

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

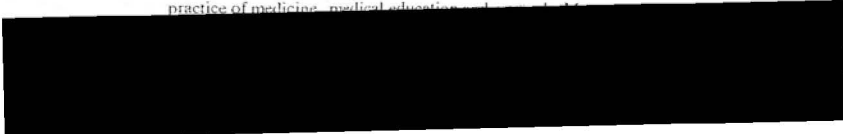
THIS CAUSE came before the Board of Medicine (hereinafter Board) pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code, in February 1992 for the purpose of considering the Petition for Declaratory Statement filed by Mayo Clinic Jacksonville and Panayotis Kelalis, 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

