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Agency for Health Care Administration

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By: Brandon L. Moore  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF NURSING

IN RE: THE PETITION FOR DECLARATORY  
STATEMENT OF:

KATHIE CALBONE, R.N.  
Case No. BON-DS-94-04

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FINAL ORDER

This matter came before the Board of Nursing pursuant to Section 120.565, Florida Statutes, and Chapter 28-4, Florida Administrative Code, on August 12, 1994, in Orlando, Florida for the purpose of considering the Petition for Declaratory Statement filed by Kathie Calbone. Having considered the petition, the supporting documentation provided by Petitioner, and the testimony at the hearing, the Board makes the following findings and conclusions.

FINDINGS OF FACT

1. Kathie Calbone is a registered nurse licensed in the State of Florida. She is the Assistant Administrator of Nursing Services at HealthSouth Doctor's Hospital in Coral Gables, Florida.

2. Ms. Calbone asks whether it is within the scope of practice for a professional nurse as defined in Section 464.003(3), Florida Statutes, to pronounce death on those patients whose death is anticipated, had occurred naturally, and

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for whom there were "Do Not Resuscitate" orders in the medical record.

3. HealthSouth Doctor's Hospital is a small community hospital. At times the attending physician is not present and the emergency room physician may not be immediately available.

4. The facility developed a protocol for specified registered nurses to attend an education course conducted by the emergency room physician to review cardiac auscultation, respiratory assessment, and psychosocial aspects. Those nurse supervisors or nurse managers who successfully completed the course would be available to pronounce the death of hospital patients whose death was anticipated, occurred naturally, and for whom DNR orders are written in the medical record. The time, date, and criteria used to pronounce death would be documented in the physician progress notes and the nurse's notes. The attending physician would be responsible for signing the death certificate and completing the medical record.

5. HealthSouth Doctor's Hospital did not want to have the head nurse routinely pronounce death. Should the attending physician not be at the hospital and the emergency department physician be immediately unable to leave the emergency department to pronounce death, the facility sought to alleviate unnecessary anxiety of the patient's family by having the House Supervisor/Nurse Manager pronounce death in the limited circumstances outlined in its policy and procedure.

6. The petition was properly noticed in the Florida Administrative Weekly.

## CONCLUSIONS OF LAW

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

2. The Petition filed by Ms. Calbone is in substantial compliance with the provisions of Section 120.565, Florida Statutes, and Rule 28-4.001, Florida Administrative Code. Petitioner has the requisite interest to maintain this proceeding.

3. Section 464.003(3)(a), Florida Statutes, in pertinent part, reads:

(3)(a) "Practice of professional nursing" means 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 the laws of this state to prescribe such medications and treatments.

4. Sections 382.008(2) and (3), Florida Statutes, read:

(2) The funeral director who first assumes custody of a dead body or fetus shall file the death or fetal death certificate. In the absence of such a person, the physician or other person in attendance at or after the death shall file the certificate of death or fetal death. The person who registers the certificate shall obtain the personal data from the next of kin or the best qualified person or source available. The medical certification of cause of death shall be furnished to the funeral director, either in person or via certified mail, by the physician or medical examiner responsible for furnishing such information.

(3) Within 72 hours after receipt of a death or fetal death certificate from a funeral director, the medical certification shall be completed, signed, and made available to the funeral director by the physician in charge of the decedent's care for the illness or condition which resulted in death, or the physician in attendance at the time of death or fetal death or immediately before or after such death or fetal death, who shall certify over his signature the cause of death to his best knowledge and belief; except the provisions of s. 382.011 apply when the death or fetal death requires investigation pursuant to s. 406.11 or the death or fetal death occurred without medical attendance.

However, Section 382.009(1), Florida Statutes, regarding recognition of brain death, reads:

(2) Determination of death pursuant to this section shall be made in accordance with currently accepted reasonable medical standards by two physicians licensed under chapter 458 or chapter 459. One physician shall be the treating physician, and the other physician shall be a board-eligible or board-certified neurologist, neurosurgeon, internist, pediatrician, surgeon, or anesthesiologist.

5. It is the opinion of the Board that pronouncement of death of HealthSouth Doctor's Hospital patients whose death was anticipated, occurred naturally, and for whom there were written orders not to resuscitate is within the scope of practice of a registered nurse under Section 464.003, Florida Statutes. This conclusion was based upon the Board's understanding of the terms "observation, assessment, nursing diagnosis" in Section 464.003(3)(a)1., Florida Statutes, and the absence of any express statutory provision regarding pronouncement of death such as determination of brain death in Section 382.009(2), Florida Statutes. HealthSouth Doctor's Hospital has articulated a specific policy designating the registered nurses, limited to the House Supervisor/Nurse Manager who may pronounce death and under what limited circumstances this may be done.

6. Petitioner is notified she may appeal this Order by filing one copy of a Notice of Appeal with the Clerk of the Board, and by filing a filing fee and one copy of a Notice of Appeal to the District Court of Appeal within 30 days of the date this order is filed:

DONE and ORDERED this 8 day of September, 1994.

BOARD OF NURSING

Betty A. Taylor  
Betty A. Taylor, R.N., M.S.N.  
Chairman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by certified mail to Kathie Calbone, R.N., Assistant Administrator Nursing Services, HealthSouth Doctor's Hospital, 5000 University Drive, Coral Gables, Florida 33146, this 13th day of September, 1994.

Brandon L. Moore  
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Deputy Agency Clerk