

174

STATE OF FLORIDA
BOARD OF NURSING

Final Order No. DOH-03-0407- DS-MOA
FILED DATE - 4/29/03
Department of Health

IN RE: THE PETITION FOR DECLARATORY STATEMENT OF
LINDA C. NOELKE, R.N.

By: Wick R. Kanon
Deputy Agency Clerk

FINAL ORDER

THIS MATTER came before the Board of Nursing ("Board") pursuant to Section 120.565, Florida Statutes, at a duly-noticed public meeting held in Tampa, Florida, on April 10, 2003, for the purpose of considering the Petition for Declaratory Statement filed by Linda C. Noelke, R.N. ("Petitioner"). Notice of the petition was published in the Florida Administrative Weekly on March 14, 2003, at Volume 29, Number 11. Having considered the petition, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. Petitioner is a Registered Nurse licensed to practice nursing in the state of Florida.
2. Section 464.003(3)(a), Florida Statutes, defines the practice of professional nursing as "the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences which shall include, but not be limited to:
 - "1. The observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others.
 - "2. The administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.
 - "3. The supervision and teaching of other personnel in the theory and performance of any of the above acts."
3. Section 464.012(4)(a), Florida Statutes, provides that a Certified Registered Nurse Anesthetist (CRNA) "may, to the extent authorized by established protocol approved by the medical staff of the facility in which the anesthetic service is performed, perform any or all of the following:
 - "1. Determine the health status of the patient as it relates to the risk factors and to the anesthetic management of the patient through the performance of the general functions.
 - "2. Based on history, physical assessment, and supplemental laboratory results, determine, with the consent of the responsible physician, the appropriate type of anesthesia within the framework of the protocol.

"3. Order under the protocol preanesthetic medication.

"4. Perform under the protocol procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, therapeutic, or diagnostic clinical procedures. These procedures include ordering and administering regional, spinal, and general anesthesia; inhalation agents and techniques; intravenous agents and techniques; and techniques of hypnosis.

"5. Order or perform monitoring procedures indicated as pertinent to the anesthetic health care management of the patient.

"6. Support life functions during anesthesia health care, including induction and intubation procedures, the use of appropriate mechanical supportive devices, and the management of fluid, electrolyte, and blood component balances.

"7. Recognize and take appropriate corrective action for abnormal patient responses to anesthesia, adjunctive medication, or other forms of therapy.

"8. Recognize and treat a cardiac arrhythmia while the patient is under anesthetic care.

"9. Participate in management of the patient while in the postanesthesia recovery area, including ordering the administration of fluids and drugs.

"10. Place special peripheral and central venous and arterial lines for blood sampling and monitoring as appropriate."

4. Ketamine hydrochloride is a nonbarbiturate general anesthetic that has hypnotic, analgesic, and amnesic effects.

5. Petitioner is a licensed to practice professional nursing in the state of Florida, holding license number RN 789932. She is not certified as an Advanced Registered Nurse Practitioner. She is trained in basic cardiac life support, and is certified as a plastic surgery nurse.

6. Petitioner asks the following questions:

a. Is it within the scope of practice for a registered nurse to administer intravenous Ketamine (Ketalar) pursuant to a written or verbal order by a surgeon in an ambulatory surgery setting where the patient is not intubated?

b. Is it within the scope of practice for a registered nurse to administer intravenous Ketamine (Ketalar) pursuant to a written or verbal order by the surgeon for the purpose of rendering the patient insensible to pain for the injection of local anesthetic and surgical procedures?

c. Is it within the scope of practice for a Registered Nurse to administer intravenous Ketamine (Ketalar) pursuant to a written or verbal order by a

surgeon in the ambulatory surgery setting where there is not an anesthesiologist on staff?

CONCLUSIONS OF LAW

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

8. The Board answers all three of the Petitioner's questions in the negative.

9. This Order constitutes final agency action and may be appealed by any party pursuant to Section 120.68, Florida Statutes, and Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, by filing a notice of appeal conforming to the requirements of Rule 9.110(d), Florida Rules of Appellate Procedure, both with the appropriate District Court of Appeal, accompanied by the appropriate filing fee, and with the department's clerk of agency proceedings, within thirty (30) days of rendition of this Order.

DONE AND ORDERED this 25 day of April, 2003.

BOARD OF NURSING



Dan Coble, Executive Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to Linda C. Noelke, R.N., 3933 Kirby Loop Road, Fort Pierce, Florida 34981; and to Susan B. Bodell, Assistant Attorney General, Office of the Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, this 29th day of April, 2003.



**PETITION FOR DECLARATORY STATEMENT BEFORE THE
STATE OF FLORIDA BOARD OF NURSING**

Linda C. Noelke, R.N.
3933 Kirby Loop Road
Fort Pierce, FL 34981

Home Phone
Cell Phone

I, Linda C. Noelke, R.N., would like to petition the State of Florida Board of Nursing for a Declaratory Statement regarding Section 464.003, Florida Statutes, The Nurse Practice Act.

- A. Is it within the scope of practice for a Registered Nurse to administer intravenous Ketamine (Ketalar) pursuant to a written or verbal order by a surgeon in an ambulatory surgery setting where the patient is not intubated?
- B. Is it within the scope of practice for a Registered Nurse to administer intravenous Ketamine (Ketalar) pursuant to a written or verbal order by the surgeon for the purpose of rendering the patient insensible to pain for the injection of local anesthetic and surgical procedures?
- C. Is it within the scope of practice for a Registered Nurse to administer intravenous Ketamine (Ketalar) pursuant to a written or verbal order by a surgeon in the ambulatory surgery setting where there is not an anesthesiologist on staff?

Linda C. Noelke R.N.

Linda C. Noelke, R.N.

2/17/03

Linda,

I know that I did I send all of this information to you previously – some of it in February of last year and some when we returned from ASPS in San Antonio last October. I had Anne pick up a copy of each of the things I was given by the Anesthesiologists and Anesthetists so I would have an extra one to keep in addition to one to give to the office – and I only have one now.

Anyway, I think this "literature" is pretty clear – and carries a lot more legal weight than a Product Insert from a drug manufacturer. There is nothing illegal, unethical, dangerous, or even especially unusual about RNs giving Ketamine in office surgery. The Florida Board of Nursing has "no position" on the subject. The ANA and AORN and JAHCO and even the American Society of Anesthesiologists have all given approval for this practice. As I say, Donato attended a two hour Inservice class on at the ASPS National Meeting. I wonder if you have checked with the ASPSN to see what their position is? That is YOUR professional association and a benefit of your membership – and presumably why we pay your dues to that organization.

Linda, I have to say, I am surprised once again by your attitude toward this. It is not an appropriate professional stand for a OR Supervisor to say it is fine for the other nurses in her facility to administrate a drug, even though it is probably illegal to do so, as long as she does not personally administer the medication herself! It is inappropriate to reach conclusions about whether or not a practice is legal or not based on nothing more than reading the Product Insert. As you can see, I went to a considerable amount of effort to make sure that the practice was acceptable before we started using the drug in our practice.

If you have had this question all along, the professional way to handle it would have been to research it a little more and then present any evidence you found to support your position to Donato. When we discovered that the FL Board of Nursing had ruled against administration of "laser" treatments by RNs, we let a \$16,000 machine sit unused for a year – and then obtained permission from the Board for them to use it after the FDA approved consumer use of the same machine. We do not have a history of contempt for legal standards or asking our nurses to do things outside the scope of their practice.

Finally, if you do not understand clearly the difference between issues that pose possible malpractice risk and those that might result in the loss of your professional license, you need to find some CE on legal issues for nurses.

I expect Donato and I will be subjected to more ill will and passive aggressive behavior in response to this discussion, as we come have to expect that anytime we address these kinds of issues, but, as I said to you on the telephone, it really isn't possible to justify hiring an additional RN because three of the four we have cannot assist Donato in the ASC! What do you think?

Joyce

February 18, 2003

To: Donato Vigliano, M.D.
Joyce McClintock, R.N., Ph.D.
Re: Administration of IV conscious Sedation at Treasure Coast Cosmetic
Surgery Center.

After careful consideration and research of the literature, (most of which was provided by you via fax) I am prepared to make the following statements:

As a Registered Nurse licensed by the Florida Board of Nursing, I am qualified to administer IV conscious sedation. As defined by the American Society of Anesthesiologist Practice Guidelines by Non Anesthesiologist, conscious sedation (moderate sedation/analgesia) is as a drug induced depression of consciousness during which the patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (Also reference St. Lucie Medical Center's Standard Policy and /or Procedure on Conscious Sedation/Analgesia draft dated 2/01, pg.30; Sedation and Analgesia- JCAHO Requirements, pg.2; ASA Guidelines Table 1, pg.24).

The drugs I am willing to administer as conscious sedation include, Benzodiazepines (Ativan, Valium, Versed), Narcotics (Demerol, Morphine, Fentanyl) and Reversal Agents Narcan and Romazicon. These drugs are approved by St. Lucie Medical Center's Department of Anesthesia as use for moderate sedation. Reference St. Lucie Medical Centers Standard Policy and/or Procedure draft, and Sedation and Analgesia-JCAHO Requirements.

As a Registered Nurse licensed by the Florida Board of Nursing, I am not qualified to administer Deep Sedation /Analgesia. Deep Sedation is defined by the ASA as, a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function maybe impaired. Patients may require assistance in maintaining a patent airway and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. Reflex withdrawal from painful stimulus is not considered a purposeful response.

As a Registered Nurse licensed by the Florida Board of Nursing I am not qualified to administer General Anesthetics. General Anesthesia is defined by the ASA as a drug induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug induced depression of

neuromuscular function. Cardiovascular function may be impaired. Reference ASA Practice Guidelines for Sedation, Table 1, pg. 24; St. Lucie Medical Center Standard Policy and/ or Procedure draft, pgs. 30-31.

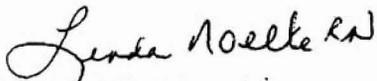
The drugs I am not willing to administer are: Methohexital (Brevital, now on national backorder) Ketamine (Ketalar), and Propofol (Diprivan). These drugs are classified as potent anesthetic induction agents. The PDR and package insert (required by the FDA for all prescriptive medications) Clinical Pharmacology lists Ketamine as a rapid acting general anesthetic producing an anesthetic state termed dissociative anesthesia. Brevital is listed as an ultra-short action barbituate anesthetic used for IV induction of anesthesia. Propofol (Diprivan) is listed as a hypnotic agent used for both the induction and maintenance of anesthesia. St. Lucie Medical Center's policy for conscious sedation restricts the use of these induction agents. The department of Anesthesia may order, monitor and administer these types of agents only. Reference St. Lucie Medical Center's Policy and Procedure for Conscious Sedation draft, pg. 31. The CRNA Practice, Considerations for Policy Guidelines for Registered Nurses Engaged in the Administration of Conscious Sedation states on pg. 2, B-3; Registered Nurses who are not anesthesia providers should not administer agents classified as anesthetics, including but not limited to Ketamine, Propofol (Diprivan), Etomidate, Sodium Thiopental, Methohexital (Brevital), Nitrous oxide and muscle relaxants. JCAHO Requirements for Sedation and Analgesia on pg. 6 states that due to a greater propensity for respiratory depression and other undesirable effects, these drugs (Brevital, Diprivan and Ketamine) are usually only used by an anesthesiologist for sedation and analgesia. ASA's Practice Guidelines for Sedation and Analgesia by Non-Anesthesiologist on pg. 17, states, if it is likely that sedation to the point of unresponsiveness will be necessary to obtain adequate conditions, practitioners who are not trained in the administration of general anesthesia should consult an anesthesiologist.

Lastly, in a Petition for Declaratory Statement by the State of Florida Board of Nursing, Jated February 7, 2002, a nurse, Brenda Sammy, asked if it was within the scope of practice for a registered nurse to administer Diprivan pursuant to a verbal or written order given by an anesthesiologist who remained in the room performing a lumbar epidural steroid injection. Mr. Dan Coble, Executive Director with the Board of Nursing, ruled that it is not in the scope of practice for a registered nurse who is not a CRNA to administer Diprivan pursuant to a verbal or written order given by an anesthesiologist and that the administration of anesthetic agents such as Diprivan for the purpose of rendering a patient insensible to pain, is an advanced practice act that may be performed by a CRNA under an established protocol with a duly licensed physician. Since the above referenced sources list Diprivan, Brevital and Ketamine as anesthetic agents, I feel it is safe to guess that the Florida Board of Nursing would also rule that administration of Brevital and Ketamine by a registered nurse is not in the scope of practice for a registered nurse. I also strongly feel that willfully violating the Nurse Practice Act by giving said drugs would result in the revoking of ones professional nurses license. (See State of Florida Board of Nursing Petition for Declaratory Statement, Brenda Sammy, R.N., Staff Nurses, Manatee Surgical Center, copy enclosed within).

As for my "inappropriate" lack of concern for my R. N. colleagues regarding the administration of Ketamine and Brevital, we have all, for many years, questioned the appropriateness of using these gray area drugs. Kim Maxwell, R.N. did, at the time the facility started to use Ketamine, hold a paramedics license which she felt might afford her leeway as she would be capable of intubation if necessary, however if you ask any one of the OR nurses, I feel confident that they would tell you they had concerns regarding both Brevital and Ketamine. As recently as January 2003, in a staff meeting, I presented the ruling from the Florida Board of Nursing regarding Diprivan. To which Dr. Viggiano responded "We do not give Diprivan here." I again question line 12 in the ruling that states, The Administration of anesthetic agents such as Diprivan for the purpose of rendering the patient insensible to pain, is an advanced practice act that may be performed by a CRNA under an established protocol with a duly licensed physician. to which the doctor responded "Ketamine is a dissociative drug." I can only refuse to give these medications by my own accord. It is up to my colleagues to make their own decisions that may adversely affect their nursing careers if they choose to violate the Nurse Practice Act.

As you can see, I too went to a considerable amount of effort to research this issue, and I feel strongly that I am correct in my decision.

I am submitting this to you in written format to avoid any miscommunication.


Linda Noelle, R.N.