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CITE as 8 FALR 912

STATE OF FLORIDA
BOARD OF MEDICAL EXAMINERS

FILED

IN RE: Petition for
Declaratory Statement of:

Department of Professional Regulation
BOARD OF MEDICAL EXAMINERS

SOFIA ESCOBAR,
Petitioner.

ORDER BY *Richard M. Regan*

DATE 7-17-86
EX: Local Board

FINAL ORDER

THIS MATTER came before the Board of Medical Examiners, pursuant to Section 120.563, Florida Statutes, and Rule Chapter 28-4, Florida Administrative Code, on October 6, 1985, in Sarasota, Florida, for consideration of the Petition for Declaratory Statement filed by Sofia Escobar. Upon consideration of the Petition, and specifically upon consideration of the factual allegations set forth in the letters of April 3, 1985, and July 3, 1985, and based on the assumption of the truthfulness of the assertions in the letters, and being otherwise fully advised in the premises, the Board makes the following findings and conclusions:

FINDINGS OF FACT

1. Petitioner Sofia Escobar is a physical therapist aide at Cedars of Lebanon Health Care Center in Miami, Florida, and has served in that position continuously since 1966.
2. For purposes of the Petition for Declaratory Statement, Petitioner specifically asserts that she was assisting the physical therapist as an aide prior to the 1973 amendments to the Physical Therapy Act and has continued to perform those duties.
3. Petitioner requests an interpretation of Section 486.171(2), Florida Statutes, in order for the Board to determine whether she may continue to perform her duties as a physical therapist aide pursuant to the Physical Therapy Act.

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CONCLUSIONS OF LAW

1. The Board of Medical Examiners has jurisdiction of this matter pursuant to Section 400.010, 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 letters being treated as a Petition are in substantial compliance with Rule Chapter 28-4, Florida Administrative Code.

3. The Physical Therapy Practice Act is set forth as Chapter 486, Florida Statutes. Section 486.171, Florida Statutes, sets forth certain exemptions and "grandfather clauses" which apply to the licensure and regulation of persons who may otherwise be governed by the Physical Therapy Practice Act.

4. Subsection (2) of Section 486.171, Florida Statutes, provides as follows:

Any person employed by or assisting a physical therapist as an aide shall be considered eligible to continue to perform his duties, providing he was so employed prior to the 1973 amendment to this chapter. He shall not be eligible to be licensed as a physical therapist assistant or to call himself an assistant until he meets the requirements of this chapter.

That statutory provision, by its very terms, applies in a situation such as this where an individual has been employed as an aide prior to amendments to Chapter 486 and has continued to practice in that capacity. Pursuant to the statutory language, such a person may continue to perform the duties of an aide to a physical therapist, which duties if practiced by a person not subject to the so-called grandfather clause would constitute practice as a physical therapist or as a physical therapist's assistant.

4. In so stating the above, the Board would point out, pursuant to Section 486.171(2), that a person who is eligible to continue to perform the duties as a physical therapist aide is not eligible to be licensed as a physical therapist's assistant

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unless that person meets the licensure requirements of Chapter 486, Florida Statutes, and is not permitted to call himself or herself a physical therapist assistant unless he or she is licensed pursuant to Chapter 486, Florida Statutes. See 1.60 Section 486.135, Florida Statutes.

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

WHEREFORE, pursuant to the provision of Section 486.171(2), Florida Statutes, Petitioner Sofia Escobar is authorized to continue to perform the duties of a physical therapist aide without obtaining licensure as a physical therapist's assistant.

DONE and ORDERED this ____ day of _____, 1986.

BOARD OF MEDICAL EXAMINERS

J. Darrell Shea, M.D.
J. Darrell Shea, M.D.
Chairman