

Iowa Judge rejects CRNA-led fluoroscopy

The following report was sent to members of the Iowa Society of Anesthesiologists:

ISA Members,

We received Judge Reis's opinion today in our legal action against the Iowa Board of Nursing (BON) and the Iowa Department of Public Health (IDPH). Our action was in response to administrative rules adopted by both the BON and IDPH to allow all Advanced Registered Nurse Practitioners (ARNPs) to provide "direct supervision" of fluoroscopy.

The judge's order states that "judgment is entered in favor of the Petitioners (ISA and the Iowa Medical Society), and that the enactment of ARC 7888B, now codified within Iowa Administrative Code §655-7.2 and ARC 8659B, now codified within Iowa Administrative Code §641-41.1(5)(n) are held to be invalid, illegal, void and of no effect, and further orders their removal from the Iowa Administrative Code forthwith. This ruling renders all other pending motions moot."

In her ruling, the judge stated the following:

Action of the Iowa Board of Nursing

The Iowa Legislature, in defining the practice of nursing, specifically limited that practice when it said the "practice of nursing" means the practice of a registered nurse or a licensed practical nurse. It does not mean any of the following: (a) The practice of medicine and surgery and the practice of osteopathic medicine and surgery, as defined in Chapter 148, ...*except practices which are recognized by the medical and nursing professions* and approved by the Board and properly performed by a registered nurse. (Iowa Code § 152.1(5)(a)).

The Iowa Code does not provide IBN with unfettered discretion to allow ARNPs to engage in the practice of medicine and it specifically prohibits the expansion of nursing practice into areas of medicine absent recognition of the medical professions. The Iowa Board of Nursing itself, both in its rulemaking process and in its support of the Iowa Department of Public Health rulemaking, could not set forth or point to any recognized standards showing that the medical or nursing professions have recognized ARNP supervision of fluoroscopy either in national training, education or curriculum standards. In fact, the Iowa Association of Nurse Anesthetists admitted during the rulemaking process that CRNAs - an even smaller subspecialty in the scope of nursing - do not receive sufficient training at the University of Iowa Nurse Anesthesia program to make CRNA's competent to utilize fluoroscopy in practice.

The medical profession's objections and IBN survey demonstrate as a matter of law that ARNPs' "direct supervision" of fluoroscopy as the term is defined within these rules is not a recognized practice by the medical profession. As such the IBN's rule exceeds its statutorily delegated authority and violates Iowa law.

Action of the Iowa Department of Public Health

IDPH serves as the state's radiation control agency responsible for regulating the use of radiation machines and radioactive materials, including fluoroscopy. (Iowa Code § 136C.3). A person (other than a "licensed professional") may not operate or use radioactive materials for medical treatment or diagnostic purposes unless that person has completed a course of instruction approved by the department or has otherwise met the minimum training requirements established by the department. (Iowa Code § 136C.14). A licensed professional is a person licensed or otherwise authorized by law to practice medicine, osteopathic medicine, podiatry, chiropractic, dentistry, dental hygiene, or veterinary medicine. ARNPs are not licensed professionals under this definition. (Iowa Code § 136C.1). ARNPs are not "licensed practitioners". (IAC § 641-38.2).

IDPH must establish minimum criteria and safety standards, including continuing education requirements, and administer examinations and disciplinary procedures for operators of radiation machines and users of radioactive materials who are not "licensed professionals". (Iowa Code §136C.3(1); Iowa Code § 136C.3(2)(a)). In order for ARNPs to provide "direct supervision" of fluoroscopy as the term is defined within the Iowa Administrative Code, they must satisfy minimum education and safety standards, including continuing education requirements and an examination established by the Iowa Department of Public Health. IDPH may not abrogate this duty to IBN.

Even if the expansion of practice by IBN had been valid, which is not the case, neither the IBN or IDPH rules establish a curriculum or minimum criteria and safety standards, including continuing education requirements and an examination as required by law for ARNPs to provide direct supervision of fluoroscopy; rather, the rules are the product of one board's work, setting forth broadly stated training requirements that neither reflect nor connect in any way to any curriculum, training and certification standards developed through the work and consensus of professional standard-setting bodies, whether in nursing or medicine, to assure nursing proficiency and public health safety in the field of radiology.

The record before this Court reflects that the desired expansion of nursing practice sought by IBN and IDPH has not been recognized by either the medical or nursing professions nor in standards of radiation health and safety. The Iowa General Assembly, both in Iowa Code Chapter 152 pertaining to nursing, and in the Radiation Machines and Radioactive Materials Act found at Iowa Code Chapter 136C, requires that this threshold be met, which is lacking in this case. Both the IBN and IDPH failed in their rulemaking to meet these minimal statutory requirements.

A copy of the full opinion is available at: www.iasahq.org/images/stories/CVCV008252Ruling.pdf