered law school and since graduating in May 2002, 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 will have completed by January 2005 over 70 hours of Continuing Medical Education including over 20 hours of Internal Medicine Board Review and 50 hours of General Medicine Review through the New England Journal of Medicine Continuing Medical Education program. Additionally, Petitioner will have completed the required HIV Continuing Medical Education credits.

7. Petitioner is in doubt whether his activities, as described above, 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.

8. 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.

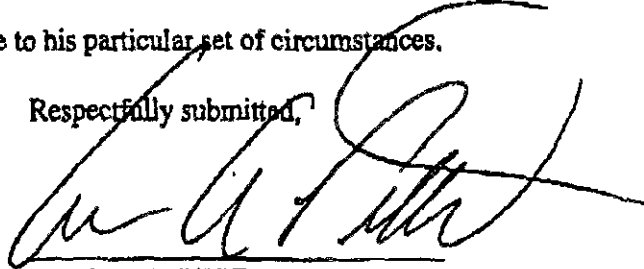
9. Petitioner currently does not plan to return to the full time practice of medicine but to assist part time at the Clearwater Free Clinic providing medical care to indigent patients within the practice of Internal Medicine.

10. 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.

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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.

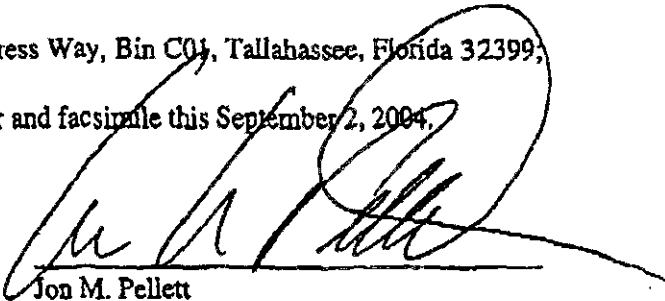
Respectfully submitted,



JON M. PELLETT
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SLOTHER & SLEET, P.A.
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Larry G. McPherson, Board Director, Florida Board of Medicine, 4052 Bald Cypress Way, Bin C03, Tallahassee, Florida 32399; fax # (850) 412-1261, Ed Tellechea, 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 September 2, 2004.



Jon M. Pellett