ATTORNEY GENERAL OPINION NO. 87-12

TO: Jean Uranga
Attorney at Law
P.O. Box 1678
Boise, Idaho 83701-1678

Per Request for Attorney General's Opinion

QUESTION PRESENTED:

Is a Certified Registered Nurse Anesthetist (CRNA) a "nurse practitioner" as defined by Idaho Code § 54-1402(d) which section, if applicable, would require that rules be jointly promulgated by the boards of medicine and nursing?

CONCLUSION:

No. The CRNA is not a nurse practitioner under the definition of Idaho Code § 54-1402(d) and joint promulgation of rules governing the conduct of the CRNA is not required.

ANALYSIS:

In your letter of July 17, 1987, you seek an opinion on behalf of the Board of Medicine concerning several questions relating to nurse practitioners, Certified Registered Nurse Anesthetists (CRNA), and the authority of the Board of Nursing to adopt rules and regulations without the joint participation by the Board of Medicine. By agreement with counsel for the Board of Nursing, the issue to be addressed was limited solely to the question as set forth above. In order to answer the question, it is necessary to review the history of the nurse practitioner in Idaho and the role of the CRNA in general.

The nurse practitioner was first identified by statute in Idaho in 1971 Idaho Sess. Laws, ch. 17, p.30 and ch. 85, p.187. That function was further clarified and given its present definition and title in 1977 Idaho Sess. Laws, ch. 132, p.279 and now reads as follows:

> "Nurse practitioner" means a licensed professional nurse having specialized skill, knowledge and experience authorized, by rules and regulations jointly promulgated by the Idaho state board of medicine and the Idaho board of nursing and implemented by the Idaho board of nursing, to perform designated acts of medical diagnosis, prescription of medical therapeutic and corrective measures and delivery of medications.

Idaho Code § 54-1402(d).

As required by this statute, the scope of practice of a nurse practitioner has been identified in rules jointly adopted by the Board of Nursing and Board of Medicine in IDAPA 23.03.D. These rules and regulations define not only the scope of practice, but also the "designated acts of medical diagnosis, prescription of medical therapeu-

tic and corrective measures and delivery of medications" that may be engaged in by nurse practitioners. The role of the nurse practitioner is thus limited to those specifically identified areas contained within the jointly adopted rules and regulations of the Board of Nursing. These rules and regulations contain an effective date of February, 1980.

From 1979 to 1984, a separate section of the nurse practice rules and regulations was adopted and was in effect covering the conduct of the CRNA. These regulations were unilaterally repealed in 1984, presumably to permit the Board of Nursing to re-evaluate the role of the CRNA and adopt new rules and regulations to govern the practice. During the history of both the nurse practitioner and the CRNA in Idaho, at no time were CRNA rules and regulations jointly adopted or approved by the Boards of Medicine and Nursing. In fact, the history indicates that CRNA rules and regulations were not considered a part of the nurse practitioner standards.

Commencing in May, 1985, the Board of Nursing drafted rules concerning the CRNA and submitted them to the Board of Medicine for its review. Over the next two years, the Boards of Nursing and Medicine jointly worked to review and clarify the role of the CRNA. In November, 1986, the Board of Nursing determined that the rules regulating the conduct of the CRNA did not require joint promulgation and proceeded to unilaterally adopt rules governing the CRNA. The rules became effective on August 31, 1987. The Board of Medicine now contends that the CRNA is a "nurse practitioner." If that contention is correct, Idaho Code § 54-1402(d) clearly requires the joint promulgation of rules governing CRNA practice.

The role and the authority of the nurse anesthetist (CRNA) has been a question of some dispute over the years. The test in Idaho, as elsewhere, has generally been whether the nurse anesthetist is engaged in *diagnosing* medical conditions, *prescribing* treatment and *delivering medications*. In the older cases, such conduct was seen as invading the province of the physician and therefore constituted the illegal practice of medicine. Here, the "designated acts" are restricted to nurse practitioners and thus would require joint regulation by both the Board of Medicine and the Board of Nursing.

As long ago as 1936, the California Supreme Court faced the problem of defining the role of nurse anesthetists. The court found that "nurses in the surgery during the preparation for and progress of an operation are *not diagnosing or prescribing* within the meaning of the Medical Practice Act." *Chalmers-Francis v. Nelson,* 57 P.2d 1312, 1313 (1936) (emphasis added). The court therefore concluded that nurse anesthetists were not engaged in "the illegal practice of medicine." *Id.*

A generation later, in 1961, the California Supreme Court revisited the question of who is authorized to administer anesthesia. As background, the court noted "that it is a common practice in California and elsewhere to permit persons not licensed as physicians to administer anesthetics," but emphasized that the practice was limited to "nurses and interns." *Magit v. Board of Medical Examiners,* 17 Cal. Rptr. 488, 366 P.2d 816, 818 (1961). The court noted that in California (as in Idaho) the statutes do not "specifically provide that one who administers anesthetics must have a license to practice medicine. . . ." *Id.* Reviewing its earlier decision in *Chalmers-Francis,* the court held that "[t]he decision was thus based on the special status of a licensed

nurse" and could not be used by foreign-trained but unlicensed doctors to engage in anesthesiology. 366 P.2d at 820.

The case law further demonstrates that the nurse anesthetist at all times operates under the supervision and direction of a physician. See *Chalmers-Francis v. Nelson,* 57 P.2d at 1313 (nurse anesthetist acts "under the immediate direction and supervision of the operating surgeon and his assistants"); *Magit v. Board of Medical Examiners,* 366 P.2d at 819 ("licensed registered nurse should not be restrained from administering general anesthetics in connection with operations under the immediate direction and supervision of the operating surgeon and his assistants"); *Bhan v. NME Hospitals, Inc.,* 772 F.2d 1467, 1471 (9th Cir. 1985) ("in administering anesthesia a nurse must act at the direction of, and under the supervision of, inter alia, a physician").

The question of this "supervision" or "direction" of nurse anesthetists is said to be the very crux of the Board of Medicine's concern over the new rules. We do not read the new rules as departing from the long-established tradition in Idaho and elsewhere of having nurse anesthetists function under the supervision and direction of physicians. In its definition of a "registered nurse anesthetist," the Board of Nursing states that such specialists may provide anesthesia care services only "as defined in these rules and *under the direction of a physician* or dentist authorized to practice in Idaho." IDAPA 23,04.C.7.b.ii (emphasis added). We do not ascribe any major significance to the choice of the word "direction" as opposed to that of "supervision" (or any combination of the two). The position statement of the foremost professional group of nurse anesthetists states:

> The terms *supervision and direction* are used interchangeably in licensing laws and nurse practice acts. These terms are often undefined and are to be interpreted in the context of the reality of practice.

"Position Statement on Relationships Between Health Care Professionals," adopted by AANA Board of Directors, March 1, 1987, quoted in 55 *Journal of the American Association of Nurse Anesthetists* 103 (1987).

Looking at the historical role of the CRNA and the cited cases, it is clear that the nurse anesthetist does not engage in diagnosis, write prescriptions, or deliver medications as contemplated by Idaho Code § 54-1402(d). Rather, the CRNA works under the supervision and direction of a physician or dentist in administering anesthesia. The rules and regulations of the Board of Nursing are consistent with the historical role of the nurse anesthetist and do not violate those principles established early on in the cases discussing the CRNA; nor does the function of the CRNA impinge on that area reserved to the nurse practitioner. We do not read the list of acts enumerated by the Board of Nursing in IDAPA 23.04.C.7.b.ii, as expanding the scope of practice of nurse anesthetists beyond that traditionally encompassed by that specialty and recognized by the courts. Thus, it is our opinion that the CRNA is not a nurse practitioner as defined by Idaho law and there is no requirement of joint promulgation of rules with the Board of Medicine governing the conduct of the CRNA.

AUTHORITIES CONSIDERED:

1. *Idaho Statutes and Administrative Rules*

   Idaho Code § 54-1402(d)

   1971 Idaho Sess. Laws, chapters 17 and 85

   1977 Idaho Sess. Laws, chapter 132

   IDAPA 23.03.D

   IDAPA 23.04.C.7.b.ii

2. *Cases*

   Chalmers-Francis v. Nelson, 57 P.2d 1312 (Calif. 1936)

   Magit v. Board of Medical Examiners, 17 Cal. Rptr. 488, 366 P.2d 816 (1961)

   Bhan v. NME Hospitals, Inc., 772 F.2d 1467 (9th Cir. 1985)

3. *Other*

   55 *Journal of the American Association of Nurse Anesthetists,* 103 (1987)

DATED this 6th day of October, 1987.

ATTORNEY GENERAL
State of Idaho
JIM JONES

ANALYSIS BY:

JOHN J. McMAHON
Chief Deputy

DANIEL G. CHADWICK
Deputy Attorney General
Chief, Intergovernmental Affairs Division