

By: *Angela Berto*
Deputy Agency Clerk

**STATE OF FLORIDA
BOARD OF MEDICINE**

IN RE: PETITION FOR DECLARATORY
STATEMENT BEFORE THE FLORIDA
BOARD OF MEDICINE ADDRESSING
SECTION 458.3145, F.S., ON BEHALF
OF H. LEE MOFFITT CANCER
CENTER AND RESEARCH INSTITUTE

FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT

This matter came before the Florida Board of Medicine at a duly-noticed public meeting on December 4, 2009, in Orlando, Florida, for consideration of the referenced Petition for Declaratory Statement (attached hereto as Exhibit "A"). The Notice of Petition for Declaratory Statement was published on November 13, 2009, in the Vol. 35, No. 45, in the Florida Administrative Weekly.

The Petition filed by Allen R. Grossman, Esq., on behalf of the H. Lee Moffitt Cancer Center and Research Institute, Inc., inquired whether Section 458.3145, Florida Statutes, allows holders of Medical Faculty Certificates to be held by physicians who are employed by the Moffitt Center so long as they hold full-time faculty appointments at one of the academic institutions listed in subsection 458.3145(1)(i), Florida Statutes.

FINDINGS OF FACTS

1. Petitioner, H. Lee Moffitt Cancer Center and Research Institute, Inc. (Moffitt Center), is the entity created and described in Section 1004.43, Florida Statutes, as being a qualified institution through which a maximum number of 30 Medical Faculty Certificates may be in use in any given year.

2. The Moffitt Center has developed as an internationally recognized center for cancer research, education, and treatment.

3. The Moffitt Center's operations include a large number of affiliations, academic endeavors, joint programs and joint studies with universities, hospitals, research institutions and health care providers throughout the state of Florida, including the University of South Florida and the University of Florida. These collaborations include, among other things, the Moffitt Center serving as a training site for students pursuing various healthcare professions, and providing ACGME-accredited graduate medical education programs and LCME-approved clerkships to medical students and residents as appropriate.

4. The Moffitt Center recruits world-class physicians to serve both at the Moffitt Center and on the faculties of these Florida medical schools pursuant to specific arrangements with the Moffitt Center for the joint use of such physicians' services. On occasion, such physicians may not meet the specific requirements of unrestricted licensure as a physician in the state of Florida; however, often these physicians are eligible to obtain a Medical Faculty Certificate to practice medicine in Florida.

5. Historically, the Moffitt Center's medical staff was populated by physicians employed by the University of South Florida. However, on January 1, 2008, a majority of the University of South Florida-employed faculty transferred employment to the Moffitt Center by way of a mutually beneficial arrangement between the institutions. Physicians holding Medical Faculty Certificates did not transfer their employment to the Moffitt Center and instead were required to continue employment at the University of South Florida.

CONCLUSIONS OF LAW

6. 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.

7. 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.

8. For purposes of determining standing in this matter, the Petitioner is a substantially affected person, because the Petitioner is the entity created and described in Section 1004.43, Florida Statutes, and is the facility referenced in Section 458.3145(4), Florida Statutes.

9. The issue is whether Section 458.3145, Florida Statutes, allows Medical Faculty Certificates to be held by physicians who are employed by the Moffitt Center so long as they hold full-time faculty appointments at one of the academic institutions listed in subsection 458.3145(1)(i), Florida Statutes.

10. Section 458.3145, Florida Statutes, addresses the qualifications for obtaining a Medical Faculty Certificate in Florida. A Medical Faculty Certificate authorizes the holder to practice medicine in conjunction with his or her faculty position at an accredited medical school and its affiliated clinical facilities or teaching hospitals. Specifically, Section 458.3145(1)(i) provides, in relevant part, that a Medical Faculty Certificate may be issued without examination to an individual who, among other things:

(i) Has been offered and has accepted a full-time faculty appointment to teach in a program of medicine at:

1. The University of Florida,
2. The University of Miami,
3. The University of South Florida,
4. The Florida State University,
5. The Florida International University,
6. The University of Central Florida, or
7. The Mayo Medical School at the Mayo Clinic in Jacksonville, Florida.

11. Further, Section 458.3145(2) authorizes the holder of a Medical Faculty Certificate to “practice only in conjunction with his or her faculty position at an accredited medical school and its affiliated clinical facilities or teaching hospitals that are registered with the Board of Medicine as sites at which holders of medical faculty certificates will be practicing.” This subsection also provides that the Medical Faculty Certificate

... automatically expires when the holder’s relationship with the medical school is terminated or after a period of 24 months, whichever occurs sooner, *and is renewable every 2 years* by a holder who applies to the board on a form prescribed by the board and provides certification by the dean of the medical school that the holder is a distinguished medical scholar and an outstanding practicing physician. (emphasis added)

12. Finally, Section 458.3145(4), Florida Statutes, limits the total number of Medical Faculty Certificates to be *extended* in any given year. Specifically, this subsection provides that

[i]n any year, the maximum number of extended medical faculty certificateholders as provided in subsection (2) may not exceed 30 persons at each institution named in subparagraphs (1)(i)1.-6. and at the facility named in s. 1004.43 and may not exceed 10 persons at the institution named in subparagraph (1)(i)7. (emphasis added)

Section 1004.43, Florida Statutes, establishes the Moffitt Center.

13. Therefore, a Medical Faculty Certificate may be issued to an individual who, among other things, has been offered and has accepted a full-time faculty appointment to teach in a program of medicine at the institutions enumerated in Section 458.3145(1)(i). Although the Moffitt Center is not included on the list in subsection (1)(i), the Moffitt Center is a site where holders of Medical Faculty Certificates will be practicing, and it is identified in subsection (4) as a facility which holds extended Medical Faculty Certificates. Further, there is no requirement that the certificateholders be employed directly by one of the listed institutions in subsection

(1)(i) instead of the Moffitt Center; rather, the requirement is that such physician practice only in conjunction with his or her faculty position as set forth in statute above.

14. Subsection (2) also provides that Medical Faculty Certificates expire when the holder's relationship with the medical school is terminated or after a period of 24 months, whichever occurs sooner, and is renewable every 2 years. Subsection (4) of the statute provides that the maximum number of extended medical faculty certificateholders by the Moffitt Center and each of the institutions enumerated in Section 458.3145(1)(i)1-6, Florida Statutes, may not exceed 30 persons in any given year. Because the statute specifically adds the Moffitt Center to the list of institutions, it is clear that the Moffitt Center has its own allotment of 30 extended Medical Faculty Certificates each year and is not required to share in the allotment assigned to the other identified institutions.


15. Accordingly, the holders of Medical Faculty Certificates are authorized pursuant to Section 458.3145, Florida Statutes, to be physicians who are employed by the Moffitt Center, so long as they hold full-time faculty appointments to teach in a program of medicine at one of the institutions identified in Section 458.3145(1)(i), Florida Statutes.

16. The Board's response to this Petition addresses solely the question propounded by the Petitioner. The Board's conclusion is based solely on the Board's application of the factual circumstances outlined in the Petition to the pertinent statutory provisions set forth above.

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

DONE AND ORDERED this 10 day of FEBRUARY, 2010.

BOARD OF MEDICINE


Larry McPherson, Jr., Executive Director
for ONELIA LAGE, M.D., CHAIR

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.569, 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 Health, 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 Florida appellate district where the party resides. The Notice of Appeal must be filed within thirty (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 has been furnished by **Certified U.S. Mail to Allen Grossman, Esq., Metzger, Grossman, Furlow & Bayó, L.L.C., 1408 N. Piedmont Way, Tallahassee, FL 32308; and by interoffice mail to Donna C. McNulty, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; this 11 day of February 2010.**


Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Angela Barton*
DATE 10/28/09

PETITION FOR DECLARATORY
STATEMENT BEFORE THE FLORIDA
BOARD OF MEDICINE ADDRESSING
§458.3145, FLORIDA STATUTES, ON BEHALF
OF H. LEE MOFFITT CANCER CENTER AND
RESEARCH INSTITUTE, INC.

Case No.: _____

PETITION FOR DECLARATORY STATEMENT

COMES NOW Petitioner, H. Lee Moffitt Cancer Center and Research Institute, Inc., established pursuant to §1004.43, Florida Statutes, located at the University of South Florida, and primarily acting as an instrumentality of the State of Florida in furtherance of its mission to contribute to the prevention and cure of cancer (hereinafter "Moffitt Center"), by and through undersigned legal counsel and pursuant to §120.565, Florida Statutes, hereby petitions the Florida Board of Medicine (hereinafter "Board") for a Declaratory Statement setting forth that the Moffitt Center, pursuant to §458.3145, Florida Statutes, is an authorized entity, the employees of which are able to obtain Medical Faculty Certificates for the purpose of practicing medicine in conjunction with his or her faculty position at an accredited medical school and its affiliated clinical facilities or teaching hospitals in Florida. In support thereof, Petitioner states as follows:

1. Petitioner is the entity created and described in §1004.43, Florida Statutes and the facility referenced in §458.3145(4), Florida Statutes, as being a qualified institution through which a maximum of 30 Medical Faculty Certificates may be in use in any given year. Petitioner's address is 12902 Magnolia Drive in

Tampa, Florida. However, for purposes of this Petition all correspondence and communication should be provided to undersigned counsel for Petitioner at the address, telephone number or facsimile number provided below.

2. In furtherance of its legislative mandates and statewide mission, the Moffitt Center has developed as an internationally recognized center for cancer research, education, and treatment. In furtherance of its education-related mission, the Moffitt Center's operations include a large number of affiliations, academic endeavors, joint programs and joint studies with universities, hospitals, research institutions and health care providers throughout the state of Florida, including the University of South Florida and the University of Florida. These collaborations include, among other things, the Moffitt Center serving as a training site for students pursuing various healthcare professions, and providing ACGME accredited graduate medical education programs and LCME approved clerkships to medical students and residents, as appropriate. To foster a superior environment for the development of future leaders in the art and science of medicine, the Moffitt Center recruits world-class physicians to serve both at the Moffitt Center and on the faculties of these Florida medical schools pursuant to specific arrangements with the Moffitt Center for the joint use of such physicians' services.

3. Although every physician recruited by the Moffitt Center has always been an eminently qualified and experienced practitioner in his or her specific area of medical practice, on occasion such physicians may not meet the specific requirements of unrestricted licensure as a physician in Florida. However, these

physicians are often eligible to obtain a Medical Faculty Certificate in order to practice medicine in Florida.

4. Section 458.3145, Florida Statutes, addresses the qualifications for obtaining a Medical Faculty Certificate in Florida. Such license authorizes the holder to practice medicine in conjunction with his or her faculty position at an accredited medical school and its affiliated clinical facilities or teaching hospitals. Section 458.3145(1)(i), Florida Statutes, requires that the holder of a Medical Faculty Certificate have a full-time faculty appointment to teach in a program of medicine at certain enumerated institutions in Florida, which includes the University of South Florida, but does not include the Moffitt Center. Section 458.3145(4), Florida Statutes, limits the total number of Medical Faculty Certificates to be held in any year. The limitation is set forth in the statute as 30 Medical Faculty Certificates at each of the institutions identified in §458.3145(1)(i)1. - 6., Florida Statutes, and at the Moffitt Center, and 10 Medical Faculty Certificates at the institution named in §458.3145(1)(i)7., Florida Statutes. Pursuant to §458.3145(2), Florida Statutes. Each such Medical Faculty Certificate expires after an initial period of 24 months and is renewable every two years.

5. Because the Moffitt Center is not specifically listed in §458.3145(1)(i), Florida Statutes, but is provided with 30 Medical Faculty Certificates under paragraph (4) of the same statute, an interpretation question has arisen as to whether a "full-time faculty appointment" at a listed institution means that each physician holding a Medical Faculty Certificate must actually be

employed directly by one of the listed institutions rather than being employed by the Moffitt Center. Historically, this interpretation did not interfere with the Moffitt Center's ability to utilize its allocated Medical Faculty Certificates because the Moffitt Center's medical staff was populated by physicians employed by the University of South Florida, which is listed in the statute. However, on January 1, 2008, a majority of the University of South Florida-employed faculty transferred employment to the Moffitt Center by way of a mutually beneficial arrangement between the institutions. To avoid the risk that this potential interpretation would preclude physicians practicing with Medical Faculty Certificates from employment at the Moffitt Center, physicians holding Medical Faculty Certificates did not transfer their employment to the Moffitt Center, and instead were required to continue employment at the University of South Florida. This interpretation has severely hampered the ability of the Moffitt Center to directly employ and thereby fully utilize the expertise and abilities of the physicians holding Medical Faculty Certificates authorized pursuant to §458.3145(1)(i), Florida Statutes, and has coincidentally made it impractical if not impossible to actually utilize the full complement of Medical Faculty Certificates contemplated in §458.3145, Florida Statutes.

6. This interpretation of the statute may also result in the Moffitt Center being required to share the allocated Medical Faculty Certificates available to each listed academic institution in any one year rather than employing an additional 30 Medical Faculty Certificate holders as authorized by §458.3145(1)(i), Florida Statutes. However, upon recent review, it is Petitioner's

reasonable belief that §458.3145, Florida Statutes does not require such an interpretation or include such a limitation.

7. Petitioner's understanding of the current statute is that §458.3145(4), Florida Statutes, authorizes the use of 30 Medical Faculty Certificates in any year by physicians at the Moffitt Center, in addition to the 30 Medical Faculty Certificates held by physicians at the University of South Florida, and the allocated number of Medical Faculty Certificates held by the other listed academic institutions, so long as each of the Moffitt Center Medical Faculty Certificate holders also holds a full-time faculty appointment to teach in a program of medicine at one of the listed academic institutions. Petitioner reasonably believes that the correct reading of the statute is to authorize an additional 30 Medical Faculty Certificates for use at the Moffitt Center rather than to require the listed academic institutions to share their respective annual allotments of Medical Faculty Certificates with the Moffitt Center. Petitioner's belief is also consistent with the legislative intent behind Section 458.3145, Florida Statutes, which is to attract high powered professionals to the state and to provide more leeway in allowing these professionals to practice and teach and in various institutions.¹

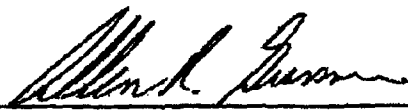
8. To the best of Petitioner's knowledge the Board of Medicine has never adopted or even proposed any administrative rules intended to explain or clarify this aspect of the Medical Faculty Certificate statutory provision.

¹ April 26, 1995 Senate Floor Debate Audiotape (Senator Myers acknowledging that the statute was originally enacted to attract high powered professionals and stating his recognition of the importance of giving certificate holders leeway to teach in places affiliated with medical schools).

9. Petitioner is not aware of any currently pending litigation or other dispute related to or relevant to this issue and Petitioner seeks the Board of Medicine's confirmation that §458.3145, Florida Statutes, does not require the holders of the statutorily provided 30 Medical Faculty Certificates allotted for the Moffitt Center to be employees of the academic institution on whose faculty the Medical Faculty Certificate holder has accepted a full-time faculty appointment.

WHEREFORE, Petitioner, H. Lee Moffitt Cancer Center and Research Institute Inc., respectfully requests that pursuant to §120.565, Florida Statutes, the Board of Medicine issue a Declaratory Statement finding that §458.3145, Florida Statutes, allows the holders of Medical Faculty Certificates authorized pursuant to §458.3145, Florida Statutes, to be held by physicians who are employed by the Moffitt Center, so long as they also hold full time faculty appointments at one of the academic institutions listed in §458.3145(1)(i), Florida Statutes.

Respectfully submitted, this 27th day of October, 2009.


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On behalf of
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