



Joint Commission

A COMMITMENT TO EXCELLENCE

April 7, 1989

Phillip R. Recht, Esq.
Manatt, Phelps, Rothenberg & Phillips
11355 West Olympic Boulevard
Los Angeles, California 90064

re: Nurse Anesthetists and the "Licensed Independent
Practitioner" Concept

Dear Mr. Recht:

Dennis S. O'Leary, M.D. President of the Joint Commission on Accreditation of Healthcare Organizations, has asked that I respond to your letter to him on this subject. I apologize for the delay in responding to your letter, particularly because I think the response to it can be relatively simple and brief.

As I am sure you know, the Joint Commission's definition of a "licensed independent practitioner" is:

"Any individual who is permitted by law and who is also permitted by the hospital to provide patient care services without direction or supervision, within the scope of his license and in accordance with individually granted clinical privileges."

The reference to hospital can be changed, as appropriate, to refer to other kinds of accredited organizations.

Thus, there are two prerequisites for such "independence." First, the applicable state law must permit the individual in question to practice independently, and, second, the accredited hospital or other healthcare organization must choose to permit the practitioner to do so. Your letter focuses on the first prerequisite, and the Joint Commission's position on this issue is very clear.

The Joint Commission does not issue advisory legal opinions with regard to who is or is not eligible to be a licensed independent practitioner under any particular state law. That question of law must be determined by appropriate state authorities and the hospital's or other healthcare



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organization's counsel. The Joint Commission will rely upon the representations of hospitals or other healthcare organizations that they have evaluated applicable state law and determined that any particular practitioner is, in fact, eligible under state law to be a licensed independent practitioner. The Joint Commission will defer to that representation unless evidence is brought to its attention that clearly and unambiguously reveals that appropriate state authorities have found otherwise. If a hospital or other healthcare organization expresses its view that individuals within a particular group of practitioners are not eligible to be licensed independent practitioners, the issue would not arise for the Joint Commission, because, without regard to whether that legal conclusion is correct, under Joint Commission standards the organization may still choose whether or not to permit any particular legally eligible practitioner to practice "independently."

I have not missed the thrust of your letter complaining about Mr. Card and, Joint Commission surveyors allegedly stating "beliefs" with regard to whether certified registered nurse anesthetists in California are eligible to be licensed independent practitioners. First of all, Mr. Card questions whether he actually made the statement you underlined in your letter. Second, I have reviewed the full article in Same-Day Surgery to which you refer, and I think placing the questioned comment in full context would help alleviate concerns along the lines expressed in your letter. However, consistent with what I have said above, I have and will continue to discourage expressions of beliefs on such legal issues. I have specifically spoken to Mr. Card, and would appreciate your informing me of the identity of the particular surveyors you have in mind and the specifics of what you believe they have said, so that, if appropriate, I can similarly communicate with them. Let me go on, however, to make it very clear that I do not believe any expression of such "beliefs" could, in fact, "threaten significant harm to California's CRNA community." I strongly believe the field is fully aware and has a good understanding of the fact that these state law matters are not decided by the Joint Commission. I would be very surprised to find any accredited hospital or other healthcare organization, even if Mr. Card or some surveyors have expressed the "beliefs" you have referred to, who would have any confusion over the fact that it is entitled to conclude otherwise based on its own interpretation of state law and that it can do so without running afoul of the Joint Commission. The use of the word "belief" clearly distinguishes any such statement from an expression of a Joint Commission position. I would be much more concerned if you were charging that any Joint Commission surveyor had specifically said that the Joint Commission had determined that individuals within any particular category of practitioner in any given state were not eligible to be licensed independent practitioners. Again, if you know of any surveyor who has erroneously suggested the Joint Commission has taken any such position, please inform me of that fact and identify the hospital or healthcare organization to which this was suggested so that I can correct any

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misunderstanding. Frankly, I would be very surprised if you could do so, because I know our surveyors know better than to do that.

It should also be clear from what I have said above that it would not be appropriate for me to provide you with any reaction, in essence constituting a legal opinion, to the materials you submitted with your letter; material submitted, I assume, to convince the Joint Commission that certified registered nurse anesthetists are eligible to be licensed independent practitioners in California. It would be inconsistent with what I have said above to issue an opinion one way or another in response to your letter.

Please feel free to call or write if you have any additional questions or I can provide you with any additional information.

Sincerely yours,

Harold J. Bressler
Harold J. Bressler
General Counsel

HJB/vsg

cc: Dennis S. O'Leary, M.D.