

DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

In re: The Petition for Declaratory
Statement of:

MAYO CLINIC JACKSONVILLE and
PANAYOTIS KELALIS, M.D.,

Petitioners.

FINAL ORDER

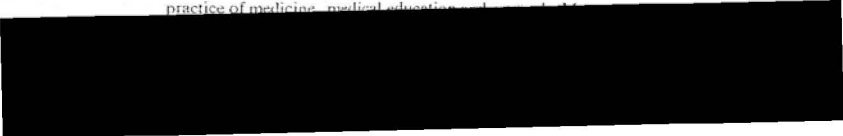
THIS CAUSE came before the Board of Medicine (hereinafter Board) pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code, in February 1992 for the purpose of considering the Petition for Declaratory Statement filed by Mayo Clinic Jacksonville and Panayotis Kelalis, M.D. (hereinafter Petitioners). 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 Mayo Clinic Jacksonville is a not-for-profit corporation for which physicians meeting the specifications set forth in Section 458.313(1)(b), Florida Statutes (1989), or its predecessor, Section 458.313(1)(d)2., Florida Statutes (originally from Chapter 85-56, Laws of Florida), are licensed to practice so long as they are exclusively employed by that entity.
2. Petitioner Kelalis is licensed to practice medicine in the State of Florida pursuant to Chapter 458, Florida Statutes.
3. Petitioners set forth the following factual scenario:

The Mayo Clinic Jacksonville is part of a system established by the Mayo Foundation, Rochester, Minnesota. Constituting a multi-specialty group practice of medicine, Mayo Clinic Jacksonville has among its primary purposes medical practice, medical education, and medical research.

Consistent with the Mayo Foundation's dedication to the practice of medicine, medical education, and medical research,



testing and treatment on an outpatient basis at the Clinic unless there is a specific need for hospitalization. In the event hospitalization is necessary, Mayo Clinic Jacksonville patients are admitted to St. Luke's Hospital.

St. Luke's Hospital Association, d/b/a St. Luke's Hospital, is a 289-bed not-for-profit hospital licensed under Chapter 395, Florida Statutes. St. Luke's Hospital is part of the Mayo Foundation system through the hospital's formal affiliation with Mayo Foundation for Medical Education and Research. Through this affiliation, St. Luke's Hospital serves as the clinical, teaching, and research hospital in support of the physicians at Mayo Clinic Jacksonville. The physicians employed by Mayo Clinic Jacksonville are also members of the St. Luke's Hospital medical staff.

St. Luke's Hospital became affiliated with the Mayo Foundation for Medical Education and Research in 1987. Although St. Luke's Hospital provides certain inpatient services, the hospital does not provide inpatient pediatric services.

Co-Petitioner, Dr. Kelalis, is a Board-certified urologist who also specializes in the area of pediatrics. Dr. Kelalis is an employee of Mayo Clinic Jacksonville. He holds his Florida medical license by endorsement pursuant to the provisions of the former Section 458.313(1)(b), Florida Statutes, formerly Section 458.313(1)(d)2., Florida Statutes, Chapter 85-56, (Laws of Florida, 1985), which was enacted by the Legislature in 1985 and which was repealed by Sunset in 1990.

As is the case with all Mayo Clinic Jacksonville physicians, Dr. Kelalis is a member of the medical staff and holds privileges at St. Luke's Hospital. Because St. Luke's Hospital does not provide inpatient pediatric services and in order to serve the needs of pediatric patients who would be in need of this physician's surgical abilities, Dr. Kelalis sought privileges at another Jacksonville hospital which does provide comprehensive inpatient care for children.

Upon inquiry by the hospital as to whether the grant of staff privileges to Dr. Kelalis would in any manner be a violation of his licensure status, the Board of Medicine staff advised the hospital that Mayo Clinic Jacksonville physicians

licensed by endorsement under Chapter 85-56 could only practice medicine at Mayo Clinic Jacksonville or at an affiliated hospital such as St. Luke's Hospital. In essence, Board staff has interpreted Chapter 85-56 as being "site specific" in terms of where Dr. Kelalis or these other Mayo Clinic Jacksonville physicians may actually provide medical services offered by Mayo Clinic Jacksonville.

In performing service at the non-Mayo affiliated hospital, Dr. Kelalis will remain at all times in the full-time, exclusive employment of Mayo Clinic Jacksonville. The services or work to be performed will be performed in the course and scope of his employment for the Clinic. Mayo Clinic Jacksonville, not Dr. Kelalis, would be reimbursed for the physician's services and the physician would not receive any remuneration other than his established Mayo Clinic Jacksonville salary. Stated differently, he would in no manner be practicing medicine on an independent basis outside of his Mayo Clinic Jacksonville duties and full-time employment status, and he would not receive any special fee.

4. The issue Petitioners seek the Board to determine is whether, and to what extent, physician licensure by endorsement under Section 458.313(1)(b) (1989), Florida Statutes, or its predecessor, Section 458.331(1)(d)2., Florida Statutes (originally from Chapter 85-56, Laws of Florida, 1985), restricts a physician exclusively employed by Mayo Clinic Jacksonville to the practice of medicine at specific locations, namely to the Mayo Clinic Jacksonville site or to the site of an affiliated hospital such as St. Luke's Hospital, Jacksonville, Florida.

5. This petition was noticed by the Board of Medicine in the December 6, 1991, issue of the Florida Administrative Weekly (Vol. 17, No. 49, Pg. 5794).

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. Petitioners have the requisite interest to maintain this petition.

4. Petitioners have set forth within the Petition a memorandum of law arguing that the former Section 458.313(1)(b) (1989), Florida Statutes, or its predecessor 458.313(1)(d)2. (originally from Chapter 85-56, Laws of Florida) is not "site specific" and that physicians

reviewed the exact language of the statute and the argument set forth in the Petition and concludes that a reasonable interpretation of the statute, and the one the Board adopts, is that the requirement that the physician's license is subject to his or her remaining as a full-time, exclusive employee of the Mayo Clinic Jacksonville contemplates that the physician be employed full-time and exclusively at Mayo Clinic Jacksonville or its affiliated hospital. To interpret the statute otherwise would make it unenforceable by the Board. Under the Board's interpretation, any physician licensed under the special provisions of Section 458.313(1)(b), Florida Statutes (1989), could be readily located at Mayo Clinic Jacksonville or its affiliated hospital and would be known to be practicing outside the scope of his or her special license if practicing at any other facility. Were this not the case, and assuming the payment arrangement set forth above, the Board would not be able to ascertain compliance with the law without securing billing information to assure that the "reimbursement" for the physician's services was paid to the clinic and not to the physician and that the physician was receiving no remuneration other than from Mayo Clinic Jacksonville.

6. The Board does not and could not dispute any material fact relied on by Petitioners since the nature of a Petition for Declaratory Statement is such that the Agency responds to questions based on the facts asserted by Petitioners. Whether the facts are or are not accurate would, of course, impact on the value of the answer to Petitioner.

7. 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 Petitioners. The conclusions by the Board with regard to the statutory provisions cited by Petitioners are not a comment on whether the proposed conduct may or may not comport with all other provisions of Chapter 458, Florida Statutes, or other related obligations of physicians.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:

That the Board of Medicine interprets Section 458.313(1)(b), Florida Statutes (1989), or its predecessor, Section 458.313(1)(d)2., Florida Statutes (originally from Chapter 85-56, Laws of Florida), as requiring that any physician licensed under said statute who is, therefore, required to be exclusively employed by Mayo Clinic Jacksonville, is restricted to the practice of medicine at specific locations, namely, at Mayo Clinic Jacksonville site or the site of hospitals affiliated with Mayo Clinic Jacksonville, such as St. Luke's Hospital, Jacksonville, Florida.

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

10001

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

MAYO CLINIC JACKSONVILLE,
and PANAYOTIS KELALIS, M.D.,

Appellants,

v.

DEPARTMENT OF PROFESSIONAL
REGULATION, BOARD OF
MEDICINE,

Appellees.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED.

CASE NO. 92-2892

Opinion filed October 15, 1993.

An Appeal from an order of the Department of Professional
Regulation, Board of Medicine.

Michael J. Cherniga of Greenberg, Traurig, Hoffman, Lipoff, Rosen
& Quentel, P.A., Tallahassee, for Appellants.

Robert A. Butterworth, Attorney General; Claire D. Dryfuss,
Assistant Attorney General; M. Catherine Lannon, Assistant
Attorney General of Department of Legal Affairs, Tallahassee, for
Appellees.

LAWRENCE, J.

Mayo Clinic Jacksonville and Dr. Panayotis Kelalis appeal a
final administrative order entered by the Board of Medicine,
interpreting section 458.313(1)(b), Florida Statutes
(1989)(repealed 1990). The Board interpreted this section to
require that physicians licensed by endorsement under this

provision are restricted to practicing medicine at specific locations. We reject the Board's interpretation.

Mayo Clinic Jacksonville is a not-for-profit corporation, and Dr. Panayotis Kelalis is a Board-certified urologist who specializes in pediatrics and is employed on a full-time basis and exclusively by Mayo Clinic. Dr. Kelalis holds his Florida medical license by endorsement under section 458.313(1)(b).¹ St. Luke's Hospital in Jacksonville became formally affiliated with Mayo Clinic, in 1987. Physicians employed by Mayo Clinic also became members of St. Luke's medical staff. St. Luke's provides inpatient services and Mayo patients requiring hospitalization are routinely admitted there. However inpatient pediatric services were not available at St. Luke's, so Dr. Kelalis sought privileges at another Jacksonville hospital in order to provide comprehensive services for the Mayo Clinic children in his care. That hospital asked the Board of Medicine whether granting staff privileges to Dr. Kelalis would violate his licensure status under the statute. The Board responded that Mayo physicians, such as Dr. Kelalis, who are licensed by endorsement under

¹ Section 458.313 is the statute governing physician licensure by endorsement. Pursuant to this statute, physicians from other jurisdictions, who meet the criteria enumerated in the statute, can acquire a license to practice in Florida. Section 458.313(1)(b) provided an even more specialized way of obtaining licensure by endorsement. Physicians employed full-time and exclusively for a not-for-profit corporation (i.e., one meeting the requirements of § 617.01(3), Florida Statutes (1989)), and who met the other requirements contained in subsection (1)(b), could become licensed in Florida without having to take either of the two national exams in the last ten years.

section 458.313(1)(b), may only practice medicine at Mayo Clinic Jacksonville or at its affiliated hospitals (i.e., St. Luke's Hospital).

Mayo Clinic Jacksonville and Dr. Kelalis petitioned the Board of Medicine for a declaratory statement regarding construction of section 458.313(1)(b).² At issue is the following clause:

Licensure under this paragraph is valid only while the physician holds said faculty appointment and is employed by the not-for-profit corporation and is not valid for any other kind of medical practice. The license of such physician shall be void upon his termination of such employment.

The Board has construed this language to mean that a physician licensed by endorsement under this provision must not only work full-time for Mayo Clinic, but may work only at physical facilities operated by Mayo Clinic and/or its affiliated hospitals.

The appellants contend the statute is clear on its face, and contains no site-specific restriction. The only restriction attached to medical licensure by endorsement is that such

² Although appellants did not petition the Board for a declaratory statement until the statute had already been repealed by sunset, review of the agency's statutory interpretation does not appear to be moot. Repeal of the provision precluded Mayo Clinic from acquiring future physicians through this alternate form of licensing, but did not affect those physicians already licensed under this provision.

physicians must remain full-time employees of Mayo Clinic. We agree.

Where the language of a statute is clear and unambiguous on its face, it must be given its plain and ordinary meaning. Streeter v. Sullivan, 509 So. 2d 268, 271 (Fla. 1987) (citing A.R. Douglass, Inc. v. McRainey, 102 Fla. 1141, 1144, 137 So. 157, 159 (1931)); Steinbrecher v. Better Constr. Co., 587 So. 2d 492 (Fla. 1st DCA 1991). "The starting point in statutory analysis is, of course, the language of the statute. Where the language used by the legislature makes clear the legislative intent, it is incumbent upon the courts to give effect to that intent." Barruzza v. Suddath Van Lines, Inc., 474 So. 2d 861 (Fla. 1st DCA 1985). Courts may resort to legislative history, administrative construction of a statute, and rules of statutory construction only to determine the legislative intent of an ambiguous statute. Florida State Racing Comm'n v. McLaughlin, 102 So. 2d 574, 576 (Fla. 1958). Generally, the interpretation of a statute by the agency charged with its enforcement is entitled to great deference and should not be overturned unless clearly erroneous or in conflict with the legislative intent of the statute. PW Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988); Tri-State Sys., Inc. v. Department of Transp., 491 So. 2d 1192 (Fla. 1st DCA 1986).

Although the Board's construction would ordinarily be accorded great deference, as it is the agency charged with the administration and regulation of physicians licensed under chapter

458, Florida Statutes (1989),³ we overrule its construction because it is in clear conflict with the plain intent of the statute. Section 458.313(1)(b) is not ambiguous. The language of this provision clearly contains no restrictions with respect to the locations where a physician licensed by endorsement may practice, so long as the physician works exclusively for a not-for-profit corporation. If the legislature had desired a site-specific restriction, it would have included such in the statute. Accordingly, we reverse the Board's final order.

SMITH and KAHN, JJ., CONCUR.

³ §§ 458.309, 458.313, Fla. Stat. (1989).