

**BOARD OF REGISTERED NURSING**

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Executive Officer

January 20, 2005

Mr. Harold Bressler

General Counsel

Joint Commission on Accreditation of Healthcare Organizations

One Renaissance Blvd.

Oakbrook Terrace, IL 60618

Dear Mr. Bressler:

It has come to the attention of the California Board of Registered Nursing (BRN) that the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has in its recent surveys cited a number of hospitals in California as deficient for the lack of a co-signature by a surgeon or an anesthesiologist on the anesthesia plan of a certified registered nurse anesthetist (CRNA). We have also been made aware that these findings are based on JCAHO's legal conclusion that CRNAs require physician supervision and do not qualify as licensed independent practitioners in California.

The Board of Registered Nursing is writing to clarify that the BRN and not the Department of Health Services (DHS) determine the scope of practice of the CRNA. The Board has stated consistently and unequivocally over the years that CRNAs are licensed independent practitioners in California and do not require physician supervision of any variety, including a physician co-signature on the anesthesia plan.

The BRN is the exclusive agency authorized to determine the licensed independent practitioner status of CRNAs. We are informed that recent JCAHO survey findings erroneously cite the Department of Health Services as holding that physician supervision of CRNAs is required under California law. However, the Department of Health Services does not have authority over CRNA scope of practice. On the contrary, DHS acknowledges that the BRN is the appropriate agency to determine whether supervision is required under California law. DHS has unequivocally held this position over the years, with the exception of one letter in February 2002, which was summarily retracted, by a subsequent letter on November 20, 2002. A copy of the November 20, 2002 letter is attached.

California Business and Professions Code 2725(e) was added just last year to reaffirm that the BRN is the exclusive agency with authority to interpret CRNA scope of practice. The very point of the statutory reaffirmation was to clearly prevent encroachment on BRN's jurisdiction by other agencies, including DHS, in that a statute cannot be undermined by a contrary assertion or a contradictory regulation issued by another agency.

The BRN has stated consistently and unequivocally over the years that it is the position of the BRN that CRNAs are licensed independent practitioners and do not require physician supervision. Among other things, this means that physician counter-signature of the CRNA's anesthesia plan is not required under California law.

It has also come to our attention that JCAHO surveyors have stated that physician supervision is required under California law until California opts out of the Medicare conditions. The Board

takes issue with this interpretation. In point of fact, licensed independent practitioner status is a state law issue, not a federal one. The BRN's conclusion that CRNA's are licensed independent practitioners holds notwithstanding the fact that the federal Medicare rules condition reimbursement on physician supervision. The Medicare conditions are irrelevant to the legal status of CRNAs under California law. The BRN alone determines the legal status of CRNAs.

It is our understanding that according to its own survey rules, JCAHO does not offer legal conclusions on state law matters.

We are extremely concerned that until JCAHO sets the record straight, hospitals will continue to reverse their own legal conclusions that CRNAs are licensed independent practitioners out of fear of contradicting JCAHO and suffering negative survey reviews.

Given the urgency of this matter that has resulted in hospitals fearing an unfavorable survey, we respectfully request that JCAHO remove its erroneous findings or deficiencies in any hospital survey based on JCAHO's incorrect conclusions of law as set forth above. We also request that JCAHO surveyors be informed that the BRN is the appropriate agency in California that determines scope of practice issues, including licensed independent practitioner status, physician supervision, and physician counter-signature.

Given the potential impact on patient care, the BRN respectfully requests your immediate consideration on this important matter.

Please feel free to contact me at (916) 324-2715 should you have further questions.

Sincerely,

Ruth Ann Terry, MPH, RN
Executive Officer