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Final Order No. DOH-00-0369- DS MOA Date 4-5-00

STATE OF FLORIDA
BOARD OF MEDICINE

FILED
Department of Health
Angela Hall, AGENCY CLERK
By: Vicki R. Ellerton
Deputy Agency Clerk

IN RE: PETITION FOR DECLARATORY
STATEMENT OF

JACK W. MACDONALD, M.D.

FINAL ORDER

The Board of Medicine considered the Petition for Declaratory Statement filed by Jack W. MacDonald, M.D., at a duly-noticed meeting of the Board held on February 4, 2000 in Jacksonville, Florida, and determined that the petition should be denied.

The petition filed by Jack W. MacDonald, M.D. posed the following question:

Can physician's assistants or advanced registered nurse practitioners independently provide informed consent in relationship to a procedure for which they are appropriately supervised and which they are authorized to perform.

Upon consideration of the petition, and the rules cited by petitioner, the Board determined that a response to the petition was not appropriate on the grounds that Rule 64B8-9.007, Florida Administrative Code, unambiguously answers the question: it is the responsibility of the physician to explain the procedure and obtain the informed consent of the patient.

Therefore, the Board of Medicine declines to issue a declaratory statement in response to the petition, and the petition is dismissed.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this RD 23 day of March, 2000.

BOARD OF MEDICINE

Tanya Williams

Tanya Williams, Board Director
for Georges El-Barhi, M.D., Chair

NOTICE TO PARTIES

Pursuant to Section 120.569, Florida Statutes, petitioner is hereby notified that he 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 has been provided by U.S. Mail to Jack W. MacDonald, M.D., Tallahassee Memorial HealthCare, 1300 Miccosukee Road, Tallahassee FL 32308 this 5th day of April, 2000.

Connie Singletary

DEPARTMENT OF HEALTH

Board of Medicine

The Board of Medicine hereby gives notice that it has received a Petition for Declaratory Statement filed by Jack W. MacDonald, M.D., Chief Medical Officer, on behalf of the medical staff of Tallahassee Memorial HealthCare. The Petitioner seeks the Board's interpretation of the application of Section 458.347, F.S., to the circumstances outlined in the petition. Specifically, the Petitioner seeks the Board's determination of the appropriateness of a physician delegating the act of securing the patient's informed consent to that physician's employee who is a licensed physician assistant.

The Board will consider this petition at 2:00 p.m., or as soon thereafter as can be heard, February 4, 2000, at its meeting at the Marriott Hotel, 4670 Salisbury Road, Jacksonville, Florida 32256. Copies of the petition may be obtained by writing Tanya Williams, Executive Director, Board of Medicine, 2020 Capital Circle S.E., Bin #C03, Tallahassee, Florida 32399-3253.



Tallahassee Memorial
HealthCare

Jack W. MacDonald, M.D.
Senior Vice President
Chief Medical Officer

1300 Miccosukee Road
Tallahassee, Florida 32308
850 681-5121
850 341-6159 Fax

December 3, 1999

/ Rec'd 12/20 from
Dr. Cerda's office
FOW

John Cerda, M.D.
Chairman, Board of Medicine
State of Florida
1600 SW Archer Rd.
Room 10-441, Box 100371
Gainesville, FL 32610

RE: Request for Declaratory Statement
Delegation of Responsibility: Informed Consent

Dear Dr. Cerda:

This letter is submitted on behalf of the Medical Staff of Tallahassee Memorial HealthCare to request a Declaratory Statement regarding the delegation of the act of providing Informed Consent by a physician licensed under 458 FS or 459 FS to that physician's employee who is either licensed as a Physician Assistant-Certified (458.347 FS) or an Advanced Registered Nurse Practitioner (464.012 FS).

Specific examples brought in question and prompting this request include independent performance of bone marrow biopsies/aspirations by a PA-C and independent placement of re-expansion chest-tubes in a neonatal patient by a duly licensed ARNP who is an employee of the supervising physician and acting completely within the scope of the Collaborative Practice Agreement appropriately on file with the Boards of Medicine and Nursing. **Can These Individuals Independently Provide Informed Consent in Relationship to the Procedure for Which they are Appropriately Supervised and Authorized to Perform?** In an adjunctive environment, can such persons provide Informed Consent for a procedure in which their role will be that of Assistant Surgeon for the employing physician?

Recent court cases have clearly supported what is stated in Section 64B8-9.007, Standards of Practice; FAC: *(1) The ultimate responsibility for diagnosing medical and surgical problems is that of the licensed doctor of medicine or osteopathy who is to perform the surgery. In addition, it is the responsibility of the operating surgeon or an equivalently trained doctor of medicine or osteopathy or a physician practicing within a Board approved post graduate program to explain the procedure to and obtain the Informed Consent of the patient.*

Section 64B8-30.012 only indirectly addresses the issue of delegating Informed Consent by stating: *(1) A supervising physician should delegate only task and procedures to the Physician Assistant which are within the supervising physician's scope of practice. (2) The decision to permit the*

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System

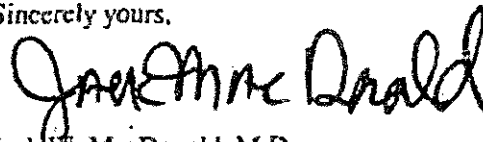
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Physician Assistant to perform a task procedure under direct supervision is made by the supervising physician based on reasonable medical judgement regarding the probability of morbidity and mortality to the patient. Furthermore, the supervising physician must be certain that the Physician Assistant is knowledgeable and skilled in performing the task and procedures assigned.

In Chapter 64B8-35; FAC which addresses Advanced Registered Nurse Practitioners, the language is also silent on delegation for obtaining Informed Consent and seems to focus only on there being assurance that the scope of practice lies within a defined and written Collaborative Practice Agreement.

The recommendation and insight of the Board of Medicine regarding this issue through the issuance of a Declaratory Statement will be sincerely appreciated and anticipated.

Sincerely yours,



Jack W. MacDonald, M.D.
SVP/Chief Medical Officer

RE: L-ND*3/31/00

SENDER: Connie Singletary

I also wish to receive the following service (for an extra fee):

RESTRICTED DELIVERY

Consult postmaster for fee.

3. Article Addressed to:

Jack W. MacDonald, M.D.
Tallahassee Memorial Healthcare
1300 Miccosukee Road
Tallahassee, FL 32308

4a. Article Number

P 969 936 716



4b. Service Type CERTIFIED

7. Date of Delivery

APR 07 2000

8. Addressee's Address

5. Received By: (Print Name)

[Handwritten Signature]

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Return Receipt