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Legal Odds and Ends

Lance Plunkett JD, LLM
NYSDA, lplunkett@nysdental.org

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Legal Odds and Ends

*New laws define job titles and responsibilities,
set wages and protect health information.*

Lance Plunkett, J.D., LL.M.

As is my custom, I am devoting this November column to summing up disparate legal occurrences concerning new laws and events that lead into the following year. There are a number of such items in 2022.

First, is the remarkable clarification by the New York State Education Department (NYSED) of the use of Certified Registered Nurse Anesthetists (CRNAs) by dentists.

The history of CRNAs is interesting. Despite many years (decades, actually) of trying to become a licensed profession, CRNAs have still not achieved this status. There is no mention of the term CRNA in the New York State Education Law governing licensure of nurses. Therefore, they have no scope of practice or official title other than being ordinary registered professional nurses (RNs). They obviously have additional training in anesthesia, but the Education Law does not recognize it. They are not nurse practitioners (NPs), who have an enhanced scope of practice that includes the ability to prescribe drugs. Some CRNAs might also have become NPs, but that is not a common occurrence and, interestingly, there is no NP-specific specialty designation for anesthesia.

Based on the foregoing history, one might reasonably ask where CRNAs come from? What exactly are they in New York State? The only place CRNAs are mentioned is in the hospital regulations of the New York State Department of Health, where they appear as a category of hospital personnel who assist with the provision of anesthesia services in hospital settings. But the Department of Health hospital regulations are incapable of conferring professional licensure status on CRNAs. For all practical purposes, they remain ordinary RNs in terms of scope of practice. That means that, like any RN, the CRNA can carry out a medical regimen specified by a physician or dentist. This is what allows them to provide anesthesia services in hospital settings under the control of a physician or dentist.

Outside of hospital settings, there has always been confusion about what CRNAs could do in dental offices, for example. The situation is exacerbated by opposition from physician groups, who don't want them doing much at all; by Department of Health requirements that certified office-based surgery physician offices have supervising physicians present to watch any CRNA activities; and by the Education Depart-

ment's political sensitivity to mention of the term CRNA. But now, at the insistence of NYSDA, the Education Department—through a collaboration among the State boards for Dentistry, Medicine and Nursing—has issued the following clarification, in a question-and-answer format, on CRNAs in dental offices:

13. Can a New York State licensed RN or nurse practitioner administer anesthesia to a dental patient in a private dental office under the supervision of a New York State licensed dentist if the nurse is also a Certified Registered Nurse Anesthetist (CRNA)?

Yes, under the following specified conditions:

- The supervising dentist must be currently certified by NYSED to administer the same level/type of anesthesia that will be provided to the patient [8 NYCRR §61.10(d)]; and
- The nurse is a licensed and registered RN AND a Certified Registered Nurse Anesthetist (CRNA):
 - Acute care nurse practitioners (with more than 3,600 hours of nurse practitioner experience) who are CRNAs may order, prescribe, and administer anesthetic agents to dental patients in the private dental office. The supervising dentist must be physically present in the office while the CRNA provides anesthesia care to a dental patient. The CRNA may also provide anesthesia to a dental patient for a dentist who may not have NYSED anesthesia certification as long as the supervising dentist (anesthesia certificate holder) is also physically in the office.
 - In cases where the CRNA is not a nurse practitioner, the supervising dentist must order or prescribe anesthetic agents and other medications and remains medically responsible for the anesthesia care rendered to the patient, including the patient's response to the anesthesia. For this reason, the supervising dentist must be present and immediately available to intervene in the event of an adverse outcome while the patient is receiving anesthesia care from the CRNA. The supervising dentist may not assume any duties that interfere with this function (such as administering anesthesia to a different patient).

While this clarification is very useful in defining what an ordinary RN/CRNA and a specialized acute care NP/CRNA can do in a dental office without a physician being involved, it puts a burden on the dentist to know exactly what credentials the anesthesia provider holds. While dentists normally check on this anyway as a matter of good clinical risk management, the simple answer "I am a CRNA" will not be enough and will require an inquiry into what un-

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derlying nursing license the person holds—a regular RN license or an acute care specialized NP license?

Always keep in mind that there is still no such thing as a CRNA license in New York State; CRNA is merely a training designation. Nevertheless, at least the word CRNA now has escaped the lips of the Education Department.

Legal Grab Bag

- On a very different subject, New York State raised the minimum wage for employees to \$15.00 per hour, but it has been phased in differently depending on the geographic region of the state. While the \$15.00 per hour rate has already been in effect in New York City and Nassau, Suffolk and Westchester counties, the phase-in has been slower in all other areas of the state. The New York State Department of Labor has now announced that starting Dec. 31, the minimum wage rate throughout the rest of New York State will be \$14.20. It remains \$15.00 in New York City and Nassau, Suffolk and Westchester counties.
- On the new law front, effective Aug. 17, registered dental assistants can now place and remove temporary restorations as a result of Gov. Hochul signing into law NYSDA's bill on

that subject as Chapter 512 of the Laws of 2022. The NYSDA bill to allow additional dental specialty residency programs such as oral medicine, dental public health and orofacial pain to qualify for dental licensure—A.9967 (Glick) / S.8808 (Stavisky)—has not yet been delivered to Gov. Hochul for action.

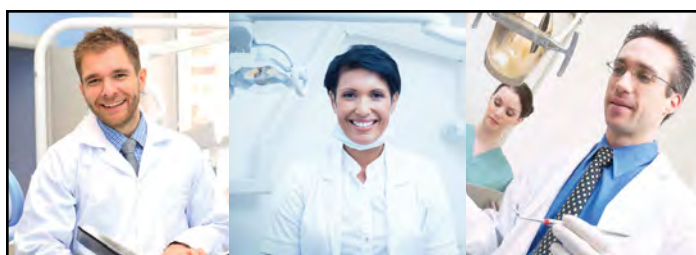
- On employment laws, the New York City law on transparency in posting salary ranges for job advertisements, discussed at length in the April 2022 NYSDJ, took effect Nov. 1. The similar New York State legislation—A.10477 (Joyner)/S.9427—A (Ramos)—has not yet been delivered to Gov. Hochul for action. Bills have been slowly trickling to the governor to sign or veto, but a large number will likely be sent to her after the midterm elections. Politics is the art of caution before an election.
- On the electronic health information front, the federal Information Blocking Regulation took full effect on Oct. 6 for all electronic health information (EHI). The Information Blocking Regulation prohibits any practice that is likely to interfere with access, exchange or use of EHI, except as required by law or covered by an exception. It has been slowly phased in to cover certain data elements of EHI, but now it fully applies to all EHI.

The genesis of the Information Blocking Regulation was to stop a practice that some electronic health record (EHR) companies were deliberately adopting that made their EHRs incompatible with other systems, thereby locking healthcare providers into exclusive use of their systems. It remains to be seen how the full regulation will affect interoperability of EHI systems, but the goal was to make interoperability easier and more effective.

When One Course Will Do

Finally, a quick note on a question that came up recently on New York State's mandated harassment prevention training. This training is required of all employers, no matter their size, in all parts of New York State. Section 201-g of the New York State Labor Law is very clear on that point. The training must be given every year. Where confusion has set in is that New York City has its own additional training requirements for employers with 15 or more employees. However, the New York State requirements for all employers also apply in New York City. Rather than have employers in New York City with 15 or more employees give two sets of sexual harassment prevention training, the city and state aligned their training programs so that the New York City training meets the New York State requirements if given by any employer in New York City. //

The material contained in this column is informational only and does not constitute legal advice. For specific questions, dentists should contact their own attorney.



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