

State of Florida  
Board of Medical Examiners

**FILED**

RE: Petition for Declaratory Statement of:  
DAVID MARCUS, M.D.,  
Petitioner.

Department of Professional Regulation  
BOARD CLERK  
*James Margie*  
CLERK  
DATE 1-30-85  
EX: *Equal Board*

FINAL ORDER

THIS MATTER came before the Board of Medical Examiners pursuant to Section 120.565, Florida Statutes, and Rule Chapter 28-4, Florida Administrative Code, on August 5, 1984, in Tampa, Florida, for consideration of the Petition for Declaratory Statement filed by David Marcus, M.D. Upon consideration of the Petition and being otherwise fully advised in the premises, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner David Marcus is licensed in the State of Florida as a physician, having been issued license number 44011.
2. Petitioner is interested in becoming a shareholder of the Max Marcus, D.O., P.A., and in furtherance thereof, has entered into discussions with Max Marcus, D.O., with respect to the issuance of shares of stock to Petitioner.
3. For purposes of the Petition for Declaratory Statement, Petitioner states that he intends to accept 49 percent of the issued and outstanding shares of the common stock in Max Marcus, D.O., P.A., amending the name of said professional association to the Max Marcus, D.O., and David Marcus, M.D., P.A., and to operate as a shareholder in said professional association, together with Max Marcus, D.O.
4. Petitioner states that he is in doubt as to the application of Chapter 458, Florida Statutes, to his operation as a shareholder of a professional association that has as its other

shareholder a licensed osteopathic physician. Specifically, he is unable to ascertain whether Chapter 458, Florida Statutes, together with any rules or regulations promulgated thereunder, prohibit a licensed physician from practicing medicine in the State of Florida as a shareholder of a professional association that has as its other shareholder an osteopathic physician who is licensed to practice osteopathic medicine pursuant to Chapter 459 of the Florida Statutes, and any rules and regulations promulgated thereunder.

5. Petitioner David Marcus asks the Board to declare whether Section 458.303, Florida Statutes, "encompasses within its ambit of protection, a duly licensed physician who is intentionally practicing medicine, as defined within Chapter 458, Florida Statutes, with an osteopathic physician within the framework of the same business entity, i.e., a Professional Association."

6. Petitioner also asks the Board to interpret subparagraph (g) of Section 458.331, Florida Statutes, stating that he is concerned about the uncertainty and doubt that exist with respect to his potential "aiding or assisting" of Max Marcus, D.O., the other shareholder of the professional association, to practice medicine within the State of Florida by the mere fact that Max Marcus, D.O., is a shareholder in the same business entity with Petitioner.

7. Finally, Petitioner states that he is uncertain as to the applicability of Section 621.05, Florida Statutes, in the context of the factual setting as above. Specifically, he is unable to ascertain whether Section 621.05, Florida Statutes, and any regulations or rules promulgated thereunder, have been interpreted to indicate that the rendition of services by a physician licensed pursuant to Chapter 458, Florida Statutes, is rendition of the same professional service as that which would be rendered by an osteopathic physician licensed to practice osteopathic medicine under Chapter 459, Florida Statutes.

CONCLUSIONS OF LAW

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

2. The Board concludes that Petitioner has the requisite substantial interest to bring this Petition and that the Petition is in substantial compliance with Rule Chapter 28-4, Florida Administrative Code.

3. Section 458.303, Florida Statutes, provides, that Chapter 458 has no application to:

(a) Other duly licensed health care practitioners acting within their scope of practice authorized by statute.

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That statutory provision, by its very terms, has no application to physicians licensed pursuant to Chapter 458, Florida Statutes. Rather, it is a statement that the requirements of Chapter 458, Florida Statutes (1983) do not apply to other duly licensed health care practitioners. Thus, it does not "encompass within its ambit of protection" a duly licensed physician; it does, however, encompass within its ambit of protection an osteopathic physician licensed pursuant to Chapter 459, Florida Statutes, who is acting within his or her scope of practice authorized by statute.

4. Subparagraph (g) of Section 458.331, Florida Statutes (1983) provides that it is a disciplinary violation for a physician to aid, assist, procure or advise any unlicensed person to practice medicine contrary to Chapter 458, Florida Statutes, or to any rule of the Department of Professional Regulation or of the Board of Medical Examiners. This provision must be interpreted in conjunction with subparagraph (a) of Section 458.303, Florida Statutes. Interpreted in conjunction with Section 458.303(a), Section 458.331.(g), Florida Statutes, encompasses any physician who aids and assists any person (1) who

is not a duly licensed health care practitioner under any provision of Florida Statutes or (2) who is a duly licensed health care practitioner, but who is acting outside the scope of his or her licensure while, at the same time, performing acts within the scope of the Chapter 458, Florida Statutes.

5. The Board is not aware of acts which are within the scope of Chapter 458, Florida Statutes, which are outside the scope of Chapter 459. The difference between allopathic physicians and osteopathic physicians is not the acts which they are lawfully permitted to perform, rather it is based on a difference in the emphasis, or lack thereof, on the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health. Compare the statutory definitions in 458.305 and 459.003(3), Florida Statutes.

6. Petitioner's final question requests this Board to interpret Section 621.05, Florida Statutes (1983) which relates to professional service corporations. This the Board cannot do. The Board of Medical Examiners is authorized to interpret only the Medical Practice Act and other statutes and rules related to the practice of allopathic medicine. It does not have the authority or responsibility to determine the corporate structure or business structure of the physician's practice. (In contrast, see, Sections 466.028(1)(h) and 466.0285, Florida Statutes, relating to the practice of dentistry and dental hygiene, and Section 463.014, Florida Statutes (1983), relating to the practice of optometry.) Since Section 621.05, Florida Statutes (1983), is within the ambit of the Department of State, the Board respectfully suggests that Petitioner seek an interpretation of Section 621.05 from that Department.

7. There is competent substantial evidence to support the Board's findings and conclusions.

WHEREFORE, the provisions of Section 458.311(g) and Section 458.303(a), Florida Statutes (1983) do not operate to prohibit a duly licensed medical doctor from practicing together with a duly

