

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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DEPARTMENT OF HEALTH

IN RE: Florida Medical Association

2009 MAR 12 PM 1:40

Petition for Declaratory Statement.

DOH 2009-0023

OFFICE OF THE CLERK

FINAL ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

December 12, 2008, the Florida Hospital Association (FHA) filed the attached Petition for Declaratory Statement ("Petition") pursuant to section 120.565, Florida Statutes and chapter 28-105, Florida Administrative Code. Department deems the facts as asserted by FHA in the Petition sufficient to trigger this Declaratory Statement.

PRELIMINARY COMMENT

"COPCN" means a Certificate of Public Convenience and Necessity issued under §§401.25 or 401.251, F.S.

ADDITIONAL STIPULATED FINDINGS OF FACT

- A. Nine Florida counties do not have licensed hospitals;
- B. Fourteen Florida counties have a single licensed hospital;
- C. Fifty three Florida counties have no Trauma Center.

FINDINGS OF LAW

- A. "Licensee" means any basic life support service, advanced life support service, or air ambulance service licensed under Chapter 401, Part III. §401.23(13), F.S.
- B. COPCN means a writing permitting an applicant or licensee to provide services, not exceeding the authorization of their expected or actual license, for the benefit of the population of that county or the population of some geographic area thereof. 64J-1.001(4), F.A.C.

C. Unless otherwise provided in law, a license to participate in the business or service of providing prehospital or interfacility advanced life support services or basic life support transportation services requires COPCN issued by the governing body of a county. §401.25, F.S.

D. Licensees operating only fixed-wing aircraft as air ambulances do not require COPCN. §401.251, F.S.

E. Services operating rotary-winged aircraft as air ambulances in conjunction with another emergency medical service are subject to the COPCN requirements of section 401.25, Florida Statutes. §401.251(4)(b), F.S. However, such services may operate in any county under express mutual aid agreements. Id.

F. Interfacility transfer means the transportation by ambulance of a patient between two facilities licensed under chapter 393, chapter 395, chapter 400, or chapter 429, pursuant to this part. §401.23(12), F.S.

G. Mutual aid agreement means a written agreement between two or more entities whereby the signing parties agree to lend aid to one another under conditions specified in the agreement and as sanctioned by the governing body of each affected county. §401.23(16), F.S.

H. Air ambulance means any fixed-wing or rotary-wing aircraft used for, or intended to be used for, air transportation of sick or injured persons requiring or likely to require medical attention during transport. §401.25(3), F.S.

I. Each emergency medical services provider licensed under chapter 401 shall transport trauma alert victims to hospitals approved as trauma centers, except as may be provided for either in the department-approved trauma transport protocol of the trauma

agency for the geographical area in which the emergency medical services licensee provides services or, if no such department-approved trauma transport protocol is in effect, as provided for in a department-approved provider's trauma transport protocol. §395.4045(1), F.S.

J. A vehicle rendering services as an ambulance during a major catastrophe or emergency when ambulances with permits based in the locality of the catastrophe or emergency are incapacitated or insufficient in number to render the services needed is exempt from COPCN requirements. §401.33(2), F.S.

K. Every licensee shall possess a valid permit for each transport vehicle, advanced life support nontransport vehicle, and aircraft in use. §401.26(2), F.S.

L. Except as provided in a lawful do not resuscitate order, a person may not be denied needed prehospital treatment or transport from any licensee for an emergency medical condition. §401.45(1)(a), F.S.

DISCUSSION

The COPCN is the individual county's permission to a Licensee to engage in pre-hospital transport and inter-facility transfer within all or part of that County. §§401.25, 401.251, F.S.; 64J-1.001(4), F.A.C. In applying COPCN, this declaratory statement follows the following assumptions and principles:

A. The legislative grant of authority permitting a Licensee to engage in pre-hospital transport or inter-facility transfer cannot be interpreted in a manner that renders it meaningless. See Sharer v. Hotel Corp. of America, 144 So.2d 813, 817 (Fla. 1962);

- B. The legislative grant of authority for COPCN cannot be interpreted to subject one county's COPCN to another County's decision in order to render it meaningful.
Id.;
- C. The legislative grant of authority for COPCN cannot be interpreted to create contradiction with other duties the legislature has placed upon licensees.
Compare Goldstein v Acme Concrete Corporation, 103 So.2d 202, 203 (Fla. 1958)(Statutes on the same subject should be read together); and finally,
- D. Any interpretation must minimize the need for creation of special cases or exceptions so as to promote simplicity of application and ease of understanding.

The above assumptions and principles applied to the facts reveal the following:

1. Nine Florida counties lack hospitals. Any pre-hospital transport from the accident scene in those counties to a hospital emergency department requires the licensee go to or through one or more counties to reach a hospital. §401.45(1)(a), F.S. Therefore, a COPCN authorizing a Licensee to perform prehospital transport includes the inherent authority to take that patient through or into another county.
2. Fifty three Florida counties lack Trauma Centers. The Legislature requires licensees transport trauma alert victims to Trauma Centers. §395.4045(1), F.S. Therefore, a COPCN authorizing prehospital transport or interfacility transfer includes the inherent authority for the licensee to take a trauma alert victim to or through another county.

3. Fourteen Florida counties have only one hospital. An interfacility transfer includes transportation by a Licensee between two hospitals. §401.23(12), F.S. A COPCN authorizing a Licensee to engage in interfacility transfer in the issuing county includes the inherent authority to take the subject of the interfacility transfer through, to or from another county as required to initiate or complete the interfacility transfer.

CONCLUSIONS OF LAW

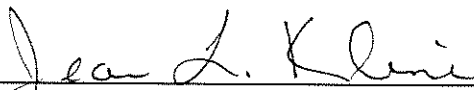
Applying the findings of fact and law, as discussed above, reveals the following:

- A. COPCN is relevant solely to the beginning and terminating point of a transfer or transport.
- B. Either the beginning point or the terminating point of any transfer or transport shall be within the geographic scope of the Licensee's COPCN.
- C. However, the beginning point of any pre-hospital transport shall be within the geographic scope of the Licensee's COPCN.

Therefore the answers to the four questions presented are:

- 1. It is permissible.
- 2. It is permissible.
- 3. It is permissible under one of three circumstances: The interfacility transfer or transport is to or from a County for which the Licensee has a COPCN; the particular permitted vehicle is rotary winged and there is an applicable Mutual Aid Agreement; or the incident generating the interfacility transfer or transport falls under section 401.33(2), Florida Statutes.
- 4. It is permissible under one of three circumstances: The interfacility transfer or transport is to or from a County for which the Licensee has a COPCN; the particular permitted vehicle involved is rotary winged; or, the incident generating the transfer falls under section 401.33(2), Florida Statutes.

DONE AND ORDERED this 12 day of March, 2009.



Jean L. Kline, R.N., B.S.N., M.P.H.
Deputy Secretary for Health
State Public Health Nursing Director
Florida Women's Health Officer

Attachment

Copies to:

William A. Bell, Esq.
General Counsel
Florida Hospital Association
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Tallahassee, FL 32301-1522

Michael A. Greif, Senior Attorney
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Department of Health
4052 Bald Cypress Way, Bin A-02
Tallahassee, FL 32399-1703

NOTICE OF RIGHTS

This is final agency action. Review of final agency action may only be had by filing notices of appeal in both the appellate district where the petitioner resides and with the clerk of the Department within 30 calendar days after the date of execution. §120.68, F.S.; Fla. R. App. P. 9.110.

RECEIVED
DOH - EMS

December 10, 2008

2008 DEC 12 A 10:15

John C. Bixler
Bureau of EMS Chief
Florida Department of Health
4052 Bald cypress Way, C-18
Tallahassee, FL 32399-1738

RECEIVED
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08 DEC 12 PM 2:03
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Dear John,

The Florida Hospital Association, as a substantially affected person on behalf of our member hospitals, is seeking a declaratory statement regarding the Department's opinion as to the applicability of Florida Statutes 401 and 395 as well as Proposed Rule 64J-1001(4) FAC and trauma transport protocols to the following set of circumstances.

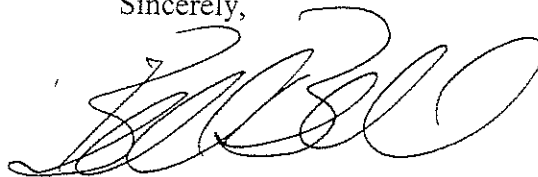
What is the permissibility of an:

1. Interfacility transfer between two counties by a licensee possessing a Certificate of Public Convenience and Necessity from only one of the counties if the other county does not prohibit such transfer or transport;
2. Interfacility transfer or transport by a licensee through, but not to or from, one or more counties;
3. Interfacility transfer or transport by a licensee as part of a coordinated response to a disaster or mass casualty incident;
4. Interfacility transfer or transport by a licensee under an agreement sanctioned by the governing bodies of the affected counties;

These circumstances apply to both resident and nonresident patients of the licensee possessing the Certificate of Public Convenience and Necessity.

Thank you for your prompt attention to this declaratory statement.

Sincerely,



William A. Bell
General Counsel