

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW
SACRAMENTO, CALIFORNIARECEIVED
APR 16 1993
DEPT. OF HEALTH SERVICES
OFFICE OF REGULATIONS

In re:

HEALTH SERVICES

REGULATORY ACTION:

Title 22

California Code of Regulations)

Amend 70233, 70527, and 70529)

NOTICE OF APPROVAL OF
REGULATORY ACTION
(Gov. Code, Sec. 11349.3)

OAL File No. 93-0315-02 8

R. 49.91

SUMMARY OF REGULATORY ACTION

This regulatory action allows an appropriately licensed health practitioner to conduct both pre- and post-anesthesia evaluations in accordance with the scope of his or her licensure.

OFFICE OF ADMINISTRATIVE LAW DECISION

OAL approves this regulatory action.

REASON FOR DECISION

This regulatory action meets all applicable legal requirements.

Comments:

DATE: 04/15/93

B. Steinhardt-Carter
B. STEINHARDT-CARTER
Staff Counsel

for: JOHN D. SMITH
Deputy DirectorOriginal: Molly Joel Coye, M.D., M.P.H., Director
cc: Ron C. Wetherall

TITLE 22

CALIFORNIA DEPARTMENT OF HEALTH SERVICES

ACTION: Notice of Proposed Rulemaking

SUBJECT: GACH: Nurse Anesthetists (R-49-91)

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Health Services will hold a public hearing commencing at 10:00 a.m. on June 17, 1992 in the Auditorium at 714 P Street, Sacramento, CA, at which time any person may present statements or arguments orally or in writing relevant to the action described in this notice. Any written statements or arguments must be received by the Office of Regulations, Department of Health Services, 714 P Street, Room 1000, P. O. Box 942732, Sacramento, CA 94234-7320, by 5:00 p.m. on June 17, 1992, which is hereby designated as the close of the written comment period. It is requested but not required that written statements or arguments be submitted in triplicate.

CONTACT: Inquiries concerning the action described in this notice may be directed to Ron C. Wetherall, Chief, Office of Regulations at (916) 657-0692. In any such inquiries, please identify the action by using the Department regulation control number R-49-91.

INFORMATIVE DIGEST: Section 70233, Title 22, California Code of Regulations (CCR) requires a general acute care hospital (GACH) to have written policies and procedures for anesthesia services, including a provision that a preanesthesia evaluation of a patient must be conducted by a physician. Subsection 70527(c)(7) requires the provision of an examination by a physician prior to discharge following outpatient surgery. The California Association of Nurse Anesthetists (CANA) petitioned the Department to amend these sections in order to remove unnecessary restrictions on its members' scope of practice.

Section 2725 of the Business and Professions Code includes the evaluation of patients as within the scope of licensure of a registered nurse.

The Attorney General (63 Attorney General Opinions 143 (1980)) and the California Supreme Court (California Association of Psychology Providers v. Rank (1990) 51 Cal.3d. 1) have stated that regulations may not alter or amend statute or enlarge or impair its scope.

The proposed regulatory changes remove the restrictions on licensed practitioners, other than physicians, in providing patient evaluation prior to anesthesia and/or discharge from outpatient surgery. The changes also standardize the requirements for persons providing outpatient services.

The proposed changes would amend Sections 70233, 70527, and 70529 of Division 5, Title 22, California Code of Regulations.

The Department has determined that these amendments are appropriate

and reasonable and will respond to the concerns of the California Association of Nurse Anesthetists.

AUTHORITY: Sections 208 and 1275, Health and Safety Code.

REFERENCE: Sections 1275 and 1276, Health and Safety Code; and Section 2725, Business and Professions Code.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: None.
- B. Fiscal Effect on State Government: None.
- C. Fiscal Effect on Federal Funding of State Programs: None.
- D. Fiscal Effect on Private Persons or Businesses Directly Affected: None.
- E. Fiscal Effect on Small Businesses: None.

DETERMINATIONS: The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has also determined that the regulations would not have a significant adverse economic impact on small businesses.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS: The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. A copy of the initial statement of reasons and a copy of the text of the proposed regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other materials related to the proposed regulations.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS: In accordance with Government Code Section 11346.5(a)(7), the Department must determine that no alternative considered by the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. Other regulation changes may be

scheduled for hearing at the same time appointed for public hearing on the action described in this notice. An agenda for the public hearing will be posted at the time and place of hearing designated above.

DEPARTMENT OF HEALTH SERVICES

R-49-91

Dated: April 11, 1992


Molly Joel Coye, M.D., M.P.H.
Director

INITIAL STATEMENT OF REASONS

Restrictions on the scope of practice of licensed practitioners can affect the adequacy, efficiency, safety, and quality of patient care. The existing regulations, in Division 5 of Title 22, California Code of Regulations (CCR), restrict the performance of preanesthesia examinations in a general acute care hospital and postanesthesia examinations in an outpatient unit to physicians. These functions are within the scope of practice for the nurse anesthetist as set forth in the Nursing Practice Act, Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code (B&P Code). Accordingly, in response to a petition from the California Association of Nurse Anesthetists (CANA), the Department proposes to revise Subsections 70233(a)(1), 70527(c)(7) and 70529(b) of Title 22, CCR to permit general acute care hospitals to adopt policies, procedures, and medical staff bylaws that permit licensed practitioners to practice pursuant to their scopes of practice.

22 CCR 70233. Anesthesia Service General Requirements.

SPECIFIC PURPOSE OF THE REGULATION

This regulation specifies the minimum requirements for the provision of this basic service. Subsection 70233(a)(1) pertains to the performance of a preanesthesia evaluation of a patient.

WHAT THE PROPOSED REGULATORY ACTION DOES

The proposed revision would revise Subsection 70233(a)(1) to delete the requirement that only a physician may conduct a preanesthesia evaluation of a patient. Instead the proposal would permit physicians and other qualified practitioners to conduct preanesthesia evaluation of patients within the scope of their respective licenses.

NECESSITY

In response to a petition for regulation changes by the CANA, the Department has determined that this existing subsection is not consistent with Sections 2827 and 2828 of the B&P Code. These sections provide the authority for the certification and utilization of certified registered nurse anesthetists in a health care facility. Furthermore, Section 2725 of the B&P Code, as interpreted by the Board of Registered Nursing of the California Department of Consumer Affairs, authorizes certified registered nurse anesthetists to perform preanesthesia evaluations.

Accordingly, the Department proposes to revise this subsection to permit a hospital to allow certified registered nurse anesthetists or other qualified practitioners (physicians, dentists or podiatrists) to perform a preanesthesia evaluation of a patient.

TECHNICAL/THEORETICAL REPORTS OR DOCUMENTS

The Department is providing, as an exhibit, a copy of a July 1990 letter from the California Board of Registered Nursing, which specifically states that the scope of practice of certified registered nurse anesthetists includes conducting preanesthesia evaluations and postanesthesia examinations independently.

The Department recognizes the growth and evolution of these health care practitioners and provides two exhibits that illustrate their current status and use in providing health care:

1. "Reforming Anesthesia Payment Under Medicare," Jerry Cromwell and Margo L. Rosenbach, Health Affairs, Fall 1988, Pages 5-19;
2. "A Profile of Anesthesia Practice Patterns," Margo L. Rosenbach and Jerry Cromwell, Health Affairs, Fall 1988, Pages 118-131.

SPECIFIC TECHNOLOGIES OR EQUIPMENT MANDATED

None.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

None.

22 CCR Section 70527. Outpatient Service General Requirements.

SPECIFIC PURPOSE OF THE REGULATION

This regulation specifies the minimum requirements for a hospital approved to provide this supplemental service. Subsection 70527(c)(7) pertains to the postanesthesia examination of a patient prior to discharge.

WHAT THE PROPOSED REGULATION DOES

The Department proposes to revise Subsection 70527(c)(7) to delete the requirement that only a physician may conduct a postanesthesia examination of a patient prior to discharge. The proposed revision would permit physicians and other qualified practitioners to conduct the postanesthesia examination within the scopes of their licenses.

NECESSITY

In response to a petition for regulation changes, the Department has determined that this subsection is not consistent with Sections 2827 and 2828 of the B&P Code. These sections provide the authority for the certification and utilization of certified registered nurse anesthetists in a health care facility. Furthermore, Section 2725 of the B&P Code, as interpreted by the Board of Registered Nursing of the California Department of Consumer Affairs, permits certified nurse anesthetists to perform postanesthesia examinations independently.

Therefore, the Department proposes to revise this subsection to permit a hospital to allow a certified registered nurse anesthetist or other qualified practitioner to conduct postanesthesia examination of a patient prior to discharge.

TECHNICAL/THEORETICAL REPORTS OR DOCUMENTS

The Department has provided, as an exhibit, a copy of a July 1990 letter from the California Board of Registered Nursing, which states that the scope of practice of certified registered nurse anesthetists includes conducting preanesthesia evaluations and postanesthesia examinations independently. The Department is also providing two other exhibits that were published in a 1988 edition of Health Affairs which illustrate the growth and evolution of the nurse anesthetist profession into today's current practice and its utilization in providing health care.

SPECIFIC TECHNOLOGIES OR EQUIPMENT MANDATED

None.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

There are no alternatives which would effectively permit the Department to execute its duties as set forth in Health and Safety Code Section 1276, to respond to a petition for regulatory change and to promulgate regulations that are in compliance with the Nursing Practice Act and Nurse Anesthetist Act, as set forth in B&P Code Sections 2725, 2827 and 2828.

22 CCR Section 70529(b). Outpatient Service Staff.

SPECIFIC PURPOSE OF THE REGULATION

This regulation establishes minimum staffing standards for a hospital outpatient department, if provided. An outpatient service is a supplemental service approved by the Department.

WHAT THE PROPOSED REGULATORY ACTION DOES

Subsection 70529(b) would be revised to add a requirement that all health professionals, other than physicians, dentists, and podiatrists providing services in the outpatient service must meet the same qualifications as for the inpatient services.

NECESSITY

This proposed addition to Subsection (b) is necessary to resolve an allegation by the California Association of Nurse Anesthetists that this existing subsection restricts them from practicing in the outpatient service. Certified registered nurse anesthetists are permitted to practice in hospital outpatient departments. This determination is consistent with the Nursing Practice Act, Chapter 6 (commencing with Section 2725) of Division 2 of the

B&P Code; and the Nurse Anesthetists Act, Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the B&P Code; and scope of practice determinations made by the California Board of Registered Nursing. This proposed addition would also provide oversight and/or participation of these other health care professionals in patient care issues by requiring either medical staff membership, other types of membership or credentialing requirements.

TECHNICAL/THEORETICAL REPORTS OR DOCUMENTS

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT MANDATED

None.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

No other alternative would effectively allow hospitals to utilize health professionals in a manner that is authorized by their licensure and scope of practice to provide for their participation in operational issues involving their profession and to provide for a system of peer review or oversight.

STATEMENTS OF DETERMINATION

- o The Department has determined that no alternative considered would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.
- o These regulations do not have an economic impact on small business.
- o These regulations do not impose a mandate on local agencies or school districts.

CALIFORNIA CODE OF REGULATIONS
TITLE 22, DIVISION 5
CHAPTER 1. GENERAL ACUTE CARE HOSPITALS

70233. Anesthesia Service General Requirements.

(a) Written policies and procedures shall be developed and maintained by the person responsible for the service in consultation with other appropriate health professionals and administration. Policies shall be approved by the governing body. Procedures shall be approved by the administration and medical staff where such is appropriate. The policies and procedures shall include provision for at least:

(1) Preanesthesia evaluation of the patient by ~~a physician, with appropriate documentation of~~ an individual qualified to administer anesthesia as a licensed practitioner in accordance with his or her scope of licensure. Persons providing preanesthesia evaluations shall appropriately document pertinent information relative to the choice of anesthesia and the surgical or obstetrical procedure anticipated.

(2) Review of the patient's condition immediately prior to induction of anesthesia.

(3) Safety of the patient during the anesthetic period.

(4) Recording of all events taking place during the induction of, maintenance of and emergence from anesthesia, including the amount and duration of all anesthetic agents, other drugs, intravenous fluids and blood or blood fractions.

(5) Recording of postanesthetic visits that include at least one note describing the presence or absence of complications related to anesthesia.

(b) The responsibility and the accountability of the anesthesia service to the medical staff and administration shall be defined.

(c) Rules for the safe use of nonflammable and flammable anesthetic agents which conform with the rules of the State Fire Marshal and Section 70849 shall be adopted.

(d) Periodically, an appropriate committee of the medical staff shall evaluate the service provided and make appropriate recommendations to the executive committee of the medical staff and administration.

(e) The requirements in this section do not apply to special hospitals unless the special hospital provides this service.

NOTE: Authority Cited: Sections 208(a) and 1275, Health and Safety Code.

Reference: Sections 1276, Health and Safety Code and Section 2725, Business and Professions Code.

70527. Outpatient Service General Requirements.

(a) Written policies and procedures shall be developed and maintained by the person responsible for the service in consultation with other appropriate health professionals and administration. Policies shall be approved by the governing body. Procedures shall be approved by the administration and medical staff where such is appropriate.

(b) The responsibility and the accountability of the outpatient service to the medical staff and administration shall be defined.

(c) If outpatient surgery is performed, the written policies and procedures shall make provision for at least the following:

- (1) The types of operative procedures that may be performed.
- (2) Types of anesthesia that may be used.
- (3) Preoperative evaluation of the patient, meeting the same standards that apply to inpatient surgery.
- (4) Informed operative consent.
- (5) The delivery of all anatomical parts, tissues and foreign objects removed to a pathologist designated by the hospital and a report of findings to be filed in the patient's medical record.

(6) Written preoperative instructions to patients covering:

(A) Applicable restrictions upon food and drugs before surgery.

(B) Any special preparations to be made by the patient.

(C) Any postoperative requirements.

(D) An understanding that admission to the hospital may be required in the event of an unforeseen circumstance.

(7) Examination of each patient by a ~~physician~~ licensed practitioner whose scope of licensure permits prior to discharge.

(d) A medical record shall be maintained for each patient receiving care in the outpatient service. The completed medical record shall include the following, if applicable:

(1) Identification sheet to include but not be limited to the following patient information.

(A) Name.

(B) Address.

(C) Identification number (if applicable).

1. Hospital number.

2. Social Security.

3. Medicare.

4. Medi-Cal.

(D) Age.

(E) Sex.

(F) Marital status.

(G) Religious preference.

(H) Date and time of arrival.

(I) Date and time of departure.

(J) Name, address and telephone number of person or agency responsible for the patient.

(K) Initial diagnostic impression.

- (L) Discharge or final diagnosis.
- (2) Medical history including:
 - (A) Immunization record.
 - (B) Screening tests.
 - (C) Allergy record.
 - (D) Nutritional evaluation.
 - (E) Neonatal history for pediatric patients.
- (3) Physical examination report.
- (4) Consultation reports.
- (5) Clinical notes including dates and time of visits.
- (6) Treatment and instructions, including:
 - (A) Notations of prescriptions written.
 - (B) Diet instructions, if applicable.

(C) Self-care instructions.

(7) Reports of all laboratory tests performed.

(8) Reports of all X-ray examinations performed.

(9) Written record of preoperative and postoperative instructions.

(10) Operative report on outpatient surgery including preoperative and postoperative diagnosis, description of findings, techniques used and tissue removed or altered, if appropriate.

(11) Anesthesia record including preoperative diagnosis, if anesthesia is administered.

(12) Pathology report, if tissue or body fluid was removed.

(13) Clinical data from other providers.

(14) Referral information from other agencies.

(15) All consent forms.

(e) Periodically, an appropriate committee of the medical staff shall evaluate the services provided and make appropriate recommendations to the executive committee of the medical staff and administration.

NOTE: Authority Cited: Sections 208(a) and 1275, Health and Safety Code.

Reference: Section 1275, Health and Safety Code and Section 2725, Business and Professions Code.

70529. Outpatient Service Staff.

(a) The outpatient service shall have a person designated to direct and coordinate the service.

(b) All physicians, dentists and podiatrists providing services in the outpatient unit shall be members of the organized medical staff. All other health care professionals providing services in outpatient settings shall meet the same qualifications as those professionals providing services in inpatient services.

(c) A registered nurse shall be responsible for the nursing service in the outpatient service.

(d) There shall be sufficient nursing and other personnel to provide the scope of services offered.

NOTE: Authority Cited: Sections 208(a) and 1275, Health and Safety Code.

Reference: Section 1276, Health and Safety Code.