

STATE OF FLORIDA  
BOARD OF NURSING

RECEIVED

AUG 27 1992

IN RE: THE PETITION FOR DECLARATORY  
STATEMENT OF:

NELL W. TALBIRD, R.N.  
Case No.: BON-DS-92-02

FILED

AUG 27 1992

FLORIDA STATE  
BOARD OF NURSING

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 June 12, 1992, in Jacksonville, Florida for the purpose of considering the Petition for Declaratory Statement filed by Nell Talbird. 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. Nell Talbird is a registered nurse licensed in the state of Florida. She is the Assistant Administrator of Patient Services at St. Luke's Hospital in Jacksonville, Florida.

2. Ms. Talbird 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 had been anticipated, had occurred naturally, and for whom there were "Do Not Resuscitate" orders in the medical record.

3. St. Lukes Hospital has drafted a nursing policy and procedure on the pronouncement of a patient death. The attending physician shall be responsible for pronouncing death either by:

- a. being present with the patient and pronouncing death;
- b. personally telephoning the emergency department and requesting the emergency department physician to pronounce death;
- c. designating the house supervisor/head nurse to pronounce death only in those cases where death was anticipated, had occurred naturally, and there was a "Do No Resuscitate." There will be a telephone order written on the Physician Order Sheet stating "House Supervisor/Head Nurse to pronounce death."

4. St. Lukes 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/Head Nurse pronounce death in the limited circumstances outlined in its policy and procedure.

5. 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. Talbird 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 St. Lukes 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. St. Lukes Hospital has articulated a specific policy designating the

registered nurses, limited to the House Supervisor/Head Nurse, 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 27th day of August, 1992.

BOARD OF NURSING

*Betty Ann Taylor, R.N.*

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 NELL TALBIRD, RN., Assistant Administrator Patient Services, St. Luke's Hospital, 4201 Belfort Road, Jacksonville, Florida 32216-5989, this 27 day of August, 1992.

*Dennis M. Grant*  
Dennis M. Grant  
Alternate Record Custodian

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