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To: Board Members

From: Joey Ridenour RN MN FAAN

Date: September 16, 2016

Subject: Advanced Practice Nurses Ordering X-Rays; Arizona Radiation Regulatory Agency / Medical Radiologic Technology Board of Examiners

Background

The Nurse Practice Act (“NPA”) authorizes registered nurse practitioners (“RNPs”) to “order and interpret laboratory, radiographic, and other diagnostic tests, and perform those tests that the RNP is qualified to perform.”

R4-19-508. Standards Related to Registered Nurse Practitioner

Scope of Practice:

B. In addition to the scope of practice permitted a registered nurse, a registered nurse practitioner, under A.R.S. §§ 32-1601 (19) and 32-1606(B)(12), may perform the following acts within the limits of the population focus of certification:

3. Order and interpret laboratory, radiographic, and other diagnostic tests, and perform those tests that the RNP is qualified to perform.

[RNP’s interpret radiography for the purposes of treatment only]

X-rays, CT scans, and similar diagnostic tests are regulated by two state agencies that share staffing: The Arizona Radiation Regulatory Agency (“ARRA”) is responsible for the conduct of a statewide radiological health and safety program and for the enforcement of State rules and regulations for the control of ionizing and non-ionizing radiation. Another agency, the Medical Radiologic Technology Board of Examiners (“MRTBE”) tests and certifies professionals to practice various specialties of medical imaging and therapy using ionizing radiation. The MRTBE also accepts complaints against certified technologists, investigates allegations, and administratively adjudicates complaints.

On September 23, 2015, Jerry Perkins, X-ray and Non-Ionizing Compliance Program Manager with ARRA, in an email correspondence with the public, reported the following (*relevant excerpts*):

- “Nurse Practitioners, and Certified Nurse Midwives cannot order X-rays in the state of Arizona unless they change several laws and rules through their legislative contacts as

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well as have an approved curriculum that will be nationally recognized for the training and certification of these individuals that will meet the requirements of Medical Radiologic Technology Board of Examiners (MRTBE).”

- “A.R.S. 30-672(D) lists practitioners who can order, take, and interpret radiographs as a dentist, chiropractor or veterinarian or licensed in this state to practice medicine, surgery, osteopathy, chiropractic or naturopathy.”

To support his position, Mr. Perkins cited a 1982 Attorney General opinion, I82-034 (see Appendix), that concluded a registered nurse practitioner’s (RNP’s) authorization to administer medications and treatment was not sufficient to authorize RNP’s to order and interpret radiographs; and referred to Arizona Revised Statute (“A.R.S.”) § 30-672(D) (see Appendix), which listed practitioners who were authorized to **“use”** x-rays, which Mr. Perkins expanded on to include the phrase “order, take, and interpret”. The statute lists those providers authorized to “use” radiographs as a physicians, dentists, chiropractors, and other licensees not including nurse practitioners; and A.R.S. § 32-2811 (see Appendix), which he said required a licensed practitioner who was not “exempt” under 30-672 D performing radiographs, to be certified by Medical Radiologic Technology Board of Examiners (MRTBE).

On September 29, 2015, Board Chief Counsel Emma Mamaluy contacted the Assistant Attorney General (“AAG”) representing ARRA to discuss the issue. Ms. Mamaluy and the AAG, Ms. Frankie Eckberg-Shin, saw that ARRA was relying on a 1982 Attorney General Opinion that predated the 1987 NPA rule (R4-19-508), that authorizes APRNs to order and interpret x-rays. Ms. Eckberg-Shin indicated that she would discuss the matter with her client agency to attempt to reach a resolution of the issue. No such resolution occurred.

On June 14, 2016, Board staff received another email from a member of the public seeking clarification on a page from the ARRA website, which stated that “nurse practitioners...are not classified as licensed practitioners” and “...these exemptions do not permit the nurses to order, take, or interpret x-rays in the State of Arizona.”

Board staff contacted its AAG, Beth Campbell, asking for assistance in updating the ARRA position to be consistent with APRNs being able to order x-rays, as authorized in A.A.C. Rule 4-19-508. AAG Campbell contacted her supervisor to assist, AAG John Tellier. However, again, no agreement was reached. ARRA’s current position remains consistent with Mr. Perkins’ emails, as its website includes a FAQ page, (<https://arra.az.gov/xray-facility/x-ray-faq>), that states, in Fact #4, that nurse practitioners “...are not classified as licensed practitioners” and “...these exemptions do not permit the nurses to **order, take, or interpret x-rays** in the State of Arizona.” (Emphasis added, web link current as of September 5, 2016.)

On September 1, 2016, Joey Ridenour, Valerie Smith, and Kristi Hunter met with AAG John Tellier, who reported he had discussed the issue with the supervising AAG representing ARRA, Rex Nowlan, who told him that ARRA and MTRBE have interpreted “use,” referring to an x-ray, to include “ordering” and “interpreting” an x-ray study, and therefore, ordering x-rays are not within the scope of practice for advanced practice nurses.

Analysis

The Arizona State Board of Nursing (“Board”) regulates advance practice nurses. (A.R.S. §§ 32-1606(B) (10), (12), (17), 32-1634.03-04, 1635.01, 1636, 1639.02, and A.A.C. Rule 4-19-501-514, *inter alia*.) R4-19-508 B (4) specifically states that nurse practitioners may order and interpret radiographic tests.

ARS §§ 30-672(D) and 32-2811, statutes cited by Mr. Perkins, refer to the “use” of ionizing radiation, and also, “application” and “apply”; however, **the statutes do not address “ordering” or “interpreting” radiographic tests** and does not otherwise discuss or limit the practice of nurse practitioners.

Mr. Perkins has misinterpreted A.R.S. § 30-672(D), by expanding the meaning of the word “use” to include ordering and interpreting radiographs, when he cited the statute and stated that it “lists those practitioners that **can order, take, and interpret radiographs**”. Again, the statute does not contain any of these terms. We agree that RNPs, absent specialized additional training, are not within their scope to “take” radiographs, however, the statute merely refers to “use” and does not include the terms “order” or “interpret,” which we believe are within an RNP’s potential scope.

The 1982 Attorney General Opinion, first full paragraph on page 3, specifically discusses the fact that the Nursing Board had not (yet) promulgated rules authorizing RNPs to order and interpret radiographic tests. This omission appeared to be a core factor that led to the conclusion that RNPs could not order/interpret radiographs. Again, this was before the 1987 rule (R4-19-508) was promulgated, and the analysis would undoubtedly have been different had the rule been in effect.

Additionally, the Opinion specifically distinguishes between “use” of radiographs, and discussing the “procedure,” as opposed to “ordering” or “interpreting” the tests. This does not support ARRA’s current interpretation of “use” as to include “ordering” or “interpreting” the tests.

Despite numerous efforts to resolve this issue through meetings, explanations and provision of the correct interpretation of the laws, Mr. Perkins’ position has not changed and remains consistent with the ARRA website, as discussed, above.

The Attorney General’s 1982 Opinion, I82-034, asserting that nurse practitioners lacked the ability to order and interpret radiographs, predated A.A.C. R4-19-508 B (3), which became effective in 1987, and specifically authorized APRNs to order and interpret radiographic tests.

Recommendation

Given ARRA’s reliance on the Attorney General’s 1982 Opinion, Board staff recommends requesting a formal Attorney General Opinion on the issues addressed in this memorandum, and

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specifically whether A.A.C. Rule 4-19-508(B)(3) authorizes advanced practice registered nurses to order and interpret radiographic and other diagnostic tests.

Board Option:

Request an Attorney General Opinion regarding whether Arizona Administrative Code Rule 4-19-508(B)(3) authorizes a registered nurse practitioner to order and interpret radiographic and other diagnostic tests that the registered nurse practitioner is qualified to perform.