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Final Order No. DOH-09-2157-DS-MOA
FILED DATE - 10/21/09
Department of Health
By: Anaële Barton
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF CLINICAL LABORATORY PERSONNEL

IN RE: PETITION FOR DECLARATORY STATEMENT

LUCINDA ANN OLIVIO

FINAL ORDER

This matter came before the Board of Clinical Laboratory Personnel (hereinafter the "Board") on October 16, 2009, at a duly noticed telephone conference call board meeting, for consideration of the above-referenced Petition for Declaratory Statement. The Notice of Petition for Declaratory Statement was published on September 25, 2009, in Vol. 35, No. 38, of the Florida Administrative Weekly. Petitioner was neither present nor represented by counsel.

Petitioner submitted a chart with a listing of various tests performed in a Donor Testing Laboratory and requested that the Board specify the license category that a medical technologist must have to perform the listed tests.

FINDINGS OF FACTS

1. Petitioner is licensed as a Clinical Laboratory Supervisor by the Board.
2. The petition failed to set forth any particular circumstances to which the referenced rule was to be applied.

CONCLUSIONS OF LAW

1. The Board of Clinical Laboratory Personnel has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.
2. Section 120.565, Florida Statutes, reads in part as follows:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of

any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances

3. Rule 28-15.001, Florida Administrative Code states:

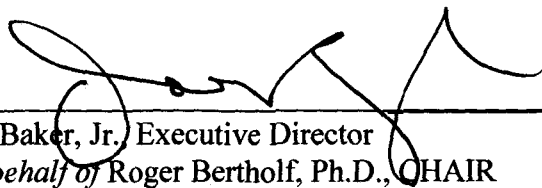
A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Because the petition fails to specify or describe Petitioner's specific or particular circumstances, the Board is unable to provide a response.

Based on the foregoing, the Board hereby **DENIES** Lucinda Olivio's petition for declaratory statement.

DONE AND ORDERED this 20th day of Oct, 2009.

BOARD OF CLINICAL LABORATORY PERSONNEL



Joe Baker, Jr. Executive Director
on behalf of Roger Bertholf, Ph.D., CHAIR

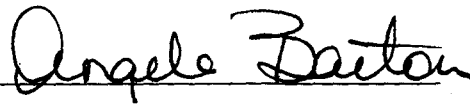
NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida

Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the Florida District Court of Appeal in the Appellate District where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to: **Lucinda Olivio**, Quality Assurance Manager, Florida Blood Services, Inc., 10100 Dr. Martin Luther King Jr. Street North, St. Petersburg, Florida 33716; and by interoffice mail to: **Deborah B. Loucks**, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, and **Angela Southwell**, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on 21 - October, 2009.



Deputy Agency Clerk



FILED
 DEPARTMENT OF HEALTH
 DEPUTY CLERK
 CLERK: *Angela Barton*
 DATE 8/4/09

Petition for Declaratory Statement Before the Board of Clinical Laboratory Personnel

July 28, 2009

Lucinda Ann Olivio
 Quality Assurance Manager
 Florida Blood Services, Inc.
 10100 Dr. Martin Luther King Jr. Street North
 St. Petersburg, FL 33716
 (727) 568-1203
 Fax (727) 568-2177

The declaratory statement is sought on 64B3-10.005 Scope of Practice Relative to Specialty of Licensure (3) through (8).

Please clarify the licensure that is required to work in a Donor Testing Laboratory. Listed below are tests performed in a donor testing lab. Please specify the license category (Hematology, Clinical Chemistry, Microbiology, Immunohematology or Serology) that a Medical Technologist must have in order to perform the testing listed. And please indicate if a "Blood Bank" specialty license can be substituted for the required license.

TEST	METHODOLOGY	LICENSE REQUIRED TO PERFORM TESTING	CAN A "BLOOD BANK" SPECIALTY BE SUBSTITUTED? (YES or NO)
WNV	NAT or PCR		
HIV/HCV/HBV (Multiplex and discriminatory)	NAT or PCR		
HBsAg	EIA or ChLIA		
Anti-HBc	EIA or ChLIA		
Anti-HIV-1/2	EIA or ChLIA		
Anti-HTLV-I/II	ChLIA		
Anti-HCV	EIA or ChLIA		
Anti- <i>T. cruzi</i> (Chagas)	EIA		
Anti-HLA Class I and Class II	EIA		

727.568.5433 ■ www.fbsblood.org

P.O. Box 22500, 33742-2500 ■ 10100 Dr. Martin Luther King Jr. Street N ■ St. Petersburg, FL 33716-3806



**FLORIDA
BLOOD
SERVICES**

ABO and Rh (Including Weak D)	Automated Serologic Agglutination		
	Gel Technology		
	Manual Tube Method		
Antibody Screen	Automated Serologic Agglutination		
	Gel Technology		
	Manual Tube Method		
DAT	Manual Tube		
Syphilis	Automated Microhemagglutination		
	Manual card method (RPR)		
	EIA		
Anti-CMV	Automated		
	Manual Card Method		
Hematology Cell Counts	Automated Impedance/ Optical or Photometry		
White Blood Cell Counts	Flow Cytometry		
Factor VIII/ Fibrinogen	Automated Light Emitting Diode Mode		
pH Determination	H ⁺ Determination		
RIBA HCV SIA	Enzyme Immunoblot Assay		
Inno-LIA HTLV I/II	Line Immunoassay		
HBsAg Neutralization	EIA or ChLIA		
HIV-1 WB	Western Blot		
HIV-1 IFA	Immunofluorescence Assay		
Cholesterol Testing	Automated		
Serum Indices (Hemoglobin, Lipemia, Bilirubin)	Automated		

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Key:

- WNV = West Nile Virus
- NAT = Nucleic Acid Testing
- PCR = Polymerase Chain Reaction
- HIV = Human Immunodeficiency Virus
- HCV = Hepatitis C Virus
- HBV = Hepatitis B Virus
- EIA = Enzyme Immunoassay
- ChLIA = Chemiluminescent Immunoassay
- HBsAg = Hepatitis B Surface Antigen
- HBc = Hepatitis B Core Antigen
- HIV-1/2 = Human Immunodeficiency Virus Type 1 and Type 2
- HTLV-I/II = Human T-Lymphotropic Virus Type I and Type II
- DAT = Direct Antiglobulin Test
- CMV = Cytomegalovirus
- RIBA SIA = Recombinant Immunoblot Assay Strip Immunoassay

Thank you in advance for your help. If further clarification of the question is needed, please feel free to call or email me at the above addresses.

Respectfully,

Lucinda Ann Olivio, MT (ASCP)