STATE OF FLORIDA BOARD OF MEDICINE

Final Order No. DOH-02-1292 FILED DATE . Department o Rvputy Agency Cler

IN RE: THE PETITION FOR DECLARATORY STATEMENT OF

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TAMMIE L. HILTON, RN

FINAL ORDER

THIS CAUSE came before the Board of Medicine (hereinafter "the Board") pursuant to §120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code, at a duly-noticed public meeting in Orlando, Florida on August 3, 2002, for the purpose of considering the Petition for Declaratory Statement (attached as Exhibit A) filed by Tammie L. Hilton, RN (hereinafter Petitioners). Having considered the petition, and being otherwise fully advised in the premises, the Board hereby dismisses the petition for failure of Petitioner to establish that she is a substantially affected person, and failure to state with particularity Petitioner's set of circumstances.

Herry DONE AND ORDERED this 22 day of 2002.

BOARD OF MEDICINE

Larry McPherson, Executive Director for Zachariah P. Zachariah, MD, Chair

NOTICE TO PARTIES

Pursuant to Section 120.569, Florida Statutes, the parties are hereby notified

Page 1 of 2

that they may appeal this Final Order by filing one copy of a notice of appeal with the Clerk of the Department of Health and one copy of a notice of appeal and the filing fee with the District Court of Appeal within 30 days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to Petitioner, Tammie L. Hilton, RN, 6267 Sandcrest Circle, Orlando FL 32819, this $\frac{6}{2}$ day of \underline{Ayyut} , 2002.

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OFFICE OF THE ATTORNEY GENERAL

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH Attorney General State of Florida

Reply to: Office of the Attorney General Administrative Law Section PL - 01, The Capitol Tallahassee, Florida 32399-1050 (350)414-3300; SunCom 994-3300

June 27, 2002

Tammie L. Hilton, R.N. 6267 Sandcrest Circle Orlando, Florida 32819

Re: Petition for Declaratory Statement to Board of Medicine

Dear Ms. Hilton:

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Section 120.565, Florida Statutes, provides that a petition for declaratory statement myst be submitted by a "substantially affected person." I am not aware of any case in which the Beard of Medicine has determined that a person licensed under another practice act constitutes a "substantially affected person" for purposes of Chapter 458. The Board

You do not make clear the circumstances in your case. Have you been asked to perform vein harvesting? Have you actually performed vein harvesting under the supervision of a physician? The Board is not permitted to issue statements of generally applicability in answering petitions for declaratory statement. Also, the Board does not issue orders on petitions that seek an opinion on someone else's behavior. You should be prepared to clarify how the statute you cite affect you.

Sincerely Senior Assistant Attorney General

cc: Parnela King, Program Administrator Nancy Murphy, Research Assistant

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Petition for Declaratory Statement before Board of Medicine

Petitioner: Tammie L. Hilton RN

6267 Sandcrest Circle Orlando, FL 32819 Phone: (407)493-4704 Fax: (407)647-4220 License Number: 2752372

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As a Registered Nurse in the State of Florida, I am requesting an interpretation by the Board of Medicine on Chapter 458 and even more specifically 458.303(2), Florida Statutes regarding services rendered under direct supervision of a licensed physician.

- (1) On May 29, 2002, a Judge of the 18th Judicial Circuit Court of Florida made a ruling that "Vein harvesting does involve the practice of medicine." And "...vein harvesting, is a procedure which involves an incision, a controlling of bleeding by hemostats, the use of electrosurgical pencils and the removal of veins from the body." *Please find enclosed an Excerpt of Proceedings.*
- (2) While the Judge made most of his ruling based on Chapter 458 which is Practice of Medicine, he states that "while section 464.207 encourages hospitals in general to use Registered Nurse First Assistants generally speaking, not for this particular procedure......458.303 does not distinguish between RNs and RNFAs." Please find enclosed Chapter 458, Florida Statutes.
- (3) In a Final Order issued by the Board of Nursing, the petitioner requested an interpretation by the Board of Chapter 464, Florida Statutes. The Board advised that The Association of Operation Room Nurses (AORN) statement adopted by the Board in 1984 does not permit RNs to make incisions. Please find enclosed Final Order by Board of Nursing and AORN Official Statement on RN First Assistants.
- (4) In a Report of the Board of Trustees of the American Medical Association regarding surgical assistants other than licensed physicians, "the role of assistant-at-surgery generally includes the following tasks: maintaining adequate exposure in the operating field, cutting suture materials, clamping and ligating bleeding vessels, and, in selected instances, actually performing parts of a procedure." The report goes on to read, "individuals, other than licensed physicians, performing this role, generally include RNFAs, APNs, CNSs, and NPs who have additional training in surgical first assistance." Please find enclosed Report of Board of Trustees of AMA.

Here are my questions:

As a Registered Nurse in Florida, am I allowed to perform "yein harvesting" to include making the incision, controlling bleeding with hemostats, use of electrosurgical pencils, and removing the vein in Coronary Artery Bypass Graft (CABG) surgical patients? Or, would this be out of the scope of practice for nursing? Please define in relationship to ch. 458.303(2), Florida Statutes which, in essence, if applied by this Judge means that if a licensed physician tells me to do something I have to do it.

I am not an RNFA. However, if this is considered the "practice of medicine" is an RNFA allowed to perform vein harvesting?

Since Registered Nurses and even RNFAs do not have the required education or experience that a Licensed Physician who would be performing this procedure, I feel that the liability is too great for myself and the patient to be required to perform such a procedure and that this is out of my scope of practice. Chapter 464 defines the Practice of professional nursing. It also goes on to state that practicing advanced or specialized. professional or practical nursing constitutes a felony of the third degree. It is punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The patients undergoing this procedure are not aware that an RN may be performing their surgery. Therefore, they have not been given the right of informed consent. The Judge ruling in this case has declared that under ch.458, Florida Statutes, if a Licensed Physician tells a nurse, whether they are an LPN, RN or RNFA to perform surgery, the nurse must do it. However, ch. 458.331(1)(w) shows that, "delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, re licensure to perform them" is grounds for disciplinary action by the Board.

Nurses are not required to carry the malpractice or liability insurances that physicians/surgeons are required to carry. Nurses are not paid the salaries that physicians/surgeons are paid. Nurses are not a luxury item any more. With the rapidly growing shortage of nurses nationwide, this provision, if not clarified will not only deter nurses that are presently in the healthcare workforce, but also deter future nurses from joining our industry. As a Registered Nurse bound by the Regulation of the Board of Nursing, I am requesting support from the Board, as I worked hard to obtain my education and my license. I fear that if the clarification is not made. I may be put into a situation where my entire livelihood may be affected.

I extend my sincerest appreciation and gratefulness for your time in this matter.

itin RN 4/10/02

Tammie L. Hilton

Date