
Legal Briefs

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Nurse anesthetists and podiatrists

May nurse anesthetists collaborate with podiatrists?

Generally, the answer to this question is "yes." There are, however, certain exceptions, and CRNAs should be familiar with their state licensing statutes. Where state licensing statutes are unclear or ambiguous, CRNA collaboration with podiatrists is supported by fundamental concepts concerning the relationships between nurse anesthetists and other health care professionals. There has been no appellate case under any nurse anesthetist practice act or nursing practice acts involving a podiatrist and a nurse anesthetist. This makes it difficult, but not impossible, to predict how courts will react.

AANA position statement

We start with the position of the American Association of Nurse Anesthetists that podiatrists are one group of health care professionals with whom nurse anesthetists may work in varying degrees of collaboration (See AANA Position Statement on Relationships Between Health Care Professionals, adopted by the AANA Board of Directors, March 1, 1987 and published in the *AANA Journal*, April 1987, Vol. 55, No. 2).

From a legal standpoint, the question as to whether a nurse anesthetist may collaborate with a podiatrist depends on the law of the state in which the activities are to be performed. In those states in which the scope of practice of nurse anesthetists is set forth by statute, the statute must be reviewed and analyzed. Where nurse anesthesia services are not covered by a specific statute, a broader evaluation must be undertaken.

California specifically mentions podiatrists

The question becomes easiest to answer in states like California, where podiatrists are specifically mentioned in the nurse practice statute. In California, Section 2725(b) provides that the practice of nursing includes "*Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist. . .*"

The Attorney General of California concluded that "*a registered nurse may lawfully administer an anesthetic, general or regional, under the authority of subdivision (b) of Section 2725 when a physician, dentist or podiatrist, acting within the scope of his or her license, orders such nurse to administer the same to a particular patient.*" (Opinion No. 83-1007, April 5, 1984, 67 California Attorney General's Opinions 122, 139).

Statutes also specifically permit nurse anesthetists or nurses to collaborate with podiatrists in Delaware (24 Del. C. Section 1902(b)(6)), Nevada (Nev. Rev. Stat. Ann., Section 632.014), West Virginia (W. Va. Code Section 30-3-4) and Wyoming (Wyo. Stat. Section 33-9-101).

Only Louisiana expressly prohibits direct collaboration of CRNAs with podiatrists. The podiatric statute provides that if a CRNA is administering anesthesia for a podiatrist, the CRNA must be under the direction and supervision of a "*physician anesthesiologist who is proximately present in the operating*

suite" and restricts spinals for podiatric surgery only to anesthesiologists. (La. R.S. 37:611(3)(b)).

Nursing statutes may give authority to nurse anesthetists

In other states, nurse anesthetists may derive their authority from nursing statutes which are sufficiently broad to include podiatrists without specifically naming them. For example, in North Carolina, one of the components of the practice of nursing by a registered nurse is "implementing the treatment and pharmaceutical regimen prescribed by any person authorized by state law to prescribe such a regimen;" (Section 90-171.20(7)(f)). In North Carolina, a podiatrist is permitted to administer local anesthetics. Consequently, under the North Carolina statute, a nurse anesthetist could collaborate with a podiatrist as long as the anesthetics used were local anesthetics.

A third type of statute is one that requires a nurse anesthetist to work under the supervision or direction of a licensed physician or provides that a registered nurse may implement a treatment or pharmaceutical plan prescribed by a licensed physician or dentist. In some states, podiatrists may not be considered licensed physicians. Is it likely that these legislatures intended to exclude podiatrists?

Arizona case involving dental surgeons

While there may be no case involving podiatrists, there is an old case, *State v Borah* 76 P. 2d 757 (Arizona, 1938), involving dental surgeons which may be of help. In Arizona, before 1935, "there was grave doubt whether, under the law, a licensed dentist could legally administer an anesthetic himself, and it was the general practice, when such a thing was necessary, to call in a regular physician to administer the anesthetic." 76 P. 2d at P. 760. At the same time, the statute provided that "A registered nurse may administer anesthetics under the direction of, and in the immediate presence of, a licensed physician or surgeon, provided such nurse has taken a prescribed course of anesthesia at a hospital in good standing or is a graduate in the science of anesthesia from some recognized school or college."

In 1935, the Arizona statute was amended to provide that a dentist could "perform an operation or administer an anesthetic in connection therewith." However, the statute on nurse anesthetists was left unchanged. James L. Borah, a dentist, had, prior to the passage of the law, been forced to employ a physician or surgeon to administer anesthetics during his dental operations. He wanted to use a nurse anesthetist, but the Attorney General had advised him that the administration of anesthesia by a nurse anesthetist under his supervision was not permitted by the laws of Arizona. Borah

brought suit against the State of Arizona, the Arizona Attorney General and his county attorney asking for a determination that, as a result of the new statute, he could legally supervise the nurse anesthetist.

The Arizona Supreme Court indicated that, in interpreting a statute, the court's function was to determine the intent of the legislature. If the language was plain and unambiguous, it could be interpreted in no other fashion. If, on the other hand, the statute could be interpreted in one of two ways, the court would adopt the construction which would make the statute logical and consistent. The question before the court was whether the word "physician" as used in the nurse anesthetist statute had the generic meaning—"a person skilled in the art of healing"—as defined by Webster's dictionary, or was it intended to apply to that limited group of persons who were licensed under Arizona law to practice medicine.

Court determines nurse anesthetist can administer anesthesia under dentist's supervision

The Arizona Supreme Court noted that by passing the Act of 1935 allowing dentists to administer anesthetics, the legislature had determined that a licensed dentist was fully qualified to administer an anesthetic, "which means that he knows not only how, but when to give it. The licensed physician and surgeon can know no more." The court pointed out that if the interpretation to be given to the word physician was the more narrow one, then a nurse anesthetist might administer anesthetics in a dental operation under the direction of one person but not under that of another who was equally qualified.

The court concluded that to interpret the Section narrowly, to include only licensed physicians and surgeons, "would be to give a practical monopoly of the administration of anesthetics and dentistry to licensed physicians and surgeons and, thus, render it invalid as the exercise of the policy power... while to hold that the word 'surgeon' as used in such Section includes the 'dental surgeon' would make it a proper and legitimate exercise of that power. Under such circumstances, every rule of statutory construction requires that we give it the constitutional, rather than the unconstitutional meaning." (76 P.2d at p. 761).

Care must be used in states which have references to physicians licensed by specific statutes. If podiatrists are not included in a specific list of acceptable supervisors or collaborators, the likelihood is that the court will conclude the legislature did not intend to permit collaboration between nurse anesthetists and podiatrists.

In those states which do not have statutes gov-

erning the administration of anesthetics by nurse anesthetists and in which the nursing practice acts provide no guidance, whether a nurse anesthetist may collaborate with a podiatrist would depend on an analysis of supervision, prescription and accepted practice.

With respect to the issue of supervision, the "AANA Position Statement on Relationships Between Health Care Professionals" should help establish that a nurse anesthetist may work in collaboration with a podiatrist. Other statements regarding the nature of supervision make clear that the supervisor need not even be competent to administer the anesthetics. For example, the General Counsel of the Joint Commission on Accreditation of Hospitals (JCAH), in explaining JCAH's Surgical and Anesthesia Services standards effective January, 1988, wrote: "The standards insist that those surgeons and other individuals be qualified to accept the responsibility of a licensed independent practitioner for overall supervision of the rendering of anesthesia services to a patient. The standards do not require that the responsible licensed independent practitioner have privileges to actually administer anesthesia." (Letter dated May 14, 1987, from Harold Bressler, general counsel of JCAH to Gene Blumenreich, general counsel of American

Association of Nurse Anesthetists. The JCAH is now known as the Joint Commission on Accreditation of Healthcare Organizations.

Source of prescriptive authority

The more limiting factor is likely to be the source of prescriptive authority. Simply and practically, how would the nurse anesthetist obtain the anesthetic? Since the nurse anesthetist will probably not have prescriptive authority, the anesthetics will be obtained based on the prescriptive authority of the collaborating podiatrist, just as the nurse anesthetist customarily relies on the prescriptive authority of the surgeon or other physician. Since podiatrists often have limited prescriptive authority, the result is that a nurse anesthetist, collaborating with a podiatrist in a state which does not have a statute describing nurse anesthesia care, would be permitted to administer only those anesthetics which the podiatrist may legally prescribe.

As can be seen, state statutes vary significantly. Nurse anesthetists who collaborate with podiatrists should make certain that their practices are consistent with their nurse anesthesia or nursing practice statutes.

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