

BEFORE THE ALABAMA BOARD OF NURSING

IN THE MATTER OF:) **PETITION FOR**
) **DECLARATORY RULING**
STEVE SYKES, M.D.,)
)
)
Petitioner.)

DECLARATORY RULING

COMES NOW the Alabama Board of Nursing, by and through its Executive Officer, N. Genell Lee, MSN, RN, JD, and issues the following ruling:

QUESTION PRESENTED

“Whether or not it is within the scope of practice for a CRNA to perform procedures involving the injection of local anesthetics, steroids and analgesics for pain management purposes, including, but not limited to, peripheral nerve blocks, epidural injections, and spinal facet joint injections when the CRNA can document education, training, and experience in performing such procedures. In addition, is it within the scope of practice for a CRNA to diagnose a patient and determine a course of treatment such as those listed above.”

FINDINGS OF FACT

1. In a letter dated October 28, 2009, Steve Sykes, M.D. of Anesthesia Consultants Medical Group in Dothan, Alabama, reported that he had been made aware of a CRNA providing epidural steroidal injections to patients, which he believed posed an “imminent threat to patient safety.” Based on this representation, Sykes requested that the Alabama Board of Nursing issue an advisory opinion regarding whether certain procedures were within the scope of practice of a certified registered nurse anesthetist (CRNA).
2. In a letter dated November 5, 2009, the Alabama Board of Nursing’s Executive Officer, N. Genell Lee, MSN, RN, JD, requested that Sykes provide the Board with the names of the CRNA’s he believed posed imminent threats to the safety of patients in order that the Board could immediately initiate investigations of Sykes’s allegations.
3. In a letter dated November 10, 2009, Sykes responded that his knowledge was “limited to information provided from RN’s with whom I work that are very concerned and have expressed their deep desire that patient safety be preserved.” Sykes further

asserted that it was his “unequivocal belief that CRNA's are not privileged in any facilities in the state of Alabama to perform medical procedures.”

4. Following its November 19-20, 2009, regular meeting, the Alabama Board of Nursing directed its Executive Officer to send a letter to Sykes advising him that the Board could not grant Sykes's request for an advisory opinion because neither the Alabama Nurse Practice Act nor the Alabama Administrative Procedures Act provided the Board with the authority to issue advisory opinions. Sykes was advised that the Board would notify him if a CRNA received discipline based on his prior allegations.

5. On February 19, 2010, the Alabama Board of Nursing received a letter dated January 12, 2010, from Sykes in which he once again alleged the existence of a “disturbing situation occurring in several facilities in Alabama where an advanced practice nurse, in this instance a certified registered nurse anesthetist (CRNA), was providing epidural steroid injections to patients.” He asserted: “It is my belief that such behavior may be in violation of the current statute which provides for practice as a CRNA, §34-21-81(4)c.” On behalf of himself and “all physicians similarly situated,” Sykes requested a declaratory ruling pursuant to Section 41-22-11 of the Code of Alabama (1975). Sykes's letterhead suggests that he engages in the practice of anesthesiology. It is unclear if the physicians he purports to represent are anesthesiologists, all Alabama licensed physicians, or some other segment thereof.

JURISDICTION

Pursuant to Section 41-22-11 of the Code of Alabama (1975), the Alabama Board of Nursing has jurisdiction to issue declaratory rulings with respect to the validity of a rule, with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it, or with respect to the meaning and scope of any order of the agency, if a written petition for declaratory ruling is filed by a person who states with specificity the reason why the person is substantially affected by the rule at issue. See also Alabama Board of Nursing Administrative Code § 610-X-1-.09.

CONCLUSIONS OF LAW

1. A petition for declaratory ruling to the Alabama Board of Nursing should state the name and address of the petitioner, a statement of facts sufficient to show that the petitioner is substantially affected by the rule, and identification of the rule, statute or order and the reasons for the questions. Alabama Board of Nursing Administrative Code § 610-X-1-.09. Sykes's letter is not a model of clarity as it pertains to the question of whether he is substantially affected by any certain rule of the Alabama Board of Nursing. Nevertheless, because the letterhead on which Sykes's correspondence is written does suggest that he is engaged in the practice of anesthesiology, and because his question pertains to the scope of a CRNA's practice, the Board infers that Sykes's interest is that the application of the rules and statutes pertaining to a CRNA's scope of practice could substantially affect Sykes's economic interests. Thus, although Sykes has not strictly conformed to the Board's requirements for petitions for declaratory rulings, the Board will consider his letter to be a petition for declaratory ruling.

2. Section 34-21-81(4)(c) of the Code of Alabama (1975) provides:

(4) **ADVANCED PRACTICE NURSING.** The delivery of health care services by registered nurses who have gained additional knowledge and skills through successful completion of an organized program of nursing education that prepares nurses for advanced practice roles as certified registered nurse practitioners, certified nurse midwives, certified nurse anesthetists, and clinical nurse specialists:

(c) Practice as a certified registered nurse anesthetist (CRNA) means the performance of or the assistance in any act involving the determination, preparation, administration, or monitoring of any drug used to render an individual insensible to pain for surgical and other therapeutic or diagnostic procedures. The nurse anesthetist is qualified in accordance with Section 27-46-3 and is licensed by the Board of Nursing and functions under the direction of a physician licensed to practice medicine, or a dentist, who is immediately available.

3. The Alabama Board of Nursing has the statutory authority to adopt standards of nursing practice. Ala. Code (1975) § 34-21-2(j)(21).

4. In Rule 610-X-9-.01 of the Alabama Board of Nursing Administrative Code, the Board has established qualifications for a registered nurse to receive approval to practice as a certified registered nurse anesthetist in Alabama. Those qualifications are:

(a) An active Alabama registered nurse license. Initial applicants shall have an unencumbered active Alabama registered nurse license unless authorized by the Board.

(b) Met all requirements for completion of or graduation from an organized program of study and clinical experience beyond the basic educational preparation as a registered nurse that prepares nurse anesthetists and is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools or its predecessor, the American Association of Nurse Anesthetists and recognized by the Board of Nursing.

(c) Earned at least a master's degree, or post-master's certificate in advanced practice nursing from an accredited graduate program in nurse anesthesia recognized by the Board.

(d) Current certification as a registered nurse anesthetist by the Council on Certification of Nurse Anesthetists or the Council on Recertification of Nurse Anesthetists.

Applicants for CRNA approval who "graduated from an accredited school of nurse anesthesia prior to December 31, 2003," were exempted from the master's degree requirement.

5. There are two CRNA education programs in Alabama: the older of the two is the Nurse Anesthesia Program at the University of Alabama at Birmingham in the School of

Health Professions, and the newer of the two is the Graduate Nursing Anesthesia Program in the School of Nursing at Samford University, Birmingham, Alabama.

6. In 1982, the Board adopted a regulation requiring CRNA's to practice in accordance with the standards developed by the American Association of Nurse Anesthetists. Alabama Board of Nursing Administrative Code § 610-X-9-.04.
7. Providing anesthesia services to patients, CRNAs do so "...under the direction of a physician licensed to practice medicine, or a dentist, who is immediately available." No evidence has been presented by Sykes or discovered by the Board to demonstrate that CRNA's are practicing independently of physician or dentist direction. A CRNA who provides anesthesia services for any purpose without direction from a physician licensed to practice medicine in Alabama or a dentist who is immediately available would be subject to disciplinary action by the Board of Nursing.
8. Sykes asks whether CRNA's may inject local anesthetics, steroids and analgesics for pain management purposes. Sykes's letter fails to provide any definition of the term "pain management." Alabama law permits CRNA's to perform or assist "in any act involving the determination, preparation, administration, or monitoring of any drug used to render an individual insensible to pain for surgical and other therapeutic or diagnostic procedures." Ala. Code (1975) § 34-21-81(4)(c). The Board's standards of practice provide as follows:
 - (8) The topical, intradermal, subcutaneous, or intramuscular administration of a local anesthetic agent in a specified amount designated by order of a licensed physician or dentist and in compliance with the Food and Drug Administration regulations may be performed by a registered nurse or licensed practical nurse when they meet the requirements of Rule 610-X-6-.04 or 610-X-6-.05 respectively.
 - (9) The monitoring and adjustment of local anesthetic agent(s) and analgesic agent(s) infusing via an epidural, brachial plexus, or femoral catheter placed by a qualified certified registered nurse anesthetist or qualified licensed physician may be performed by a registered nurse, with the use of an electronic pump or infusion reservoir, as ordered by a licensed prescriber.
 - (a) The registered nurse is authorized to replace and refill reservoirs with a solution prepared by a licensed registered pharmacist. The registered nurse is authorized to adjust infusion rates at the direction of a physician licensed to practice medicine or a certified registered nurse anesthetist.
 - (b) A standardized procedure is required for monitoring and adjustment of epidural, brachial plexus, and femoral catheter infusions of local anesthetics and analgesics.
 - (c) The organized program of study shall include:

- (i) Advanced cardiac life support or other comparable certification.
- (ii) Review of pertinent anatomy, physiology, and pathophysiology.
- (iii) Electronic pump/reservoir management.
- (iv) Theory of epidural analgesia.
- (v) Neurological assessment.
- (vi) Recognition and management of complications.
- (vii) Pharmacokinetics and pharmacodynamics.
- (viii) Annual review and competency evaluation.

Alabama Board of Nursing Administrative Code § 610-X-6-.07(8)-(10) (effective December 28, 2009). The substance of this rule was adopted by the Board in 2003, following notice and opportunity for public comment. See Alabama Board of Nursing Administrative Code § 610-X-6-.08 (effective April 24, 2003, through December 27, 2009). When the Board's recent revisions to its standards of practice rules were opened for public comment, the Alabama State Board of Medical Examiners (BME) submitted comments on this rule via a November 3, 2009, letter from BME's Executive Director Larry Dixon. With regard to the proposed Alabama Board of Nursing Administrative Code § 610-X-6-.07(8)-(10), the BME's only suggested revisions were (1) the addition of "licensed anesthesiologist" to the list of persons who could place epidural, brachial plexus, or femoral catheters for use in infusing local anesthetic agents and analgesic agents; and (2) the addition of wording to require demonstrated competency by registered nurses who are monitoring and adjusting local anesthetic agents and analgesic agents infusing through epidural, brachial plexus, or femoral catheters. The BME did not comment on that portion of the rule which continued to permit CRNA's to place epidural, brachial plexus, or femoral catheters for use in infusing local anesthetic and analgesic agents. The Alabama Board of Nursing declined to add "licensed anesthesiologist" to the rule, because the BME does not award specialty licenses and because anesthesiologists were already included in the rule, by virtue of their status as "qualified licensed physician[s]." The Alabama Board of Nursing also declined to add the language requiring demonstrated competency of registered nurses, because the rule already provided that a standardized procedure was required for registered nurses to be able to monitor and adjust local anesthetic agents and analgesic agents infusing through epidural, brachial plexus, or femoral catheters. All standardized procedures require that the nurse demonstrate competency initially and at periodic intervals. Alabama Board of Nursing Administrative Code § 610-X-6-.12(2)(e) and (3).

9. Sykes asks whether CRNA's may perform epidural steroidal injections. Epidural insertions are taught in the didactic and clinical components of education at CRNA schools; thus, epidural insertion is part of the basic education for a CRNA. It is common practice in Alabama hospitals for CRNA's approved by the Board of Nursing to perform epidural insertion and medication administration during labor and delivery to alleviate pregnant women's pain during childbirth. An uncomplicated vaginal birth may not involve any surgical, therapeutic, or diagnostic procedures requiring that the mother be rendered insensitive to pain; yet, a CRNA acts within his/her scope of practice when performing the epidural procedure for the purposes of managing the pain associated with the birth itself, rather than solely for any medical interventions that might become necessary during the birth. Of course, the epidural insertion and medication administration are done at the direction of a physician – most often an obstetrician/gynecologist. In an "epidural steroid injection," the procedure is the same, but the medication administered is different. Nevertheless, these injections are also made at the direction of physicians such as orthopedic physicians, family physicians, etc.

10. At the direction of physicians, CRNA's in Alabama regularly perform peripheral nerve blocks to render patients insensitive to pain for surgical procedures. These procedures are taught in both didactic and clinical components of education at CRNA schools; thus, peripheral nerve blocks are considered to be within the basic education of a CRNA.

11. With regard to spinal facet joint injections, the Board is not aware of CRNA schools in Alabama providing didactic and/or clinical education regarding such a procedure. "For practice beyond basic education that has not been previously approved by the Board, a standardized procedure is required for the registered nurse or licensed practical nurse in any practice setting." Alabama Board of Nursing Administrative Code § 610-X-6-.12(1) (as effective December 28, 2009). To date the Board has not received a standardized procedure application regarding spinal facet joint injections. Should the Board receive a standardized procedure application signed by the Chief Executive Officer, Chief Nursing Officer, and Chief Medical Officer of a hospital or other healthcare facility, the Board would then have the opportunity to consider the educational preparation, supervised clinical practice, and demonstrated competency to perform the procedure.

12. Sykes's letter asks whether it is within the scope of practice for a CRNA to diagnose a patient and determine a course of treatment such as those listed above (the Board infers that the courses of treatment to which Sykes is referring are peripheral nerve blocks, epidural injections, and spinal facet joint injections). The Board has found no evidence that CRNA's are providing medical diagnoses and prescribing medications. CRNA's are permitted by law to perform or assist in determination, preparation, administration and monitoring of any drug as part of anesthesia practice. If a CRNA is receiving direction from a physician licensed to practice medicine or a dentist, the direction could, in compliance with the statute, be to select the appropriate anesthesia for the circumstances and condition of the selected patient.

13. CRNA's practicing in hospitals are subject to the credentialing process of the hospital where services are provided. Credentialing committees include physicians on staff of the local hospital, governing representatives of the hospital, and any other providers important to the functioning of the hospital. The credentialing process specifies which procedures are allowed in the hospital, who can perform them, and under what circumstances. Physicians, CRNA's, and other providers are subject to the hospital's credentialing process. Thus, even if a procedure is within the scope of practice of a Alabama CRNA, the CRNA must still be credentialed to perform the procedure in a particular hospital.

RULING

The Petition for a Declaratory Ruling is hereby granted, and the Alabama Board of Nursing hereby rules as follows:

1. It is within the scope of practice for an Alabama CRNA with the documented education, training, and experience to place epidural, brachial plexus, or femoral catheters for use in infusing local anesthetic agents and analgesic agents.
2. It is within the scope of practice for an Alabama CRNA with the documented education, training, and experience to perform epidural steroidal injections.
3. It is within the scope of practice for an Alabama CRNA with the documented education, training, and experience to perform peripheral nerve blocks.
4. The Board lacks sufficient information to determine whether spinal facet joint injections could fall within the scope of an Alabama CRNA's practice.
5. It is not within the scope of practice for an Alabama CRNA to make medical diagnoses. However, if an Alabama CRNA is receiving direction from a physician licensed to practice medicine or a dentist, the Alabama CRNA may determine the appropriate anesthesia for the circumstances and condition of the selected patient without such conduct being considered the making of medical diagnoses.

DONE and **ORDERED** on this the 19th day of March, 2010.

ALABAMA BOARD OF NURSING



N. Genell Lee, RN, MSN, JD
Executive Officer